REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COCA-COLA BOTTLERS PHILIPPINES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 1165
(CTA Case No. 8183)

Present:
Del Rosario, *PJ,*
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Cotangco-Manalastas,and
Ringpis-Liban, *JJ.*

Promulgated:

MAY 06 2016 3:05 p.m.

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RESOLUTION

CASTAÑEDA, JR., *J.*:

This resolves petitioner's Motion for Reconsideration of the October 12, 2015 Decision. Respondent's Comment (Re: Motion for Reconsideration dated November 17, 2015) was filed on February 17, 2016, which is within the period of extension granted.

The dispositive portion of the October 12, 2015 Decision states:

> **WHEREFORE,** the petition is **DENIED** for lack of merit. The January 17, 2014 Decision and April 22, 2014 Resolution of the CTA Special Third Division in CTA Case No. 8183 are **AFFIRMED**.
>
> **SO ORDERED.**

Petitioner prays that this Court reconsider and set aside its Decision and petitioner's claim for refund be granted in the amount of at least P30,940,207.27 as substantiated and recommended by the court-commissioned Independent Certified Public Accountant (CPA).

Petitioner's grounds for the reconsideration:[1]

I. Section 229 of the National Internal Revenue Code (NIRC) of 1997, as amended, applies to petitioner's claim for refund.

II. A Claim for Tax Refund under Section 229 of the NIRC of 1997 necessitates only preponderance of evidence for its approbation like in any other ordinary civil case; hence, should not be strictly construed against the petitioner.

III. The subject matter of the claim for refund or tax credit is the inadvertent omission/under-declaration of input VAT amounting to P72,738,183.31 in computing output VAT for the quarter ended September 30, 2008. Necessarily, the substantiation procedures performed by the independent CPA were concentrated on the portion of input taxes inadvertently omitted for said quarter rather than the whole or total input taxes deducted from the total output VAT for the said quarter. The ultimate legal issue involved is whether the amount to be substantiated is the input taxes omitted which is the subject of the claim or is it the whole input taxes for the quarter.

IV. As ruled by the Supreme Court in BPI-Family Savings Bank case, (G.R. 122480, April 12, 200[0]) substantial justice, equity and fair play prevail over technicalities and legalism.

Respondent, in her Comment (Re: Motion for Reconsideration Dated November 17, 2015), states that Section 204 and 209 of the NIRC of 1997, as amended, is inapplicable to petitioner's claim for refund; claims for refund are construed strictly against the claimant; that the Honorable Court *En Banc* is free to adapt or disregard the Independent CPA's Report; and that the BPI-Family Savings Bank case finds no application in the instant case.

Hence, this resolution. *jc*

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[1] *Rollo*, pp. 153-154.

After a careful study of the grounds raised by petitioner in its motion as well as the Comment of the respondent, the Court *En Banc* finds no valid or cogent reason to deviate from our findings and conclusions reached in our Decision dated October 12, 2015, thus, the motion is denied.

We emphasize that "even with the substantiated input taxes of ₱30,940,207.27, the result is also Net VAT Payable. Pertinent portions of the assailed Decision,[2] provides:

> 'Petitioner's Quarterly VAT Return for the third quarter of 2008 shows output taxes due in the amount of ₱1,357,219,175.12. Had petitioner declared the substantiated input taxes of ₱30,940,207.27 in its Quarterly VAT Return for the third quarter of 2008, considering its output taxes and substantiated input taxes for the third quarter of 2008 per the Independent CPA's examination, it would not have enough input taxes to offset against its output taxes for the same taxable period. Thus, petitioner would still not have a VAT overpayment for the third quarter of 2008, which may be the subject of a claim for refund under Section 229 of the NIRC of 1997, as amended. xxx xxx xxx' "[3]

WHEREFORE, premises considered, petitioner's Motion for Reconsideration of the October 12, 2015 Decision is **DENIED** for lack of merit.

SO ORDERED.

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

WE CONCUR:

(I maintain my Concurring and Dissenting Opinion.)
ROMAN G. DEL ROSARIO
Presiding Justice

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[2] *Rollo,* p. 57.
[3] *Rollo*, pp. 144-145.

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

(I join PJ's Concurring and Dissenting Opinion.)
AMELIA R. COTANGCO-MANALASTAS
Associate Justice

Ma. Belen
(With due respect, I join the Concurring and Dissenting Opinion of PJ Del Rosario.)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice