REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

FIRST GEN HYDRO POWER CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9889

Members:

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

Promulgated:
MAR 05 2021 8:40 AM

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RESOLUTION

CASTAÑEDA, J.:

Submitted before this Court is petitioner's **Motion for Reconsideration (Re: Decision dated October 29, 2020)**, filed through registered mail on November 18, 2020 and received by the Court on December 4, 2020, with respondent's **Opposition (Re: Motion for Reconsideration of the Decision dated 29 October 2020)**, filed on January 5, 2021.

On October 29, 2020, the Court promulgated a Decision denying petitioner's claim for refund of its unutilized zero-rated input value-added tax (VAT) for failing to prove that it fully complied with the requsities for VAT refund, the dispositive portion of which reads as follows:

> "**WHEREFORE**, the present *Petition for Review* is **DENIED** for lack of merit.
>
> **SO ORDERED.**"

In its Motion, petitioner claims that it submitted complete documents to respondent in support of its administrative request for VAT refund. Petitioner argues that the *Revised Checklist of Mandatory Requirements for Claims for VAT Refund* covering the period of January 1 to December 31, 2016 confirms the completeness of the documents submitted since there was a checkmark beside the item "Complete as to Requirements." This fact was also testified by its witness, Ms. Maria Carmina Z. Ubaña. Petitioner further points out that even the Memorandum Report prepared by respondent's revenue officer (RO) Veronica A. Asis states that the filing of petitioner's administrative claim for refund was compliant with the relevant regulations.

Petitioner also asserts that respondent's computation of its refundable input VAT was erroneous. It reiterates that the Court-commissioned Independent Certified Public Accountant (ICPA) was able to draw attention to the erroneous computation made by respondent, specifically, his failure to correctly consider the entirety of the subject input VAT in the aggregate amount of ₱125,092,110.76, which petitioner could have validly applied against its existing output VAT liability. Petitioner continues that had respondent done so, it could have resulted in petitioner's entitlement to the refund of the amount of ₱15,950,720.98.

Moreover, petitioner avers that its zero-rated sales during the four quarters of calendar year (CY) 2016 were correctly reported. Petitioner assails the Court's finding that it needs to secure a Certificate of Compliance (COC) from the Energy Regulatory Commission (ERC) for it to qualify for VAT zero-rating. Petitioner argues that contrary to the said finding, Republic Act (RA) No. 9136 or the *"Electric Power Industry Reform Act of 2001 (EPIRA)"* and Revenue Regulations (RR) No. 16-2005 are inapplicable to the present case since petitioner clearly manifested that its claim of VAT zero-rating on the sales of generated power from revewable sources of energy is anchored principally on Section 108(B)(7) of the National Internal Revenue Code (NIRC) of 1997, as amended. Nonetheless, petitioner stated that while its COC was only issued by ERC on March 1, 2016, it had long applied and submitted documents for the renewal of its COC.

Petitioner further insists that that its input taxes for CY 2016 were duly substantiated. Petitioner claims that the Court should revisit the disallowance of ₱9,001,583.31 on the following bases: (i) that RO Asis had mentioned in her Memorandum Report that petitioner's official receipts (ORs) and invoices were issued in accordance with the invoicing requirements provided under the law and relevant regulations, and that the latter's basis in disallowing the amount of ₱386,745.29 was mainly due to subtantiation requirement issue, and not because of non-compliance with the invoicing requirements; (ii) that the ICPA found petitioner's ORs and invoices to have generally complied with the invoicing requirements and that the latter had already ascertained the "nature of the service" from the face of the ORs themselves; (iii) that the disallowance in the amount of ₱8,345,748.94 was duly supported by ORs, sales invoices, billing statements, and other official documents which stated the nature of the service performed; and, (iv) that the input VAT of ₱263,160.89, which was denied admission by the Court, pertains to sub-markings made by the ICPA on the entries found in the schedules marked as exhibits, and the corresponding ORs or invoice supporting the entries in the schedules were indicated in the column "Per Invoice" or Per OR" of the same schedule.

Lastly, petitioner avers that its input taxes in the amount of ₱15,950,720.98 for CY 2016 have not been applied against its output taxes during and in the succeeding quarters. Petitioner asserts that its input VAT credits from the prior years were disregarded without legal and factual basis. Moreso, petitioner insists that the input VAT credits that were directly attributable to its VATable sales were properly applied against the corresponding output VAT. In any case, should the Court still finds the foregoing discussions wanting, petitioner, in the alternative, prays that it be allowed to present supplemental evidence, recall witness, and set a commissioner's hearing for the marking of its supplemental documentary evidence.

On the other hand, in his Opposition, respondent asserts that petitioner failed to discharge the burden of establishing its claim for tax refund. He reiterates that exemptions from taxation are highly disfavored in law and the taxpayer-claimant must be able to justify its claim by the clearest grant of organic and statutory law. Lastly, respondent insists that an exemption from the common burden cannot be permitted to exist upon vague implications.

This Court finds petitioner's Motion for Reconsideration bereft of merit.

The Court shall first discuss petitioner's alternative prayer that it be allowed to present and offer supplemental evidence to further prove its case. According to petitioner, it intends to *"elaborate on matters presented in evidence or working papers contained in the BIR Records, such as: (a) applications for refund for CYs 2014 and 2015, the TCCs (with cover letters) granted by respondent for CYs 2014 and 2015; and (b) schedules and supporting computations in the BIR records; (c) COCs issued in 2010; (d) application for renewal of COCs, among others."* Petitioner likewise claims that this Court had in the past been generous in allowing litigants to present supplemental evidence, especially when the submission of the evidence will give this Court an opportunity for a more circumspect evaluation of evidence.

Perforce, a motion to reopen may properly be presented only after either or both parties have formally offered, and closed their evidence, but before judgment. On the other hand, a motion for new trial is proper only after rendition or promulgation of judgment. A motion for reopening, unlike a motion for new trial, is not specifically mentioned and prescribed as a remedy by the Rules of Court. There is no specific provision in the Rules of Court governing motions to reopen. It is albeit a recognized procedural recourse or device, deriving validity and acceptance from long, established usage. *x x x* The reopening of a case for the reception of additional evidence after a case has been submitted for decision but before judgment is actually rendered is, it has been said, controlled by no other rule than that of the paramount interests of justice, resting entirely in the sound judicial discretion of the Court; and its concession, or denial, by said Court in the exercise of that discretion will not be reviewed on appeal unless a clear abuse thereof is shown.[1]

In the case of *Alejandro B. Ty v. Sylvia S. Ty,*[2] the Supreme Court reiterated that the controlling guideline governing a motion to reopen is the paramount interest of justice and rests entirely upon the sound judicial discretion of the court, *viz.*:

> "On the propriety of the reception of additional evidence, this Court falls backs (sic) upon the holding of the High Court in *Alegre v. Reyes*, 161 SCRA 226 (1961) to the effect that even as there is no specific provision in the Rules of Court **governing motions to reopen a civil case for the reception of additional evidence after the case has been submitted for decision, but <u>before judgment is actually rendered</u>,** nevertheless

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[1] *Ramon J. Alegre v. Hon. Manuel T. Reyes, et al.*, G.R. No. L-56923, May 9, 1988.
[2] G.R. No. 165696, April 30, 2008.

> such reopening is controlled by no other principle than that of the paramount interest of justice, and rests entirely upon the sound judicial discretion of the court." (*Emphasis and underscoring supplied.*)

> While, in the case of *Lolita R. Alamayri vs. Rommel Pabale, et al.*,[3] the Supreme Court held that "parties must diligently and conscientiously present all arguments and available evidences in support of their respective positions to the court before the case is deemed submitted for judgment. Only under exceptional circumstances may the court receive new evidence after having rendered judgment; otherwise, its judgment may never attain finality since the parties may continually refute the findings therein with further evidence."

In the present case, other than the claim of *substantial justice*, petitioner did not raise any other compelling reason that would justify the presentation of supplemental evidence. At this juncture, the Court emphasizes that the bare invocation of 'the interest of substantial justice' is not a magic wand that will automatically compel this Court to suspend procedural rules.[4] While petitioner may believe that it has a meritorious claim, this must be weighed against the need to halt an abuse of the flexibility of procedural rules. It is well established that faithful compliance with the Rules of Court is essential for the prevention and avoidance of unnecessary delays and for the organized and efficient dispatch of judicial business.

Petitioner's attempt to recall its witness to elaborate on matters presented in evidence or working papers contained in the BIR Records and to offer additional documentary evidence to refute the findings thereto, does not fall under the category of exceptional circumstances but rather constitutes *"forgotten evidence"*. As enunciated in the case of *Office of the Ombudsman, Represented by Hon. Simeon V. Marcelo v. Carmencita D. Coronel,* [5] *viz.*:

> "*x x x* Forgotten evidence refers to evidence already in existence or available before or during a trial; known to and obtainable by the party offering it; and could have been presented and offered in a seasonable manner, ✗

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[3] G.R. No. 151243, April 30, 2008.

[4] *Spouses David Bergonia and Luzviminda Castillo v. Court of Appeals (4th Division), et al.*, G.R. No. 189151, January 25, 2012.

[5] G.R. No. 164460, June 27, 2006.

were it not for the sheer oversight or forgetfulness of the party or the counsel. Presentation of forgotten evidence is disallowed, because it results in a piecemeal presentation of evidence, a procedure that is not in accord with orderly justice and serves only to delay the proceedings. A contrary ruling may open the floodgates to an endless review of decisions, whether through a motion for reconsideration or for a new trial, in the guise of newly discovered evidence."

Again, presentation of additional evidence is allowed when it is newly discovered, or where it has been omitted through inadvertence or mistake, or where the purpose of the evidence is to correct evidence previously offered. It is an accepted tenet that rules of procedure must be faithfully followed except only when, for persuasive and weighting reasons, they may be relaxed to relieve a litigant of an injustice commensurate with his failure to comply with the prescribed procedure.[6] In this case, petitioner has not demonstrated any cogent reason for this Court to take exception.

The Court shall now address the merit of petitioner's arguments in its Motion. Incdidentally, the Court observes that petitioner heavily relied on the testimony of its witness and ICPA's conclusion in seeking to overturn the ruling in the assailed Decision. It, however, lose sight of the fact that actions for tax refund, as in this case, are in the nature of a claim for exemption and the law is construed in *strictissimi* juris against the taxpayer. The pieces of evidence presented entitling a taxpayer to an exemption are also *strictissimi* scrutinized and must be duly proven.[7] Thus, this Court make its own determination and verification of the documentary evidence presented by the parties, including the correctness of respondent's findings (at the administrative level) and ICPA's conclusion as reflected in the ICPA Report. After all, the latter's report is only persuasive in nature and not conclusive to the Court, as explicitly provided in Section 3, Rule 13 of the Revised Rules of the Court of Tax Appeals (RRCTA), to wit:

"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 original documents, the availability of *gr*

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[6] *Ma. Rosario Suarez v. Judge Martin S. Villarama, Jr., et al.*, G.R. No. 124512, June 27, 2006.

[7] *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 159490, February 18, 2008.

> 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." *(Emphases supplied)*

As such, petitioner cannot claim that the ICPA's findings are sufficient to support its claim that it is entitled to refund the amount ₱15,950,720.98.

The Court also reiterates that, other than petitioner's bare allegation and general statement that respondent's computation of its refundable input VAT was erroneous, petitioner has been unable to point out the reasons/bases why its administrative claim was denied in the first place by respondent. It not only failed to offer proof to debunk the findings of respondent, but also failed to pinpoint specifically which of respondent's findings have not been supported by any factual or legal bases. As such, said allegation cannot be accorded credence for lack of evidentiary support. It is a basic rule that he who alleges must prove what is alleged.[8] Thus, petitioner's claim of erroneous computation cannot stand.

As to petitioner's claim that it need not secure a COC issued by the ERC before it may be entitled to its claim for refund, as its claim for refund is anchored on the provision of Section 108(B)(3) of the NIRC of 1997 and not under the EPIRA, this Court is not swayed.

Verily, Section 6 of RA No. 9136 or the EPIRA, as well as Section 4 (a) of Rule 5 of its Implementing Rules and Regulations, explicitly states that before a new generation company may commence its commercial operation, it must first secure a COC from the ERC to carry out such operation. Otherwise, it cannot be considered as a generation company as contemplated under the law.

Going back to the present case, it should be noted that at the time petitioner incurred the subject unutilized input taxes for the four (4) quarters of CY 2016, RA No. 9136 was already in effect.[9] Thus, between a special law like RA No. 9136, which aims, among others, *jc*

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[8] *Eastern Assurance and Surety Corporation v. Con-Field Construction and Development Corporation,* G.R. No. 159731, April 22, 2008.
[9] Took effect on June 26, 2001.

to ensure the quality, reliability, security and affordability of the supply of electric power, and a general law like the NIRC of 1997, as amended, which governs the imposition of national internal revenue taxes, fees and charges; it is a rule in statutory construction that a special law prevails over a general law, regardless of the laws' respective dates of passage.[10] *Generalia specialibus non derogant.*[11]

Lastly, the Court also finds no reason to revisit the disallowance of the amount of ₱9,001,583.31 since petitioner failed to specify and make express reference to the pieces of evidence (*i.e.,* ORs or sale invoices) which the Court failed to give probative value or that which the Court erroneously considered as non-compliant with the invoicing requirements provided by law. As such, this Court cannot give weight to such bare allegations of petitioner. It is basic in the rule of evidence that bare allegations, unsubstantiated by evidence, are not equivalent to proof. In short, mere allegations are not evidence.[12]

In view of the foregoing disquisitions, this Court finds that no new substantial matter or compelling reason was raised in the present Motion to justify the reversal or modification of the Decision assailed by petitioner.

WHEREFORE, premises considered, petitioner's Motion for Reconsideration (Re: Decision dated October 29, 2020) is **DENIED** for lack of merit.

SO ORDERED.

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

I Concur:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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10 *Elaine R. Abanto, et al. v. The Board of Directors of the Development Bank of the Philippines, et al.,* G.R. Nos. 207281 & 210922, March 5, 2019; citing *Senator Leila M. De Lima v. Hon. Juanita Guerrero, et al.,* G.R. No. 229781, October 10, 2017.

11 The general does not detract from the specific.

12 *Virginia Real v. Sisenando H. Belo,* G.R. No. 146224, January 26, 2007.