REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PBC CAPITAL INVESTMENT CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 6068

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

MAY 23 2002

x - x

DECISION

This case involves a claim for refund filed by petitioner in the amount of P818,394.71, allegedly representing its overpaid income tax for the taxable years 1996 to 1998.

The facts of the case are as follows:

Petitioner is a corporation duly organized and existing under the laws of the Republic of the Philippines with principal office located at the Philbank Building, 6778 Ayala Avenue, Makati City (par. 1, Joint Stipulation of Facts and Issues).

Petitioner was incorporated and started its operations in March 1996 with Tax Identification Number 004-657-299. It incurred no taxable income for the first quarter of 1996 (Exhibit A, p. 7, CTA records). For the second and third quarters of the same year, however, petitioner paid income taxes amounting to P1,135,100.31 and P494,806.01, respectively (Exhibits B and C, p. 8, CTA records). On April 15, 1997, petitioner filed its tentative annual income tax return for the year 1996 and paid income tax amounting to P1,232,977.00 (Exhibit D, p.9, CTA records).

On July 9, 1997, after the release of petitioner's audited financial statements, petitioner filed its final annual income tax return for the year 1996 reflecting an overpayment of income tax amounting to P280,594.00, arrived at as follows:

Taxable Income	P 7,377,968.00
Tax Due	2,582,289.00
Less: Tax credits/payments	2,862,883.00
Tax Payable/(Refundable)	(P 280,594.00)

In the said return, petitioner indicated that the overpayment was to be applied as tax credit to the next taxable year (Exhibit E, p. 16, CTA records).

In 1997, petitioner ended up in a net loss position, thus, unable to apply its 1996 excess tax credit. In its final income tax return, petitioner declared as tax credit the total amount of P470,595.00, consisting of its 1996 tax overpayment of P280,594.00, and its creditable withholding tax amounting to P190,001.00 (Exhibit I, p. 26, CTA records).

For the taxable year 1998, as reflected in its Final Annual Income Tax Return (Exhibit Q, p. 42, CTA records), the total tax due was P383,513.00. However, the total income taxes paid for the quarters of 1998 amounted to P612,311.00, resulting to tax overpayment of P228,798.00. Likewise, petitioner has creditable withholding tax on rental income in the total amount of P119,001.71, making the excess taxes paid for the year 1998 amount to P347,799.71.

Thus, petitioner claimed to have made tax overpayments for the taxable years 1996, 1997 and 1998 in the total amount of P818,394.71, detailed as follows:

1996	P 280,594.00
1997	190,001.00
1998	347,799.71
TOTAL	P 818,394.71

On April 14, 2000, petitioner filed a written claim for the refund of the aforesaid amount with the respondent. On the same day, petitioner elevated its case before this Court by way of a Petition for Review.

Respondent filed his Answer through registered mail on June 29, 2000.

Accordingly, petitioner underwent the process of marking several documents and presenting witnesses to identify some of them. Records show that on May 8, 2001, petitioner asked for ten (10) days from date thereof (page 95, CTA records) within which to file its formal offer of evidence allegedly due to numerous exhibits to be offered. Petitioner, however, failed to file its formal offer within the period granted by the Court but instead filed another motion for extension of ten (10) days within which to file its formal offer. The Court granted again the said motion, but this time gave a non-extendible period of ten (10) days to file its formal offer.

On May 28, 2001, petitioner filed through registered mail another motion requesting for an extension of five (5) days from May 28, 2001 to file its formal offer of evidence. Since petitioner failed to file its formal offer of evidence, the Court set the case for hearing for the presentation of respondent's evidence (p. 107, CTA records).

For failure of the respondent to appear and present evidence for four (4) consecutive trial dates, the Court declared respondent to have waived his right to present his evidence and gave the parties thirty (30) days from notice thereof to submit their memoranda (page 115, CTA records).

On March 11, 2002, this Court submitted the case for decision without the parties' memoranda (p. 118, CTA records).

Hence, the query. Is the petitioner entitled to the relief sought?

We answer in the negative.

Central to the dispute is **Section 34, Rule 132** of the Revised Rules of Court which provides:

> **"Section 34. Offer of Evidence. – The Court shall consider no evidence which has not been offered**. The purpose for which the evidence is offered must be specified." (Emphasis supplied)

Under the aforesaid rule, it is quite clear that an evidence not formally offered even if identified during the trial is of no value and cannot be considered by the Court.

This has been our ruling in a number of similar cases brought before Us such as the case of **Tatle Apparel Manufacturing vs. Commissioner of Customs, CTA Case No. 5029, promulgated on May 30, 1995,** where this Court ruled:

> "The Rules of Court in Rule 132 Section 34 thereof is quite clear that "the court shall consider no evidence which has not been formally offered" (Veran vs. Court of Appeals, G.R. No. L-41154, January 29, 1988). Under this rule, evidence not formally offered in court will not be taken into consideration by the court in disposing of the issues of a case (Martin, Revised Rules of Evidence, p. 589). It should be noted that the proceedings before the Court of Tax Appeals is a trial de novo and if petitioner desires to

> present evidence, it should do so (C.F. Sharp, Inc. vs. Commissioner of Customs, G.R. L-23803, February 26, 1968)."

The aforesaid decision was upheld by the Court of Appeals through a resolution dated July 31, 1995, CA-G.R. 37856 and finally, by the Supreme Court in G.R. No. L-124454, promulgated on May 27, 1996, with Entry of Judgment dated July 1, 1996.

Likewise, in the case of **Benguet Corporation vs. Commissioner of Internal Revenue and Commissioner of Customs, CTA Case No. 5452, promulgated on April 27, 1998,** with Entry of Judgment dated May 15, 1998, this Court also passed upon the same issue, thus:

> "It is crystal clear then that evidence not formally offered in court will not be taken into consideration by the court in disposing of the issues of a case. x x x
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> Furthermore, the Supreme Court, in Tabuena vs. Court of Appeals, G.R. No. 85423, May 6, 1991, ruled, "The mere fact that a particular document is marked as an exhibit does not mean it has thereby been offered as part of the evidence of a party."
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> Moreover, in the case of Interpacific Transit, Inc. vs. Aviles, G.R. No. 86062, June 6, 1990, the Highest Tribunal had eloquently declared, thus:
>
>> "The mere fact that a particular document is identified and marked as an exhibit does not mean it will be or has been offered as part of the evidence of the party. The party may decide to formally offer it if it believes this will advance its cause, and then again it may decide not to do so at all. In the latter event, the trial court is, under Rule 132, Section 35, not authorized to consider it."

Mr. Justice Ricardo Francisco, in his book "Rules on Evidence" (1996, Third Edition, pages 537-538), discussed the rationale behind the rule in this wise:

> "Any evidence which a party desires to submit for the consideration of the Court must formally be offered by him. Such a formal offer is necessary because it is the duty of the judge to rest his findings of facts and his judgment only and strictly upon the evidence offered by the parties at the trial. The offer may be made in any form sufficient to show that the party is ready and willing to submit the evidence to the Court."

To reiterate, since no evidence has been offered by the petitioner, nothing is submitted to this Court for consideration. As adverted to earlier, petitioner's counsel requested for several extensions of time to file its formal offer. The Court granted the same. The period lapsed and no formal offer of evidence was filed. Hence, this Court has no other recourse but to deny the instant petition for failure to substantiate the claim for refund.

WHEREFORE, in view of the foregoing premises, the instant Petition for Review is hereby **DENIED** for lack of evidence.

SO ORDERED.

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

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge