REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

SAN MIGUEL BREWERY, INC.,
Petitioner,

CTA *EB* NO. 2144
(CTA Case No. 9513)

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

x -- x

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA *EB* NO. 2156
(CTA Case No. 9513)

-versus-

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

SAN MIGUEL BREWERY, INC.,
Respondent.

Promulgated:
OCT 22 2021 11:50am

x -- x

RESOLUTION

MODESTO-SAN PEDRO, J.:

For resolution is the Commissioner Internal Revenue's ("CIR") Motion for Reconsideration Re: Decision dated 04 February 2021, filed on 26 February 2021 ("CIR's MR"),[1] with San Miguel Brewery, Inc.'s ("San Miguel") Comment On/Opposition To "Motion for Reconsideration….."

[1] Records, CTA EB No. 2144, pp. 185-202

dated February 24, 2021 of Commissioner of Internal Revenue, filed on 16 March 2021 ("San Miguel's Comment");[2] and San Miguel's Motion for Partial Reconsideration, filed on 1 March 2021 ("San Miguel's MR"),[3] with the CIR's Comment, filed on 22 March 2021 ("CIR's Comment").[4]

In the CIR's MR, he alleges that this Court's Second Division erred when it held that San Miguel is entitled to refund or tax credit certificate in the amount of Php44,474,387.74. For the CIR, the Court had no jurisdiction over the instant Petition since the nullification of the Php20.57 per liter excise tax rate specified in ***Revenue Memorandum Circular No. 90-2012 ("RMC 90-12")*** does not fall under the special jurisdiction granted by statute to this Court. He insists that a collateral attack on a presumably valid administrative issuance is not allowed. Moreover, San Miguel is not entitled to a tax refund simply because there was no erroneous or illegal collection of excise taxes. He stresses that claims for refund are construed strictly against the taxpayer and in favor of the government. Thus, the Decision rendered by the Court in Division should be reversed and set aside and a new one be entered dismissing the same for lack of jurisdiction and/or denying the same for utter lack of merit.

In its Comment, San Miguel counter-argues that the CIR's MR is a mere verbatim reproduction of the arguments set forth in his Petition. These were already discussed and responded to by San Miguel in its "Comment on the Petition for Review," dated 21 January 2020, and sufficiently covered in this Court's Decision, dated 4 February 2021. Thus, the CIR's MR should be denied for lack of merit.

On the other hand, in San Miguel's MR, it argues that there is evidence on record as to the net retail price of San Mig Light ("SML") in Kegs, independently of the Sworn Declarations filed by San Miguel with the Bureau of Internal Revenue ("BIR"). It emphasizes that this was the testimony of Ms. Noemi L. Ronquillo which was never rebutted by the CIR. It invokes the rules that evidence which stands uncontradicted is deemed conclusive. Hence, even without the Sworn Declarations, this Court's Second Division should have granted the portion of San Miguel's claim for refund with respect to SML in Kegs, on the basis of their net retail price as established by the uncontradicted and therefore, conclusive testimony of Ms. Ronquillo. Moreover, it argues that it can be presumed that the net retail price of the SML in Kegs in 2015 was less than Php50.60 per liter. It further posits that its claim for refund is not a claim for tax exemption, nor is it an ordinary and simple claim for refund, but one that arose from the excessive, illegal, wrongful and erroneous imposition and collection of the excise tax rate of Php22.25 per liter by the BIR on SML that is expressly contradictory to and violative of ***Section 143 of***

[2] *Id.*, pp. 215-217.
[3] *Id.*, pp. 203-211.
[4] *Id.*, pp. 218-235.

the National Internal Revenue Code, as amended, and of the constitutional and statutory right to due process by San Miguel. Thus, the rule of *strictissimi juris* should not be applied to it. With respect to this Court's contention that a hearing must be conducted before it can take judicial notice of the Sworn Declarations, San Miguel holds that a hearing was effectively conducted when this Court's Second Division ordered the CIR to comment on San Miguel's Motion for Partial New Trial, dated 25 June 2019, which in turn had a prayer that the Court's Second Division take judicial notice of the Sworn Declarations. Since the CIR did not object to such prayer, the Court should take judicial notice of the Sworn Declarations. New Trial is also allowed in the case at bar based on excusable negligence and mistake. As testified to by San Miguel's witness, Atty. Kasilag, San Miguel's failure to present and offer the Sworn Declarations to the Independent Certified Public Accountant ("ICPA") and this Court's Second Division was due to excusable negligence and mistake. Due to the tremendous pressure to beat the deadline set by the Court for the submission of the ICPA Report and the voluminous nature of the documents to be collated, the only documents that San Miguel was able to present to the ICPA were those mentioned in the ICPA Report. This "time pressure" and "state of rush" contributed to the failure to exercise ordinary prudence in the submission of the necessary documents to the ICPA. On the other hand, a mistake occurred when the ICPA no longer requested the Sworn Declarations after San Miguel furnished him with Schedule of Net Retail Price of SML Products. This created an impression with the personnel of San Miguel that the Sworn Declarations were no longer necessary to establish the net retail price of the SML in Kegs as the Schedule of Net Retail Price of SML Products already suffice.

In the CIR's Comment, he simply re-pleaded the arguments set forth in his MR.

We deny both Motions for Reconsideration.

In ***Ortigas and Company Limited Partnership vs. Judge Tirso Velasco and Dolores V. Molina, and Dolores V. Molina vs. Hon. Presiding Judge, RTC, Quezon City, Br. 105, and Manila Banking Corporation***,[5] the Supreme Court had an occasion to rule in this wise:

> "*Effect, and Disposition of*
> *Motion for Reconsideration*
>
> The filing of a motion for reconsideration, authorized by Rule 52 of the Rules of Court, does not impose on the Court the obligation to deal individually and specifically with the grounds relied upon therefor, in much the same way that the Court does in its judgment or final order as regards be issues raised and submitted for decision. This would be a useless

[5] G.R. Nos. 109645 and 112564, Resolution, 4 March 1996.

> formality or ritual invariably involving merely a reiteration of the reasons already set forth in the judgment or final order for rejecting the arguments advanced by the movant; and it would be a needless act, too, with respect to issues raised for the first time, these being, as above stated, deemed waived because not asserted at the first opportunity. It suffices for the Court to deal generally and summarily with the motion for reconsideration, and merely state a legal ground for its denial (Sec. 14, ART. VIII, Constitution); *i.e.*, the motion contains merely a reiteration or rehash of arguments already submitted to and pronounced without merit by the Court in its judgment, or the basic issues have already been passed upon, or the motion discloses no substantial argument or cogent reason to warrant reconsideration or modification of the judgment or final order; or the arguments in the motion are too unsubstantial to require consideration, etc."

Moreover, in ***H. Harry L. Roque, Jr., et al. v. Commission on Election, represented by Hon. Chairman Jose Melo, et al.***,[6] the Supreme Court *En Banc* ruled that whenever the issues raised in the Motion for Reconsideration have already been addressed and passed upon in the Decision, and the Motion for Reconsideration fails to raise matters which are substantially plausible or compellingly persuasive that would lead the Court to rule in favor of the desired course of action, then the Motion for Reconsideration will be denied by the Court, to wit:

> "Petitioners' above contention, as well as the arguments, citations, and premises holding it together, is a rehash of their previous position articulated in their memorandum in support of their petition. They have been considered, squarely addressed, and found to be without merit in the Decision subject hereof. The Court is not inclined to embark on another extended discussion of the same issue again...
>
> xxx xxx xxx
>
> While a motion for reconsideration may tend to dwell on issues already resolved in the decision sought to be reconsidered—and this should not be an obstacle for a reconsideration—the hard reality is that petitioners have failed to raise matters substantially plausible or compellingly persuasive to warrant the desired course of action.
>
> xxx xxx xxx
>
> WHEREFORE, the instant separate motions for reconsideration of the main and intervening petitioners are DENIED."

This was reiterated in ***Shangri-La International Hotel Management, Ltd., et al. v. Developers Group of Companies, Inc.***,[7] as follows:

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[6] G.R. No. 188456, Resolution, 10 February 2010

[7] G.R. No. 159938, Resolution, 22 January 2007.

> "The bulk of the aforementioned grounds is a mere rehash of movant's previous arguments. While DGCI is correct in stating that a motion for reconsideration, by its very nature, may tend to dwell on issues already resolved in the decision sought to be reconsidered and that this should not be an obstacle for a reconsideration, the hard reality is that movant has failed to raise matters substantially plausible or compellingly persuasive to warrant the desired course of action.
>
> Considering that the grounds presently raised have been sufficiently considered, if not squarely addressed, in the subject Decision, it behooves movant to convince the Court that certain findings or conclusions in the Decision are contrary to law. As it is, however, the instant motion does not raise any new or substantial legitimate ground or reason to justify the reconsideration sought."

A perusal of both Motions would show that the arguments raised therein have already been sufficiently passed upon, discussed, threshed out, and judiciously resolved in the Decision, dated 4 February 2021. These Motions disclose no cogent reason to disturb the findings and conclusions which this Court made in said Decision.

Applying the judicial pronouncements above, nothing is left for this Court to do but to deny the Motion for Reconsideration.

WHEREFORE, in view of the foregoing, the Commissioner Internal Revenue's Motion for Reconsideration Re: Decision dated 04 February 2021 and San Miguel Brewery, Inc.'s Motion for Partial Reconsideration are hereby **DENIED** for lack of merit.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

(See Concurring and Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(With due respect, I join PJ's CDO)
CATHERINE T. MANAHAN
Associate Justice

(With due respect, I join the CDO of PJ)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

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EN BANC

SAN MIGUEL BREWERY, INC., Petitioner,	**CTA EB No. 2144** (CTA Case No. 9513)
- versus -	
COMMISSIONER OF INTERNAL REVENUE, Respondent.	

x- -x

COMMISSIONER OF INTERNAL REVENUE Petitioner,	**CTA EB No. 2156** (CTA Case No. 9513)
	Present:
- versus -	**DEL ROSARIO, *P.J.*, CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO,** and **REYES-FAJARDO, *JJ.***
SAN MIGUEL BREWERY, INC., Respondent.	Promulgated: OCT 2 2 2021 11:40 am

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CONCURRING AND DISSENTING OPINION

DEL ROSARIO, P.J.:

I concur with the *ponencia* in denying the Commissioner of Internal Revenue (CIR)'s Motion for Reconsideration Re: Decision dated 04 February 2021. No new argument has been adduced by the CIR to warrant the reconsideration sought. The arguments he interposed are mere rehash of his previous arguments which have been duly considered and passed upon by the Court in the assailed Amended Decision.

With due respect, after a second hard look on the records of the case, I am constrained to withhold my assent on the *ponencia's* denial of San Miguel Brewery, Inc. (SMBI)'s Motion for Partial Reconsideration. **I submit that SMBI's Motion for Partial Reconsideration must be granted and that the Court must proceed to determine SMBI's entitlement to its claim for refund of excise taxes on San Mig Light (SML) in kegs taking into consideration the net retail price of the SML in kegs in 2015 as testified to by SMBI's witness, Ms. Noemi L. Ronquillo.**

In the Decision dated June 13, 2019 in CTA Case No. 9513, the Court in Division denied SMBI's claim for refund with respect to excise taxes on SML in kegs for taxable year 2015 for failure of SMBI to submit documents to prove the net retail price of SML in kegs.

Ms. Ronquillo, however, in her Judicial Affidavit in CTA Case No. 9513 dated April 19, 2017 testified that the net retail price of SML in kegs in 2015 was below ₱50.60 and within the Tier 1 bracket in relation to Section 143 of the National Internal Revenue Code (NIRC) of 1997, as amended, as it was ₱47.81-₱47.89 per liter, to wit:

> "13. Q – A while ago, you stated that effective January 1, 2015 until December 31, 2015, the rate of P21.39 was increased by the BIR to P22.25 per liter, or a four-percent add-on to the previous rate of P21.39. How does this rate of P22.25 compare with the excise tax rate provided for in the National Internal Revenue Code effective January 1, 2015, if you know?
>
> A – Section 143, sixth and seventh paragraphs, of the NIRC on fermented liquors, as amended by Republic Act No. 10351, provides that effective on January 1, 2015, if the net retail price per liter is P50.60 or less, the tax shall be P19.00 per liter; and if the net retail price per liter is more than P50.60, the tax shall be P22.00 per liter.
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> Under the aforesaid provision of Section 143 of the NIRC, as amended by R.A. No. 10351, the applicable tax rate for "San Mig Light", in bottle and can, and the Other Products is P22.00 per liter, as they were within the Tier 2 bracket because their net retail price was more than P50.60 per liter. **For "San Mig Light" in kegs, since it was within the Tier 1 bracket because its net retail price was less than P50.60, the applicable tax rate is P19.00 per liter.**

13A. Q – What was the net retail price in 2015 of "San Mig Light", bottle and can, and the Other Products and of "San Mig Light" in kegs?

A – The net retail price of "San Mig Light", in bottle and can, and the Other Products in 2015 exceeded P50.60 per liter. On the other hand, **the net retail price of "San Mig Light" in kegs was P47.81-P47.89 per liter.**"[1] *(Boldfacing supplied)*

The unrebutted testimony of Ms. Ronquillo, anent the net retail price of SML in kegs in 2015 and the applicable tax rate for SML in kegs, must be given full weight and credence.

Ms. Ronquillo's testimony should be used as a basis of the net retail price of SML in kegs in 2015 which is needed in the computation of SMBI's claimed excise taxes on SML in kegs for taxable year 2015.

Truth to tell, tax refund case is civil in nature,[2] and only a preponderance of evidence is needed to grant a claim for tax refund based on excess payment.[3] Nothing in the Rules of Court requires that documentary evidence is indispensable in civil cases. All that is required is the satisfaction of the quantum of evidence, that is, preponderance of evidence.

Jurisprudence has it that an unrebutted testimony is enough evidence,[4] and sufficient to establish a basis for the court's award.[5] The declarations of the Supreme Court regarding the weight of testimonial evidence are quoted below:

> "He contends, in the first place, that the lower court erred in not finding that the applicant has failed to establish satisfactorily that he had previously filed his declaration of intention to become a citizen of the Philippines and that he is not exempted from the prerequisite of filing said declaration.
>
> Applicant alleged under oath in his petition that he had filed his declaration of intention to become a Filipino citizen with the Office of the Solicitor General in 1941, although all the records have been lost by reason of the war. This allegation is not disputed in any answer or objection and is supported by the **unrebutted testimony**

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[1] Exhibit "P-4", CTA Case No. 9513 Docket, Vol. I, pp. 167-168.
[2] *Philippine Phosphate Fertilizer Corporation vs. Commissioner of Internal Revenue*, G.R. No. 141973, June 28, 2005.
[3] *Southern Philippines Power Corporation vs. Commissioner of Internal Revenue*, G.R. No. 179632, October 19, 2011.
[4] *Bienvenido Yap vs. The Solicitor General*, G.R. No. L-1602, September 9, 1948.
[5] *People of the Philippines vs. Elroswell Manzano y Brebonera @ Boy Ulo*, G.R. No. 138303, November 26, 2001.

> **of the applicant, who was duly cross-examined in the trial court. <u>This is enough evidence</u>. Appellant's contention that applicant's testimony should be supported by documentary proof is not well taken. There is nothing in the law in support of such requirement."**[6]
>
> xxx xxx xxx
>
> "We agree with the Solicitor General that it was proper to award compensation to the heirs of the victim for loss of earning capacity, pursuant to Article 2206 of the Civil Code. **Although the prosecution did not present documentary evidence to support this claim, testimonial evidence is sufficient** to establish a basis for which the court can make a fair and reasonable estimate of damages for loss of earning capacity. **The unrebutted testimony** of Angelita Kasilag **is sufficient basis for the award.** At the time of his death, Ernesto, thirty-three years old, was earning an average of P150.00 a day buying and selling bottles and junk materials. If not for his untimely death, he would have earned more for his family."[7] *(Boldfacing and underscoring supplied)*

Absent any contrary evidence of the CIR, who opted not to present any evidence during trial, I see no reason not to give weight and credence on the unrebutted testimony of SMBI's witness.

While tax refund, being in the nature of tax exemption, is construed strictly against the taxpayer, **this principle should not be interpreted to alter the quantum of evidence necessary in civil cases**, that is - - from preponderance of evidence to proof beyond reasonable doubt.

All told, I VOTE that CIR's Motion for Reconsideration be denied for lack of merit; and, that SMBI's Motion for Partial Reconsideration be granted. I submit that the Court should proceed to determine SMBI's claim for refund of excise taxes on SML in kegs for taxable year 2015 using the unrebutted testimony of Ms. Ronquillo as basis for the net retail price of SML in kegs in 2015.

ROMAN G. DEL ROSARIO
Presiding Justice

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[6] *Bienvenido Yap vs. The Solicitor General*, G.R. No. L-1602, September 9, 1948.
[7] *People of the Philippines vs. Elroswell Manzano y Brebonera @ Boy Ulo*, G.R. No. 138303, November 26, 2001.