REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

TOLEDO POWER COMPANY,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NOS. 8450, 8512, 8547 & 8596

Members:

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

Promulgated:

NOV 0 3 2017 9:20 Am

x - x

RESOLUTION

CASANOVA, *J.*:

For resolution are:

1. petitioner's **Motion to Reopen Proceedings**, filed on June 13, 2017, with respondent's **Opposition Re: Petitioner's Motion to Re-Open Proceedings dated June 13, 2017**, filed on July 7, 2017;

2. petitioner's **Motion to Reopen Proceedings (With Motion for Reconsideration)**, filed on June 29, 2017, with respondent's **Comment/Opposition Re: Petitioner's Motion to Reopen Proceedings (With Motion for Reconsideration)**, filed on August 2, 2017, and petitioner's **Reply (To Respondent's Opposition dated 07 July 2017)**, filed on July 19, 2017; and

3. respondent's **Motion for Partial Reconsideration Re: Decision dated 9 June 2017**, filed on June 29, 2017, with petitioner's **Comment (To Respondent's Motion for Partial Reconsideration filed on June 29, 2017)**, filed on July 25, 2017.

Petitioner contends that pursuant to the ruling of the Court *En Banc* in the case *Toledo Power Company vs. Commissioner of Internal Revenue*[1] that it is petitioner's responsibility to ensure the completeness of the exhibits submitted by the duly-commissioned Independent Certified Public Accountant (ICPA), petitioner needs to reexamine the exhibits submitted by the ICPA. Thus, it prays for the reopening of the proceedings of this case and allow petitioner to present further evidence in support of its claim.

Then, petitioner filed a *Motion to Reopen Proceedings (With Motion for Reconsideration)*, praying to reopen the proceedings and seeking reconsideration of this Court's Decision dated June 9, 2017 on the following grounds:

A. There was a mistake on the representation of the commissioned Independent Certified Public Accountant (ICPA) that all the necessary documents had been photocopied and submitted to the Court;

B. Exhibit No. BBB-4493 is compliant with the requirements of Sections 110(A) and 113(A) and (B) of the NIRC of 1997, as amended, in relation to Sections 4.110-1, 4.110-8, and 4.113-1 of Revenue Regulations (RR) No. 16-05, as amended, and is within the period of the claim; and

C. Petitioner's sale of power to CEBECO III, which was eventually distributed to a PEZA registered entity and a BOI-registered 100% export entity are subject to VAT zero-rating.

Petitioner alleges that all of the pertinent documents to substantiate its claim for refund were submitted to the duly commissioned Independent Certified Public Accountant (ICPA). Petitioner further claims that upon its examination of the ICPA

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[1] CTA *EB* No. 1359, May 25, 2017.

Report, the schedules contained therein gave an impression that the corresponding proof of payment for each IEIRD was submitted. Petitioner states that based on the ICPA's schedule (Exhibit "CCC") and the latter's appointment as officer of the Court, the former was led to believe that all of the necessary documents to substantiate its claim were submitted. Petitioner avers that it was mistaken that all the documents it submitted to the ICPA would also be submitted to this Court; and the former should not have relied on the representations in the ICPA Report and should have made its own verification of submitted documents. The alleged mistake in the conclusion made by the ICPA which petitioner heavily relied on will result to great prejudice to the latter. Petitioner also attached the Affidavits of Merit of petitioner's duly authorized representative and the duly commissioned ICPA.

As such, petitioner asks that it be allowed for the last time to present further evidence substantiating its claim. Petitioner likewise attached in the motion the necessary documents to prove its payment of input VAT incurred on its importations and the original sales invoice from Cebu Energy Development Corporation to prove that the transaction occurred within the calendar year subject of the instant claim.

Respondent objects to the reopening of this case for lack of merit. Respondent claims that the reopening of the case after the Decision has been rendered would never put an end to litigation and the motion to reopen proceedings does not provide any valid or lawful ground in support thereof; thus, it is unlawful, baseless and procedurally infirm. Respondent asserts that the mistake as contemplated in Section 1, Rule 37 of the Rules of Court refers to the mistake of fact and not of law. Allegedly, the mistake of petitioner's counsel is one of law.

The Court takes into consideration the case of *BPI-Family Savings Bank, Inc. vs. Court of Appeals*[2], which the Supreme Court ruled that proceedings before this Court is not governed strictly by the technical rules of evidence and the paramount consideration remains the ascertainment of truth, to wit:

> "True, strict procedural rules generally frown upon the submission of the Return after the trial. The law creating the Court of Tax Appeals, however, specifically

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[2] G.R. No. 122480, April 12, 2000.

provides that proceedings before it 'shall not be governed strictly by the technical rules of evidence.' The paramount consideration remains the ascertainment of truth. Verily, the quest for orderly presentation of issues is not an absolute. It should not bar courts from considering undisputed facts to arrive at a just determination of a controversy.

In the present case, the Return attached to the Motion for Reconsideration clearly showed that petitioner suffered a net loss in 1990. Contrary to the holding of the CA and the CTA, petitioner could not have applied the amount as a tax credit. In failing to consider the said Return, as well as the other documentary evidence presented during the trial, the appellate court committed a reversible error.

It should be stressed that the rationale of the rules of procedure is to secure a just determination of every action. They are tools designed to facilitate the attainment of justice. But there can be no just determination of the present action if we ignore, on grounds of strict technicality, the Return submitted before the CTA and even before this Court. To repeat, the undisputed fact is that petitioner suffered a net loss in 1990; accordingly, it incurred no tax liability to which the tax credit could be applied. Consequently, there is no reason for the BIR and this Court to withhold the tax refund which rightfully belongs to the petitioner."

In the present case, petitioner attached pertinent documents as proof of payment of its input VAT incurred on its importations and the original sales invoice from Cebu Energy Development Corporation to prove that the transaction occurred within the calendar year subject of the instant claim.

Further, Section 1(a), Rule 37 of the Rules of Court provides that the aggrieved party may move for a new trial on the ground of fraud, accident, mistake or excusable negligence which ordinary prudence could not have guarded against and by reason of which such aggrieved party has probably been impaired in his rights.

In this case, petitioner committed an honest mistake in relying on the representation of the ICPA that the latter photocopied and submitted the pertinent documents substantial to petitioner's claim. In fact, the ICPA and petitioner's duly authorized representative executed their respective affidavits of merit stating the circumstances of the said inadvertent mistake.

In the furtherance of substantial justice, the Court deems it proper to allow the reopening of this case for the presentation of the above-mentioned documents. Consequently, to facilitate the orderly administration of justice, the Court shall defer the resolution of petitioner's Motion for Reconsideration and respondent's Motion for Partial Reconsideration considering that the presentation of additional evidence may affect the resolution of the same.

WHEREFORE, premises considered, petitioner's two **Motions to Reopen Proceedings** are **GRANTED**. Accordingly, set this case for the presentation of petitioner's additional evidence on December 6, 2017 at 8:30 a.m.

In the meantime, the resolution of petitioner's **Motion for Reconsideration** and respondent's **Motion for Partial Reconsideration Re: Decision dated 9 June 2017** is **HELD IN ABEYANCE** until further orders from the Court.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

We concur:

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

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice