

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

EN BANC

**COMMISSIONER OF INTERNAL
REVENUE,**

Petitioner,

CTA EB NO. 2752
(CTA Case No. 10121)

Present:

-versus-

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

**ASURION HONG KONG LIMITED-
ROHQ,**

Respondent.

Promulgated:

AUG 06 2024

3:40 PM

X- - - - - X

D E C I S I O N

MANAHAN, J.:

This resolves the *Petition for Review*¹ filed by petitioner Commissioner of Internal Revenue (CIR) posted on May 18, 2023 and received by the Court on May 25, 2023, pursuant to Section 4(b), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA), as amended², which prays for the reversal and setting aside of the *Decision* dated October 5, 2022³ (Assailed Decision) and the *Resolution* dated April 13, 2023⁴ (Assailed Resolution) promulgated by the Special Second Division of the Court of Tax Appeals (CTA) in CTA Case No. 10121 entitled, "*Asurion Hong Kong Limited-ROHQ vs.*

¹ Rollo, CTA EB No. 2752, pp. 6-37.

² Rules of the Court of Tax Appeals – approved by the Supreme Court on November 22, 2005 (A.M. No. 05-11-07-CTA); Amendments to the 2005 Rules of Court of the Court of Tax Appeals – approved by the Supreme Court on September 16, 2008 (A.M. No. 05-11-07-CTA; and Additional Amendments to the 2005 Revised Rules of the Court of Tax Appeals – approved by the Supreme Court on February 10, 2009 (A.M. No. 05-11-07-CTA).

³ Rollo, pp. 45-79.

⁴ *Id.*, pp. 81-85. 

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Commissioner of Internal Revenue", and the rendition instead of a new judgment dismissing respondent's petition for review for lack of factual and legal basis.

The dispositive portion of the Assailed Decision and the Assailed Resolution, are quoted hereunder:

Decision dated October 5, 2022⁵

"WHEREFORE, the foregoing considered, the Petition for Review filed by petitioner Asurion Hong Kong Limited-ROHQ on 18 July 2019 is hereby **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is **ORDERED** to **ISSUE a TAX REFUND or TAX CREDIT CERTIFICATE** in favor of petitioner in the total amount of ₱13,445,586.53 representing its excess unutilized input value-added tax for calendar year 2017.

SO ORDERED."

Resolution dated April 13, 2023⁶

"WHEREFORE, the foregoing premises considered, respondent's "Motion for Partial Reconsideration (of the Decision dated 05 October 2022)" filed on 24 October 2022 is hereby **DENIED** for lack of merit.

SO ORDERED."

THE FACTS

Petitioner is the duly appointed CIR vested with authority to carry out the functions, duties, and responsibilities of his Office including the duty to act upon claims for tax refund and credit pursuant to the 1997 National Internal Revenue Code (NIRC), as amended.⁷

Respondent is the Philippine Branch of a multinational company organized and existing under the laws of Hong Kong. As such, petitioner is licensed by the Securities and Exchange Commission (SEC) to transact business in the Philippines as a

⁵ *Supra*, Note 3.

⁶ *Supra*, Note 4.

⁷ *Rollo*, CTA EB No. 2752, p. 46. 

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regional operating headquarters (ROHQ) under SEC Registration No. FS201413422.⁸

For calendar year (CY) 2017, respondent rendered services to the following companies:⁹

1. Asurion Insurance Services, Inc. (AISI), a corporation organized under the laws of Nashville, Tennessee, United States of America (USA);
2. New Asurion Corporation (NAC), a corporation organized under the laws of Nashville, Tennessee, USA;
3. Phone Repair Centre Limited (PRCL), a corporation organized under the laws of London, United Kingdom (UK); and,
4. New Asurion Singapore Pte. Ltd. (NAS), a corporation organized under the laws of Singapore.

The foregoing entities allegedly paid respondent the amount of ₱760,169,016.95 for its services in acceptable foreign currency, in accordance with the Bangko Sentral ng Pilipinas' (BSP's) rules and regulations.¹⁰

Respondent filed with the Bureau of Internal Revenue (BIR) its Original and Amended Quarterly value-added tax (VAT) Returns (BIR Form No. 2250-Q) for the four (4) quarters of CY 2017 on the following dates:¹¹

Period	Type of Return	Date of Filing
1 st Quarter	Original	20 April 2017
	Amended	29 November 2017
2 nd Quarter	Original	25 July 2017
	Amended	19 December 2017
3 rd Quarter	Original	23 October 2017
	Amended	19 December 2017
4 th Quarter	Original	18 January 2018
	Amended	12 March 2019

⁸ *Rollo*, p. 46.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at p. 47. 

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As alleged by respondent, it did not have any sales subject to 12% VAT nor VAT-exempt sales during the aforementioned period, while it incurred an input VAT amounting to P17,135,383.37 wholly attributable to its zero-rated sales for the same period.¹²

On 27 March 2019, respondent filed its administrative claim with the BIR for refund of the abovementioned amount of incurred input VAT.¹³

On 21 June 2019, respondent received a letter dated 14 May 2019 from BIR Revenue Region No. 8 - Makati, denying its administrative claim for refund.¹⁴

Thus, on 18 July 2019, respondent filed the original petition which was raffled to the Second Division and docketed as CTA Case No. 10121.¹⁵

After trial, the Court in Division rendered the Assailed Decision where it partially granted respondent's petition in the total amount of ₱13,445,586.53 representing its excess unutilized input value-added tax for calendar year 2017.

Petitioner CIR then moved for the reconsideration of the Assailed Decision but was denied under the Assailed Resolution for lack of merit.

Hence, the instant *Petition for Review* was posted by petitioner on May 18, 2023, after the Court granted¹⁶ his *Motion for Extension of Time (To File Petition for Review)*.¹⁷

On July 04, 2023, respondent is ordered to submit its comment on said petition.¹⁸

On July 25, 2023, the Court received respondent's *Comment (Re: Petition for Review dated May 17, 2023)*.¹⁹

¹² *Rollo*, p. 47.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*, Minute Resolution dated May 11, 2023, p. 5.

¹⁷ *Id.*, pp. 1-3.

¹⁸ *Id.*, Minute Resolution dated July 4, 2023, p. 94.

¹⁹ *Id.*, pp. 95-113. 

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Thus, the case was submitted for decision on August 14, 2023.

THE ISSUE

The following issues are raised in the instant petition to be resolved by this Court:²⁰

1. Whether or not the Honorable Special Second Division of this Court erred in partially granting respondent's Petition for Review by ordering the refund of the reduced amount of Thirteen Million Four Hundred Forty Five Thousand Five Hundred Eighty Six and 53/100 (Php13,445,586.53) Pesos representing respondent's alleged excess unutilized input value-added tax for CY2017; and
2. Whether the Honorable Special Second Division of the Court erred in denying herein petitioner's Motion for Partial Reconsideration.

Arguments of Petitioner

Petitioner argues that respondent failed to prove that the services were rendered in the Philippines, was not able to present all its Service Agreements with its alleged clients, and properly substantiate its big-ticket purchases.

Petitioner further argues that this Court must take note of the observations / findings of fact of the BIR in denying the administrative tax refund, and that if an administrative claim was dismissed by the BIR due to the taxpayer's failure to submit complete documents, then the judicial claim before the CTA should be dismissed for the taxpayer's failure to substantiate the claim at the administrative level.

Petitioner insists that Asurion Insurance Services is an entity which cannot be categorized as "other person" doing business outside the Philippines since Asurion Insurance

²⁰ *Id.*, Petition for Review, pp. 12-13. 

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Services and the respondent are related entities and managed by the same set of corporate officers.

Arguments of Respondent

On the other hand, respondent argues that it sufficiently established that its services were rendered in the Philippines and it paid or incurred input VAT which were properly substantiated in accordance with the law and regulations.

Respondent insists that its services were not rendered to its parent company in Hong Kong but to its affiliates which are corporations conducting business and established outside the Philippines.

Respondent opined that this Court is not bound by the observations/fact-findings of the BIR as it may conduct its own fact-finding.

Respondent argues that it is a separate and distinct entity from Asurion Insurance Services Inc. which makes it an "other person" doing business outside the Philippines.

RULING OF THE COURT *EN BANC*

This Court shall determine first whether the instant petition is filed on time. Sections 1 and 3(b), Rule 8 of the RRCTA provide that:

SECTION 1. *Review of cases in the Court en banc.*- In cases falling under the exclusive appellate jurisdiction of the Court *en banc*, the petition for review of a decision or resolution of the Court in Division must be preceded by the filing of a timely motion for reconsideration or new trial with the Division.

xxx

xxx

xxx

SEC. 3. *Who may appeal; period to file petition.*-

(a) xxx xxx xxx

(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 motion and the payment of the full amount of the docket and other lawful fees and deposit for 

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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. (*Emphasis supplied*)

The records of the case reveal that the instant petition was preceded by a Motion for Reconsideration which is the subject of the Assailed Resolution dated April 13, 2023 and petitioner received a copy of said Resolution on April 18, 2023.²¹

Applying the above-cited provision, petitioner had fifteen (15) days from April 18, 2023 or until May 3, 2023. However, petitioner filed a *Motion for Extension of Time (To File Petition for Review)* which was subsequently granted and was given until May 18, 2023 to file the instant petition. Thus, the filing of the Petition for Review via registered mail on May 18, 2023 was on time.

Factual findings of the CTA Court in Division cannot be disturbed sans any proof of abuse of discretion.

Petitioner faulted the Court in Division in partially granting respondent's claim for refund considering that it failed to prove that the services were rendered in the Philippines, to present all its Service Agreements with its alleged clients, and to properly substantiate its big-ticket purchases.

It should be noted that said rulings are factual findings by the Court in Division during the course of the trial. Hence, in the absence of any factual allegation and empirical proof that the Court in Division has committed grave abuse of discretion, the Court *en banc* cannot disturb such factual findings as held in *Republic of the Philippines, represented by the Commissioner of Internal Revenue v. Team (Phils.) Energy Corporation (Formerly Mirant (Phils.) Energy Corporation)*,²² to wit:

“With regard to the second requirement, it is fundamental that the findings of fact by the CTA in Division are not to be disturbed without any showing of grave abuse

²¹ Docket, CTA Case No. 10121, Notice of Resolution dated April 13, 2023, p. 983.

²² G.R. No. 188016, January 14, 2015. 

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of discretion considering that the members of the Division are in the best position to analyze the documents presented by the parties....”

The reason for such is that the CTA Court in Division, as a trial court, was in the best position to observe and appreciate the documentary and/or testimonial evidence presented to it during the trial of the case as held in *Heirs of Teresita Villanueva, et al. v. Heirs of Petronila Syquia-Mendoza, et al.*,²³ to wit:

“Findings of fact made by a trial court are accorded the highest degree of respect by an appellate tribunal and, absent a clear disregard of the evidence before it that can otherwise affect the results of the case, those findings should not simply be ignored. Absent any clear showing of abuse, arbitrariness, or capriciousness committed on the part of the lower court, its findings of facts are binding and conclusive upon the Court. The reason for this is because the trial court was in a much better position to determine which party was able to present evidence with greater weight.” (*Emphasis supplied*)

In the instant case, petitioner merely alleged that the Court in Division erred in making said rulings without mentioning and providing proof that the same were attended either by grave abuse of discretion, arbitrariness, or capriciousness. Thus, this Court will not disturb such factual findings.

The Court is not bound by petitioner’s findings on respondent’s administrative claim for refund.

Petitioner argues that this Court should have taken into consideration his denial of respondent’s administrative claim for refund due to failure of the latter to submit the complete documentary requirements for such claim.

Petitioner should be mindful that this Court is not bound by law to take cognizance of his findings in respondent’s administrative claim for refund because the Court is mandated to conduct a *trial de novo* or a new trial on the entire case as

²³ G.R. No. 209132, June 05, 2017. 

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held in *Kepco Philippines Corporation v. Commissioner of Internal Revenue*,²⁴ to wit:

“It is settled that tax refunds are in the nature of tax exemptions. Laws granting exemptions are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. Where the taxpayer claims a refund, the CTA as a court of record is required to conduct a formal trial (*trial de novo*) to prove every minute aspect of the claim.”
(*Emphasis supplied*)

Thus, the Court is not precluded from receiving evidence which respondent failed to submit in its administrative claim for refund and be included in the evaluation as to the proper disposition of the instant case.

Corporation is an artificial being which has a separate and distinct personality from its officials.

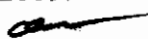
Petitioner posits that Asurion Insurance Services is an entity which cannot be categorized as “other person” doing business outside the Philippines since Asurion Insurance Services and respondent are related entities and shares the same corporate officers.

Petitioner alleged that the evidence presented shows that the two corporations have the same address in the United States. Hence, piercing its veil of corporate personality should be allowed.

Petitioner should be reminded that the presence of the same officers in two (2) corporations does not mean that they are one and the same corporation as held in the case of *Pioneer Insurance Surety Corporation v. Morning Star Travel & Tours, Inc., et al.*,²⁵ to wit:

“The law vests corporations with a separate and distinct personality from those that represent these corporations.”

²⁴ G.R. No. 179356, December 14, 2009.

²⁵ G.R. No. 198436, July 08, 2015. 

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Also, in the case of *Rommel M. Zambrano, et al. v. Philippine Carpet Manufacturing Corporation/Pacific Carpet Manufacturing Corporation, et al.*,²⁶ the Supreme Court specifies instances where the corporate veil may be pierced, to wit:

“A corporation is an artificial being created by operation of law. It possesses the right of succession and such powers, attributes, and properties expressly authorized by law or incident to its existence. **It has a personality separate and distinct from the persons composing it, as well as from any other legal entity to which it may be related.**

Equally well-settled is the principle that the corporate mask may be removed or the corporate veil pierced when the corporation is just an alter ego of a person or of another corporation. For reasons of public policy and in the interest of justice, the corporate veil will justifiably be impaled only when it becomes a shield for fraud, illegality or inequity committed against third persons.

Hence, **any application of the doctrine of piercing the corporate veil should be done with caution.** A court should be mindful of the milieu where it is to be applied. **It must be certain that the corporate fiction was misused to such an extent that injustice, fraud, or crime was committed against another, in disregard of rights.** The wrongdoing must be clearly and convincingly established; it cannot be presumed. Otherwise, an injustice that was never unintended may result from an erroneous application.

Further, the Court's ruling in *Philippine National Bank v. Hydro Resources Contractors Corporation* is enlightening, viz.:

The doctrine of piercing the corporate veil applies only in three (3) basic areas, namely: 1) defeat of public convenience as when the corporate fiction is used as a vehicle for the evasion of an existing obligation; 2) fraud cases or when the corporate entity is used to justify a wrong, protect fraud, or defend a crime; or 3) alter ego cases, where a corporation is merely a farce since it is a mere alter ego or business conduit of a person, or where the corporation is so organized and controlled and its affairs are so conducted as to make it merely an instrumentality, agency, conduit or adjunct of another corporation.”

(Emphases supplied)

²⁶ G.R. No. 224099, June 21, 2017. 

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The circumstances cited by petitioner were not among those envisioned by the law that will allow the piercing of the corporate veil of a corporation.

The petition failed to cite any circumstances that respondent used the corporate fiction to defeat any public convenience, or committed fraud, or merely an alter ego of another and its affairs are so conducted as to make it merely an instrumentality, agency, conduit or adjunct of another corporation.

Thus, in the absence of proof as to any of such circumstances, this Court has no basis to disregard such corporate fiction. The Supreme Court is very explicit that the application of the doctrine of piercing the corporate veil should be done with caution and there should be a certainty that the corporate fiction was misused to such an extent that injustice, fraud, or crime was committed against another, in disregard of rights.

In the instant case, petitioner failed to adduce any empirical evidence to justify the application of such doctrine.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED**. Accordingly, the *Decision* dated October 5, 2022 and *Resolution* dated April 13, 2023 are hereby **AFFIRMED**.

SO ORDERED.


CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

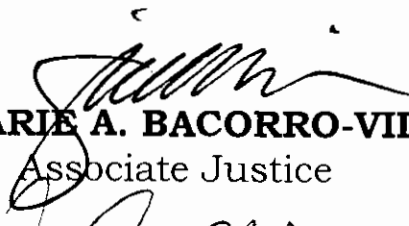

ROMAN G. DEL ROSARIO
Presiding Justice


MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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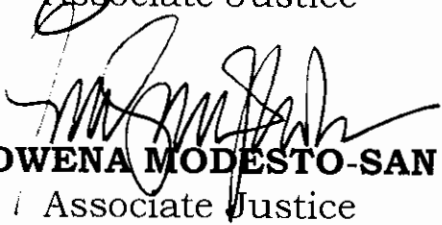
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JEAN MARIE A. BACORRO-VILLENA

Associate Justice



MARIA ROWENA MODESTO-SAN PEDRO

Associate Justice

(on leave)

MARIAN IVY F. REYES-FAJARDO

Associate Justice



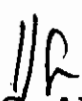
LANEE S. CUI-DAVID

Associate Justice

ON LEAVE

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

