REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

LOADSTAR INTERNATIONAL SHIPPING, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9176

Members:

DEL ROSARIO, *P.J., Chairperson,*
UY, *and*
MINDARO-GRULLA, *JJ.*

Promulgated:

JAN 15 2019 : 10:50am

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RESOLUTION

MINDARO-GRULLA, J.:

For resolution is petitioner's **Motion for Reconsideration**, filed on August 17, 2018, with respondent's **Comment (To Petitioner's Motion for Reconsideration)**, filed by registered mail on September 24, 2018 and received by the Court on October 2, 2018, pursuant to the resolution dated October 15, 2018.

Petitioner seeks reconsideration of the Court's Decision (assailed Decision)[1] promulgated on July 30, 2018, the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is **DENIED** for lack of jurisdiction.
>
> **SO ORDERED.**"

[1] Docket, vol. II, pp. 597-614.

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In the assailed Decision the Court dismissed the Petition for Review for lack of jurisdiction for failure to appeal within 30-days from receipt of the Final Decision on Disputed Assessment (FDDA). It was found that the FDDA was received on April 6, 2015 and petitioner therefore had until May 6, 2015 within which to appeal the same with the Court of Tax Appeals. However, the Petition for Review was filed out of time on October 22, 2015.

Petitioner moves for reconsideration of the assailed Decision, raising the following grounds/issues:

I. Whether or not the CTA has jurisdiction over the Petition;

II. Petitioner LISI is not liable for deficiency income tax since it is exempt from income tax being a company engaged in overseas shipping pursuant to R.A. No. 7471, as amended by R.A. No. 9301;

III. Petitioner LISI is not liable for deficiency VAT being engaged in overseas shipping; and

IV. Respondent's authority to assess has already prescribed.

Petitioner contends that the undated letter of C.M. Ilagan & Associates is considered forgotten evidence pursuant to Section 34 of Rule 132 of the Revised Rules of Court. Thus, it submits that the undated letter cannot be given any cognizance nor does it have any weight or value. Petitioner argues that since the undated letter was not formally offered it should be excluded and rejected as evidence of the purported receipt of the FDDA.

Moreover, petitioner alleges that C.M. Ilagan & Associates was not duly authorized to represent petitioner. Lastly, petitioner submits that it was judicially admitted by respondent that the assessments, FDDA, collection letter and subsequent letters were served to a mere employee.

On the other hand, respondent contends that he was able to prove during trial that petitioner received the FDDA on April 6, 2015.

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Hence, it argues that petitioner's filing of the instant Petition for Review on October 22, 2015 was filed out of time.

Respondent alleges that petitioner is liable for deficiency income tax and value-added tax for taxable year 2010 in the amount of ₱2,080,530.74 and ₱1,520,666.84. He contends that the subject tax assessments have become final, executory, and demandable since the instant petition for review was filed out of time. Finally, respondent avers that the burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only the Commissioner of Internal Revenue is wrong but also that the taxpayer is right.

Petitioner's Motion for Reconsideration is bereft of merit.

While the Court agrees with petitioner's allegation that evidence not formally offered should not be admitted in evidence based on Section 34 of Rule 132 of the Rules of Court, the same admits an exception.

The ruling of the Supreme Court in the case of *Dizon vs. Court of Tax Appeals*[2] is instructive in applying the exception to the general rule that "evidence not formally offered cannot be considered by the Court", to wit:

> "Under Section 8 of RA 1125, the CTA is categorically described as a court of record. As cases filed before it are litigated *de novo*, party-litigants shall prove every minute aspect of their cases. Indubitably, no evidentiary value can be given the pieces of evidence submitted by the BIR, as the rules on documentary evidence require that these documents must be formally offered before the CTA. Pertinent is Section 34, Rule 132 of the Revised Rules on Evidence which reads:
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>> **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.

[2] G.R. No. 140944, April 30, 2008.

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The CTA and the CA rely solely on the case of *Vda. de Oñate*, which reiterated this Court's previous rulings in *People v. Napat-a* and *People v. Mate* on the admission and consideration of exhibits which were not formally offered during the trial. Although in a long line of cases many of which were decided after Vda. de Oñate, we held that courts cannot consider evidence which has not been formally offered, nevertheless, petitioner cannot validly assume that the doctrine laid down in *Vda. de Oñate* has already been abandoned. Recently, in *Ramos v. Dizon*, this Court, applying the said doctrine, ruled that the trial court judge therein committed no error when he admitted and considered the respondents' exhibits in the resolution of the case, notwithstanding the fact that the same were not formally offered. Likewise, in *Far East Bank & Trust Company v. Commissioner of Internal Revenue*, the Court made reference to said doctrine in resolving the issues therein. Indubitably, the doctrine laid down in *Vda. De Oñate* still subsists in this jurisdiction. In *Vda. de Oñate*, we held that:

> From the foregoing provision, it is clear that for evidence to be considered, the same must be formally offered. Corollarily, the mere fact that a particular document is identified and marked as an exhibit does not mean that it has already been offered as part of the evidence of a party. In *Interpacific Transit, Inc. v. Aviles* [186 SCRA 385], we had the occasion to make a distinction between identification of documentary evidence and its formal offer as an exhibit. We said that the first is done in the course of the trial and is accompanied by the marking of the evidence as an exhibit while the second is done only when the party rests its case and not before. A party, therefore, may opt to formally offer his evidence if he believes that it will advance his cause or not to do so at all. In the event he chooses to do the latter, the trial court is not authorized by the Rules to consider the same.

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> However, in *People v. Napat-a* [179 SCRA 403] citing *People v. Mate* [103 SCRA 484], **we relaxed the foregoing rule and allowed evidence not formally offered to be admitted and considered by the trial court provided the following requirements are present, viz.: first, the same must have been duly identified by testimony duly recorded and, second, the same must have been incorporated in the records of the case.**

From the foregoing declaration, however, it is clear that *Vda. de Oñate* is merely an exception to the general rule. Being an exception, it may be applied only when there is strict compliance with the requisites mentioned therein; otherwise, the general rule in Section 34 of Rule 132 of the Rules of Court should prevail."

Thus, courts may allow evidence not formally offered to be admitted and considered, provided the following requirements are present, *viz.*: first, the same must have been duly identified by testimony duly recorded and, second, the same must have been incorporated in the records of the case.

In this case, the exception to the general rule that "evidence not formally offered cannot be considered by the Court" applies. The undated letter received by the BIR on May 15, 2015[3] was duly identified by Revenue Officer Jenisse P. Alano during the hearing on January 17, 2017, to wit:

"JUSTICE DEL ROSARIO:

Ms. Alano, you stated in your answer to Question No. 20, kindly go over your Judicial Affidavit, that the petitioner actually received a copy of the FDDA on April 6, 2015. It appears that you based your answer on a letter sent by CN Ilagan and Associates. Do you have a copy of this letter?

MS. ALANO:

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[3] BIR Records, pp. 248-249.

A. Your Honors, can I check?

JUSTICE DEL ROSARIO:

Yes.

It appears that this Letter is not attached to your Judicial Affidavit.

So, Ms. Alano, did you actually see a copy of that letter?

MS. ALANO:

A. Yes, your Honors.

JUSTICE DEL ROSARIO:

And, what would be the reason as to why the same has not been attached to your Judicial Affidavit?

Okay, for the record, "NO ANSWER." So, as not to waste the time of the Court.

But do you have a copy of that letter right now?

MS. ALANO:

A. Yes, your Honors

JUSTICE DEL ROSARIO:

Can you show it to the Court?

MS. ALANO:

A. Yes, your Honors.

JUSTICE DEL ROSARIO:

So, kindly go over this letter and please point to the particular portion showing the actual statement saying that the receipt by the petitioner of the FDDA was on April 6, 2015. Is it there?

Just for the record, are you referring to Lines No. 1 and 2, the first and second lines?

MS. ALANO:

A. Yes, your Honors.

JUSTICE DEL ROSARIO:

So, it is apparently indicated that the receipt of the FDDA was on April 6, 2015.

MS. ALANO:

A. Yes, your Honors, 2015."[4]

Moreover, the undated letter has been incorporated in the records of the case. An original copy of the undated letter received by the BIR on May 15, 2015[5] is found in the Bureau of Internal Revenue (BIR) Records, which was forwarded to this Court on January 15, 2016 pursuant to Section 5(b), Rule 6 of the Revised Rules of Court of Tax Appeals.

Thus, even though the undated letter of CM Ilagan and Associates has not been formally offered in evidence, the Court may consider the same as an exception to the general rule in Section 34 of Rule 132 of the Rules of Court.

Based on the undated letter and the testimony of respondent's witness, the Court found in the assailed Decision that petitioner received the FDDA on April 6, 2015 and that petitioner had until May 6, 2015 within which to appeal the FDDA to the Court of Tax Appeals. Since the instant Petition for Review[6] was filed only on October 22, 2015, it was filed out of time. Thus, the Court has no jurisdiction over the instant case.

It must be emphasized that if the court has no jurisdiction over the nature of an action, its only jurisdiction is to dismiss the case. The court could not decide the case on the merits.[7]

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[4] Transcript of Stenographic Notes dated January 17, 2017, pp. 30-31.
[5] BIR Records, pp. 248-249.
[6] Docket vol. I, pp. 6-21.
[7] *AT&T Communications Services Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 185969, November 19, 2014.

Considering the foregoing, the Court finds no cogent reason to reverse or modify the assailed Decision dated July 30, 2018.

WHEREFORE, premises considered, petitioner's **Motion for Reconsideration** is **DENIED** for lack of merit.

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ON LEAVE
ERLINDA P. UY
Associate Justice