REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

****

DAVAO CITY WATER DISTRICT,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 1472
(CTA Case Nos. 8505 and 8575)

Present:

DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, and
MANAHAN, *JJ.*

Promulgated:

FEB 27 2018 10:03 a.m.

x - x

RESOLUTION

UY, J.:

For resolution is petitioner's **"MOTION FOR RECONSIDERATION"** filed on November 6, 2017, without respondent's comment despite due notice, praying for the reconsideration of the Court *En Banc*'s Decision dated September 13, 2017, the dispositive portion of which reads as follows:

> "**WHEREFORE**, in light of the foregoing considerations, the Petition for Review is **DENIED** for lack of merit. Accordingly, the assailed Decision dated October 12, 2015 rendered by the Court in Division in CTA Case Nos. 8505 and 8575 is **AFFIRMED**.
>
> **SO ORDERED.**"

In the instant *Motion*, petitioner still insists, in effect, that the Court in Division should have relied solely on the Independent Certified Public Accountant (ICPA) Report, and that it is of no moment that the pertinent BIR Form 2307 was not submitted and offered in evidence.

In support of the said *Motion*, petitioner avers that in the 2016 consolidated cases of *Commissioner of Internal Revenue vs. De La Salle University, Inc.* ("*De La Salle* case"),[1] this Court relied on the ICPA and in fact, based its ruling thereto and the Supreme Court sees no cogent reason to deviate from the same; that the original copies of the voluminous receipts, etc., were all ready (*for verification and comparison*) during the time the Court-commissioned ICPA was presented in open court in July 7, 2014; and that under the Section 5, Rule 12 of the Revised Rules of the Court of Tax Appeals (RRCTA), it was enough that the ICPA has brought along with her the voluminous BIR Form 2307 when she testified in open court.

Furthermore, petitioner reiterates that it does not subscribe as to the ruling that only BIR Form 2307 is the sole acceptable proof of the fact of withholding. According to petitioner, the document which may be accepted as evidence as to the fact of withholding must comply with the following requisites: (a) it must emanate from the payor himself, and not merely from the payee; and (b) it must indicate the name of the payor, the income payment basis, the amount of the tax withheld and the nature of the tax paid. Relative thereto, petitioner points out that the subject ICPA Report contains the following information: (i) the name of the payor, (ii) the income basis of the tax withheld, (iii) the amount of tax withheld, and (iv) the nature of the tax paid.

Moreover, along the point that other document may be accepted as evidence as to the fact of withholding, petitioner is praying before the Court to take judicial notice that water bills were issued to customers on a month to month basis, and that the withholding is done on a monthly basis. Petitioner is of the view that it need not prove this fact under Section 2, Rule 129 of the Rules of Court, which suppletorily applies to this Court's proceedings.

Finally, petitioner believes that it adduced sufficient evidence, a preponderance of evidence in civil cases, for its claims for refund.

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[1] G.R. Nos. 196596, 198841-198941, November 9, 2016.

THE COURT *EN BANC*'S RULING

The instant *Motion for Reconsideration* lacks merit.

The ICPA Report is not conclusive upon this Court.

Petitioner invokes: (1) a certain portion of the ruling in the *De La Salle* case to justify that the Court in Division should have relied on the subject ICPA Report; and (2) Section 5, Rule 12 of the RRCTA, to conclude that it was enough that the ICPA has brought along with her the voluminous BIR Form 2307 when she testified in open court.

Petitioner is gravely mistaken.

Nowhere in the *De La Salle* case does the Supreme Court ruled that ICPA Reports are conclusive upon this Court. While We agree that this Court may consider or give weight to an ICPA Report, Section 3, Rule 13 of the RRCTA is clear that the same is not conclusive upon this Court, 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 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)*

Furthermore, petitioner totally ignore the ruling made by the High Court in *Philippine Long Distance Telephone Company vs. Commissioner of Internal Revenue*,[2] where the presentation as evidence of the documents upon which ICPA based his or her findings were required. To reiterate, said the Supreme Court:

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[2] G.R. No. 157264, January 31, 2008.

> "*Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*,[3] citing *Commissioner of Internal Revenue v. Manila Mining Corporation*[4] explains the need for the promulgation of the immediately-cited Circular[5] and its effect:
>
> > x x x The circular, in the interest of speedy administration of justice, was promulgated to avoid the time-consuming procedure of presenting, identifying and marking of documents before the Court. It **does not relieve respondent of its imperative task** of *premarking* photocopies of sales receipts and invoices and *submitting the same to the court* after the independent CPA shall have examined and compared them with the originals. Without presenting these pre-marked documents as evidence from which the summary and schedules were based, **the court cannot verify the authenticity and veracity of the independent auditor's conclusions.** (Italics in the original; Emphasis and underscoring supplied)."

Thus, there can be no merit in petitioner's contention that it was enough that the ICPA has brought along with her the alleged voluminous BIR Form 2307 when she testified in open court.

As a corollary, a cursory reading of the *De La Salle* case would reveal that Supreme Court recognizes that this Court makes an independent evaluation of the evidence on record apart from that reported by the ICPA. Pertinent portions of the *De La Salle* case state:

> "To stress, the CTA's factual findings were based on and supported by the report of the Independent CPA who reviewed, audited and examined the voluminous documents submitted by DLSU.
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> xxx xxx xxx

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[3] G.R. No. 145526, March 16, 2007, 518 SCRA 425.
[4] G.R. No. 153204, August 31, 2005, 468 SCRA 571.
[5] Referring to CTA Circular No. 1-95, the precursor of the above-quoted Section 5, Rule 12 of the RRCTA.

> **Based on the Independent CPA's Report** **and on its own appreciation of the evidence**, the CTA held that only the portion of the rental income pertaining to the substantiated disbursements (i.e., proved by receipts, vouchers, etc.) from the CF-CPA Account was considered as used actually, directly and exclusively for educational purposes. Consequently, the unaccounted and unsubstantiated disbursements must be subjected to income tax and VAT.
>
> xxx xxx xxx
>
> **The Court finds that the above fact-finding process undertaken by the CTA shows that it based its ruling on the evidence on record, which we reiterate, were examined and verified by the Independent CPA.** Thus, we see no persuasive reason to deviate from these factual findings."

It is clear from the foregoing jurisprudential pronouncements that the Supreme Court upheld the findings of this Court not only because this Court based the said findings on the ICPA Report, but also because this Court made *"its own appreciation of the evidence...on record"*. In other words, the findings of this Court were sustained, because the latter ruled on the evidence on record which were likewise examined and verified by the ICPA.

In this case, however, what We have is merely an ICPA Report. In view of petitioner's failure to submit proof, or specifically, the subject BIR Forms 2307, the Court in Division was not able to make its own appreciation thereof. Correspondingly, the above ruling of the Supreme Court in the *De La Salle* case reinforces more the requirement of the presentation as evidence of the same BIR Forms 2307, as We have sustained, rather than support petitioner's cause.

The competent proof to establish the fact that taxes are withheld is the certificate of creditable tax withheld at source (BIR Form 2307).

Petitioner reiterates that it does not subscribe as to the ruling that only BIR Form 2307 is the sole acceptable proof of the fact of withholding. In so doing, petitioner points again to the subject ICPA

Report to prove such fact.

We disagree with petitioner.

To reiterate, the certificate of creditable tax withheld at source or BIR Form 2307 is the competent proof to establish the fact that taxes are withheld.[6] This is so because the said certificate is complete in the relevant details that would aid the courts in the evaluation of any claim for refund of excess creditable withholding taxes.[7] Thus, the same certificate or BIR Form 2307 cannot simply be replaced by an ICPA Report.

In addition to what has been discussed earlier as to the insufficiency or inconclusiveness of the ICPA Report, petitioner failed to point to other specific evidence which shows the fact of withholding; and thus, Our ruling that petitioner should have presented BIR Form 2307 stands.

Judicial notice is not warranted in the instant case.

Petitioner also prays for the Court to take judicial notice that water bills were issued to customers on a month to month basis, and that the withholding is done on a monthly basis.

The said prayer, however, cannot be granted.

Section 2, Rule 129 of the Rules of Evidence, provides as follows:

> "SEC. 2. *Judicial notice, when discretionary.* – A court may take judicial notice of matters which are of public knowledge, or are capable of unquestionable demonstration, or ought to be known to judges because of their judicial functions."

Based on the foregoing, this Court may take judicial notice of matters which are of public knowledge, or are capable of

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[6] *Commissioner of Internal Revenue vs. Philippine National Bank*, G.R. No. 180290, September 29, 2014.

[7] *Supra*, citing *Banco Filipino Savings and Mortgage Bank vs. Court of Appeals*, 548 Phil. 32 (2007).

unquestionable demonstration, or ought to be known to judges because of their judicial functions.

Generally speaking, matters of judicial notice have three material requisites: (1) the matter must be one of common and general knowledge; (2) it must be well and authoritatively settled and not doubtful or uncertain; and (3) it must be known to be within the limits of the jurisdiction of the court. The principal guide in determining what facts may be assumed to be judicially known is that of notoriety. Hence, it can be said that judicial notice is limited to facts evidenced by public records and facts of general notoriety. Moreover, a judicially noticed fact must be one not subject to a reasonable dispute in that it is either: (1) generally known within the territorial jurisdiction of the trial court; or (2) capable of accurate and ready determination by resorting to sources whose accuracy cannot reasonably be questionable.[8]

In this case, there is no showing that petitioner was able to show compliance with the said three material requisites. Specifically, petitioner failed to establish the general notoriety of water bills being issued to customers, and the withholding of tax is done, on a monthly basis. Neither is it shown that such facts are evidenced by public records. Correspondingly, judicial notice under the premises is not justified.

As a corollary and to repeat, as cases filed before this Court are litigated *de novo*, party-litigants should prove **every minute aspect** of their cases.[9]

In fine, petitioner could have easily presented the required and pertinent BIR Forms No. 2307, for the Court in Division to have examined and verified the same. Even now, petitioner offers no explanation as to why it was not able to present and offer in evidence the said documents, if indeed the same are available. Thus, in this connection, We call to mind the presumption that *"evidence willfully suppressed would be adverse if produced"*.[10]

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[8] *Expertravel & Tours, Inc. vs. Court of Appeals, et al.*, G.R. No. 152392, May 26, 2005.
[9] *Dizon vs. Court of Tax Appeals, et al.*, G.R. No. 140944, April 30, 2008; *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue,* G.R. No. 145526, March 16, 2007; and *Commissioner of Internal Revenue vs. Manila Mining Corporation,* G.R. No. 153204, August 31, 2005.
[10] Section 3, Rule 131 of the Rules of Evidence.

WHEREFORE, in light of the foregoing considerations, the instant *Motion for Reconsideration* is **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

Ma. Belen S. —
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice