REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

STEFANINI PHILIPPINES, INC.,
Respondent.

CTA EB NO. 2753
(CTA Case No. 10188)

Present:

DEL ROSARIO, *P.J.*,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, *and,*
ANGELES, *JJ.*

Promulgated:
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DECISION

BACORRO-VILLENA, J.:

Before the Court *En Banc* is a Petition for Review[1] filed by petitioner Commissioner of Internal Revenue (**petitioner/CIR**), pursuant to Section 3(b)[2], Rule 8 of the Revised Rules of the Court of

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1 Filed on 26 May 2023, *Rollo*, pp. 7-70, with annexes.
2 **SEC. 3**. *Who may appeal; period to file petition.* —

...

(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper

Tax Appeals (**RRCTA**). It seeks the reversal and setting aside of the First Division's Decision dated 23 November 2022[3] (**assailed Decision**) and Resolution dated 18 April 2023[4] (**assailed Resolution**), partially granting respondent Stefanini Philippines, Inc.'s (**respondent**'s/**OPI**'s) claim for refund or issuance of a Tax Credit Certificate (**TCC**) amounting to ₱5,577,917.98, representing its alleged excess and unutilized input value-added tax (**VAT**) on purchases of goods and services attributable to zero-rated sales for the 2nd Quarter of the calendar year (**CY**) 2017.

PARTIES OF THE CASE

Petitioner is the duly appointed CIR vested by law with the authority, among others, to decide, approve and grant applications for refund or tax credit of excess internal revenue tax payments. He may be served with summons and other court processes at the Bureau of Internal Revenue (**BIR**), National Office Building, Agham Road, Diliman, Quezon City.

Respondent, on the other hand, is a corporation organized under Philippine law, with registered office address at 3, 5 & 6/F iMET BPO Metrobank Ave., Metropolitan Park, Roxas Blvd., Pasay City 1300.[5] It is registered with the Securities and Exchange Commission (**SEC**) with Company Registration No. CS200801124[6], and with the BIR under Taxpayer's Identification Number (**TIN**) 006-960-314-000.[7] The corporation is engaged in the business of providing business processes outsource solutions and allied contact or call center services, both as

motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

3 Division Docket, Volume III, pp. 1548-1584; Penned by Associate Justice Marian Ivy F. Reyes-Fajardo with Presiding Justice Roman G. Del Rosario and Associate Justice Catherine T. Manahan, concurring.

4 Id., pp. 1613-1616.

5 Paragraph 1, I. Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI), id., Volume II, p. 865.

6 Petitioner's Securities and Exchange Commission (SEC) Certificate of Filing of Amended Articles of Incorporation (AOI), Exhibit "P-2", id., p. 1200.

7 Petitioner's Bureau of Internal Revenue (BIR) Certificates of Registration, Exhibits "P-4" and "P-5", id., pp. 1210 and 1211, respectively.

principal and agent, as well as to lease real properties suitable for operations, marketing and advertising.[8]

FACTS OF THE CASE

On 28 June 2019, respondent filed with the BIR VAT Credit Audit Division (**VCAD**) an Application for Tax Credits/Refunds (BIR Form No. 1914)[9] and a Letter-Application[10] for refund of its excess and unutilized input VAT attributable to zero-rated sales, in the amount of ₱5,577,917.98, for the 2nd Quarter of CY 2017.

On 18 September 2019, respondent received a Letter dated 27 August 2019 from the BIR Assessment Service, signed by Officer-in-Charge (**OIC**) Assistant Commissioner Maria Luisa I. Belen (**ACIR Simple**), denying its administrative claim for refund of excess and unutilized input VAT attributable to zero-rated sales (**Denial Letter**).[11] The Denial Letter indicated that respondent's administrative claim was denied for lack of legal and factual basis due to the following disallowances, the total of which exceeded the amount claimed for refund, enumerated in Annex "A" attached thereto:

a. Disallowed input VAT due to non-compliance with invoicing requirements pursuant to Section 113[12] of the National Internal Revenue Code (**NIRC**) of 1997, as amended — ₱424,529.36;

b. Disallowed input VAT on out of period local purchases — ₱259,230.25;

c. Non-compliance with Item 4.4.3[13] of Annex A.1[14] of Revenue Memorandum Circular (**RMC**) No. 47-2019[15] in

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8 Par. 1.1.1, id.; Petitioner's Amended AOI, Exhibit "P-3", id., pp. 1202-1209.
9 Exhibit "P-25", id., p. 1261.
10 Exhibit "P-24", id., pp. 1258-1260.
11 Exhibit "P-27" (Q&A No. 57), id., p. 1292, *vis-à-vis* Annexes "F" and "F-1" of Petition for Review, id., Volume I, pp. 41-43.
12 SEC. 113. *Invoicing and Accounting Requirements for VAT-Registered Persons.*
13 Schedule of Big-Ticket purchases classified per supplier and in the same format prescribed under 4.1 together with the proof of payment for "big ticket" purchases, such as but limited to cancelled paid checks/certified copy of bank statements or equivalent documents (arranged in accordance with the chronology of purchases as shown in the schedule).
14 Revised Checklist of Mandatory Requirements on Claims for VAT Refund.

relation to Revenue Memorandum Order (**RMO**) No. 16-2007[16] (big-ticket purchases) — ₱4,807,090.85;

d. Deferred input tax on previous period without supporting documents — ₱59,119.88;

e. Allocated input tax on unremitted export sales — ₱3,770.76;

f. Additional output tax on rental income (VAT return vs. schedule of VAT-able sales) — ₱20,381.16; and,

g. Compromise penalty for failure to supply correct information in the VAT return pursuant to Section 250[17] of the NIRC of 1997, as amended — ₱6,250.00.

On 16 October 2019 and within thirty (30) days from receipt of the Denial Letter, respondent filed its Petition for Review[18] before the Court in Division to appeal the denial of its administrative claim for refund. The same was raffled to the First Division and docketed as CTA Case No. 10188.[19]

On 11 November 2019, the First Division issued Summons[20] ordering petitioner to file an Answer within fifteen (15) days from service. Petitioner received the said Summons on 13 November 2019.[21]

After the First Division granted an extension of time to petitioner[22], the Answer[23] was filed on 19 December 2019. There,

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15 Revised Guidelines and Mandatory Requirements for the Processing and Grant of Value-Added Tax (VAT) Refund Claims within the 90-day Period Pursuant to Section 112 of the Tax Code of 1997, as Amended.

16 Prescribing Additional Procedures in the Audit of Input Taxes Claimed in the VAT Returns by Revenue Officers and Amending "Annex B" of Revenue Memorandum Order (RMO) No. 53-98 with Respect to the Checklist of Documents to be Submitted by a Taxpayer upon Audit of his/its VAT Liabilities as well as the Mandatory Reporting Requirements to be Prepared by the Assigned Revenue Officer/s Relative thereto, All of which shall Form an Integral Part of the Tax Docket.

17 **SEC. 250**. *Failure to File Certain Information Returns.*

18 Division Docket, Volume I, pp. 6-43, with annexes.

19 The First Division was then composed of Presiding Justice Roman G. Del Rosario, as Chairperson, Associate Justice Esperanza R. Fabon-Victorino (Ret.) and Associate Justice Catherine T. Manahan, as Members.

20 Division Docket, Volume I, p. 44.

21 Id.

22 See Order dated 04 December 2019, id., p. 52.

petitioner essentially argued that respondent's claim for refund should be denied for failure to comply with the mandatory invoicing requirements pursuant to Section 113[24], in relation to Section 110[25], of the NIRC of 1997, as amended.

On 10 January 2020, the First Division issued a Notice of Pre-Trial Conference[26] and set the Pre-Trial Conference on 20 February 2020. Accordingly, petitioner filed his or her Pre-Trial Brief[27] on 05 February 2020, while respondent filed its Pre-Trial Brief[28] on 14 February 2020.

Meanwhile, on 20 January 2020, petitioner forwarded to the First Division the entire BIR Records of the present case consisting of 183 pages in one (1) folder.[29] The First Division noted the same in a Minute Resolution dated 22 January 2020.[30]

During the 20 February 2020 Pre-Trial Conference, the First Division granted both parties fifteen (15) days, or until 06 March 2020, within which to file their Joint Stipulation of Facts and Issues (**JSFI**).[31] On 05 March 2020, the parties submitted their JSFI.[32]

In the Resolution dated 23 June 2020[33], the First Division approved the parties' JSFI and terminated the pre-trial. Thereafter, it issued the Pre-Trial Order[34] on 30 June 2020.

On 29 June 2020, respondent filed a "Motion to Commission and Appoint Independent Certified Public Accountant [**ICPA**]"[35], requesting the appointment of Joseph Cedric V. Calica (**Calica**) as the

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23 Id., pp. 53-62.
24 Supra at note 12.
25 SEC. **110**. *Tax Credits*.
26 Division Docket, Volume I, pp. 65-66.
27 Id., pp. 73-76.
28 Id., pp. 95-106.
29 See Compliance dated 20 January 2020, id., pp. 67-69.
30 Id., p. 71.
31 See Minutes of the Hearing and Order, both dated 20 February 2020, id., Volume II, pp. 857-859 and 861-862, respectively.
32 Id., pp. 865-874.
33 Id., pp. 893-894.
34 Id., pp. 919-929.
35 Id., pp. 895-916, with annexes.

ICPA. The First Division granted this request during the 10 September 2020 hearing and ordered ICPA Calica to submit his ICPA Report and Judicial Affidavit by 12 October 2020.[36] The continuation of respondent's presentation of evidence was set for 27 October 2019 for ICPA Calica's testimony.[37] Following the Court's directive, ICPA Calica submitted his ICPA Report[38] (with USB[39]) on 09 October 2020. The First Division noted the same in a Minute Resolution dated 15 October 2020.[40]

In the trial that ensued, respondent presented its testimonial and documentary evidence. Respondent offered the testimonies of its witnesses, namely: (1) Jeanina B. Pepito (**Pepito**), its Finance Manager; and, (2) ICPA Calica.

During the 10 September 2020 hearing[41], Pepito identified her Judicial Affidavit dated 14 February 2020[42] and Supplemental Judicial Affidavit dated 19 June 2020[43], where she declared essentially that: (1) budget development, staffing the finance department, ensuring tax compliance, overseeing financial transactions, safeguarding corporate documents, producing reports, and coordinating with external auditors and counsels on tax matters; (2) respondent is a domestic corporation and VAT-registered taxpayer engaged in business process outsourcing and call center services, providing services to non-resident affiliate entities engaged in business conducted outside the Philippines, with payments made in foreign currency during the 2nd Quarter of CY 2017; (3) on 25 July 2017, respondent filed, through the Electronic Filing and Payment System (**eFPS**), its Quarterly VAT Return for the 2nd Quarter of CY 2017, reporting an accumulated excess input tax of ₱51,623,306.90 attributable to zero-rated sales; (4) on 22 September 2019, respondent filed an Amended VAT Return, including a claim for input VAT refund of ₱5,577,917.98 related to zero-rated sales; (5) on 28 June 2019, respondent applied for a refund of the excess input VAT for the 2nd Quarter of CY 2017; (6) the BIR

36 See Minutes of the Hearing and Order, both dated 10 September 2020, id., pp. 955-959 and 961-962, respectively.
37 Id.
38 Exhibit "P-58" (Refer to the separate Binder).
39 Exhibit "P-59".
40 Division Docket, Volume II, p. 970.
41 Supra at note 36.
42 Exhibit "P-27", Division Docket, Volume II, pp. 1266-1293.
43 Exhibit "P-28", id., pp. 1294-1298.

disapproved respondent's refund application through a Denial Letter dated 27 August 2019, received by respondent on 18 September 2019; and, (7) respondent's claim for refund or issuance of a TCC is duly supported by applicable law and substantiated by evidence, and filed within the statute of limitations prescribed under Section 112(A)[44] and (C)[45] of the NIRC of 1997, as amended.

Petitioner did not conduct any cross-examination.[46]

Next to assume the witness stand was ICPA Calica who, at the 27 October 2020 hearing[47], identified the following: (1) his Judicial Affidavit dated 21 October 2020[48]; (2) his ICPA Report[49] filed on 09 October 2019; and, (3) the USB[50] containing the scanned copies of the exhibits he examined.

During cross-examination, petitioner's counsel focused on the fact that respondent did not provide them with a copy of the USB containing the exhibits ICPA Calica examined. Unable to verify the exhibits mentioned in the ICPA Report, petitioner's counsel moved to defer the cross-examination. The First Division, however, denied the motion, deeming it dilatory. Insisting that the line of questioning depended on the documents examined by the ICPA, petitioner's counsel did not to ask further questions.[51]

Respondent did not conduct any redirect examination.[52]

On 16 November 2020, after completing the presentation of its testimonial evidence, respondent filed its Formal Offer of Evidence[53]

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44 SEC. 112. *Refunds or Tax Credits of Input Tax.* —
(A) *Zero-Rated or Effectively Zero-Rated Sales.* — ...

45 SEC. 112. *Refunds or Tax Credits of Input Tax.* —
...
(C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* — ...

46 TSN dated 10 September 2020, p. 27.

47 See Minutes of the Hearing and Order, both dated 27 October 2020, Division Docket, Volume II, pp. 1162-1164 and 1165-1166, respectively.

48 Exhibit "P-60", id., pp. 975-988.

49 Exhibit "P-58" (Refer to the separate Binder).

50 Exhibit "P-59".

51 TSN dated 27 October 2020, pp. 13-17.

52 Id., pp. 17-18.

53 Division Docket, Volume II, pp. 1174-1198.

(**FOE**) consisting of Exhibits "P-1" to "P-60-B", inclusive of sub-markings. Petitioner filed his or her Comment[54] thereto on 26 November 2020.

In the Resolution dated 08 January 2021[55], the First Division admitted respondent's exhibits and set the presentation of petitioner's evidence on 18 February 2021.

During the 18 February 2021 hearing[56], petitioner, for his or her part, presented as sole witness, Revenue Officer II Dexter C. Bustillos (**RO Bustillos**), who testified through his Judicial Affidavit dated 03 February 2020[57] that: (1) his duties as an RO assigned at the VCAD include, among others, conducting audits or verifications of VAT credit or refund claims of direct exporters and preparing evaluation reports, including narrative memorandum reports on the results of field audits or verifications conducted; (2) he was tasked with auditing or verifying respondent's administrative claim for a refund of alleged excess and unutilized input VAT for the 2nd Quarter of CY 2017, amounting to ₱5,577,917.98; (3) Tax Verification Notice (**TVN**) No. 201800083105 dated 28 June 2019[58] was issued to him and his co-RO Leo-Gibbs C. Tapiru, authorizing them to evaluate respondent's administrative claim; (4) the TVN, along with the Revised Checklist of Mandatory Requirements for Claims for VAT Refund[59], was duly served to respondent; (5) his team recommended the denial of petitioner's refund claim through a Memorandum Report dated 13 August 2019[60], as their verification yielded disallowances exceeding the total amount claimed for refund; and, (6) the entire tax docket of respondent's refund claim was then forwarded to the Tax Audit Review Division (**TARD**) on 13 August 2019 for final review.

Respondent did not conduct any cross-examination.[61]

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54 Id., Volume III, pp. 1463-1465.
55 Id., pp. 1471-1474.
56 See Minutes of the Hearing and Order, both dated 18 February 2021, id., pp. 1481 and 1482-1483, respectively.
57 Exhibit "R-5", id., Volume I, pp. 82-86.
58 Exhibit "R-1", BIR Records, p. 147.
59 Exhibit "R-2", id., p. 144.
60 Exhibit "R-3", id., pp. 170-171.
61 TSN dated 18 February 2021, p. 9.

In response to the Court's clarificatory question, RO Bustillos explained that big-ticket suppliers are those that make up 5% of respondent's total input tax claim. He confirmed that a supplier qualifies as a big-ticket supplier if 5% of the buyer's total input VAT originates from that single supplier. He also clarified that the disallowance of input VAT, both for big-ticket suppliers and non-big-ticket suppliers, as well as the ripened portion of deferred input tax (which refers to the amortization of input tax on capital goods for the period of claim), is due to noncompliance with the invoicing requirements under Section 113[62] of the NIRC of 1997, as amended. Lastly, RO Bustillos confirmed that the BIR's findings (*i.e.*, disallowances of input VAT) are summarized in the Memorandum Report.

On 05 March 2021, petitioner filed his or her "[FOE] (with Motion to Set Commissioner's Hearing)"[63] consisting of Exhibits "R-1" to "R-5-1". Respondent filed its Comment/Opposition[64] thereto on 20 May 2021.

In the Resolution dated 07 July 2021[65], the First Division denied the request for a Commissioner's Hearing to correct the exhibit number marking of RO Bustillos' Judicial Affidavit dated 03 February 2020 (previously marked as Exhibit "R-4"). Instead, the affidavit was deemed marked as Exhibit "R-5", and petitioner's exhibits were admitted. The Court then gave the parties a period of 30 days within which to submit their respective memoranda.

On 26 October 2021, petitioner filed his or her Memorandum.[66] Respondent, on the other hand, filed its Memorandum on 27 October 2021.[67] Accordingly, on 16 December 2021, the First Division[68] considered the case submitted for decision.[69]

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62 Supra at note 12.
63 Division Docket, Volume III, pp. 1486-1489.
64 Id., pp. 1491-1496.
65 Id., pp. 1503-1505.
66 Id., pp. 1506-1514.
67 Id., pp. 1516-1543.
68 The First Division was then composed of Presiding Justice Roman G. Del Rosario, as Chairperson, Associate Justice Catherine T. Manahan and Associate Justice Marian Ivy F. Reyes-Fajardo, as Members.
69 See Resolution dated 16 December 2021, Division Docket, Volume III, p. 1546.

On 23 November 2022, the First Division promulgated the assailed Decision[70] partially granting respondent's Petition for Review. The dispositive portion of the assailed Decision reads:

> ...
>
> **WHEREFORE,** the instant Petition for Review is **PARTIALLY GRANTED.** Accordingly, [petitioner] is **DIRECTED TO REFUND OR ISSUE TAX CREDIT CERTIFICATE** in favor of [respondent] in the amount ₱3,203,101.02 representing its unutilized input VAT attributable to its zero-rated sales for the 2nd quarter of CY 2017 or for the period April to June 2017.
>
> **SO ORDERED.**
>
> ...

The First Division found that respondent has sufficiently proven that it is entitled to a refund of its excess and unutilized input VAT for the 2nd Quarter of CY 2017 but in the reduced amount of ₱3,203,101.02 for the following reasons:

a. Out of respondent's total declared zero-rated sales *per* 2nd Quarter VAT return for CY 2017 of ₱179,437,738.44, only the amount of **₱155,686,959.49** qualifies as zero-rated sales;

b. Out of respondent's total declared input VAT *per* 2nd Quarter VAT return for CY 2017 of ₱5,601,079.14, only the amount of **₱3,694,528.42** represents valid input VAT after deducting the total disallowances of ₱1,906,550.72, broken down as follows: **(i)** ICPA's findings of ₱1,255,624.98; and, **(ii)** the First Division's findings *per* independent verification of ₱650,925.74; and,

c. Out of respondent's total refund claim of ₱5,577,917.98, only the amount of **₱3,203,101.02** is refundable. Considering that only the amount of ₱3,694,051.62[71] pertains to valid input VAT attributable to reported zero-

[70] Supra at note 3.

[71] Valid input VAT of ₱3,694,528.42 multiplied by 99.98%, which is the ratio of respondent's reported zero-rated sales of ₱179,437,738.44 over total sales of ₱179,460,898.85.

rated sales and the output VAT still due is ₱2,302.45[72], the remaining input VAT that can be attributed to respondent's reported zero-rated sales is computed at ₱3,691,749.17. Further, as only 86.76%[73] of respondent's reported zero-rated sales qualifies as zero-rated sales, the said remaining input VAT is reduced to ₱3,203,101.02 (*i.e.*, ₱3,691,749.17 multiplied by 86.76%), which is the refundable excess input VAT attributable to valid zero-rated sales.

Aggrieved, petitioner filed a Motion for Partial Reconsideration[74] (**MPR**) on 06 December 2022. After receiving respondent's Comment/Opposition[75] on 13 January 2023, the First Division promulgated the assailed Resolution[76] denying petitioner's MPR for lack of merit. The dispositive portion of the assailed Resolution states:

> ...
>
> **WHEREFORE,** [petitioner]'s *Motion for Partial Reconsideration (Re: Decision promulgated on 23 November 2022)* is **DENIED** for lack of merit.
>
> **SO ORDERED.**
>
> ...

The First Division noted that petitioner's arguments are mere reiterations of matters that have already been exhaustively considered, weighed and resolved in the assailed Decision.

With the denial of its MPR[77], petitioner filed the present Petition for Review[78] with the Court *En Banc* on 26 May 2023. After respondent

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72 Output VAT *per* 2nd Quarter VAT return for CY 2017 of ₱2,779.25 less valid input VAT attributable to VAT-able sales of ₱476.80.

73 Ratio of respondent's valid zero-rated sales of ₱155,686,959.49 over reported zero-rated sales of ₱179,437,738.44.

74 Division Docket, Volume III, pp. 1585-1596.

75 Id., pp. 1600-1607.

76 Supra at note 4.

77 Supra at note 74.

78 Supra at note 1.

submitted its Comment[79] on 07 July 2023, the Court *En Banc* submitted the case for decision on 26 July 2023.[80]

ISSUE

In the present Petition for Review, petitioner ascribes the sole error that the First Division allegedly committed when it rendered its assailed Decision and Resolution, to wit:[81]

> THE COURT OF TAX APPEALS - FIRST DIVISION ERRED IN FINDING THAT RESPONDENT STEFANINI PHILIPPINES, INC. IS ENTITLED TO A REFUND OF ITS ALLEGED UNUTILIZED INPUT VALUE-ADDED TAX (VAT) FOR THE PERIOD APRIL TO JUNE 2017 (OR THE 2ND QUARTER OF THE CALENDAR YEAR [CY] 2017).

In support of the above, petitioner reiterates his or her arguments in the MPR before the First Division that: (1) respondent failed to substantiate its claim for refund at the administrative level; (2) it is incumbent upon respondent to prove that it is entitled to the refund sought because a claim for refund is not *ipso facto* granted upon filing of the claim; (3) tax refunds are subject to administrative routinary investigation; and, (4) tax refunds are strictly construed against the taxpayer and in favor of the government.

Citing *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*[82] (**Total Gas**) and *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*[83] (**Atlas**), petitioner insists that since a decision has already partially granted respondent's administrative claim for refund, respondent cannot submit documents that were not presented at the administrative level. The Court's jurisdiction should be confined to reviewing whether the denial was proper based on the evidence submitted at the administrative level.

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79 *Rollo*, pp. 72-84.
80 See Resolution dated 26 July 2023, id., p. 85.
81 See Assignment of Error, Petition for Review, supra at note 1, p. 4.
82 G.R. No. 207112, 08 December 2015.
83 G.R. No. 145526, 16 March 2007.

Petitioner also submits that respondent bears the burden of proof to refute the findings from the administrative evaluation of supporting documents conducted by the BIR before being considered entitled to its refund claim. According to the Memorandum Report[84] submitted by the ROs assigned to audit respondent's refund claim, respondent failed to substantiate the claim due to disallowances that exceeded the amount claimed for refund. This failure to substantiate warrants the denial of the subject refund claim for the alleged unutilized input VAT on local purchases of goods and services.

Petitioner further stresses that it is insufficient for respondent to merely prove engagement in zero-rated sales. Respondent must also demonstrate that the alleged unutilized input VAT is attributable to such zero-rated sales. Additionally, VAT invoices and official receipts (**ORs**) must comply with the invoicing requirements provided in Section 113[85] of the NIRC of 1997, as amended, and must be duly registered with the BIR.

Lastly, petitioner reasserts that tax refunds are strictly construed against the taxpayer and in favor of the government. Therefore, respondent bears the heavy burden of proving compliance with all statutory and administrative requirements to be entitled to the tax refund. Having failed to meet these requirements, petitioner maintains that respondent is not entitled to the claimed refund for alleged unutilized input VAT for the 2nd Quarter of CY 2017.

In its Comment[86], respondent notes that petitioner's arguments are mere rehash or reiterations of those that have been duly considered, thoroughly discussed and judiciously passed upon by the First Division in its assailed Decision[87] and Resolution.[88] Since petitioner failed to raise any new ground or issue to warrant the reversal or any modification of the First Division's findings, the present Petition for Review must fail on this ground alone.

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84 Exhibit "R-3", supra at note 60.
85 Supra at note 12.
86 Supra at note 79.
87 Supra at note 3.
88 Supra at note 4.

Respondent likewise echoes the First Division's ruling that *Total Gas* and *Atlas* are inapplicable. Respondent also cited the Court *En Banc*'s common ruling in *Commissioner of Internal Revenue v. Axelum Resources Corporation*[89] and *Commissioner of Internal Revenue v. Carmen Copper Corporation*[90], that, in case of inaction tantamount to a denial or denial other than the taxpayer's failure to submit complete documents despite notice or request, a taxpayer-claimant may present all available evidence to prove its entitlement to prove its entitlement to the claim for refund, and the Court will consider all evidence offered, even those not presented before respondent at the administrative level.

Instead, according to respondent, what is applicable to the present case is the long-standing doctrine that cases filed before this Court are litigated *de novo* so that it may judiciously consider all pieces of evidence presented to it. Citing the Supreme Court's common ruling in *Commissioner of Internal Revenue v. Univation Motor Philippines, Inc. (formerly Nissan Motor Philippines, Inc.)*[91] (**Univation**), *Commissioner of Internal Revenue v. Philippine Bank of Communications*[92] (**PBCOM**) and *Commissioner of Internal Revenue v. CE Casecnan Water and Energy Co., Inc.*[93] (**Casecnan**), respondent argues that this Court is not confined to the evidence presented in the administrative claim and that cases filed with it are litigated *de novo*.

Lastly, respondent notes that the findings of fact in the assailed Decision were all duly supported by and founded on substantial evidence on record. The partial grant of its refund claim resulted from a thorough and exhaustive examination of all documents presented during the trial, as evidenced by the First Division's discussion of the elements of a claim for an input VAT refund and respondent's full compliance with these elements. Petitioner, however, failed to point out any specific error, palpable or otherwise, nor any misappreciation of facts or evidence committed by the First Division that may justify any departure from the assailed Decision[94] and Resolution.[95]

[89] CTA EB No. 2561 (CTA Case No. 9969), 13 June 2023.
[90] CTA EB No. 2528 (CTA Case No. 9592), 20 April 2023.
[91] G.R. No. 231581, 10 April 2019.
[92] G.R. No. 211348, 23 February 2022.
[93] G.R. No. 212727, 01 February 2023.
[94] Supra at note 3.
[95] Supra at note 4.

RULING OF THE COURT

Before going into the merits of the case, We shall first resolve whether the Court *En Banc* has jurisdiction over the instant petition.

THE PETITION FOR REVIEW WAS TIMELY FILED.

The First Division issued the assailed Resolution denying petitioner's MPR[96] on 18 April 2023. Petitioner received the said assailed Resolution on 26 April 2023.[97]

Under Section 2(a)(1)[98], Rule 4 in relation to Section 3(b)[99], Rule 8 of the RRCTA, petitioner had fifteen (15) days from 26 April 2023 or until 11 May 2023, within which to file an appeal before this Court.

On 10 May 2023, petitioner filed a "Motion for Extension To File Petition for Review"[100], requesting for an additional period of 15 days from 11 May 2023, or until 26 May 2023, within which to file its Petition for Review. The Court *En Banc* granted the same in its Minute Resolution dated 12 May 2023.[101] Accordingly, petitioner timely filed the instant petition on 26 May 2023.[102]

We now proceed to the merits of the case.

This Court finds that the present Petition for Review is a mere rehash of the issue already presented, duly resolved and passed upon by the First Division in the assailed Decision[103] and Resolution.[104]

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96 Supra at note 74.

97 See Notice of Resolution dated 24 April 2023, Division Docket, Volume III, p. 1611.

98 **SEC 2**. *Cases within the jurisdiction of the Court en banc.* — The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:

(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive appellate jurisdiction over:

(1) Cases arising from administrative agencies — **Bureau of Internal Revenue**, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture[.] (Emphasis supplied)

99 Supra at note 2.

100 *Rollo*, pp. 1-4.

101 Id., p. 6.

102 Supra at note 1.

103 Supra at note 3.

It is worth mentioning that petitioner's discussion in this petition is a *word for word* restatement of the discussion in his or her MPR. Regrettably, petitioner did not make any attempt to make a reference to the First Division's discussion of the legal basis and relevant jurisprudence used to arrive at the conclusion in the assailed Decision and Resolution (*i.e.*, finding respondent entitled to a refund of its excess and unutilized input VAT attributable to zero-rated sales for the 2nd Quarter of CY 2017 in the partial amount of ₱3,203,101.02).

Nevertheless, for emphasis, the Court *En Banc* shall pass upon petitioner's arguments.

THE COURT OF TAX APPEALS (CTA) IS AUTHORIZED TO CONDUCT TRIAL *DE NOVO*.

Foremost, this Court finds no merit in petitioner's contention that the role of the Court in the instant case is confined to reviewing the same documents submitted by respondent in the administrative level as this goes against the nature of the Court of Tax Appeals' (**CTA**'s) function as a "court of record" pursuant to Section 8[105] of Republic Act (**RA**) No. 1125[106], as amended by RA 9282.[107]

As a "court of record", the CTA is authorized to conduct trial *de novo*, where, as applied in this particular case, the judicial determination of a taxpayer's entitlement to a claim for refund is not limited to the documents it submitted or (failed to submit) in the administrative level. Parties who come to court are required to prove

104 Supra at note 4.

105 **Sec. 8.** ***Court of record; seal; proceedings.*** — **The Court of Tax Appeals shall be a court of record** and shall have a seal which shall be judicially noticed. It shall prescribe the form of its writs and other processes. It shall have the power to promulgate rules and regulations for the conduct of the business of the Court, and as may be needful for the uniformity of decisions within its jurisdiction as conferred by law, but such proceedings shall not be governed strictly by technical rules of evidence. (Emphasis supplied)

106 AN ACT CREATING THE COURT OF TAX APPEALS.

107 AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

every aspect of their case if they want the Court to take such evidence into consideration.[108]

As correctly ruled by the First Division, citing the case of *Philippine Airlines, Inc. v. Commissioner of Internal Revenue*[109], being a court of record, the CTA's power to exercise its appellate jurisdiction does not preclude it from considering evidence that was not presented in the administrative claim before the BIR. This is consistent with the Supreme Court's subsequent pronouncements in the case of *Univation*[110] (cited in *PBCOM*[111] and *Casecnan*[112]), stating that cases filed in the CTA are litigated *de novo*; thus, it may consider all evidence submitted before it, even those not submitted to the BIR, *viz*:

> ...
>
> The law creating the CTA specifically provides that proceedings before it shall not be governed strictly by the technical rules of evidence. The paramount consideration remains the ascertainment of truth. Thus, the CTA is not limited by the evidence presented in the administrative claim in the Bureau of Internal Revenue. **The claimant may present new and additional evidence to the CTA to support its case for tax refund.**
>
> Cases filed in the CTA are litigated *de novo* as such, respondent "should prove every minute aspect of its case by presenting, formally offering and submitting ... to the Court of Tax Appeals all evidence ... required for the successful prosecution of its administrative claim." **Consequently, the CTA may give credence to all evidence presented by respondent, including those that may not have been submitted to the CIR as the case is being essentially decided in the first instance.**
>
> ...

Accordingly, respondent's failure to submit documents in support of its administrative claim is not fatal to its present judicial claim since the case is litigated *de novo* and decided based on what has been presented and formally offered by the parties during trial.

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108 *Philippine Airlines, Inc. (PAL) v. Commissioner of Internal Revenue*, G.R. Nos. 206079-80 and 206309, 17 January 2018; *Commissioner of Internal Revenue v. Philippine National Bank*, G.R. No. 180290, 29 September 2014; *Commissioner of Internal Revenue v. Manila Mining Corporation*, G.R. No. 153204, 31 August 2005.

109 *Philippine Airlines, Inc. (PAL) v. Commissioner of Internal Revenue*, supra.

110 Supra at note 91; Citations omitted, italics in the original text and emphasis supplied.

111 Supra at note 92.

112 Supra at note 93.

RECOMPUTATION OF THE REFUNDABLE AMOUNT IS WARRANTED AND IN ORDER.

While the Court *En Banc* agrees with the First Division's disquisitions in the assailed Decision[113] and Resolution[114], We are, however, constrained to nonetheless rule that respondent is entitled to a *slightly higher* refundable amount of excess and unutilized input VAT attributable to valid zero-rated sales. We essay the reasons below.

In the assailed Decision[115] promulgated on 23 November 2022, the First Division computed the refundable amount of excess and unutilized input VAT attributable to valid zero-rated sales of **₱3,203,101.02** in the following manner:

Table 1. Substantiated or Valid Input VAT Allocation to VAT-able Sales

Total VAT-able Sales *per* 2nd Quarterly VAT Return for CY 2017	₱23,160.41
Divided by Total Sales *per* 2nd Quarterly VAT Return for CY 2017	179,460,898.85
Multiplied by Substantiated or Valid Input VAT	3,694,528.42
Substantiated or Valid Input VAT allocated to VAT-able Sales	**₱476.80**

Table 2. Substantiated or Valid Input VAT Allocation to *Declared* Zero-Rated Sales

Total Zero-Rated Sales *per* 2nd Quarterly VAT Return for CY 2017	₱179,437,738.44
Divided by Total Sales *per* 2nd Quarterly VAT Return for CY 2017	179,460,898.85
Multiplied by Substantiated or Valid Input VAT	3,694,528.42
Substantiated or Valid Input VAT allocated to *Declared* Zero-Rated Sales	**₱3,694,051.62**

Table 3. Computation of Output VAT Still Due

Output VAT	₱2,779.25
Less: Substantiated or Valid Input VAT allocated to VAT-able Sales	476.80
Output VAT Still Due	**₱2,302.45**

113 Supra at note 3.
114 Supra at note 4.
115 Supra at note 3.

Table 4. Refundable Excess and Unutilized Input VAT Attributable to *Valid* Zero-Rated Sales

Substantiated or Valid Input VAT allocated to *Declared* Zero-Rated Sales	₱3,694,051.62
Less: Output VAT Still Due	2,302.45
Excess and Unutilized Substantiated or Valid Input VAT allocated to *Declared* Zero-Rated Sales	**₱3,691,749.17**
Divided by Declared Zero-Rated Sales	179,437,738.44
Multiplied by Valid Zero-Rated Sales	155,686,959.49
Excess and Unutilized Substantiated or Valid Input VAT attributable to *Valid* Zero-Rated Sales	**₱3,203,101.02**

However, prior to the promulgation of the assailed Decision, specifically on 05 July 2022, the Supreme Court issued its decision in *Chevron Holdings, Inc. (formerly Caltex Asia Limited) v. Commissioner of Internal Revenue*[116] (**Chevron**). In this case, the High Court provided pivotal guidelines for computing the refundable excess and unutilized input VAT attributable to zero-rated sales when the taxpayer-claimant is engaged in mixed transactions.

Fundamentally, the Supreme Court definitively held in *Chevron* that a VAT-registered taxpayer has two (2) options with respect to its input VAT attributable to zero-rated sales, it may: (1) charge the same against output VAT from VAT-able sales, and claim for refund or issuance of a TCC any unutilized or "excess" input VAT; or, (2) claim the same for refund or issuance of a TCC in its entirety, *viz*:

> ...
> **[T]he input tax attributable to zero-rated sales may, <u>at the option of the VAT-registered taxpayer</u>, be: (1) charged against output tax from regular 12% VAT-able sales, and any unutilized or "excess" input tax may be claimed for refund or the issuance of tax credit certificate; or (2) claimed for refund or tax credit in its entirety.** It must be stressed that **the remedies of charging the input tax against the output tax and applying for a refund or tax credit are alternative and cumulative.** Furthermore, the option is vested with the taxpayer-claimant. It goes without saying that **the CTA, and even the Court, may not, on its own, deduct the input tax attributable to zero-rated sales from the output tax derived from the regular twelve percent (12%) VAT-able sales first and use the resultant amount as the basis in computing the allowable amount for refund. <u>The courts cannot</u>**

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116 G.R. No. 215159, 05 July 2022; Citations omitted, italics in the original text, emphasis in the original text and supplied, and underscoring supplied.

condition the refund of input taxes allocable to zero-rated sales on the existence of "excess" creditable input taxes, which includes the input taxes carried over from the previous periods, from the output taxes. These procedures find no basis in law and jurisprudence.

...

First, Section 112 (A) of the [NIRC of 1997, as amended] merely requires that the input tax claimed for refund or the issuance of tax credit certificate "**has not been applied against [the] output tax**[.]" Section 4.112-1 (a) of RR No. 16-2005 states that "[t]**he input tax that may be subject of the claim shall exclude the portion of input tax that has been applied against the output tax**." ...

...

The law and rules are clear and need no interpretation. The taxpayer only needs to prove *non-application or non-charging of the input VAT subject of the claim*. **There is nothing in the law and rules that mandate the taxpayer to deduct the input tax attributable to zero-rated sales from the output tax from regular twelve percent (12%) VAT-able sales first** and only the "excess" may be refunded or issued a tax credit certificate. To reiterate, these remedies accorded by law to the taxpayer are alternatives. **Requiring taxpayers to prove that they did not charge the input tax claimed for refund against the output tax is one thing; requiring them to prove that they have "excess" input tax *after* offsetting it from output tax is another.** The former is essential to the entitlement of the refund under Section 112 (A); the latter is not. The reason is that a taxpayer who enjoyed a lower (or zero) output tax payable because it deducted the input tax from zero-rated sales from the output tax cannot benefit twice by applying for the refund or tax credit of the same input tax used to reduce its output tax liability. Proof of non-charging the input tax subject to the refund or credit against the output tax is to avert double recovery.

...

...[B]efore the input tax from zero-rated sales may even form part of the total allowable or creditable input taxes to be charged against the output taxes and undergo the computation of "excess output or input tax" in Section 110 (B), it may already be removed from the formula once the taxpayer opted to claim the entire amount for refund.

These were echoed by Associate Justice Japar B. Dimaampao, opining that **"nowhere in Section 112 (A) does it require that the taxpayer must first offset its input tax with any output tax before its claim for refund may prosper.** Notably, the word "excess" does not even appear in this section. **Instead, what recurs**

is the refundability of input tax <u>that has not been applied against output tax or that has simply remained unused</u>."

Moreover, **the crediting of input taxes, including input tax attributable to zero-rated sales, from the output tax should be discretionary to the taxpayer as it is the taxpayer who is more interested in reducing its output tax payable.** In fact, the legislature put a cap on the input tax that may be deducted from the output tax to generate cash flow for the government. Therefore, to require entities engaged in zero-rated transactions to charge their input tax from zero-rated sales against their output VAT from regular twelve percent (12%) VAT-able sales would defeat the very object of the tax measure, which is to generate more income for the government.

Second, Congress referred to "**any input tax**" in the *proviso* of Section 110 (B), which could mean one, some, or all input tax from zero-rated sales. **<u>Had the legislature intended the charging of the input tax attributable to zero-rated sales against the output tax as a preliminary step to the refund or issuance of a tax credit certificate, it would have used the phrase "excess input tax" in the provision</u>.**

To be sure, **the lawmakers had contemplated the input tax attributable to zero-rated sales as an amount that will be refunded or credited and not offset against the output tax.**

...

If the Congress intended the crediting of input tax against the output tax as a condition precedent to the refund or issuance of a tax credit certificate, they could have stressed this during the deliberations. They did not. **Instead, it was clarified that when the taxpayer is engaged in *both* regular and zero-rated transactions**, as in Chevron Holdings' case, **<u>the ratable portion allocable to zero-rated sales is "immediately refundable" or creditable</u>**.

Third, **to call the refundable input tax in Section 110 (B), in relation to Section 112 (A), <u>"excess" input tax is a misnomer</u> since what is being applied for a refund or tax credit is the <u>unutilized or unused input VAT from zero-rated sales</u>.** As a matter of fact, **there is no "excess" input tax attributable to zero-rated sales as there is no related output tax from which the input tax may be charged against.** For context, in zero-rated transactions, the tax rate is set at zero percent. Consequently, the seller charges zero output tax. However, the seller may have incurred input taxes from its purchases of goods and/or services related to its sales. The input taxes previously charged by suppliers **<u>remain unutilized or unused until charged against the output tax from</u>**

> **<u>the non-zero-rated sale transactions</u>** in the same quarter that the input taxes were incurred or applied for a refund or the issuance of tax credit certificate within two (2) years from the close of the taxable quarter when the related sales were made.
>
> ...
>
> *Fourth*, that the taxpayer failed to prove that it had sufficient creditable input taxes to cover or "pay" its output tax liability in a given period, hence, there is no refundable "excess" input tax, which is an issue distinct, separate, and independent from a claim for refund or issuance of tax credit certificate of **unutilized** input VAT attributable to zero-rated sales. For one, **<u>the taxpayer-claimant is not asking to refund the "excess" creditable input taxes from the output tax</u>**. To be sure, the "excess" input tax may only be carried over to the succeeding periods and cannot be refunded. But, on the other hand, **<u>the taxpayer is asking to refund the unutilized or unused input tax from zero-rated sales</u>**.[117]
>
> ...

Clearly from the foregoing, a VAT-registered taxpayer has the discretion to decide whether to charge its input VAT attributable to zero-rated sales against output VAT. The CTA cannot impose its own methods for calculating the refund, such as compelling the crediting of input VAT against output VAT as a condition precedent to the refund or issuance of a TCC. This is especially true when the taxpayer-claimant opts to claim the input VAT attributable to zero-rated sales for a refund or issuance of a TCC in its entirety.

Furthermore, regardless of which option the taxpayer-claimant chooses, the Supreme Court's ruling in *Chevron* clarifies that since the taxpayer-claimant is requesting a refund of unutilized or unused input VAT from zero-rated sales (as opposed to the "excess" creditable input VAT from the output VAT), this amount is inherently immediately refundable, given that there is no related output VAT to offset it against. Therefore, the CTA's proper preliminary step in determining the refundable excess and unutilized input VAT attributable to valid zero-rated sales should be computing the ratable portion of the taxpayer-claimant's input VAT allocable to zero-rated sales, assuming the input VAT cannot be directly attributed to zero-rated activities.

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117 Supra at note 116; Citations omitted, italics in the original text, emphasis in the original text and supplied, and underscoring supplied.

It is only when the taxpayer-claims chooses the first option, *i.e.*, to charge the input VAT attributable to zero-rated sales against output VAT from VAT-able sales, and claim for refund or issuance of a TCC any unutilized or "excess" input VAT, as what herein respondent opted for in this case, that the CTA may require the offsetting of such ratable portion of the taxpayer-claimant's input VAT attributable to zero-rated sales against "Output VAT Still Due" as a condition precedent to the refund or issuance of a TCC.

Besides clarifying the nature of a taxpayer-claimant's claim for a refund of input VAT attributable to zero-rated sales—that the option to choose either of the two (2) remedies belongs to the taxpayer-claimant and that the method for calculating the refundable amount depends on the chosen option—in *Chevron*, the Supreme Court also introduced a fresh perspective on the substantiation requirement for input VAT that can be credited against output VAT. It established that delving into input tax substantiation pertains to the assessment of potential deficiency output VAT, which is not within the Court's authority in a judicial claim for refund under Section 112(A) of the NIRC of 1997, as amended, *viz*:

> ...
> **[T]he substantiation of input taxes that can be credited against the output tax is an issue relevant to the assessment for potential deficiency output VAT liability. In turn, it is not for the CTA and the Court to determine and rule in a judicial claim for refund under Section 112(A) of the [NIRC of 1997, as amended] that the taxpayer had insufficient or unsubstantiated input taxes to cover its output tax liability. This is for the BIR to determine in an administrative proceeding for assessment of deficiency taxes.**
>
> It is true, in several cases, the Court has ruled that it will not grant a refund if the taxpayer has pending tax liability to the government because "[t]o award the refund despite the existence of deficiency assessment is an absurdity and a polarity in conceptual effects" and that "to grant the refund without determination of the proper assessment and the tax due would inevitably result in a multiplicity of proceedings or suits." We explained in *Commissioner of Internal Revenue v. Court of Appeals*, to wit:
>
> > ... If the deficiency assessment should subsequently be upheld, the Government will be forced to institute anew a proceeding for the recovery of erroneously refunded taxes which recourse must be filed within the prescriptive period

> of ten years after [the] discovery of the falsity, fraud[,] or omission in the false or fraudulent return involved. This would necessarily require and entail additional efforts and expenses on the part of the Government, impose a burden on a drain of government funds, and impede or delay the collection of much-needed revenue for governmental operations.
>
> Thus, to avoid multiplicity of suits and unnecessary difficulties or expenses, it is both logically necessary and legally appropriate that the issue of the deficiency tax assessment against Citytrust be resolved jointly with its claim for [the] tax refund, to determine once and for all in a single proceeding the true and correct amount of tax due or refundable.
>
> **But in these cases, the taxpayer's liability for deficiency taxes is related to and intertwined with the resolution of the claim for refund. <u>Such a situation is not present here</u>. The <u>records do not show</u> that Chevron Holdings is <u>delinquent for output VAT</u> or that it is <u>being assessed for deficiency output tax</u> in the first, second, third, and fourth quarters of the taxable year 2006.**[118]
>
> ...

Without qualifying as to the option chosen by the taxpayer-claimant, the Supreme Court held that it is not for the CTA, nor even the High Court, to rule on the sufficiency or substantiation of input taxes in a refund claim under Section 112(A) of the NIRC, as amended. The authority to determine and assess deficiency taxes rests with the BIR; hence, courts cannot substitute their judgment for that of the BIR (in assessing tax deficiencies) in judicial proceedings.

The foregoing declaration aligns with the ruling in *SMI-ED Philippines Technology, Inc. v. Commissioner of Internal Revenue*[119] (**SMI-ED**), where the Supreme Court explained that, as a rule, the CTA has no power to make an assessment, directly or indirectly, as its jurisdiction over matters such as tax collection, tax refund, and others related to the national internal revenue taxes is appellate in nature. This implies that the BIR must have had a prior determination of the taxpayer-claimant's deficiency tax liability before the Court can

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[118] Supra at note 116; Citations omitted, italics in the original text, emphasis and underscoring supplied.

[119] G.R. No. 175410, 12 November 2014.

adjudicate the same in a judicial proceeding for a refund claim. The relevant portions of the ruling in *SMI-ED* are quoted below.

> ...
>
> The term "assessment" refers to the determination of amounts due from a person obligated to make payments. In the context of national internal revenue collection, it refers the determination of the taxes due from a taxpayer under the National Internal Revenue Code of 1997.
>
> **The power and duty to assess national internal revenue taxes are lodged with the BIR.** ...
>
> ...
>
> **The Court of Tax Appeals has no power to make an assessment at the first instance. On matters such as tax collection, tax refund, and others related to the national internal revenue taxes, the Court of Tax Appeals' jurisdiction is appellate in nature.**
>
> ...
>
> **Thus, the BIR first has to make an assessment of the taxpayer's liabilities.** When the BIR makes the assessment, the taxpayer is allowed to dispute that assessment before the BIR. If the BIR issues a decision that is unfavorable to the taxpayer or if the BIR fails to act on a dispute brought by the taxpayer, the BIR's decision or inaction may be brought on appeal to the Court of Tax Appeals. The Court of Tax Appeals then acquires jurisdiction over the case.
>
> When the BIR's unfavorable decision is brought on appeal to the Court of Tax Appeals, the Court of Tax Appeals reviews the correctness of the BIR's assessment and decision. **In reviewing the BIR's assessment and decision, the Court of Tax Appeals had to make its own determination of the taxpayer's tax liabilities. The Court of Tax Appeals may not make such determination before the BIR makes its assessment and before a dispute involving such assessment is brought to the Court of Tax Appeals on appeal.**
>
> ...
>
> **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.
>
> ...
>
> 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. **<u>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.</u>**[120]
>
> ...

In the subsequent case of *Commissioner of Internal Revenue v. Toledo Power Company*[121] (**Toledo**), where *SMI-ED* was cited, the Supreme Court reiterated that courts do not possess assessment powers. Therefore, when the accuracy of VAT returns is not in question—such as in a claim for tax refund or credit under Section 112 of the NIRC of 1997, as amended, where the issue to be resolved is whether the taxpayer is entitled to a refund or credit of its unutilized input VAT—courts cannot issue assessments against taxpayers; they can only review the CIR's assessments. The relevant portion of the ruling states:

> ...
>
> But while TPC's sales of electricity to CEBECO, ACMDC, and AFC are not zero-rated, we cannot hold it liable for deficiency VAT.

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[120] Supra at note 119; Citations omitted, emphasis and underscoring supplied.

[121] G.R. Nos. 196415 & 196451, 02 December 2015; Citations omitted, italics in the original text and emphasis and underscoring supplied.

by imposing 10% VAT on said sales of electricity as what the CIR wants us to do.

As a rule, taxes cannot be subject to compensation because the government and the taxpayer are not creditors and debtors of each other. However, we are aware that in several cases, we have allowed the determination of a taxpayer's liability in a refund case, thereby allowing the offsetting of taxes.

In *Commissioner of Internal Revenue v. Court of Tax Appeals,* we allowed offsetting of taxes in a tax refund case because there was an existing deficiency income and business tax assessment against the taxpayer. We said that "[t]o award such refund despite the existence of that deficiency assessment is an absurdity and a polarity in conceptual effects" and that "to grant the refund without determination of the proper assessment and the tax due would inevitably result in multiplicity of proceedings or suits."

Similarly, in *South African Airways v. Commissioner of Internal Revenue,* we permitted offsetting of taxes because the correctness of the return filed by the taxpayer was put in issue.

In the recent case of *SMI-ED Philippines Technology, Inc. v. Commissioner of Internal Revenue,* we also allowed offsetting because there was a need for the court to determine if a taxpayer claiming refund of erroneously paid taxes is more properly liable for taxes other than that paid. We explained that the determination of the proper category of tax that should have been paid is not an assessment but is an incidental issue that must be resolved in order to determine whether there should be a refund. However, we clarified that while offsetting may be allowed, the BIR can no longer assess the taxpayer for deficiency taxes in excess of the amount claimed for refund if prescription has already set in.

But in all these cases, we allowed offsetting of taxes only because the determination of the taxpayer's liability is intertwined with the resolution of the claim for tax refund of erroneously or illegally collected taxes under Section 229 of the NIRC. A situation that is not present in the instant case.

In this case, **TPC filed a <u>claim for tax refund or credit under Section 112 of the NIRC, where the issue to be resolved is whether TPC is entitled to a refund or credit of its unutilized input VAT</u>** for the taxable year 2002. And **<u>since it is not a claim for refund under Section 229 of the NIRC, the correctness of TPC's VAT returns is not an issue. Thus, there is no need for the court to determine whether TPC is liable for deficiency VAT</u>**.

> Besides, **it would be unfair to allow the CIR to use a claim for refund under Section 112 of the NIRC as a means to assess a taxpayer for any deficiency VAT, especially if the period to assess had already prescribed. As we have said, the courts have no assessment powers, and therefore, cannot issue assessments against taxpayers. The courts can only review the assessments issued by the CIR, who under the law is vested with the powers to assess and collect taxes and the duty to issue tax assessments within the prescribed period.**
>
> ...

Indeed, since the CTA is precluded from making a judicial assessment for deficiency tax, it cannot determine and rule in a judicial claim for a refund under Section 112(A) of the NIRC of 1997, as amended, that the taxpayer-claimant had insufficient or unsubstantiated input VAT to cover its output VAT liability. This pronouncement inevitably impacts the Court's formula for calculating: (1) the "Output VAT Still Due", which is the net amount of output VAT payable after deducting the ratable portion of input VAT allocable to VAT-able sales; and, (2) ultimately, the "Refundable Excess and Unutilized Input VAT Attributable to Zero-Rated Sales."

The impact can be summarized as follows: what should be the proper basis for allocating input VAT—is it the "Declared Input VAT" (or the "Total Available Input VAT" for the period of claim) or the "Substantiated or Valid Input VAT" (after deducting disallowances)?

*i. **The apportionment of input VAT for purposes of computing the "Output VAT Still Due" should be based on the "Declared Input VAT."***

As regards the computation of "Output VAT Still Due", the 'no judicial assessment rule' necessarily prevents the Court from reducing the ratable portion of input VAT allocable to VAT-able sales for failure of substantiation. Thus, instead of the "Substantiated or Valid Input VAT", which is what the Court typically uses in apportioning input VAT based on sales volume, it should be the "**Declared Input VAT**" for the period of claim.

To reiterate, as held in *Chevron*, "**the substantiation of input taxes that can be credited against the output tax is an issue relevant to the assessment for potential deficiency output VAT liability**". Given that the ratable portion of input VAT allocable to VAT-able sales is credited against output VAT to arrive at "Output VAT Still Due", the Court is bound to apportion the taxpayer-claimant's declaration of "Total Available Input VAT" in the relevant VAT Return for the period of claim. Reducing this amount to only the substantiated portion would be tantamount to an indirect judicial assessment for deficiency VAT.

On this note, since the First Division used the "Substantiated or Valid Input VAT" (which is lower than the "Total Declared Input VAT" for the 2nd Quarter of CY 2017, after removing the unsubstantiated portion) in determining the ratable portion of input VAT allocable to VAT-able sales, there is an indirect judicial assessment for deficiency VAT to the extent of the difference of ₱246.05 as against the "should be" ratable portion of input VAT allocable to VAT-able sales using the "Declared Input VAT", as shown below:

Table 1. Input VAT Allocation	**Amount (a)**		**Allocation Factor (c) = (a) / (b)**	**Allocated Declared Input VAT (e) = (c) x (d)**		**Allocated Substantiated Input VAT (g) = (c) x (f)**		**Difference (h) = (e) - (g)**
Zero-Rated Sales	₱179,437,738.44		99.99%	₱5,600,356.29		₱3,694,051.62		₱1,906,304.67
VAT-able Sales	23,160.41		0.01%	722.85		476.80		246.05
Total Sales	**₱179,460,898.85**	(b)	100.00%	₱5,601,079.14	(d)	**₱3,694,528.42**	(f)	**₱1,906,550.72**

Table 2. Computation of Output VAT Still Due

Output VAT	₱2,779.25
Less: Declared Input VAT allocated to VAT-able Sales	722.85
Output VAT Still Due	**₱2,056.40**

Accordingly, the "Output VAT Still Due" (against which the ratable portion of input VAT allocable to zero-rated sales will be offset to arrive at the unutilized input VAT attributable to zero-rated sales) in this case should only be **₱2,056.40**, compared to ₱2,302.45 as computed by the First Division.

In this case, the difference of ₱246.05, representing the amount of indirect judicial assessment for deficiency VAT, is negligible since respondent's VAT-able sales constitute just 0.01% of the total sales, and the total disallowed input VAT is only about 34%[122] of the "Declared Input VAT." However, it is important to note that this difference could potentially be significant if respondent had more VAT-able transactions and the Court had disallowed a larger portion of the "Declared Input VAT."

Recognizing the fact that the Court's longstanding practice of using the "Substantiated or Valid Input VAT", which is typically lower than the "Declared Input VAT", in apportioning input VAT for purposes of calculating the portion allocable to VAT-able sales inevitably leads to an indirect assessment for deficiency VAT without prior determination from the BIR (through an assessment or any other tax collection effort), the Court must conscientiously change its approach. This is particularly relevant in refund cases where the ratable portion of input VAT allocable to VAT-able sales is insufficient to cover the output VAT on VAT-able sales for the period of claim or where there is an "Output VAT Still Due."

This impact is exacerbated when the amounts involved corresponding to VAT-able sales are significant and the disallowed input VAT, ascertained during judicial proceedings, is substantial. To avoid the risk of reducing the amount of creditable input VAT, which unwittingly sanctions a judicial assessment for deficiency VAT—an outcome the Supreme Court sought to correct through its pronouncement in *Chevron*—the Court *En Banc* hereby changes the formula for computing the "Output VAT Still Due."

This new formula or method of computing "Output VAT Still Due" ensures that the risk of judicially sanctioning an indirect deficiency VAT assessment is completely avoided, aligning the Court's practice with the *ratio decidendi* of the Supreme Court's ruling in *Chevron*.

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[122] (Declared Input VAT of ₱5,601,079.14 less Substantiated or Valid Input VAT of ₱3,694,528.42) divided by ₱5,601,079.14.

ii. The apportionment of input VAT for purposes of computing the "Refundable Excess and Unutilized Input VAT Attributable to Zero-Rated Sales" should also be based on the "Declared Input VAT."

Regarding the computation of the "Refundable Excess and Unutilized Input VAT Attributable to Zero-Rated Sales", the next logical step would be to determine how much of the ratable portion of input VAT allocable to zero-rated sales will be offset against the "Output VAT Still Due."

This aspect of the computation raises a similar question about the proper basis for allocating input VAT. Should it be the "Declared Input VAT" (or the "Total Available Input VAT" for the period of claim), consistent with the computation of the "Output VAT Still Due", or the "Substantiated or Valid Input VAT" (after deducting disallowances)?

The Court's primary consideration for its longstanding practice of using the "Substantiated or Valid Input VAT" is that the evaluation of the merits of a refund claim should be limited to the substantiated portion of input VAT attributable to zero-rated sales. Since the "Substantiated or Valid Input VAT", like the "Declared Input VAT", is an undivided amount, the apportionment of input VAT based on sales volume should begin with this amount.

The Court must therefore examine the rationale of both approaches to determine whether the allocation of input VAT should be based on the declared amount or the substantiated amount after adjustments.

There are two (2) contrasting interpretations of the 'no judicial assessment rule' enunciated in *Chevron* insofar as the ratable portion of input VAT allocable to zero-rated sales is concerned.

The ***first interpretation*** treats the 'no judicial assessment rule' as **applicable to both options** of the taxpayer-claimant. Regardless of whether the input VAT attributable to zero-rated sales is charged against the "Output VAT Still Due", the Court should not reduce this ratable portion for any disallowances, as this would also be tantamount to an indirect judicial assessment for deficiency VAT.

In other words, when determining the ratable portion of input VAT allocable to zero-rated sales that will be offset against the "Output VAT Still Due", as sanctioned under Section 112(A)[123] of the NIRC of 1997, as amended, the Court should not examine the substantiation of the "Declared Input VAT" (or the "Total Available Input VAT" for the period of claim). Instead, the apportionment of input VAT based on sales volume between that allocable to VAT-able sales and zero-rated sales (and/or any other type of sales, as applicable) should consistently be based on the "Declared Input VAT."

The resulting amount of "Excess and Unutilized Input VAT attributable to Declared Zero-Rated Sales", in turn, may be reduced to equal the "Substantiated or Valid Input VAT" (after deducting disallowances), as only such portion corresponding to transactions "incurred or paid" may be refunded to the taxpayer-claimant pursuant to Section 112(A)[124] of the NIRC of 1997, as amended.

Correspondingly, the basis for computing the refundable amount in relation to what the taxpayer-claimant is able to establish as valid zero-rated sales would be the lower amount between the resulting "Excess and Unutilized Input VAT attributable to Declared Zero-Rated Sales" and the "Substantiated or Valid Input VAT". Notably, in the event that the lower amount is the "Substantiated or Valid Input VAT", the whole amount is deemed attributable to zero-rated sales, *i.e.*, it will no longer be re-apportioned based on sales volume.

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[123] SEC. 112. *Refunds or Tax Credits of Input Tax.* —
(A) *Zero-rated or Effectively Zero-rated Sales.* — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, **to the extent that such input tax has not been applied against output tax**[.] (Emphasis and underscoring supplied)

[124] SEC. 112. *Refunds or Tax Credits of Input Tax.* —
(A) *Zero-rated or Effectively Zero-rated Sales.* — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of **creditable input tax due or paid** attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax[.] (Emphasis and underscoring supplied)

The final step would be to compute for the "Refundable Excess and Unutilized Input VAT Attributable to Zero-Rated Sales", which is the amount corresponding only to valid zero-rated sales. The amount corresponding to the invalid zero-rated sales, although duly substantiated, is no longer refundable since under Section 112(A)[125] of the NIRC of 1997, as amended, the right to apply for refund or issuance of a TCC only covers valid zero-rated sales.

Following the ***first interpretation***, the recomputed "Output VAT Still Due" of ₱2,056.40 shall be offset against the ratable portion of input VAT allocable to zero-rated sales using the "Declared Input VAT" amounting to ₱5,600,356.29, resulting in the "Excess and Unutilized Input VAT attributable to Declared Zero-Rated Sales" of ₱5,598,299.89. Since the "Substantiated or Valid Input VAT" (after deducting disallowances) is only ₱3,694,528.42, the whole amount is deemed attributable to zero-rated sales. Lastly, given that respondent was only able to establish valid zero-rated sales of ₱155,686,959.49 (or 86.76%) of the declared zero-rated sales of ₱179,437,738.44, the "Refundable Excess and Unutilized Input VAT Attributable to Zero-Rated Sales" would be **₱3,205,512.40**.

Below is table summary of the computation of "Refundable Excess and Unutilized Input VAT Attributable to Zero-Rated Sales" under the ***first interpretation***:

Table 3. Refundable Excess and Unutilized Input VAT Attributable to Zero-Rated Sales

Declared Input VAT allocated to Declared Zero-Rated Sales	₱5,600,356.29
Less: Output VAT Still Due	2,056.40
Excess and Unutilized Input VAT attributable to Declared Zero-Rated Sales (a)	**₱5,598,299.89**
Substantiated or Valid Input VAT (after deducting disallowances)[126] (b)	**3,694,528.42**

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125 SEC. 112. *Refunds or Tax Credits of Input Tax.* —
(A) *Zero-rated or Effectively Zero-rated Sales.* — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid **attributable to such sales**, except transitional input tax, to the extent that such input tax has not been applied against output tax[.] (Emphasis and underscoring supplied)

126 Out of the "Declared Input VAT" of ₱5,601,079.14 for the 2nd Quarter of CY 2017, only the amount of ₱3,694,528.42 pertains to validly substantiated input VAT, computed as follows:

Substantiated or Valid Input VAT deemed attributable to Zero-Rated Sales [whichever is lower between (a) and (b)]	**₱3,694,528.42**
Divided by Declared Zero-Rated Sales *per* 2nd Quarterly VAT Return for CY 2017	179,437,738.44
Multiplied by Valid Zero-Rated Sales *per* 2nd Quarterly VAT Return for CY 2017	155,686,959.49
Refundable Excess and Unutilized Input VAT Attributable to Zero-Rated Sales	**₱3,205,512.40**

On the other hand, the ***second interpretation*** considers the 'no judicial assessment rule' as **applicable only to the second option,** where the taxpayer claims the input VAT attributable to zero-rated sales for a refund or issuance of a TCC in its entirety. The rationale for this interpretation is that the factual milieu in *Chevron,* where therein taxpayer-claimant chose the second option, is not on all fours with refund cases where the taxpayer-claimant chose the first option.

Additionally, it can be argued that the CTA may examine the substantiation of the "Declared Input VAT" (or the "Total Available Input VAT" for the period of claim) in determining the ratable portion of input VAT allocable to zero-rated sales, as an exception to the 'no judicial assessment rule,' since this function is inherent in the Court's authority to determine the merits of a refund claim anchored in Section 112(A) of the NIRC of 1997, as amended.

Since it is well settled that "a claim for tax refund or credit is similar to a tax exemption and should be strictly construed against the taxpayer. The burden of proof to show that he [or she] is ultimately entitled to the grant of such tax refund or credit rests on the

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	Purchase of Capital Goods not exceeding ₱1 million	**Domestic Purchases of Goods Other than Capital Goods**	**Domestic Purchases of Services**	**Amortized Input Tax from Purchase of Capital Goods not exceeding ₱1 million**	**Total**
Total Declared Input VAT	₱111,002.77	₱159,314.56	₱5,254,865.82	₱75,895.99	₱5,601,079.14
Less: Disallowances					
Found by the ICPA	15,000.00	92,090.09	1,096,069.01	52,465.88	1,255,624.98
Found by the Court	96,002.77	13,372.50	541,549.72	0.75	650,925.74
Total Disallowances	*111,002.77*	*105,462.59*	*1,637,618.73*	*52,466.63*	*1,906,550.72*
Total Substaotiated or Valid Input VAT	**₱-**	**₱53,851.97**	**₱3,617,247.09**	**₱23,429.36**	**₱3,694,528.42**

The "Substantiated or Valid Input VAT" pertains to the amount worth of invoices or receipts submitted by the taxpayer to the Court for examination and confirmed to be compliant with the substantiation requirement under Sections 113 and 237 of the NIRC of 1997, as amended.

taxpayer".[127] It thus stands to reason that the taxpayer-claimant must overcome the burden of substantiating the "Declared Input VAT" for the period of claim as a whole, rather than only the amount claimed for refund or the net input VAT (after deducting the output VAT from the "Declared Input VAT" for the period of claim).

Failure of substantiation merits the outright denial of the unsubstantiated portion of the "Declared Input VAT" for the period of claim such that only the substantiated portion thereof or the "Substantiated or Valid Input VAT" is apportioned based on sales volume in determining the ratable portion of input VAT allocable to the taxpayer-claimant's zero-rated sales.

Following the ***second interpretation***, the recomputed "Output VAT Still Due" of ₱2,056.40 shall be offset against the ratable portion of input VAT allocable to *valid* zero-rated sales (using the "Substantiated or Valid Input VAT" of ₱3,694,528.42). Since zero-rated sales account for 99.99% of respondent's total sales, the said ratable portion amounts to ₱3,694,051.62. Then, as respondent was only able to establish valid zero-rated sales of ₱155,686,959.49 (or 86.76%) of the declared zero-rated sales of ₱179,437,738.44, the resulting "Excess and Unutilized Input VAT attributable to Valid Zero-Rated Sales" is ₱3,205,098.72. Ultimately, after offsetting thereto the "Output VAT Still Due" of ₱2,056.40, the "Refundable Excess and Unutilized Input VAT Attributable to Zero-Rated Sales" would be **₱3,203,042.32.**[128]

Below is table summary of the computation of "Refundable Excess and Unutilized Input VAT Attributable to Zero-Rated Sales" under the ***second interpretation***:

Table 3. Refundable Excess and Unutilized Input VAT Attributable to Zero-Rated Sales

Substantiated or Valid Input VAT allocated to Declared Zero-Rated Sales	₱3,694,528.42
Divided by Declared Zero-Rated Sales *per* 2nd Quarterly VAT Return for CY 2017	179,437,738.44
Multiplied by Valid Zero-Rated Sales *per* 2nd Quarterly VAT Return for CY 2017	155,686,959.49
Substantiated or Valid Input VAT allocated to Valid Zero-Rated Sales	**₱3,205,098.72**

[127] *Coral Bay Nickel Corporation v. Commissioner of Internal Revenue*, G.R. No. 190506, 13 June 2016, citing *BPI Leasing Corporation v. The Honorable Court of Appeals, et al.*, G.R. No. 127624, 18 November 2003.

[128] This amount is lower by ₱2,470.09 compared to the ₱3,205,512.40 refundable amount computed under the ***first interpretation***.

Less: Output VAT Still Due	2,056.40
Refundable Excess and Unutilized Input VAT Attributable to Zero-Rated Sales	**₱3,203,042.32**

In contrast to the First Division's approach, where the "Output VAT Still Due"[129] was first offset against the ratable portion of input VAT allocable to *declared* zero-rated sales before computing the refundable amount based on what respondent was able to establish as valid zero-rated sales, resulting in "Refundable Excess and Unutilized Input VAT Attributable to Zero-Rated Sales" amounting to ₱3,203,101.02[130], the foregoing computation under the ***second interpretation*** is more consistent with the Supreme Court's method of computing "Refundable Excess and Unutilized Input VAT Attributable to Zero-Rated Sales" in *Chevron*, citing Section 4.110-4[131] of Revenue Regulations (**RR**) No. 16-2005[132], as amended by RR No. 4-2007[133]:

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129 Computed at ₱2,302.45 since the apportionment of input VAT for purposes of computing the "Output VAT Still Due" was based on the "Substantiated or Valid Input VAT."

130 This amount is higher by ₱58.71 compared to the ₱3,203,042.32 refundable amount computed under the ***second interpretation***.

131 SEC. 4.110-4. *Apportionment of Input Tax on Mixed Transactions.* — . . .

. . .

Illustration: ERA Corporation has the following sales during the month:

Sale to private entities subject to 12%	₱ 100,000.00
Sale to private entities subject to 0%	100,000.00
Sale of exempt goods	100.000.00
Sale to gov't. subjected to 5% final VAT Withholding	100,000.00
Total Sales for the month	₱ 400,000.00

The following input taxes were passed on by its VAT suppliers:

Input tax on taxable goods 12%	₱ 5.000.00
Input tax on zero-rated sales	3,000.00
Input tax on sale of exempt goods	2.000.00
Input tax on sale to government	4,000.00
Input tax on depreciable capital good **not attributable** to any specific activity (monthly amortization for 60 months)	**20,000.00**

. . .

B. *The input tax attributable to zero-rated sales for the month shall be computed as follows:*

Input tax directly attributable to zero-rated sale — ₱ 3,000.00

Ratable portion of the input tax not directly attributable to any activity:

Taxable sales (0%) / Total Sales x **Amount of input tax not directly attributable to any activity**

P100,000.00 / 400,000.00 x P20,000.00 — ₱ 5,000.00

Total input tax attributable to zero-rated

...

Computation of refundable input tax attributable to zero-rated sales when the taxpayer-claimant is engaged in mixed transactions.

The manner of apportionment of the input tax is provided in Section 4.110-4 of RR No. 16-2005, as amended by RR No. 4-2007[.]

...

Thus, **the refundable input VAT is computed by getting the percentage of valid zero-rated sales over total reported sales (taxable, zero-rated, and exempt)** multiplied by the properly substantiated input taxes not directly attributable to any of the transactions.

...

Accordingly, Chevron Holdings is entitled to the refund of unutilized input tax allocable to its zero-rated sales for January 1 to December 31, 2006, in the total amount of ₱1,140,381.22, computed as follows:

	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
Valid zero-rated sales	5,762,011.70	4,669,743.23	66,091,331.71	79,131,661.58
Divided by: Total reported sales	313,164,583.06	272,400,438.61	299,500,840.65	501,152,183.16
Multiplied by: Valid input tax not directly attributable to any activity	1,276,656.14	1,650,503.65	1,860,385.53	4,294,269.68
Input tax attributable to zero-rated sales	**23,489.59**	**28,294.48**	**410,534.26**	**678,062.88**
TOTAL				**₱1,140,381.22**

Claims for the tax refund, like tax exemptions, are construed *strictissimi juris* against the taxpayer. However, when the claim for refund has a clear legal basis and is sufficiently supported by evidence, as in the present case, then the Court shall not hesitate to grant the refund.[134]

...

sales for the month ₱ 8,000.00

=========

132 Consolidated Value-Added Tax Regulations of 2005.

133 Amending Certain Provisions of Revenue Regulations No. 16-2005, As Amended, Otherwise Known as the Consolidated Value-Added Tax Regulations of 2005, Revenue Regulations No. 04-07.

134 Citations omitted, italics in the original text, and emphasis in the original text and supplied.

As expressly stated in *Chevron*, "refundable input VAT is computed by getting the percentage of **valid** zero-rated sales over total reported sales (taxable, zero-rated, and exempt) multiplied by the properly substantiated input taxes not directly attributable to any of the transactions". This means that only the valid portion of the "Substantiated or Valid Input VAT allocated to Declared Zero-Rated Sales" may be applied for refund or issuance of a TCC and creditable against the "Output VAT Still Due."

It must be stressed that the taxpayer-claimant should no longer benefit from the invalid portion in terms of applying or crediting it against "Output VAT Still Due", as it should only be claimed as expense or recorded as part of an asset account subject to depreciation, whichever is applicable, as provided under Q-13 and A-13 of Revenue Memorandum Circular (**RMC**) No. 42-03[135], to wit:

> ...
>
> Q-13: Should penalty be imposed on TCC application for failure of claimant to comply with certain invoicing requirements, (e.g., sales invoices must bear the TIN of the seller)?
>
> A-13: Failure by the supplier to comply with the invoicing requirements on the documents supporting the sale of goods and services will result to the **disallowance of the claim for input tax** by the purchaser-claimant.
>
> **If the claim for refund/TCC is based on the existence of zero-rated sales by the taxpayer but it fails to comply with the invoicing requirements in the issuance of sales invoices (*e.g.* failure to indicate the TIN), its claim for tax credit/refund of VAT on its purchases shall be denied considering that the invoice it is issuing to its customers does not depict its being a VAT-registered taxpayer whose sales are classified as zero-rated sales. Nonetheless, this treatment is without prejudice to the right of the taxpayer to charge the input taxes to the appropriate expense account or asset account subject to depreciation, whichever is applicable.** Moreover, the case shall be referred by the processing office to the concerned BIR office for verification of other tax liabilities of the taxpayer.[136]
>
> ...

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135 Clarifying Certain Issues Raised Relative to the Processing of Claims for Value-Added Tax (VAT) Credit/Refund, Including Those Filed with the Tax and Revenue Group, One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center, Department of Finance (OSS) by Direct Exporters.

136 Emphasis and underscoring supplied.

It goes without saying that deducting the "Output VAT Still Due" from the "Substantiated or Valid Input VAT allocated to **Declared Zero-Rated Sales**", rather than only from the "Substantiated or Valid Input VAT allocated to ***Valid* Zero-Rated Sales**" would result in a double tax benefit to the taxpayer-claimant insofar as "Substantiated or Valid Input VAT allocated to ***Invalid* Zero-Rated Sales**" is concerned, as a portion thereof may be charged against the "Output VAT Still Due" and only the remainder is claimed as expense (when the whole amount corresponding to invalid zero-rated sales should just be claimed as expense), as illustrated below:

Allocated to	**Substantiated Input VAT Allocated to Zero-Rated Sales**	**Amount Offset Against Output VAT Still Due**	**Refundable Amount/ Amount Claimed as Expense**	**Tax Benefit (b) & (c)**
	(a)	(b)	(c) = (a) – (b)	
Valid Zero-Rated Sales	₱3,205,098.72	₱1,784.210	₱3,203,314.51	1. Credited against the "Output VAT Still Due;" and, 2. Applied for refund or tax credit
Invalid Zero-Rated Sales	488,952.90	**272.19**	₱488,680.71	1. **Credited against the "Output VAT Still Due;"** and, 2. Claimed as Expense
Declared Zero-Rated Sales	**₱3,694,051.62**	**₱2,056.40**	**₱3,691,995.22**	

Whereas, under the ***second interpretation***, there is no such double tax benefit with respect to the "Substantiated or Valid Input VAT allocated to ***Invalid* Zero-Rated Sales**" since no amount thereof is offset against "Output VAT Still Due" or only the "Substantiated or Valid Input VAT allocated to ***Valid* Zero-Rated Sales**" is charged against the "Output VAT Still Due", as follows:

Allocated to	**Substantiated Input VAT Allocated to Zero-Rated Sales**	**Amount Offset Against Output VAT Still Due**	**Refundable Amount/ Amount Claimed as Expense**	**Tax Benefit**
	(a)	(b)	(c) = (a) – (b)	
Valid Zero-Rated Sales	₱3,205,098.72	₱2,056.40	₱3,203,042.32	1. Credited against the "Output VAT Still Due;" and, 2. Applied for refund or tax credit
Invalid Zero-Rated Sales	488,952.90	-	488,952.90	1. Claimed as

Allocated to	Substantiated Input VAT Allocated to Zero-Rated Sales	Amount Offset Against Output VAT Still Due	Refundable Amount/ Amount Claimed as Expense	Tax Benefit
	(a)	(b)	(c) = (a) - (b)	
				Expense
Declared Zero-Rated Sales	₱3,694,051.62	₱2,056.40	₱3,691,995.22	

Notably, the computation of "Refundable Excess and Unutilized Input VAT Attributable to Zero-Rated Sales" under the ***second interpretation*** aims to rectify the above-illustrated double tax benefit by *only* granting a refund *if and only if* there is an excess of "Substantiated or Valid Input VAT allocated to ***Valid* Zero-Rated Sales**" after applying the "Output VAT Still Due."

Having discussed the merits and logic behind the ***first*** and ***second interpretations*** of the 'no judicial assessment rule' enunciated in *Chevron*, as it pertains to the ratable portion of input VAT allocable to zero-rated sales, We shall now determine which interpretation shall be applied.

This Court finds it more prudent to apply the ***first interpretation***: the 'no judicial assessment rule' is **applicable to both options** of the taxpayer-claimant regarding input VAT attributable to zero-rated sales.

It bears noting that in declaring that it is not for the CTA to rule on the sufficiency or substantiation of input taxes in a refund claim under Section 112(A) of the NIRC of 1997, as amended, the Supreme Court did not expressly state that this rule applies only to the second option. In other words, the Supreme Court plainly ruled that the Court is precluded from inquiring into the nature and substance of a taxpayer's input VAT from various sources for the purpose of determining the ratable portion allocable to zero-rated sales and chargeable against the "Output VAT Still Due". This ruling was made without specifying any distinctions or exceptions (such as not applying the rule with respect to the first option as suggested by the *second interpretation*).

The principle of *stare decisis et non quieta movere* (to adhere to precedents and not to unsettle things which are established), as ordained in Article 8[137] of the Civil Code, enjoins adherence by this Court to doctrinal rules established by the Supreme Court in its final decisions[138], such as the recent pronouncement in *Chevron* regarding the proper formula for computing the "Refundable Excess and Unutilized Input VAT Attributable to Zero-Rated Sales". This principle is based on the notion that once a question of law has been examined and decided, it should be considered settled and closed to further argument.[139] The High Court's interpretation of a statute becomes part of the law as of the date it was originally passed because such interpretation simply establishes the contemporaneous legislative intent that the interpreted law carries into effect.[140]

Settled is the rule that where the law does not distinguish, courts should not distinguish.[141] *Ubi lex non distinguit, nec nos distinguere debemos.*

Accordingly, since the Supreme Court's 'no judicial assessment rule' enunciated in *Chevron* already forms part of the law on the matter (*i.e.*, Section 112[A] of the NIRC of 1997, as amended, which governs claims for refund or tax credit of excess and unutilized input VAT attributable to zero-rated or effectively zero-rated sales) as of its effective date, and, as aforesaid, this pronouncement does not distinguish between a taxpayer-claimant's two (2) options with respect to input VAT attributable to zero-rated sales, this Court should not make such a distinction and is thus constrained to apply the ***first interpretation***.

Having thus established that there is a refundable excess input VAT attributable to valid zero-rated sales in the increased amount of **₱3,205,512.40**[142], following the pronouncements in *Chevron* (*i.e.*, the

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137 ART. 8. Judicial decisions applying or interpreting the laws or the Constitution shall form part of the legal system of the Philippines.

138 See *Benjamin G. Ting v. Carmen M. Velez-Ting*, G.R. No. 166562, 31 March 2009.

139 Id.

140 See *Philippine Long Distance Telephone Company v. Abigail R. Razon Alvarez, et al.*, G.R. No. 179408,
05 March 2014.

141 *Pension and Gratuity Management Center (PGMC), et al. v. AAA*, G.R. No. 201292, 01 August 2018.

142 Supra at pp. 33-34.

'no judicial assessment rule' regarding both the computation of "Output VAT Still Due" and the "Refundable Excess and Unutilized Input VAT Attributable to Zero-Rated Sales" under the ***first interpretation***), and since this amount is well within the input VAT claim of ₱5,577,917.98 that remained unutilized until the same was deducted as part of the "VAT Refund/TCC Claimed" of ₱15,210,089.68 in respondent's Amended Quarterly VAT Return for the 2nd Quarter of CY 2019[143], respondent has sufficiently proven its entitlement to a refund or issuance of a TCC in the said increased amount.

It is a well-settled doctrine that a tax refund, which is in the nature of a tax exemption, should be construed *strictissimi juris* against the taxpayer. However, when the claim for refund has a clear legal basis and is sufficiently supported by evidence, as in the present case, then the Court shall not hesitate to grant the refund.[144]

WHEREFORE, premises considered, the present Petition for Review filed by petitioner Commissioner of Internal Revenue on 26 May 2023 is hereby **DENIED** for lack of merit. The First Division's Decision dated 23 November 2022 and Resolution dated 18 April 2023, respectively, in CTA Case No. 10188 entitled *Stefanini Philippines, Inc. v. Commissioner of Internal Revenue*, are hereby **AFFIRMED with MODIFICATION**.

Accordingly, petitioner Commissioner of Internal Revenue is **DIRECTED** to refund respondent Stefanini Philippines, Inc. the amount of **₱3,205,512.40**, representing the latter's excess and unutilized input VAT attributable to its zero-rated sales for the 2nd Quarter of the calendar year ended 31 December 2017 or the period from 01 April 2017 to 30 June 2017.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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143 Exhibit "P-20" (Line 23D), Division Docket, Volume II, p. 1249.

144 *San Roque Power Corporation v. Commissioner of Internal Revenue*, G.R. No. 180345, 25 November 2009; *Commissioner of Internal Revenue v. Philippine AirLines, Inc.*, G.R. No. 180043, 14 July 2009.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(*With Concurring Opinion*)
CATHERINE T. MANAHAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
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 before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA *EB* No. 2753** (CTA Case No. 10188)
	Present:
-*versus*-	**DEL ROSARIO,** *P.J.,* **RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** *and* **ANGELES,** *JJ.*
STEFANINI PHILIPPINES, INC., *Respondent.*	Promulgated: OCT 2 1 2024

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CONCURRING OPINION

MANAHAN, *J.*:

The *ponencia* held that in light of the recent case of *Chevron Holdings, Inc. v. Commissioner of Internal Revenue*[1] ("***Chevron***") which was promulgated prior to the assailed *Decision,* the amount of input VAT refundable to respondent *Stefanini Philippines, Inc.* ("**Stefanini**") must be re-computed. *Chevron* subscribed to the "**no judicial assessment rule**" and held that the substantiation of input VAT creditable against the output VAT is not for the Court to determine in a judicial claim for refund, but is for the Bureau of Internal Revenue ("**BIR**") to determine in the proper administrative proceeding for deficiency tax assessment.

In making the re-computation, the *ponencia* presented two interpretations of the "no judicial assessment rule" insofar

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[1] G.R. No. 215159, July 05, 2022 [Per J. Lopez, En Banc].

as the *ratable* portion of input VAT allocable to zero-rated sales is concerned.

The first interpretation prohibits the Court from reducing the ratable portion for any disallowances, as this would amount to an indirect judicial assessment for deficiency VAT. *Stefanini*'s entitlement to refund is hence computed as follows:

	Amount (PhP)	% Volume of sales
Declared VAT-able sales	23,160.41	0.0129%
Declared Zero-rated sales	179,437,738.44	99.9871%
Total sales	179,460,898.85	100%
Declared Input VAT	**5,601,079.14**	
Allocable to VAT-able sales	722.85	*5,601,079.14 x 0.0129%*
Allocable to Zero-rated sales	5,600,356.29	*5,601,079.14 x 99.9871%*
Output VAT	**2,779.25**	
Less: Declared Input VAT allocable to VAT-able sales	722.85	
Output VAT Still Due	2,056.40	
Declared Input VAT allocable to Zero-rated sales	**5,600,356.29**	
Less: Output VAT Still Due	2,056.40	
Unutilized Input VAT attributable to Declared Zero-rated sales	5,598,299.89	
Valid Input VAT[2] deemed attributable to Zero-rated sales	3,694,528.42	
Multiplied by: % Valid Zero-rated sales to Declared Zero-rated sales	86.76378%[3]	
REFUNDABLE INPUT VAT	**3,205,512.40**	

The second interpretation permits the Court to examine the substantiation of input VAT in determining the ratable portion allocable to zero-rated sales, if the taxpayer does not claim for refund the input VAT attributable to zero-rated sales in its entirety. Thus, the "Output VAT Still Due" (P 2,056.40) is

[2] Footnote 126, *Decision*, p. 33.
[3] 155,686,959.49 / 179,437,738.44.

deducted from the ratable portion of input VAT allocable to *valid* zero-rated sales:

	Amount (PhP)
Valid Input VAT	3,694,528.42
Multiplied by: % of Zero-rated sales to total sales	99.9871%
Valid Input VAT allocable to Declared Zero-rated sales	**3,694,051.62**
Valid Input VAT allocable to Declared Zero-rated sales	3,694,051.62
Multiplied by: % of Valid Zero-rated sales to declared zero-rated sales	86.76378%
Valid Input VAT allocable to Valid Zero-rated sales	**3,205,098.72**
Less: Output VAT Still Due	2,056.40
REFUNDABLE INPUT VAT	**3,203,042.32**

The *ponencia* cogently explained how the second interpretation prevents the taxpayer-claimant from benefitting from the input VAT attributable to *invalid* zero-rated sales by charging such portion against the "Output VAT Still Due." Although this involves a determination of tax liability, it can be argued that the "no judicial assessment rule" does not apply in this case since the taxpayer has the burden of substantiating its declared input VAT for the period of claim as a whole.

I concur.

The "no judicial assessment rule" in tax refund cases

The "no judicial assessment rule" is succinctly defined in *SMI-ED Philippines Technology, Inc. v. Commissioner of Internal Revenue* ("*SMI-ED*"):[4]

> The Court of Tax Appeals has no power to make an assessment at the first instance. On matters such as tax collection, tax refund, and others related to the national internal revenue taxes, the [CTA]'s jurisdiction is appellate in nature.

[4] G.R. No. 175410, November 12, 2014 [Per J. Leonen, Second Division].

The "no judicial assessment rule" is firmly grounded on the basic principle of separation of powers. Under this principle, the enforcement of tax laws and all matters of tax administration, including assessment, collection, and refund, properly pertain to the executive branch. Hence, the power to assess national internal revenue taxes is statutorily lodged with the BIR.[5]

The BIR's power to assess is not mutually exclusive with the Court's power to determine a taxpayer's liability *after* the BIR makes its assessment and such assessment is brought before the Court. This much was elaborated in *SMI-ED*:

> When the BIR's unfavorable decision is brought on appeal to the Court of Tax Appeals, the Court of Tax Appeals reviews the correctness of the BIR's assessment and decision. *In reviewing the BIR's assessment and decision, the Court of Tax Appeals had to make its own determination of the taxpayer's tax liabilities.*[6]

The Court's power to make its own determination of the taxpayer's liabilities is *not a function of tax administration*, but is *incidental to the exercise of judicial power, i.e.* the power "to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government."[7] Such judicial power enables the Court to review, by appeal, decisions or inactions of the CIR in cases involving disputed assessments and tax refunds.[8]

In the case of tax *refunds*, the "no judicial assessment rule" prevents the Court from *finding liability for deficiency tax.* This is because such finding of liability is not precipitated by a BIR assessment, thereby constituting an "assessment at the first instance" by the Court. Thus, in *SMI-ED*, a refund case, the Supreme Court held that it was erroneous for the Court of Tax Appeals ("**CTA**") to impose capital gains tax after finding that the taxpayer sold capital assets:

[5] TAX CODE, Sec. 2 and Sec. 6.
[6] *Emphasis supplied.*
[7] CONST., Art. VIII, Sec. 1.
[8] Republic Act No. 9282, Sec. 7.

> The BIR, however, did not initiate any assessment for deficiency capital gains tax. Since more than a decade have lapsed from the filing of petitioner's return, the BIR can no longer assess petitioner for deficiency capital gains taxes, if petitioner is later found to have capital gains tax liabilities in excess of the amount claimed for refund.
>
> The Court of Tax Appeals should not be expected to perform the BIR's duties of assessing and collecting taxes whenever the BIR, through neglect or oversight, fails to do so within the prescriptive period allowed by law.

In *Commissioner of Internal Revenue v. Toledo Power Company*,[9] the high court also held that while the taxpayer is not entitled to the refund because its sales of electricity do not qualify for VAT zero-rating, the Court cannot hold the taxpayer liable for the deficiency VAT by imposing such VAT on said sales of electricity.

It bears to note that the *imposition* of deficiency capital gains tax, deficiency VAT, or other deficiency taxes in excess of the amount claimed for refund is not intrinsic to the claim for refund. Distinction should therefore be made between "judicial assessment" and mere judicial determination of the amounts due for refund. While both ultimately delve into the correctness of the amount of taxes, the latter is limited to what the taxpayer has already voluntarily paid. *SMI-ED* is once again instructive:

> 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.

An assessment involves a demand to pay the correct amount of taxes due; a judicial determination of a refund claim does not. Courts cannot make such demand on a taxpayer, the enforcement of tax laws being within the exclusive province of the executive branch. Thus, in a refund case, since the tax has already been paid, the CTA's appellate jurisdiction is limited to reviewing the merits of the taxpayer's claim through the proper

[9] G.R. No. 196415, December 2, 2015 [Per J. Del Castillo, Second Division].

interpretation and application of tax laws. This necessarily entails inquiring into whether the taxpayer has complied with the legal requisites for entitlement to refund. For instance, in input VAT refunds, the Tax Code requires that the input VAT claimed must be evidenced by a VAT invoice,[10] be attributable to zero-rated sales by a VAT-registered person and in excess of the output VAT at the end of the taxable quarter,[11] and not applied against output tax.[12]

When the Court makes a disallowance in a refund case, it is not therefore making a deficiency tax assessment. The tax has already been paid. Such disallowance is simply an inescapable consequence of the Court's finding that under pertinent law, regulations, and jurisprudence, the taxpayer fell short of substantiating its claim. After all, the long-standing doctrine is that the burden of proof rests on the taxpayer to establish its right to deductions, refunds, or exemptions[13] In actions for tax refund, not only is the law construed strictly against the taxpayer; the pieces of evidence entitling it thereto are also strictly scrutinized and must be duly proven.[14]

Duty to adhere to precedent under the principle of stare decisis

In applying nonetheless the first interpretation, the *ponencia* considered that *Chevron* applied the "no judicial assessment rule" without distinction in refund cases, whether the taxpayer claims its input VAT attributable to zero-rated sales for refund in its entirety or charges the same against its output VAT from VAT-able sales. The application of the first interpretation is more faithful to the established principles of *stare decisis et non quieta movere* (to adhere to precedents and not unsettle things established) and *ubi lex non distinguit, nec nos distinguere debemus* (where the law does not distinguish, courts should not distinguish).

I concur.

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[10] Sec. 110(A)(1).
[11] Sec. 110(B).
[12] Sec. 112(A).
[13] *Thunderbird Pilipinas Hotels and Resorts, Inc. v. Commissioner of Internal Revenue*, G.R. No. 211327, November 11, 2020 [Per J. Leonen, Third Division].
[14] *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 159490, February 18, 2008 [Per J. Velasco, Jr., Second Division].

Courts must follow earlier decisions of the Supreme Court when another case involving exactly the same point at issue arises again. Adherence to precedent ensures the consistent and predictable development of judicial decisions. It is crucial in fostering reliance in the judicial system. More importantly, it is "a gross injustice to decide alternate cases on opposite principles."[15] Adherence to precedent is necessary to promote the even-handed administration of justice.

CATHERINE T. MANAHAN
Associate Justice

[15] *Eleazar P. Quinto and Gerino A. Tolentino, Jr. v. Commission on Elections*, G.R. No. 189698, February 22, 2010 [Per C.J. Puno, *En Banc*].