REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

TOLEDO POWER CO.,
Respondent.

CTA EB No. 1778
(CTA Case No. 8671)

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TOLEDO POWER CO.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 1780
(CTA Case No. 8671)

Present:
Del Rosario, *P.J.*,
Castañeda, Jr.,
Uy,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban,
Manahan,
Bacorro-Villena, and
Modesto-San Pedro, *JJ.*

Promulgated:
DEC 17 2019 2:30 pm

x---x

RESOLUTION

CASTAÑEDA, JR., *J.*:

For resolution are the "Motion for Reconsideration (Re: Decision promulgated 15 August 2019)"[1] filed by the Commissioner of Internal Revenue (CIR) on September 4, 2019 (for CTA EB No. 1778) and the "Motion for Reconsideration (Re: Decision dated August 15, 2019)"[2] filed

[1] *Rollo*, CTA EB No. 1778, pp. 129-137.
[2] *Id.*, pp. 139-154.

by Toledo Power Company (TPC) on September 11, 2019 (for CTA EB No. 1780). TPC filed its "Comment/Opposition (re: Motion for Reconsideration dated September 4, 2019) in CTA EB No. 1778 on September 26, 2019. CIR filed his "Opposition (Re: Motion for Reconsideration)" in CTA EB No. 1780 on October 15, 2019. These motions were submitted for resolution on October 17, 2019.

The dispositive portion of the August 15, 2019 Decision reads:

> **WHEREFORE,** premises considered, the Petition for Review filed by Toledo Power Company in CTA EB No. 1780, and the Petition for Review filed by the Commissioner of Internal Revenue in CTA EB No. 1778 are **DENIED** for lack of merit. Accordingly, We **AFFIRM** the Amended Decision and the Resolution of the then CTA Third Division dated September 25, 2017 and the January 12, 2018, respectively.
>
> **SO ORDERED.**

CIR's ground of the Motion for Reconsideration:[3]

THE HONORABLE COURT ERRED IN RULING THAT THE LAW DOES NOT REQUIRE THAT THE INPUT VAT SUBJECT OF THE CLAIM BE DIRECTLY ATTRIBUTABLE TO ZERO-RATED SALES.

TPC's Assignment of Errors:[4]

A. The Honorable Court erred in ruling that the ICPA cannot be faulted for not submitting the complete set of documents before the Court.

B. The Honorable Court failed to consider that the Court-Commissioned Independent CPA (ICPA) is an officer of the Court who is completely independent, objective and impartial to conduct the audit function.

C. The Honorable Court erred in its outright non-reliance on the report of the Court-commissioned independent CPA and in the denial of Petitioner TPC's right to present additional documents both of which tantamount to a denial of Petitioner's right to due process.

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[3] *Rollo*, CTA EB No. 1778, p. 130.
[4] *Id.*, p. 140.

After a careful review of the grounds raised and arguments presented by TPC and CIR, We find no valid or cogent reason to deviate from our findings and conclusions reached in our Decision dated August 15, 2019, thus, the motions are denied.

We noted that with respect to the CIR's motion, the arguments therein are mere reiterations of the arguments raised in his petition for review which were already considered and passed upon by the Court. Section 112(A) of the NIRC, as amended, is clear that, "That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales."

With respect to TPC's motion, this Court reiterates that the burden is on the taxpayer to prove its entitlement to the refund.[5] As held by the then CTA Third Division in its Resolution dated January 12, 2018 in this case, "[TPC] cannot be faulted for relying on the ICPA's representation as to the completeness of the evidence the ICPA submitted to the Court. However, as the Court noted in the Amended Decision, [TPC] has already been given several opportunities to support its claim for refund. Litigation must end at some point."[6]

WHEREFORE, premises considered, the "Motion for Reconsideration (Re: Decision promulgated 15 August 2019)" filed by the Commissioner of Internal Revenue and the "Motion for Reconsideration (Re: Decision dated August 15, 2019)" filed by Toledo Power Company are **DENIED** for lack of merit.

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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[5] *Commissioner of Internal Revenue v. Far East Bank & Trust Company, G.R. No. 173854,* March 15, 2010, 615 SCRA 430-431.
[6] *Rollo*, CTA EB No. 1780, pp. 39-40.

ERLINDA P. UY
Associate Justice

(Took no part in the deliberation of the Decision)
ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice