REPUBLIC OF THE PHILIPPINES

Court of Tax Appeals

QUEZON CITY

SECOND DIVISION

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ORGANIZATIONAL CHANGE CONSULTANTS INTERNATIONAL CENTER FOR LEARNING, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8625

Members:

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

Promulgated:
JUN 09 2017 2:55 Am

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RESOLUTION

CASANOVA, *J.*:

Before this Court are:

1. respondent's **Motion for Reconsideration,** filed on March 1, 2017, with petitioner's **Comment/Opposition (Re: Respondent's Motion for Reconsideration dated February 28, 2017),** filed on March 23, 2017; and

2. petitioner's **Motion for Partial Reconsideration,** filed on March 1, 2017, without respondent's comment as per Records Verification dated March 28, 2017.

Both petitioner and respondent seeks reconsideration of the Court's Decision dated February 10, 2017 which cancelled the assessment for deficiency documentary stamp tax (DST) and compromise penalty, and affirmed with modifications the assessment for deficiency income tax, value-added tax (VAT), and expanded withholding tax (EWT).

Respondent assails the aforesaid Decision on the following grounds:

A. The assessments are already final, executory and demandable by reason of failure of petitioner to timely file petition for review; and

B. The Court erred in modifying the assessments against petitioner with respect to income tax, VAT, and EWT.

On the other hand, petitioner has raised the following grounds:

1. The Court erred in sustaining the disallowance of the facilitators fees and consultant fees;

2. The Court erred in sustaining the disallowance of the commissions and professional fees;

3. The Court erred in not considering the amount of P2,251,700.00 representing subscription payments as not subject to income tax; and

4. The Court erred in not considering the total amount of P1,142,400.67 representing advances or reimbursements as not subject to income tax.

I. RESPONDENT'S MOTION FOR RECONSIDERATION

Respondent contends that the Court has no jurisdiction over the case since the assessments have become final, executory and demandable by reason of the failure of petitioner to submit relevant documents in support of the latter's protest within the 60-day period provided by law. Respondent also claims that the assailed Decision stating the Preliminary Collection Notice dated February 21, 201as the Final Decision on Disputed Assessment (FDDA) is absurd and unduly disadvantageous to the government. Allegedly, such situations would arise where taxpayers are again given the opportunity to contest an otherwise incontestable assessment if and when the BIR commences collection remedies.

Petitioner counter-argues that respondent maintains to claim that the petition was premature since there was no FDDA, but respondent also states that petition was filed beyond the reglementary period since the assessment had become final, executory and demandable. Petitioner further explains that it submitted all of relevant supporting documents as stated in its Memorandum.

The Court finds respondent's argument unmeritorious.

As stated in the assailed Decision, after petitioner disputed the Formal Letter of Demand (FLD) and Final Assessment Notice (FAN) on September 17, 2012,[1] it received a Preliminary Collection Notice on February 27, 2013, instead of a final decision.[2]

To reiterate the Court's finding, the Preliminary Collection Notice, in the absence of a final decision, is the denial of petitioner's protest to the FLD and FAN which constitutes the final determination on a disputed assessment based on the Supreme Court's ruling in the cases of *Oceanic Wireless Network, Inc. vs. Commissioner of Internal Revenue;*[3] *Commissioner of Internal Revenue vs. Isabela Cultural Corporation,*[4] and *Allied Banking Corporation vs. Commissioner of Internal Revenue,*[5] *considering* that respondent failed to substantially refute the said finding which is based on jurisprudence, the ruling of Court shall be sustained.

As regards the contention of respondent that the FAN was final and executory for failure of petitioner to submit supporting documents for its protest within the reglementary period provided by law, the Court finds that the same is without merit.

A careful scrutiny of the records shows that respondent has not interposed such issue during the proceedings of this case, except in the instant Motion for Reconsideration.

[1] Page 5 of the Decision dated February 10, 2017, Docket, (Vol. IV), p. 1893
[2] Page 13 of the Decision, Docket, (Vol. V), p. 1901
[3] G.R. No. 148380, December 9, 2005
[4] G.R. No. 135210, July 11, 2001
[5] G.R. No. 175097, February 5, 2010

In the case of *Duty Free Philippines Service Inc. vs. Tria*[6], the Supreme Court held:

> "It is a fundamental rule of procedure that higher courts are precluded from entertaining matters neither alleged in the pleadings nor raised during the proceedings below, but ventilated for the first time only in a motion for reconsideration or on appeal. xxx. Such change of theory cannot be tolerated on appeal, not due to the strict application of procedural rules, but as a matter of fairness."

The Court notes that petitioner has stated in its Memorandum that it submitted all relevant supporting documents simultaneous with the filing of its request for reconsideration.[7] Likewise, respondent has not included the issue of non-submission of petitioner's supporting documents for protest as one of the issues to be resolved by this Court.[8] To allow respondent to raise such issue at this stage of proceedings would be unfair to petitioner and would offend the basic rules of fair play, justice and due process.

With regard to respondent's claim that the Court committed reversible error when it affirmed with modifications the assessments against petitioner for taxable year 2009 covering deficiency income tax, value-added tax and expanded withholding tax, the Court also finds the same bereft of merit.

Respondent maintains that petitioner failed to subject portion of its rental expenses to EWT, as required under Revenue Regulations (RR) No. 2-98, thus, was disallowed as deduction from its gross income pursuant to Section 34(K) of the NIRC of 1997, as amended. Likewise, the sales reported per income tax return were allegedly understated as compared to that per investigation resulting to an understatement of taxable income, thus, petitioner was assessed pursuant to Section 31 in relation to Section 32 of the same Code.

Respondent further alleged that portion of petitioner's income payments to sub-contractors was not reported in the financial statements. Respondent posits that even assuming the income payments in the amount of P1,601,935.50 already formed part of the venue rental account

[6] G.R. No. 174809, June 27, 2012.
[7] Par. 3, V. Discussion, Memorandum, Docket, (Vol. IV), p. 1842
[8] Joint Stipulations of Facts, Docket, (Vol. II), pp. 1129 to 11f4; Pre-Trial Order dated April 28, 2014, Docket, (Vol. II), pp. 1136 to 117

on which petitioner properly withheld tax, still the other items (advertising and promotions, repairs and maintenance and janitorial services) should be added to petitioner's reported taxable income, pursuant to Section 31 of the NIRC of 1997, as amended.

A careful evaluation of the foregoing shows that the same are mere rehash of the same facts and issues which have already been passed upon extensively in the assailed Decision. Thus, respondent's allegation is found to be bereft of merit.

II. PETITIONER'S MOTION FOR PARTIAL RECONSIDERATION

A. Fees and commissions

Petitioner contends that respondent's examiner Mr. Charlie C. de Leon was unwilling to consider any other document, except for the official receipts. As such, even if petitioner submitted piles of documents to respondent, the same would have been futile. Petitioner insists that Section 34(A)(1)(b) of the National Internal Revenue Code of 1997, as amended, allows other adequate records. Allegedly, the law requires substantiation of the deduction with sufficient evidence, such as "official receipt" as one of the possible supporting document; and in alternative, in case a taxpayer cannot present the official receipt, to present "adequate records".

According to petitioner, it could have and would have presented the vouchers to detail the expenses had the examiner insisted on additional documents. After all, the alleged role of the respondent is not simply to collect and enforce tax laws and regulations but, foremost, to educate and guide the taxpayer on the nuances of tax laws and regulations. Respondent's examiner should not have allegedly brushed aside in a rote manner the efforts of the petitioner on what additional documents could have been acceptable to him as "adequate records".

In the conduct of its business, petitioner allegedly has to incur the fees for facilitators, consultants and professionals, and the commissions. To further support these expenses, petitioner submits the vouchers which detail the payments to the said facilitators, consultants and professionals.

The Court is not swayed.

Section 34(A)(1)(b) of the NIRC of 1997, as amended, requires the taxpayer to substantiate deductions by sufficient evidence, to wit:

> "SEC. 34. **Deductions from Gross Income.** – x x x
>
> xxx xxx xxx
>
> (b) *Substantiation Requirements.* – No deduction from gross income shall be allowed under Subsection (A) hereof unless the taxpayer shall substantiate with sufficient evidence, such as official receipts or other adequate records: (i) the amount of the expense being deducted, and (ii) the direct connection or relation of the expense being deducted to the development, management, operation and/or conduct of the trade, business or profession of the taxpayer."

To be deductible as a business expense, three conditions are imposed, namely: (1) the expense must be ordinary and necessary; (2) it must be paid or incurred within the taxable year; and (3) it must be paid or incurred in carrying on a trade or business.[9]

In relation thereto, Section 237 of the same code provides that the proper substantiation requirement for an expense to be allowed is the official receipt or invoice, to wit:

> "SEC. 237. **Issuance of Receipts or Sales or Commercial Invoices.** – All persons subject to an internal revenue tax shall, for each sale or transfer of merchandise or for services rendered valued at Twenty-five pesos (P25.00) or more, issue duly registered receipts or sales or commercial invoices, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service: *Provided, however,* That where the receipt is issued to cover payment made as rentals, commissions, compensations or fees, receipts or invoices shall be issued which shall show the name, business style, if any, and address of the purchaser, customer or client.
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> The original of each receipt or invoice shall be issued

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[9] *Collector of Internal Revenue vs. Philippine Education Co., Inc.,* G.R. No. L-8505, May 30, 1956

> to the purchaser, customer or client at the time the transaction is effected, who, if engaged in business or in the exercise of profession, shall keep and preserve the same in his place of business for a period of three (3) years from the close of the taxable year in which such invoice or receipt was issued, while the duplicate shall be kept and preserved by the issuer, also in his place of business, for a like period.
>
> The Commissioner may, in meritorious cases, exempt any person subject to internal revenue tax from compliance with the provisions of this Section."

In the case of *H. Tambunting Pawnshop, Inc. vs. Commissioner of Internal Revenue*[10], the High Tribunal affirmed the Decision of the CTA *En Banc* as to the proper substantiation requirement for an expense to be allowed as deduction from gross income, to wit:

> "x x x the proper substantiation requirement for an expense to be allowed is the official receipt or invoice. x x x
>
> Moreover, the issue on the submission of cash vouchers as evidence to prove expenses incurred has been addressed by this Court in the assailed Resolution, to wit:
>
> 'The trend then was to allow deductions based on cash vouchers which are signed by the payees. It bears to note that the cases cited by petitioner are pronouncements by this Court in 1980, 1982 and 1989.
>
> However, latest jurisprudence has deviated from such interpretation of the law. Thus, this Court held in the case of *Pilmico-Mauri Foods Corporation vs. Commissioner of Internal Revenue* C.T.A. Case No. 6151, December 15, 2004;
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> [P]etitioner's contention that the NIRC of 1977 did not impose substantiation requirements on deductions from gross income is bereft of merit. Section 238 of the 1977 Tax Code [now Section 237] provides:

[10] G.R. No. 173373, July 29, 2013

xxxx

From the foregoing provision of law, a person who is subject to an internal revenue tax shall issue receipts, sales or commercial invoices, prepared at least in duplicate. The provision likewise imposed a responsibility upon the purchaser to keep and preserve the original copy of the invoice or receipt for a period of three years from the close of the taxable year in which the invoice or receipt was issued. The rationale behind the latter requirement is the duty of the taxpayer to keep adequate records of each and every transaction entered into in the conduct of its business. So that when their books of accounts are subjected to a tax audit examination, all entries therein could be shown as adequately supported and proven as legitimate business transactions. Hence, petitioner's claim that the NIRC of 1977 did not require substantiation requirements is erroneous.'

In order that the cash vouchers may be given probative value, these must be validated with official receipts."

Hence, even assuming the vouchers are admitted, the same nevertheless have no probative value without the corresponding official receipts. In the case of *Towne & City Development Corporation vs. Court of Appeals*[11], the Supreme Court held that a voucher is merely a documentary record of a business transaction, to wit:

"x x x, as correctly pointed out by the trial court which the appellate court upheld, vouchers are *not*

[11] G.R. No. 135043, July 14, 2004

receipts.

It should be noted that a voucher is **not necessarily** an evidence of payment. It is merely a way or method of recording or keeping track of payments made. A procedure adopted by companies for the orderly and proper accounting of funds disbursed. Unless it is supported by an actual payment of cash duly receipted for as is customary among businessmen, a voucher remains a piece of paper having no evidentiary weight.

A receipt is a written and signed acknowledgment that money has been or goods have been delivered, while a voucher is documentary record of a business transaction.

The references to alleged check payments in the vouchers presented by the petitioner do not vest them with the character of receipts. x x x"

Deductions for income tax purposes partake of the nature of tax exemptions and are strictly construed against the taxpayer, who must prove by convincing evidence that he is entitled to the deduction claimed.[12] Petitioner failed to discharge its burden of substantiating its claim for deductions due to the inadequacy of its documentary evidence. Hence, there is no reason to disturb the findings of the Court on this matter.

B. Undeclared sales

In the assailed Decision, the Court partially upheld respondent's assessment of undeclared sales, including therein payments made by stockholders as deposit for future stock subscriptions and return of unused/excess cash advances. Petitioner moves for reconsideration of the said ruling and has attached in the instant motion several documents which it marked as Exhibits "MR-328" to "MR-357".

With regard to the subscription payments in the amount of P2,251,700.00 which the Court disallowed as the same were supported by official receipts dated not within the subject taxable period 2009, petitioner contends that respondent included the receipts issued in prior years to those issued in January 2009, considering they were all payments for stock subscriptions. In such case,

[12] *Philex Mining Corporation vs. Commissioner of Internal Revenue,* G.R. No. 148187, April 16, 2008

the receipts should be deducted from the alleged undeclared sales, consistent with the Court's ruling that subscription payments "do not constitute sales or income, thus, not subject to tax".

To support its contention, petitioner presents the photocopies of the pertinent pages of its columnar pad for cash receipts (marked as **Exhibits "MR-328" to "MR-335").** The highlighted portions allegedly pertain to the subscription payments made by stockholders. Though allegedly received in December 2007 and January 2008, said payments formed part of those received in January 2009. Verily, petitioner posits that the same should not be considered as sales transactions and not subject to income tax.

As regards the return of cash advances, petitioner explains that it issued official receipts (marked as **Exhibits "MR-336" to "MR-357")** for the amounts returned by the recipients of the advances because these were cash receipts. However, they should not be considered as sales transactions; therefore, do not form part of the income of petitioner.

> Although petitioner has introduced new documents for the Court's consideration which were marked as Exhibits "MR-328" to "MR-357", the same cannot be considered by the Court pursuant to Section 34, Rule 132[13] of the Rules of Court. Also, there is nothing in the records which would show that the documents are newly discovered, thus, shall be considered as forgotten evidence.

> Forgotten evidence, not presented during the trial nor formally offered, is not newly found evidence that merits a new trial. It goes against the orderly administration of justice to allow a party to submit forgotten evidence which it could have offered with the exercise of ordinary diligence, more so when a decision has already been rendered.[14]

Consequently, regardless of the weight of the evidence, the previous ruling on this matter shall remain.

WHEREFORE, premises considered, respondent's **Motion for Reconsideration** and petitioner's **Motion for Partial**

[13] SEC. 34. *Offer of Evidence.* – The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified

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

Reconsideration are **DENIED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

We concur:

JUANITO C. CASTANEDA, JR.
Associate Justice

CATHERINE T. MANAHAN
Associate Justice