Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB Case No. 1122** (CTA Case No. 8465)
	Present:
- versus -	**DEL ROSARIO,** *PJ,* **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS,** *and* **RINGPIS-LIBAN,** *JJ.*
ACQUIRE ASIA PACIFIC PHILIPPINES, INC., Respondent.	**Promulgated:** NOV 26 2014 3:40 p.m.

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DECISION

CASANOVA, *J.*:

This is an appeal, by way of a Petition for Review[1], filed by the Commissioner of Internal Revenue (CIR), from the Decision[2] dated December 13, 2013 and Resolution[3] dated February 5, 2014, both promulgated by the Court of Tax Appeal's (CTA) Third Division in CTA Case No. 8465, entitled *"Acquire Asia Pacific Philippines, Inc. vs. Commissioner of Internal Revenue"*, which granted Acquire Asia Pacific Philippines, Inc.'s (AAPPI) Petition for Review ordering the CIR to issue a tax credit certificate in favor of AAPPI for its erroneously overpaid income taxes.

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[1] CTA *En Banc* Rollo, pp. 1-6
[2] Annex "A", Petition for Review, CTA *En Banc* Rollo, pp. 7-21
[3] Annex "B", *Ibid.*, pp. 22-23

Petitioner is the duly appointed Commissioner of Internal Revenue vested with the authority to act as such, including, *inter alia*, the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the tax laws. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Respondent AAPPI is duly organized and existing under Philippine Laws with principal office at Lower Ground Floor, Worldwide Corporate Center, Shaw Boulevard cor. EDSA, Mandaluyong City. Respondent is registered with the Philippine Economic Zone Authority (PEZA) as an Ecozone IT Enterprise.[4]

The facts of the case, as found by the CTA Third Division, are as follows:[5]

> "From the records, it shows that AAPPI is registered with the Philippine Economic Zone Authority ("PEZA") as an Ecozone IT Enterprise.
>
> During taxable year 2009, AAPPI filed its Quarterly Income Tax Returns (BIR Form No. 1702Q), as summarized below:

Date Filed	Period	Taxable Income	Tax Rate	Amount Remitted
May 29, 2009	1st Quarter	11,019,082.26	5%	550,954.11
August 20, 2009	2nd Quarter	9,332,455.09	5%	365,798.23
Nov 27, 2009	3rd Quarter	11,944,577.39	5%	597,228.87

> Subsequently, petitioner filed amended Quarterly Income Tax Returns (BIR Form no. 1702Q), as summarized below:

Date Amendment was Filed	Period	Taxable Income	Tax Rate	Amount Previously Remitted	Additional Amount Remitted	Interest Paid	Total Amount Paid
Feb 8, 2010	1st Quarter	15,973,019.08	5%	550,954.11	247,696.84	34,107.85	832,758.80
Feb 8, 2010	2nd Quarter	20,826,596.77	5%	365,798.23	675,531.61	59,244.12	1,100,573.96
Feb 8, 2010	3rd Quarter	23,120,117.66	5%	597,228.87	558,777.01	21,065.89	1,177,071.77
TOTAL		**59,919,733.51**		**1,513,981.21**	**1,482,005.46**	**114,417.86**	**3,110,404.53**

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[4] Par. 10, The Parties, *Id.*, p. 2
[5] Annex "A", The Facts, Petition for Review, CTA *En Banc* Rollo, pp. 8-12

On April 13, 2010, petitioner filed its Annual Income Tax Return (BIR Form No. 1702) for taxable year 2009, showing a total gross income of ₱86,300,149.00, while paying ₱4,315,007.00, excluding interest. On April 30, 2010 an Amended Annual Income Tax Return was filed, but there were no actual amendments made.

Thus, a summary of the transactions:

Period	Taxable Income	Tax Rate	Amount Remitted
1st Quarter	15,973,019.08	5%	798,650.95
2nd Quarter	20,826,596.77	5%	1,041,329.84
3rd Quarter	23,120,117.66	5%	1,156,005.88
4th Quarter	26,380,415.49	5%	1,319,020.33
Annual	**86,300,149.00**	**5%**	**4,315,007.00**

On November 24, 2010, AAPPI filed an application for issuance of a tax credit certificate of its overpaid income taxes for the years 2008 to 2010 with Revenue District Office No. 41 of the BIR. Petitioner filed a claim for an aggregate amount of ₱3,238,552.48, with ₱1,726,002.98 pertaining to the overpaid income taxes for taxable year 2009.

To date, respondent has yet to rule on AAPPI's application for issuance of tax credit certificate for its alleged overpaid income taxes for the year ended December 31, 2009.

On January 18, 2012, AAPPI paid to the City of Mandaluyong its two percent (2%) for taxable year 2009, amounting to ₱2,161,202.40.

Thus, petitioner filed its judicial claim for erroneously overpaid income taxes through a Petition for Review on April 12, 2012, with respondent filing her Answer on May 22, 2012, stating the following Special and Affirmative Defenses:

'SPECIAL AND AFFIRMATIVE DEFENSES

4. Petitioner contends that they are entitled to a tax credit certificate in the amount of PESOS: ONE MILLION SEVEN HUNDRED TWENTY SIX THOUSANDTWO *[sic]* AND 98/100 (₱1,726,007.98) on their alleged overpaid income taxes for the taxable year ended 31 December 2009;

5. Petitioner's alleged claim for refund is subject to administrative and routinary investigation/ examination by the Bureau;

6. Petitioner must show that it has complied with the provisions of Sections 204(c) *[sic]* and 229 of the 1997 National Internal Revenue Code on the prescriptive period for claiming tax credit;

7. In an action for a claim of tax credit certificate, the burden of proof is on the taxpayer to establish its right to claim a tax credit certificate, and failure to sustain the burden is fatal to the claim for a tax credit certificate;

8. Well-established is the rule that refunds/tax credits are construed strictly against the taxpayer as they partake the nature of tax exemptions;

9. In **COMPAIGNIE FINCANCIERE SUCRES ET DENREES VS. COMMISSIONER OF INTERNAL REVENUE; GR NO. 133834 August 28, 2006** the Honorable Supreme Court ruled, to wit:

> **'xxx Tax refunds are a derogation of the State's taxing power. Hence like tax exemptions, they are construed strictly against the taxpayer and liberally in favor of the State. Consequently, he who claims a refund or exemption from taxes has the burden of justifying the exemption by words too plain to be mistaken and too categorical to be misinterpreted.'**

Petitioner filed its corresponding Reply on June 1, 2012.

After submitting their respective Pre-Trial Briefs, the Court issued a Resolution ordering the parties to file their Joint Stipulation of Facts and Issues on June 26, 2012. The parties then complied with the Resolution on July 6, 2012.

On July 16, 2012, the Court issued the Pre-Trial Order.

On August 24, 2012, petitioner filed its Formal Offer of Evidence, which was resolved by the Court on October 12, 2012.

On November 26, 2012, respondent filed her Formal Offer of Evidence, which was resolved by the Court on January 21, 2013, with the Court ordering the parties to file their respective Memoranda within thirty (30) days.

On January 28, 2013, respondent filed a Motion for Reconsideration (Resolution Promulgated on January 21, 2013), asking the Court to admit several exhibits.

In the meantime, respondent filed her Respondent's Memorandum on February 12, 2013.

On February 25, 2013, petitioner filed a Comment (on Motion for Reconsideration dated 25 January 2013).

On March 18, 2013, the Court promulgated a Resolution granting the Motion for Reconsideration (Resolution Promulgated on January 21, 2013), as well as ordering petitioner to submit its Memorandum within thirty (30) days from notice.

On April 18, 2013, petitioner filed its Memorandum.

Thus, on April 22, 2013, the Court promulgated a Resolution submitting the case for decision.

Hence, this Decision." *(Citations Omitted)*

On December 13, 2013, the CTA Third Division promulgated the assailed Decision[6], the dispositive portion of which reads as follows:

> "**WHEREFORE**, in view of the foregoing, the Court hereby **GRANTS** the Petition for Review. Accordingly respondent is hereby **ORDERED** to **ISSUE** a **TAX CREDIT CERTIFICATE** in favor of petitioner Acquire Asia Pacific Philippines, Inc. in the amount of **₱1,726,002.98**, representing the two percent (2%) share of the local government in the preferential tax rate of five percent (5%) accorded to petitioner as an enterprise registered under the Philippine Economic Zone Authority which was erroneously remitted to the BIR.
>
> **SO ORDERED.**"

On December 23, 2013, the CIR, petitioner herein, filed a Motion for Reconsideration[7]seeking the indulgence of the Court *a quo* in reconsidering the assailed Decision by denying the claim of AAPPI, respondent herein, by reason of its failure to fully substantiate its claim for refund. On January 23, 2014, respondent herein filed a Comment (on Motion for Reconsideration dated 20 December 2013) praying that the said Motion for Reconsideration be denied.

Accordingly, on February 5, 2014, the CTA Third Division promulgated the assailed Resolution[8], denying the Motion for Reconsideration for lack of merit.

Petitioner then filed on February 18, 2014, the instant Petition for Review[9] with this Court *En Banc*.

On March 18, 2014, the Court *En Banc* issued a Resolution[10] ordering respondent to file its Comment to the Petition for Review within ten (10) days from receipt of the said Resolution.

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[6] *Supra* 2
[7] Division Docket, pp. 428-431
[8] *Supra* 3
[9] *Supra* 1
[10] CTA *En Banc* Rollo, pp. 25-26

In compliance, respondent filed a Comment (On Petition for Review dated 17 February 2014)[11] on April 15, 2014.

Meanwhile, in the Resolution[12] dated May 2, 2014, the Court *En Banc* noticed that petitioner failed to attach the Verification and Certification of Non-Forum Shopping in her Petition for Review. Thus, the Court *En Banc* required petitioner to submit, within five (5) days from receipt thereof, a Petition for Review with the Verification and Certification of Non-Forum Shopping.

On June 19, 2014, petitioner filed a Motion to Admit the Attached Verification and Certification of Non-Forum Shopping and Revenue Delegation Authority Order No. 2-2007, claiming that she inadvertently failed to include the said attachments in her Petition. Thus, respondent now prays that her Motion be granted, consequently, admitting the attachments included therein.

Thereafter, in a Resolution[13] dated July 7, 2014, the Court *En Banc* granted petitioner's Motion and admitted the attached Verification and Certification of Non-Forum Shopping, as well as the copy of Revenue Delegation Authority Order No. 2-2007. The Court further resolved to give due course to the instant Petition, thereby giving both parties a period of thirty (30) days from notice thereof to file their respective Memorandum after which the instant Petition for Review shall be considered submitted for decision.

On August 4, 2014, petitioner filed her Memorandum[14] while respondent filed its Memorandum[15] on August 22, 2014. Thus, in the September 24, 2014 Resolution[16], the Court *En Banc* deemed the instant case submitted for decision.

Petitioner raised this sole issue[17] in her Petition for Review, to wit:

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[11] *Id.*, pp. 27-37
[12] Id., pp. 39-40
[13] *Id.*, pp. 49-50
[14] *Id.*, pp. 51-55
[15] *Id.*, pp. 56-67
[16] *Id.*, pp. 69-70
[17] *Id.*, p. 4

THE MAJORITY IN THE THIRD (3RD) DIVISION ERRED IN DECIDING THAT RESPONDENT WAS ABLE TO FULLY SUBSTANTIATE ITS CLAIM FOR REFUND.

Petitioner claims that, when respondent filed its application for tax credit certificate with Revenue District Office (RDO) No. 41, respondent was required to submit certain documents to substantiate its claim so as to enable the assigned Revenue Officer to determine the validity of the said claim. However, despite several notices, respondent failed to submit the required documents which resulted in the failure of the assigned Revenue Officer to properly determine whether or not respondent is, indeed, entitled to a tax credit certificate. In effect, petitioner asserts that respondent failed to properly exhaust administrative remedies before seeking judicial intervention.

On the other hand, respondent asserts that the letter dated June 13, 2012 from the BIR RDO No. 41 requesting the submission of documents, was merely an afterthought considering that it was prepared and issued long after AAPPI's filed its administrative claim on November 24, 2010, and its Petition for Review with the CTA on April 12, 2012. Respondent clarifies that the two (2)-year prescriptive period, under Section 229[18] of the NIRC of 1997, as amended, within which to file its judicial claim was set to expire on April 15, 2012. Lastly, respondent likewise invokes the principle of *solutio indebiti* in support of its assertions.

We find the instant petition bereft of merit.

The instant petition is a simple question of substantiation. Albeit having raised the same issue and argument that has already been analyzed, weighed and passed upon extensively in the assailed Decision and Resolution, the Court *En Banc*, after thorough scrutiny and re-evaluation of the case records, still finds that respondent was able to

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[18] "**SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* -** *xxx*

xxx xxx xxx

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid."

properly substantiate its claim for refund. As correctly held by the Court *a quo* in the assailed Decision:

> "There is no specific regulation enumerating the documents needed to be presented when filing an administrative claim for refund for erroneous payment of the 5% special income tax for PEZA-registered entities, such as petitioner (*respondent herein*), unlike that for VAT refunds. As such, so long as a taxpayer is able to fully substantiate the amount to be refunded, as well as show its entitlement for said refund, then the Court sees no reason not to grant said request.
>
> A simple perusal of the application for refund or issuance of a tax credit certificate dated November 24, 2010 shows clearly that petitioner submitted all relevant documents which will enable respondent (*petitioner herein*) to determine petitioner's entitlement to its claim. In its administrative claim, petitioner submitted the following documents to substantiate the portion covering the taxable year 2009 of its claim:
>
> '1. Duly accomplished BIR Form 1914 (Application for Tax Credits/Refunds);
> 2. BIR Certificate of Registration of Acquire;
> 3. PEZA Registration Agreement dated 12 February 2008;
>
> xxx xxx xxx
>
> 8. Annual Income Tax Return for the year 2009;
> 9. Quarterly Income Tax Return for the 1st Quarter of 2009;
> 10. Quarterly Income Tax for the 2nd Quarter of 2009;
> 11. Quarterly Income Tax Return for the 3rd Quarter of 2009;'
>
> In the Court's opinion, these are already sufficient to determine whether or not petitioner's claim is valid or not. Respondent's allegation that petitioner failed to submit the documents requested in the letter sent by BIR on June 13, 2012, should not be given any merit. In this particular case,

the BIR requested for documents which would have been reasonable had this case been an audit investigation and not a refund based on an erroneous payment." *(Citations Omitted)*

In repeatedly insisting that respondent's failure to submit the list of documents requested by Revenue Officer Mariflor Ayen-Exmundo of RDO No. 41, in her letter[19] dated June 13, 2012, resulted in the said Revenue Officer's failure to properly determine AAPPI's entitlement to a tax credit certificate, *We* remind that, time and again, the Court *En Banc* has been consistent in holding that the cases filed before this Court, being a court of record, are litigated *de novo* and party litigants should prove every minute aspect of their cases. Otherwise stated, judicial claims are being decided based on what has been presented and formally offered by parties during the trial of the case before the Court and not on mere allegation of non-submission of complete documents before the BIR.[20] As such, the submission of documents in the administrative level for claims for refund/tax credit is mainly for audit purposes, so as to establish the veracity of a taxpayer's claim, whereas, when the said claim is elevated to this Court, judicial rules and procedures shall govern the matter of proving the said claim.

Thus, based on the foregoing and considering that petitioner did not raise anything new to merit reconsideration or reversal of the assailed Decision and Resolution, this Court *En Banc* finds no reversible error to disturb the findings of the CTA Third Division in CTA Case No. 8465, entitled *"Acquire Asia Pacific Philippines, Inc. vs. Commissioner of Internal Revenue"*.

WHEREFORE, the instant Petition for Review is hereby **DENIED** for lack of merit. The Decision and Resolution dated December 13, 2013 and February 5, 2014, respectively, rendered by the CTA Third Division in CTA Case No. 8465, are both **AFFIRMED.**

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[19] Exhibit "1-b" for the respondent, BIR Records

[20] *Citing, among others,* Ayala Corporation vs. Commissioner of Internal Revenue, CTA Case No. 8262 dated March 21, 2014; and Phil. Gold Processing and Refining Corp vs. Commissioner of Internal Revenue, CTA Case No. 8301 dated February 27, 2014; *See* CIR vs. United International Pictures, AB, G.R. No. 169565, January 21, 2009

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

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
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 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