REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

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UNIVATION MOTOR PHILIPPINES, INC. (Formerly, Nissan Motor Philippines, Inc.),
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 2178
(CTA Case No. 9575)

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COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

UNIVATION MOTOR PHILIPPINES, INC. (Formerly Nissan Motor Philippines, Inc.),
Respondent

CTA EB No. 2179
(CTA Case No. 9575)

Present:

DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, and
MODESTO-SAN PEDRO, *JJ.*

Promulgated:
JUN 0 9 2021 3:40pm

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RESOLUTION

UY, *J.*:

For resolution is the ***MOTION FOR RECONSIDERATION [re: Decision dated January 13, 2021]***[1] filed by the Commissioner of Internal Revenue (CIR) on February 3, 2021 with ***COMMENT (Re:***

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[1] EB Docket (CTA EB No. 2178), pp.152 to 155.

Motion for Reconsideration dated February 2, 2021)[2] filed by Univation Motor Philippines Inc. (Univation Motor) on February 26, 2021.

In his *Motion,* the CIR prays for reconsideration of the Court *En Banc*'s Decision promulgated on January 13, 2021, the dispositive portion of which reads:

> "**WHEREFORE**, in light of the foregoing considerations, the *Petition for Review* in CTA EB No. 2178 filed by Univation Motor Philippines, Inc. and the *Petition for Review* in CTA EB No. 2179 filed by the CIR are both **DENIED** for lack of merit. Accordingly, the Decision dated June 21, 2019 and Resolution dated October 29, 2019, rendered by the Court in Division in CTA Case No. 9575, are **AFFIRMED**.
>
> **SO ORDERED**."

<u>The CIR's argument:</u>

The CIR submits that a motion for reconsideration is not *pro forma* just because it reiterated the arguments earlier passed upon and rejected by the court; and that a movant may raise the same arguments, precisely to convince the court that it was erroneous.

Allegedly, Univation Motor is not entitled to its claim for refund of alleged excess and unutilized creditable withholding tax (CWT).

The CIR reiterates that Univation Motor failed to comply with the requirements in Revenue Memorandum Order (RMO) No. 53-98 and Revenue Regulations (RR) No. 2-2006; that compliance to the foregoing is mandatory as it is the only way that petitioner can determine the veracity of respondent's claim; and that without the documents enumerated in said issuances, petitioner cannot establish whether the taxpayer is entitled to the claim for refund.

According to the CIR, the submission of the documents enumerated in RMO No. 53-98 and RR No. 2-2006 would establish the link between the CWT being refunded and the related income as

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[2] EB Docket (CTA EB No. 2178), pp. 128 to 135.

shown in respondent's tax return. The failure to submit the complete documents will allegedly not establish the link.

The CIR further contends that it is of utmost importance to establish this link because a refund of CWT shall only be given due course if it shown that the income payment has been declared as part of gross income. Otherwise stated, if the CWT being refunded does not relate to an income declared in the tax return, such CWT may not be claimed for refund.

Lastly, the CIR insists that respondent failed to establish by preponderant evidence its entitlement to claim for refund. Hence, the original petition should have been denied for lack of merit.

Univation Motor's Counter-arguments:

Univation Motor counter-argues that RMO No. 53-98 is an issuance addressed to the Bureau of Internal Revenue (BIR) examiners providing directives or instructions, prescribing guidelines, and outlining the processes, operations, activities, workflows, methods and procedures necessary in the implementation of stated policies, goals, objectives, plans and programs of the BIR in all areas of operations, except auditing. In other words, it informs the BIR examiners of the documents that may be required or requested from a taxpayer during the conduct of an audit related to administrative claims for refund. It is not a directive addressed to taxpayers, much less an absolute procedural rule that taxpayers must adhere to when filing an administrative claim for refund.

Univation Motor also argues that the non-submission of complete supporting documents in the administrative level is not fatal to the claimant's judicial recourse.

Furthermore, Univation Motor submits that it has satisfied all the requisites to be entitled to a refund or issuance of a tax credit certificate (TCC) for excess and unapplied CWT.

THE COURT *EN BANC*'S RULING

Petitioner's *Motion for Reconsideration* is without merit.

A perusal of the CIR's motion readily shows that the arguments raised therein are mere reiterations of the arguments in the prior

Petition for Review before the Court *En* Banc, which have already been considered, passed upon and discussed by this Court. Nevertheless, the Court *En Banc* shall address the same.

To reiterate, the CIR is incorrect in invoking RMO No. 53-98 and RR No. 2-2006 as legal basis for the denial of Univation Motor's refund claim.

Contrary to the CIR's argument, the non-submission of complete documents enumerated under RMO No. 53-98 and RR No. 2-2006 at the administrative level is not fatal to a claim for refund at the judicial level brought about by the inaction of the CIR.

As held by the Supreme Court in the case of *Commission of Internal Revenue vs. Univation Motors*[3], to wit:

> "Petitioner CIR argued that failure of the respondent to submit the required complete documents as required by Revenue Memorandum Order No. 53-98 and Revenue Regulations No. 2-2006 rendered the petition with the CTA dismissible on the ground of lack of jurisdiction. It reasoned out that when a taxpayer prematurely filed a judicial claim with the CTA, the latter has no jurisdiction over the appeal.
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> In the instant case, **respondent's failure to submit the complete documents at the administrative level did not render its petition for review with the CTA dismissible for lack of jurisdiction**. At this point, it is necessary to determine the grounds relied upon by a taxpayer in filing its judicial claim with the CTA. The case of *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue* is instructive, thus:
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>> **A distinction must, be made between administrative cases appealed due to inaction and those dismissed at the administrative level due to the failure of the taxpayer to submit supporting documents.** If an administrative claim was dismissed by the CIR due to the taxpayer's failure to submit complete documents despite notice/request, then the judicial claim before the CTA would be

[3] G.R. No. 231581, April 10, 2019.

> dismissible, not for lack of jurisdiction, but for the taxpayer's failure to substantiate the claim at the administrative level. When a judicial claim for refund or tax credit in the CTA is an appeal of an unsuccessful administrative claim, the taxpayer has to convince the CTA that the CIR had no reason to deny its claim. It, thus, becomes imperative for the taxpayer to show the CTA that not only is he entitled under substantive law to his claim for refund or tax credit, but also that he satisfied all the documentary and evidentiary requirements for an administrative claim. It is, thus, crucial for a taxpayer in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place. Consequently, a taxpayer cannot cure its failure to submit a document requested by the BIR at the administrative level by filing the said document before the CTA.

<u>In this case, it was the inaction of petitioner CIR which prompted respondent to seek judicial recourse with the CTA</u>. Petitioner CIR did not send any written notice to respondent informing it that the documents it submitted were incomplete or at least require respondent to submit additional documents. As a matter of fact, petitioner CIR did not even render a Decision denying respondent's administrative claim on the ground that it had failed to submit all the required documents.

Considering that the administrative claim was never acted upon, there was no decision for the CTA to review on appeal *per se*. However, this does not preclude the CTA from considering evidence that was not presented in the administrative claim with the BIR. Thus, RA No. 1125 states:

> Section 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 jurisdictions as conferred by law, but such proceedings shall not be governed strictly by technical rules of evidence.
>
> 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.**
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> **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 x x x to the Court of Tax Appeals all evidence x x x 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**." (Emphasis supplied)

Similar to the above-mentioned case, it must be recalled that Univation Motor filed a Petition for Review in CTA No. 9575 on April 11, 2017 due to the inaction of the CIR on its administrative claim for issuance of a Tax Credit Certificate.[4] Thus, applying the foregoing, it is clear that respondent cannot invoke the alleged non-compliance with RMO No. 53-98 and RR No. 2-2006 as legal basis for the Court to deny the instant claim for tax refund or credit.

Notably, RMO No. 53-98 is merely a guide to revenue officers as to what documents they may require taxpayers to present upon audit of their tax liabilities and is never intended as a benchmark in determining whether the documents submitted by a taxpayer are actually complete to support a claim for tax credit or refund. Furthermore, the failure of the taxpayer to submit the requirements listed under RMO No. 53-98 is not fatal to the taxpayer's claim for tax credit or refund.

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[4] Page 4 of the Decision dated January 13, 2021.

As regards to RR No. 2-2006[5] issued on January 5, 2006, the same merely prescribes the mandatory attachments of the Summary Alphalist of Withholding Agents of Income Payments Subjected to Tax Withheld at Source (SAWT) to tax returns with claimed tax credits due to Creditable Tax Withheld at Source and of the Monthly Alphalist of Payees (MAP) whose income received have been subjected to withholding tax to the withholding tax remittance return filed by the withholding agent/payor of income payments.

Hence, the CIR cannot validly invoke RMO No. 53-98 and RR No. 2-2006 as legal basis in concluding that Univation Motor failed to present relevant documents at the administrative level.

It bears stressing that the Court of Tax Appeals is a court of record, cases filed before it are litigated *de novo* and party litigants should prove every minute aspect of its case.[6] The Court is not precluded from considering petitioner's evidence that was not presented in the administrative claim with the BIR. The question of whether the evidence submitted by a party is sufficient to warrant the granting of its prayer lies within the sound discretion and judgment of the Court.[7]

WHEREFORE, in light of the foregoing considerations, the *Motion for Reconsideration* filed by the CIR is **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

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[5] *Mandatory Attachments of the Summary Alphalist of Withholding Agents of Income Payments Subjected to Tax Withheld At Source (SAWT) to Tax Returns With Claimed Tax Credits due to Creditable Tax Withheld At Source and of the Monthly Alphalist of Payees (MAP) Whose Income Received Have Been Subjected to Withholding Tax to the Withholding Tax Remittance Return Filed by the Withholding Agent/Payor of Income Payments.*

[6] *Commissioner of Internal Revenue vs. Manila Mining Corporation,* G.R. No. 153204, August 31, 2005.

[7] *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 207112, December 8, 2015.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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