REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

AXELUM RESOURCES CORP.,
Petitioner,

CTA Case No. 9969

Members:

- versus -

CASTAÑEDA, JR., *Chairperson*
and
BACORRO-VILLENA, *JJ.*

COMMISSIONER OF INTERNAL REVENUE
Respondent.

Promulgated:

NOV 0 8 2021 3:00 pm

x- -x

RESOLUTION

CASTAÑEDA, JR., *J.:*

For this Court's resolution is respondent's *Motion for Partial Reconsideration (Re: Decision dated 15 June 2021)* filed on July 1, 2021,[1] with petitioner's *Comment/Opposition* filed on July 22, 2021.[2]

In the assailed decision, the Court partially granted petitioner's claim for refund in the reduced amount of ₱12,819,154.46, representing excess unutilized input value-added taxes (VAT) attributable to its zero-rated sales for the period April 1 to June 30, 2016. The dispositive portion of the decision reads:[3]

> "**WHEREFORE**, premises considered, the Petition for Review filed by Axelum Resources Corporation on November 5, 2018, is **PARTIALLY GRANTED in the reduced amount of ₱12,819,154.46**.
>
> **SO ORDERED**."

Respondent asserts that petitioner failed to substantiate its claim and asks the Court to "take a second hard look" on the case as "mere reliance on [the] Independent Certified Public Accountant's report does not fully prove the validity of the claim". The ICPA allegedly did not conform to the checklist of mandatory requirements for VAT claim for refund under Revenue Memorandum Circular (RMC) 54-2014. Again, he reiterated that per the Bureau's finding, only ₱2,768,079.51 was recommended for refund.[4]

On the other hand, petitioner noted that the Court reviewed the supporting documents submitted with the ICPA report and disallowed several items because the same were found to be not properly supported by documents and failed to comply with the substantiation requirements set forth in Sections 110(A) and 113(A) of the NIRC of 1997, as amended.[5]

Petitioner likewise pointed out that 1) respondent failed to "confront the [commissioned ICPA]" regarding the alleged failure to conform to the mandatory checklist and failure of petitioner to substantiate its claim for VAT refund, and 2) respondent failed to oppose the admission of the ICPA report when it was offered as evidence. "Failure on the part of respondent to question the ICPA report and oppose its contents should be considered as waiver on its part [to] question the admissibility of the report."[6]

The Court notes that respondent's arguments in the subject Motion are a mere rehash of the points raised in his memorandum. The same have been considered by the Court when the case was deliberated and need not be revisited since there has been no presentation of new information relevant to the case, thus, the motion is denied.

In this case, petitioner submitted the required supporting documents for its local purchases of goods and services, including the purchase of assets classified as Construction in Progress, and respondent failed to refute the evidence submitted by petitioner to support its claim.

[4] Docket, pp. 504-506.
[5] Docket, p. 514.
[6] Docket, p. 516.

"Failure to object to the offered evidence renders it admissible, and the court cannot, on its own, disregard such evidence."[7]

We also emphasize that the Court-commissioned ICPA is an officer of the Court charged with the duty of determining the factual issues of a case.[8] Likewise, Section 3 of Rule 13 of the Revised Rules of the Court of Tax Appeals (RRCTA) provides:

> **"Rule 13**
> **Trial by Commissioner**
>
> Sec. 3 – *Findings of independent CPA.* -The submission by the independent CPA of pre-marked documentary exhibits shall be subject to verification and comparison with the original documents, the availability of which shall be the primary responsibility of the party possessing such documents and, secondarily, by the independent CPA. **The findings and conclusions of the independent CPA may be challenged by the parties and shall not be conclusive upon the court, which may, in whole or in part, adopt such findings and conclusions subject to verification."** *(Emphasis supplied)*

Pursuant to the foregoing provision, petitioner is correct to point out that respondent should have challenged the findings of the ICPA[9] when she submitted her report, when she was presented as a witness and when petitioner formally offered as evidence the ICPA report. However, respondent failed to even comment on petitioner's Formal Offer of Evidence.[10]

Also, per BIR Records, petitioner submitted the complete documents. A bulk of petitioner's input taxes on local purchases of goods and services comes from its acquisitions of assets classified as projects in progress. The same were found by the ICPA and the Court as partially supported by official receipts; invoices stamped with "Bureau of Internal Revenue, VAT Credit Audit Division, VAT Refund Claimed"; and Deeds of Sale, which includes a schedule of the projects, their description and corresponding amounts.

---

[7] *Commissioner of Internal Revenue v. Philippine National Bank*, G.R. No. 180290, September 19, 2014, *citing Asia Construction and Development Corporation v. COMFAC Corporation*, 535 Phil 513, 517-518.
[8] Sections 1 and 2 of Rule 13 of the Revised Rules of the Court of Tax Appeals.
[9] Ms. Sonia D. Segovia of Sycip Gorres Velayo & Co.
[10] Docket, p. 406.

The BIR's Revised Checklist of Mandatory Requirements for Claims for VAT Refund shows that petitioner is "Complete as to Requirements", particularly on the local purchases of goods and services since a check mark (✓) has been indicated before every item therein (Items 4.1 to 4.7), to wit:[11]

"4. LOCAL PURCHASES OF GOODS AND SERVICES

✓	4.1	Hard and soft copy of Schedule of Purchases (except Big Ticket) with Input Tax for the period of claim with details following the prescribed format in Annex A.1.6, in MS Excel format
✓	4.2	Hard and soft copy of Big Ticket purchases in the same format prescribed under 4.1 together with the proof of payment
✓	4.3	Photocopies of Sales Invoices for purchases of goods or ORs with Statement of Accounts/Billing Statements for purchase of services (arranged in accordance with the schedule required under 4.1)
✓	4.4	Sworn statement stating the completeness and authenticity of Sales Invoices for purchase of goods or ORs with Statement of Accounts/Billing Statements for purchase of services
✓	4.5	Alphalist of Suppliers with the following information: Name, Address and TIN of suppliers and total purchases per supplier in hard and soft copies
✓	4.6	Schedule of Amortization of Input Tax on Capital Goods exceeding 1M from previous quarters/years following the prescribed format in Annex A.1.7 in MS Excel format
✓	4.7	Hard and soft copy of Schedule of Property, Plant & Equipment (PPE) Additions per FS following the prescribed format in Annex A.1.8 in MS Excel format

xxx xxx xxx

[11] Exhibit R-3, BIR Records, p. 272.

REMARKS

__✓__ 1. Complete as to Requirements
_____ 2. Disapproved:
 _____ a. Prescribed claim
 _____ b. PEZA Registered (subject to 5% tax regime)
 _____ c. Indirect Exporter
 _____ d. Others (Pls. specify reason)"

In their report, the revenue officers found, among others, that "for copies of [Deeds of Sale] certified by the Clerk of Court, there are also no details of the said properties purchased and the "Schedule 1" indicated to provide said details are not included as attachments to the DoS".[12]

Moreover, per Schedules attached to the revenue officers' report, only *invoices* pertaining to petitioner's purchases of assets classified as Construction in Progress (CIP) were examined.[13] However, Section 4.110-3 of Revenue Regulations (RR) No. 16-2005, as amended by RR No. 04-2007, provides:

> "SECTION 4.110-3. *Claim for Input Tax on Depreciable Goods.* — xxx xxx xxx
>
> xxx xxx xxx
>
> Construction in progress (CIP) is the cost of construction work which is not yet completed. CIP is not depreciated until the asset is placed in service. Normally, upon completion, a CIP item is reclassified and the reclassified asset is capitalized and depreciated.
>
> **CIP is considered, for purposes of claiming input tax, as a purchase of service, the value of which shall be determined based on the progress billings. Until such time the construction has been completed, it will not qualify as capital goods as herein defined, in which case, input tax credit on such transaction can be recognized in the month the payment was made; Provided, that an official**

[12] Exhibit R-1, BIR Records, p. 394.
[13] Exhibit R-1, Annexes "A", "B" and "C", BIR Records, pp.390-392.

> **receipt of payment has been issued based on the progress billings.**
>
> In case of contract for the sale of service where only the labor will be supplied by the contractor and the materials will be purchased by the contractee from other suppliers, input tax credit on the labor contracted shall still be recognized on the month the payment was made based on a *[sic]* progress billings while input tax on the purchase of materials shall be recognized at the time the materials were purchased.
>
> Once the input tax has already been claimed while the construction is still in progress, no additional input tax can be claimed upon completion of the asset when it has been reclassified as a depreciable capital asset and depreciated." *(Emphasis supplied)*

Considering the foregoing and the ICPA Report, the Court finds that petitioner's acquisition of property, plant and equipment collectively known in the Deeds of Sale as Projects in Progress[14] were properly recorded as Construction in Progress and forms part of its Property, Plant and Equipment account in its books and financial statements.[15]

Furthermore, a taxpayer's failure to comply with the requirements listed in RMO No. 53-98 (now RMC 54-2014) is not fatal to its claim for tax credit or refund of excess unutilized excess VAT, thus:[16]

> "Indeed, a taxpayer's failure with the requirements listed under RMO No. 53-98 is not fatal to its claim for tax credit or refund of excess unutilized excess VAT. This holds especially true when the application for tax credit or refund of excess unutilized excess VAT has arrived at the judicial level. **After all, in the judicial level or when the case is elevated to the Court, the Rules of Court governs. Simply put, the question of whether the evidence submitted by a party is sufficient to warrant the granting of its prayer lies within the sound**

[14] Exhibits P-75-a to P-75-d.
[15] Exhibit P-21, p. 11 and Exhibit P-77, p. 34.
[16] *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 207112, December 8, 2015.

discretion and judgment of the Court." *(Emphasis supplied)*

The Court adheres to the principle that the paramount consideration remains the ascertainment of truth and it is not precluded to consider undisputed facts to arrive at a just conclusion.

Considering the foregoing, the Court finds no reason to change the assailed decision in favor of the respondent.

WHEREFORE, respondent's *Motion for Partial Reconsideration (Re: Decision dated 15 June 2021)* is **DENIED** for lack of merit. Accordingly, the assailed Decision promulgated on June 15, 2021 is hereby **AFFIRMED**.

SO ORDERED.

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

I CONCUR:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice