REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

RAI RAI KEN FOODS CORPORATION, *Petitioner,*	**CTA Case No. 10902**
	Members:
- versus -	**MANAHAN,** *Chairperson,* **REYES-FAJARDO,** *and* **ANGELES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: SEP 19 2025 9:12 a.m.

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RESOLUTION

This resolves respondent's Demurrer to Evidence[1] filed on October 10, 2024, with petitioner's Comment on the Respondent's Demurrer to Evidence with Motion for Reconsideration filed on December 6, 2024.

Respondent points out that the formal offer of evidence belatedly filed by petitioner, was denied admission in the Resolution[2] dated October 3, 2024. With the denial thereof, petitioner has no sufficient evidence to offer, much more, support its cause of action in this case. For this reason, CTA Case No. 10902 should be dismissed for insufficiency of evidence.

In repudiation, petitioner admits that courts cannot consider evidence which was not formally offered by a party-litigant. It

[1] Docket, pp. 738-744.
[2] Docket, pp. 733-737.

nonetheless counters that the following pieces of evidence[3] may still be considered in this case, because they are of public record, and was identified by witness Roel Gumapac:

1. Secretary's Certificate notarized before a Notary Public;
2. BIR Final Decision dated May 25, 2022;
3. Appeal/Protest dated August 9, 2017;
4. Final Decision on Disputed Assessment [FDDA] dated June 5, 2017;
5. Protest dated February 12, 2015;
6. Final Assessment Notice (FAN) dated January 14, 2015;
7. LOA [Letter of Authority] No. 049-2012-00000213 (SN: eLA201100014382);
8. Affidavit of Loss of Documents executed by the Petitioner's HR/Legal/Corporate Affairs Officer named Edilburga Gensonon on August 15, 2012 notarized before a Notary Public;
9. Barangay Certification; and
10. Judicial Affidavit of Roel Gumapac.

According to petitioner, these documents and its witness' testimony, are sufficient to establish its action to invalidate the BIR's 2011 deficiency internal revenue tax assessments issued against it, subject of CTA Case No. 10902.

We find for respondent.

Section 1, Rule 33 of the Rules of Court, as amended, reads:

> **Section 1.** *Demurrer to evidence.* — **After the plaintiff has completed the presentation of his or her evidence, the defendant may move for dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief**. If his or her motion is denied, he or she shall have the right to present evidence. If the motion is granted but on appeal the order of dismissal is reversed, he or she shall be deemed to have waived the right to present evidence.[4]

Spouses Mangaron v. Hanna Via Design & Construction (Mangaron)[5] defined demurrer to evidence as "... an objection or exception by one of the parties in an action at law, to the effect that the evidence which his [or her] adversary produced is insufficient in point of law (whether true or not) to make out his [or her] case or sustain the issue."

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3 Per par. 4, petitioner's Comment on the Respondent's Demurrer to Evidence with Motion for Reconsideration. *Id.* at p. 795.
4 Emphasis ours.
5 G.R. No. 224186, September 23, 2019.

Gauged against the yardstick forged by *Mangaron,* petitioner's evidence fell short in supporting its causes of action in CTA Case No. 10902. Bear in mind:

One. As held in the Resolution dated October 3, 2024, petitioner's motion to admit its formal offer of evidence was denied. *Sans* a formal offer, petitioner does *not* have any evidence in support of its cause. On this point alone, the demurrer to evidence prayed for by respondent should be granted.

Two. Assuming *arguendo* that the documents and witness' testimony mentioned[6] by petitioner may still be weighed, an identical result would follow.

In its Petition, petitioner mainly cites four (4) matters to warrant the invalidation of the Bureau of Internal Revenue (BIR)'s FDDA, FAN, Preliminary Assessment Notice (PAN), and Assessment Notices issued against it,[7] for taxable year (TY) 2011.[8] These are:

First. Respondent's Decision is void for failure to indicate the facts and law on which it is based. Specifically, it was not appraised of the reasons for the fluctuation in the amounts of deficiency internal revenue taxes in the FDDA, FAN, and PAN.

Second. The BIR's PAN and FAN failed to state the factual basis of the findings therein. They were based on presumptions because actual audit on it did not occur.

Third. The BIR's disallowance of expenses, leading to the finding of deficiency tax assessments against it was done whimsically and arbitrarily because it conjured figures without any evidence.

Fourth. The alleged anterior audit done by respondent's tax agents, from which the tax assessments were based, is invalid because the Revenue Officers named in the LOA, *i.e.*, Rodolfo De Guzman and Ernalyn Dela Cruz, failed to perform and finish their examination

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[6] See page 2 of this Resolution for the complete list. *Supra* note 3.

[7] Prayer, Petition for Review with Motion to Suspend Collection of Taxes. Docket, pp. 27-28.

[8] Pages 10-11, Petition for Review with Motion to Suspend Collection of Taxes. *Id.* at p. 10-12.

within one hundred twenty (120) days from service thereof. Additionally, they were purportedly replaced with a new set of ROs, without a new or revalidated LOA from respondent, or his duly authorized representative.

Our corresponding answer to these four (4) matters, in relation to the ten (10) pieces of evidence invoked by petitioner ensues.

First. No sufficient proof was provided to demonstrate that BIR's deficiency taxes for TY 2011 were attended with unexplained variations.

Tabled below are the pertinent details regarding the BIR's purported findings in the Amended PAN, FLD/FAN, FDDA, and respondent's Decision, as follows:

Item	Amended PAN	FLD/FAN[9]	FDDA[10]	Decision[11]
Basic Income Tax (IT)	-	₱9,685,029.88	₱9,685,029.88	Sustained the FDDA.
Basic Value-Added Tax (VAT)	-	10,285,819.14	10,285,819.14	
Basic Expanded Withholding Tax (EWT)	-	942,102.86	942,102.86	
Basic Fringe Benefits Tax (FBT)	-	87,325.00	87,325.00	

Contrary to petitioner's posture, the 2011 *basic* deficiency internal revenue taxes found by the BIR against it did not vary. All the items of taxes in the FLD/FAN, FDDA, and Decision, remained the same. If at all, the fluctuation in the total amounts of 2011 deficiency taxes experienced by petitioner is simply a result of adjustments on interests because of its failure to timely settle its tax obligations for said year.

On the other hand, the Amended PAN faulted by petitioner in its Petition, was *not*[12] even included in its list of documents / exhibits to be presented in support of its Petition, required by Section 6, Rule 7 of the Rules of Court, as amended. Neither did petitioner intend to rely on the same as evidence.[13] Therefore, it should be ignored outright.

9 *Id.* at pp. 70-71.
10 *Id.* at pp. 55-59.
11 *Id.* at pp. 41-46.
12 Annex "A," petitioner's Compliance. *Id.* at p.97.
13 Not in the list of supposed evidence invoked by petitioner. *Supra* note 3.

Second. Evidence is deficient to demonstrate that the FLD/FAN, FDDA, and Decision lacks factual and legal basis, violative of Section 228 of the NIRC, as amended.

In *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc. (USTI),*[14] the BIR's 1994 deficiency EWT against therein respondent was cancelled, because it only contained tabulation of figures, *sans* further detail thereon. The High Court observed that "[the BIR] should have at least attached a detailed notice of discrepancy or stated an explanation why the amount of ₱48,461.76 is collectible against [therein respondent], and how the same was arrived at...." Simply put, *USTI* ruled that details of discrepancy relative to the amounts assessed by the BIR would suffice to inform the taxpayer of the factual and legal bases of the formal assessment.

Here, the Details of Discrepancy in the BIR's FLD/FAN contained explanations regarding petitioner's 2011 deficiency IT,[15] VAT,[16] EWT,[17] and FBT.[18] Petitioner confirmed the existence of said Details of Discrepancy in its administrative protest to the FLD/FAN.[19] Likewise, the BIR's FDDA has a corresponding Details of Discrepancy, justifying the findings of said taxes.[20] So too did respondent's Decision[21] relay the reasons for sustaining such FDDA. Consistent with *USTI*, respondent satisfactorily informed petitioner of the factual and legal bases of the latter's 2011 deficiency internal revenue taxes against the latter, showing substantial adherence with Section 228 of the NIRC, as amended.

Third. There is inadequate proof demonstrating that the BIR's disallowance of petitioner's costs and expenses for TY 2011, due to lack of substantiation, is improper. Section 34(A)(1)(b) of the NIRC, as amended, reads:

SEC. 34. *Deductions from Gross Income.*

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14 G.R. No. 197515, July 2, 2014.
15 Docket, pp. 612-613.
16 *Id.* at p. 613.
17 *Ibid.*
18 *Id.* at pp. 613-614.
19 Page 1, the Protest on the Formal Assessment Notice for Rai Rai Ken Foods Corporation. *Id.* at p. 62.
20 *Id.* at pp. 57-59.
21 *Id.* at pp. 41-46.

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> *(A) Expenses. –*
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> ...
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> *(1) Ordinary and Necessary Trade, Business or Professional Expenses.-*
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> ...
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> ***(b) Substantiation Requirements.*** - No deduction from gross income shall be allowed under Subsection (A) hereof unless the taxpayer shall substantiate with sufficient evidence, such as official receipts or other adequate records: (i) the amount of the expense being deducted, and (ii) the direct connection or relation of the expense being deducted to the development, management, operation and/or conduct of the trade, business or profession of the taxpayer.

Section 34(A)(1)(b) of the NIRC, as amended, is clear and unequivocal—expenses must be substantiated with sufficient evidence like receipts, or other records, among others. Inversely, if the claimed expenses are unsupported or undocumented, disallowance thereof is proper.

In this connection, deductions for income tax purposes partake of the nature of tax exemptions and are strictly construed against the taxpayer, who must prove by convincing evidence that he is entitled to the deduction claimed.[22] To be entitled to claim a tax deduction, the taxpayer must competently establish the factual and documentary bases of its claim.[23] Otherwise, the claimed deduction will be disallowed.[24]

Witness Roel Gumapac admitted that petitioner was unable to produce the documents required by the BIR due to alleged typhoon.[25] Following Section 34(A)(1)(b) of the NIRC, as amended, and jurisprudence, with petitioner's failure to produce the documentation

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22 *Philex Mining Corporation v. Commissioner of Internal Revenue,* G.R. No. 148147, April 16, 2008.

23 *H. Tambunting Pawnshop, Inc. v. Commissioner of Internal Revenue,* G.R. No. 173373, July 29, 2013.

24 *Atlas Consolidated Mining & Development Corporation v. Commissioner of Internal Revenue,* G.R. No. L-26911, January 27, 1981.

25 Answer to Question Nos. 13 and 14, Judicial Affidavit of Roel Gumapac (Exhibit "P-10"). Docket, p. 586.

just mentioned, the BIR is correct in disallowing its claimed expenses for 2011, for lack of substantiation.

Parenthetically, Section 6(B) of the NIRC, as amended, provides that "[w]hen a report required by law as a basis for the assessment of any national internal revenue tax shall not be forthcoming within the time fixed by laws or rules and regulations or when there is reason to believe that any such report is false, incomplete or erroneous, the Commissioner shall assess the proper tax on the best evidence obtainable [BEO]."

Item 1 of Section 2.3 of Revenue Memorandum Circular (RMC) No. 23-00[26] clarified that a tax assessment anchored on BEO is justified, if "[t]he report or records requested from the taxpayer are not forthcoming i.e.[,] the records are lost; refusal of the taxpayer to submit such records." Such is the situation here. To be precise, the BIR required, and petitioner *failed*[27] to produce the documents and records sought to be examined and audited by the BIR relative to its 2011 internal revenue tax liabilities. *Ergo,* the BIR may not be held answerable for resorting to the BEO method in laying the bases for the 2011 deficiency income tax assessments against petitioner.

Petitioner maintains that it may not be blamed for its non-presentation of its supporting documents and records. For petitioner, said documents and records were rendered incorrigible by reason of flood in its storage area caused by Typhoon *Habagat.* In support thereof, petitioner relies on: (1) Affidavit of Loss of Documents allegedly signed by Edilburga P. Genson;[28] and (2) Certification dated October 8, 2013[29] allegedly issued by the Punong Barangay of Barangay San Isidro, Makati City.

These documents leave much to be desired.

For one, the Affidavit of Loss of Documents was subscribed by a certain Edilburga P. Genson (Genson). Yet, Genson was not presented

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26 SUBJECT: Existing Revenue Procedures on the Assessment of Deficiency Internal Revenue Taxes Based on the "Best Evidence Obtainable."
27 *Supra* note 25.
28 *Id.* at p. 73.
29 *Id.* at p. 74.

in court as witness. Therefore, Genson's Affidavit is hearsay. *Republic v. Ciruelas**[30] decreed:

> Basic is the rule that, while affidavits may be considered as public documents if they are acknowledged before a notary public, these Affidavits are still classified as hearsay evidence. The reason for this rule is that they are not generally prepared by the affiant, but by another one who uses his or her own language in writing the affiant's statements, parts of which may thus be either omitted or misunderstood by the one writing them. Moreover, the adverse party is deprived of the opportunity to cross- examine the affiants. For this reason, affidavits are generally rejected for being hearsay, unless the affiants themselves are placed on the witness stand to testify thereon. (Underscoring supplied)

Being hearsay, Genson's Affidavit is devoid of probative value.[31]

Besides, even petitioner is unsure as to who is the affiant of the Affidavit. To be precise, Gumapac mentioned that petitioner's HR/Legal/Corporate Affairs Officer was a certain Edilburga *Gensonon*,[32] whereas the Affidavit found in records, was subscribed by a certain Edilburga P. *Genson*.[33] This gives Us extra reason to doubt the veracity of the Affidavit.

For another, the Barangay Certification dated October 8, 2013 was neither requested by, nor issued to petitioner. Said document was issued to a certain Cebu Modern Japanese Cuisine Corporation/Mr. Benjamin D. Garcia. As We see it, Gumapac lacks personal knowledge as to the circumstances surrounding said Certification because he was *not* the party to whom the same was issued. Neither was there proof that said persons secured such certification under express or implied authority from petitioner. *Ergo*, Gumapac's testimony and the Barangay Certification are likewise hearsay; hence, bereft of probative weight.

On these accounts, petitioner's dependence on fortuitous event as justification for the non-submission of the documents and records required by the BIR fails.

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30 G.R. No. 239505, February 17, 2021, citing *Republic v. Spouses Gimenez*, 776 Phil. 233, 275 (2016).

31 *Republic v. Galeno*, G.R. No. 215009, January 23, 2017.

32 *Supra* note 25.

33 *Supra* note 28.

Fourth. Evidence is likewise wanting to support petitioner's hypothesis that the anterior audit or examination conducted by the BIR is void because it was concluded beyond one hundred twenty (120) days from service of the LOA, *sans* proper revalidation thereof.

Foremost, there is no proof as to the precise dates when the BIR's examination and audit on petitioner for TY 2011 ended; hence, it cannot be determined whether the audit was indeed concluded *outside* the one hundred twenty (120)-day period stated by petitioner. Granting *arguendo* that the examination or audit truly ended beyond the one hundred twenty (120)-day period from service of LOA, without revalidation thereof, it would *not* render the pertinent examination void. Item IV (8) of Revenue Memorandum Order (RMO) No. 44-2010[34] states:

> *IV. Policies and Guidelines*
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> ...
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> 8. **Beginning June 1, 2010, the rule on the need for revalidation of LAs for failure of the revenue officials to complete the audit within the prescribed period shall be withdrawn.** Accordingly, **there is no need for revalidation of the LA even if the prescribed audit period has been exceeded**. However, the failure of the RO to complete the audit within the prescribed period shall be subject to the applicable administrative sanctions.[35]

Beginning June 1, 2010, RMO No. 44-2010 brushed aside the revalidation requirement, if the assigned RO failed to complete the audit, within one hundred twenty (120) days from service of the LOA. Therefore, the BIR's audit and examination beyond said period alone, and even without a revalidated LOA, does not render said act illicit.

Fifth. There is deficient proof to establish petitioner's position that the examination and audit for TY 2011 performed by the BIR is void, because the revenue officers (ROs) named in the LOA were replaced by a new set of ROs, *sans* an LOA in their names.

Petitioner invokes Letter of Authority No. LOA-049-2012-00000213 dated August 3, 2012 (LOA) in support of its position.[36] However, said LOA simply contained the names of Revenue Officer

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[34] SUBJECT: Electronic Issuance of Letters of Authority.
[35] Boldfacing supplied.
[36] Docket, p. 72.

Rodolfo de Guzman and Group Supervisor Ernalyn Dela Cruz, and that they were authorized to examine and audit petitioner for TY 2011, no more, no less. Other documents[37] relied upon by petitioner are silent as to the ROs who handled the audit. This means that there is no proof that said tax agents were changed with another set of ROs without LOA in their names.

Finally. Petitioner's plea to reconsider the Resolution dated October 3, 2024, which refused admission of its belatedly filed formal offer is denied. The reason is easy to perceive—to admit the formal offer belatedly filed by petitioner's counsel would be to reward the latter for the clear neglect it displayed during the proceedings, which may not be countenanced. We, again, underscore our findings in the Resolution[38] dated October 3, 2024, meriting iteration as proper closing:

> Petitioner's counsel admitted that petitioner's FOE was already prepared as early as March 22, 2024. Meanwhile, the pertinent holidays, *i.e.*, March 28, 29, and 30, 2024, were already cast in stone, as early as October 11, 2023. If the former is keen in pursuing the latter's cause, it could have filed said FOE from March 25 to March 27, 2024 as the holidays were already on the horizon; yet, counsel failed. After those holidays and weekend, petitioner's counsel still had the opportunity to check, and if not filed, lodge petitioner's FOE on the given deadline on April 1, 2024; again, it failed. From April 1, 2024 until the CTA-JRD acknowledged the non-filing of petitioner's FOE on April 11, 2024, petitioner's counsel had another shot at rectifying the previously displayed non-feasance; again, the latter failed. Worse, petitioner's counsel filed petitioner's FOE only on May 29, 2024, which is **58 days** from the prescribed deadline on April 1, 2024.
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> Tallying the obtaining circumstances, petitioner's counsel exhibited intolerable negligence in the latter's failure to file petitioner's FOE within the prescribed period. The former failed to exercise reasonable care and caution which an ordinarily prudent person would have used in the same situation. For this reason, we refuse admission of petitioner's belatedly filed FOE.[39]

WHEREFORE, respondent's Demurrer to Evidence filed on October 10, 2024 is **GRANTED**. Accordingly, CTA Case No. 10902 is **DISMISSED,** for insufficiency of evidence.

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[37] *Supra* note 3.
[38] *Supra* note 2.
[39] Footnotes omitted.

Petitioner's Motion for Reconsideration, embodied in its Comment on the Respondent's Demurrer to Evidence, filed on December 6, 2024, is **DENIED**.

SO ORDERED.

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

Marian Ivy F. Reyes - Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

HENRY S. ANGELES
Associate Justice