REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

MERCURY GROUP OF COMPANIES, INC.,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9531

Present:

CASTAÑEDA, JR.,
Chairperson, and
MANAHAN, *JJ.*

Promulgated:

JAN 02 2020 11:00 AM

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RESOLUTION

MANAHAN, J.:

For resolution is respondent's *Motion for Partial Reconsideration (Re: Decision promulgated 6 September 2019)* filed on September 24, 2019, with petitioner's *Comment/Opposition (To Respondent's Motion for Partial Reconsideration dated September 23, 2019)* filed on October 14, 2019.

Respondent seeks partial reconsideration of the Decision of the Court promulgated on September 6, 2019, the dispositive portion of which reads:

> **"WHEREFORE,** premises considered, the Petition for Review is **PARTIALLY GRANTED**. The assessments issued by respondent against petitioner for the taxable year ended December 31, 2009

covering deficiency income tax, VAT, and EWT are **UPHELD IN PART**. Accordingly, petitioner is **ORDERED TO PAY** respondent the aggregate amount of **ONE MILLION THREE HUNDRED NINETY-SEVEN THOUSAND FOUR HUNDRED SIXTY PESOS AND NINETY-SEVEN CENTAVOS (₱1,397,460.97)**, inclusive of the 25% surcharge, 20% deficiency interest and 20% delinquency interest imposed under Sections 248(A)(3), 249(B) and (C) of the 1997 NIRC, as amended, respectively, computed until December 31, 2017, as follows:

	Income Tax	**VAT**	**EWT**	**Total**
Basic tax due	₱ 93,158.40	₱306,466.79	₱ 614,399.43	₱ 1,014,024.62
Surcharge (25%)	23,289.60	76,616.70	153,599.86	253,506.15
Deficiency interest:				
IT - (04/15/2010 to 04/30/2014 to 07/31/2016)				
(₱93,158.40 x 20% x 1,476/365 days)	75,343.45			75,343.45
[(₱93,158.40 - ₱34,418.40) x 20% x 823/365days]	26,489.33			26,489.33
VAT - (01/25/2010 to 04/30/2014 to 07/31/2016)				
(₱306,466.79 x 20% x 1,556/365 days)		261,294.42		261,294.42
[(₱306,466.79 - ₱268,830.24) x 20% x 823/365days]		16,972.54		16,972.54
EWT - (01/15/2010 to 04/30/2014 to 07/31/2016)				
(₱614,399.43 x 20% x 1,566/365 days)			527,205.21	527,205.21
[(₱614,399.43 - ₱237,005.83) x 20% x 823/365days]			170,189.00	170,189.00
Amount due as of July 31, 2016	***₱218,280.78***	***₱661,350.44***	***₱1,465,393.50***	***₱2,345,024.72***
Deficiency interest from 08/01/2016 to 12/31/2017:				
IT [₱93,158.40 - ₱34,418.40) x 20% x 518/365 days]	16,672.50			16,672.50
VAT [₱306,466.79 - ₱268,830.24) x 20% x 518/365 days]		10,682.59		10,682.59
Deficiency interest on EWT from 08/01/2016 to 01/27/2017				
[(₱614,399.43 - ₱237,005.83) x 20% x 180/365 days]			37,222.38	37,222.38
Delinquency interest from 08/01/2016 to 12/31/2017:				
IT [(₱218,280.78 - ₱34,418.40 - 27,817.61) x 20% x 518/365 days]	44,291.06			44,291.06
VAT [₱661,350.44 - ₱268,830.24 - ₱229,205.40) x 20% x 518/365 days]		46,354.56		46,354.56
Delinquency interest on EWT from 08/01/2016 to 01/27/2017				
[(₱1,465,393.50 - 237,005.83 - ₱231,476.28) x 20% x 180/365days]			98,325.51	98,325.51
Delinquency interest on EWT from 01/27/2017 to 12/31/2017				
[(₱1,465,393.50 - ₱237,005.83 - ₱118,022.69 – ₱231,476.28 - ₱183,184.19) x 20% x 180/365days]			128,848.29	128,848.29
Total amount due	**₱279,244.34**	**₱718,387.59**	**₱1,729,789.68**	**₱2,727,421.61**
Less: Payments on April 30, 2014				
Basic tax	34,418.40	268,830.24	237,005.83	540,254.47
Interest	27,817.61	229,205.40	231,476.28	488,499.29

Less: Payment on January 27, 2017				
Basic tax	-	-	118,022.69	118,022.69
Interest	-	-	183,184.19	183,184.19
Remaining deficiency tax due on December 31, 2017	**₱217,008.33**	**₱220,351.95**	**₱ 960,100.69**	**₱1,397,460.97**

In addition, petitioner is **ORDERED TO PAY** delinquency interest at the rate of twelve percent (12%), which is double the legal interest rate for loans or forbearance of any money, on the total unpaid income tax, VAT, and EWT of ₱156,044.77, ₱163,314.80, and ₱996,911.39, respectively, representing basic deficiency tax, surcharge, and deficiency interest until July 31, 2016, net of payments made on April 30, 2014, as shown below, computed from January 1, 2018 until full payment thereof pursuant to Section 249(C) of the 1997 NIRC, as amended by Republic Act No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN) Law,[1] and as implemented by RR No. 21-2018.

	Income Tax	**VAT**	**EWT**	**Total**
Amount due as of July 31, 2016	₱ 218,280.78	₱ 661,350.44	₱1,465,393.50	₱ 2,345,024.72
Less: Payments on April 30, 2014				
Basic tax	34,418.40	268,830.24	237,005.83	540,254.47
Interest	27,817.61	229,205.40	231,476.28	488,499.28
Total unpaid tax as of July 31, 2016	**₱156,044.77**	**₱163,314.80**	**₱996,911.39**	**₱1,316,270.96**

SO ORDERED."

In his *Motion for Partial Reconsideration*, respondent assigns the following error allegedly committed by the Court, and we quote:

> "The Honorable Court erred when it cancelled the deficiency income tax and VAT for undeclared service income, undeclared purchases and unaccounted source of cash on the ground that the same is merely based on presumption."

The main thrust of respondent's motion centers on his allegation that the Court should only rule on matters that were raised in the administrative level and should be limited only to issues raised therein. Respondent further theorizes that the power of judicial review should not encompass matters and issues that were never substantiated in the administrative level and should confine itself to issues and

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[1] *Alpha 245, Inc., (formerly ARC Worldwide Philippines Co., Inc.) vs. Commissioner of Internal Revenue*, CTA Case No. 9225, April 6, 2018. ɤ

documents raised in petitioner's protests filed against the subject assessment. Respondent cited the Supreme Court decision in the case of *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue*[2] where it allegedly ruled that a court exercising judicial review is confined to inquiring whether the findings of an administrative body are consistent with the law and evidence. The ruling in the aforecited case of *Pilipinas Total* prompted respondent to argue that a judicial review of the findings of an administrative body, more specifically, the Bureau of Internal Revenue (BIR), is *not* a *de novo* trial, hence it cannot rule on matters that were never substantiated in said level.

In the instant case, respondent maintains that the conclusions provided in the Final Decision on Disputed Assessment (FDDA) were a result of the failure of petitioner to substantiate or support its arguments to overthrow the findings of the revenue examiners, thus the Court should confine itself to the documents submitted by petitioner in support of its protest and not consider evidence or documents provided by petitioner during trial and which were never introduced during the protest stage of the tax assessment.

Respondent reiterates his position in the FDDA that petitioner's undeclared service income, unaccounted source of cash and undeclared purchases constitute undeclared revenue resulting to deficiency income tax and VAT for taxable year ended December 31, 2009. Respondent also firmly asserts that petitioner is liable for deficiency income tax on its disallowed optional standard deduction (OSD) of Php297,018,816.80. He mentions that verification of petitioner's quarterly income tax returns for the first to third quarters of 2019 shows that petitioner opted to use the itemized deduction and that on its annual tax return shifted to use the OSD. The difference between the itemized deduction and the OSD was disallowed pursuant to Section 34 (L) of the 1997 National Internal Revenue Code (NIRC), as amended and Revenue Memorandum Circular (RMC) No. 16-2010, thus resulting to a substantial income tax deficiency.

In its *Comment/Opposition*, petitioner disagrees with the contention of respondent that it failed to substantiate or support its arguments in the administrative level and asserts that the pieces of documentary evidence it submitted in

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[2] G.R. No. 207112, December 8, 2015.

support of its protest (with the BIR) are the same pieces of evidence it submitted to the Court. Petitioner maintains that the Court correctly applied tax laws and jurisprudence to the same set of documents which the BIR failed to appreciate or consider during the proceedings in the administrative level.

Petitioner also finds error in the theory of respondent that the Court should no longer consider evidence or documents that were never introduced in the administrative level because the Court of Tax Appeals (CTA) is not only empowered but required to hear cases *de novo* under Section 8 of Republic Act (RA) 1125, as amended by RA 9282, establishing it as a court of record.

Finally, petitioner is firm in its contention that it substantially refuted the findings of respondent embodied in his FDDA and destroyed the presumption of correctness of tax assessments and proved that the tax assessment issued against it for taxable year 2009 is based merely on presumptions and not on solid facts and relevant laws.

RULING OF THE COURT

We find respondent's contentions bereft of merit.

Respondent's assertion that the Court should only consider evidence introduced in the administrative level and exclude those which have been newly submitted in the judicial level goes against the nature of the Court as a court of record pursuant to Section 8 of RA 1125 as amended by RA 9282, and we quote, thus:

> "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 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 jurisdiction as conferred by law, but such proceedings shall not be governed strictly by technical rules of evidence." (emphasis supplied)

The Supreme Court, in the case entitled *CIR vs. Manila Mining Corporation*[3] has clearly linked the concept of the CTA

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[3] G.R. No. 153204, August 31, 2005.

being a "court of record" to an entity which possesses an authority to conduct *trial de novo,* and we quote:

> "The Court notes with approval the findings of the CTA:
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> xxx xxx xxx
>
> Section 8 of Republic Act 1125 (An Act Creating the Court of Tax Appeals) provides categorically that the Court of Tax Appeals shall be a court of record and as such it is required to conduct a formal trial (*trial de novo*) **where the parties must present their evidence accordingly, if they desire the Court to take such evidence into consideration."** (emphasis supplied)

Consistent with the basic principle that a court shall not consider evidence which has not been formally offered,[4] parties who come to court are required to prove every aspect of their case and submit their evidence. This point has been clarified by the Supreme Court in the case of *Philippine Airlines, Inc. vs. CIR,*[5] when it ruled in this manner:

> **"No value is given to documentary evidence submitted in the Bureau of Internal Revenue unless it is formally offered in the Court of Tax Appeals.** Thus, the review of the Court of Tax Appeals is not limited to whether or not the Commissioner committed gross abuse of discretion, fraud or error of law, as contended by the Commissioner. As evidence is considered and evaluated again, the scope of the Court of Tax Appeals' review covers factual findings." (emphasis supplied)

To put emphasis on the principle of trial *de novo* in cases filed before the CTA, we quote the case entitled *CIR vs. PNB,*[6] where the Supreme Court declared thus:

> "More importantly, the Court of Tax Appeals is not precluded from accepting respondent's evidence assuming these were not presented at the administrative level. **Cases filed in the**

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[4] Rule 132
Section 34. *Offer of Evidence.* The Court shall consider no evidence which has not been formally offered. The purpose of which the evidence is offered must be specified."

[5] G.R. Nos. 2060-80 and 206309, January 17, 2018.

[6] G.R. No. 180290, September 29, 2014. *cxu*

> **Court of Tax Appeals are litigated *de novo*.**" (emphasis supplied)

The power of judicial review by the CTA with regard to tax assessments includes the authority to evaluate whether the findings of the administrative officers such as respondent, are consistent with the facts and applicable laws relevant to the case, and on that bases, approve, modify or reverse the findings embodied in the tax assessments or in his FDDA according to the evidence submitted by both parties.

In the instant case, the Court astutely examined the evidence submitted by petitioner during trial and detailed its findings per item of the tax assessment issued by respondent and came up with the conclusion that petitioner is entitled to a partial grant of its Petition for Review. We stand by our conclusions as respondent merely repeated his arguments presented during trial and which were resolved in our Decision dated September 6, 2019.

WHEREFORE, premises considered, respondent's *Motion for Partial Reconsideration (Re: Decision promulgated 6 September 2019)* filed on September 24 2019, is **DENIED** for lack of merit.

SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

I CONCUR:

Juanito C. Castañeda, Jr.

JUANITO C. CASTAÑEDA, JR.
Associate Justice