REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

HALLIBURTON WORLWIDE LIMITED – PHILIPPINE BRANCH,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. **9670**

Members:

CASTAÑEDA, JR., *Chairperson, and*
BACORRO-VILLENA, *JJ.*

Promulgated: MAY 24 2021 3:50 p.m.

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RESOLUTION

BACORRO-VILLENA, J.:

For the Court's resolution are:

(1) Petitioner's "Motion for Reconsideration or Reopening of Trial"[1] (**MR**) on the Decision dated 11 January 2021 filed on 28 January 2021, with respondent's "Comment/Opposition on Petitioner's Motion for Reconsideration or Reopening of Trial"[2] filed *via* registered mail on 19 February 2021[3]; and,

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[1] Division Docket, pp. 967-1000, with annexes.
[2] Id., pp. 1019-1025.
[3] Received by the Court on 02 March 2021.

(2) Respondent's "Motion for Partial Reconsideration"[4] (**MPR**) on the Decision dated 11 January 2021 filed *via* registered mail on 27 January 2021[5], with petitioner's "Comment (Re: Respondent's Motion for Partial Reconsideration dated 27 January 2021)"[6] filed on 22 February 2021.

Both parties seek the reconsideration and/or partial reconsideration of the Court's Decision dated 11 January 2021 (**Assailed Decision**). The dispositive portion of which reads:

> ...
>
> **WHEREFORE**, premises considered, the instant Petition for Review filed on 25 August 2017 by Halliburton Worldwide Limited – Philippine Branch is hereby **PARTIALLY GRANTED.**
>
> Accordingly, respondent Commissioner of Internal Revenue is **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in the amount of **FIFTY FIVE THOUSAND SIX HUNDRED TEN PESOS and TWENTY THREE CENTAVOS** (₱55,610.23), representing its unutilized excess input VAT for the four (4) taxable quarters of CY 2015 which is attributable to its zero-rated sales or receipts for the same period.
>
> **SO ORDERED.**
>
> ...

In its MR, petitioner prays that the Assailed Decision be reconsidered and reversed and, instead, an amended decision be rendered ordering respondent to refund, or issue a tax credit certificate (**TCC**) for the full amount of ₱11,259,584.34, representing petitioner's unutilized input taxes attributable to zero-rated sales for the four (4) quarters of taxable year (**TY**) 2015. Alternatively, petitioner prays that this Court reopen trial to allow it to present supplemental evidence.

Petitioner argues that this Court's reliance on Part III, Rule 5, Section 18[7] of Department of Energy (**DOE**) Circular No. DC2009-05-

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[4] Division Docket, pp. 1003-1010.
[5] Received by the Court on 03 February 2021.
[6] Division Docket, pp. 1014-1017.
[7] **SEC. 18.** *Conditions for Availment of Incentives and Other Privileges.* —
A. *Registration/Accreditation with the DOE*
...
B. *Registration with the Board of Investments (BOI)*
...
C. *Certificate of Endorsement by the DOE*

0008, the Implementing Rules and Regulations (**IRR**) of Republic Act (**RA**) No. 9513[8] or the Renewable Energy Act of 2008, insofar as it lays down the requirements for value-added tax (**VAT**) zero-rating, is contrary to law and jurisprudence.

Citing Section 15(g)[9] of RA 9513, petitioner claims that the only condition *sine qua non* to avail of the VAT zero-rating incentive is the DOE Certificate of Registration requirement since the said provision does not mention either the Board of Investments (**BOI**) Certificate of Registration or the DOE Certificate of Endorsement. Petitioner further claims that, based on the language of Section 15 of RA 9513, the role of the BOI is limited to acting in a consultative capacity only, not as an approving authority.

Relative thereto, petitioner likewise cites Section 25[10] of RA 9513 in support of its claim that only the DOE Certificate of Registration requirement is necessary for entitlement to VAT zero-rating.

Additionally, petitioner theorizes that there is a conflict between RA 9513 and its IRR insofar as the requirements for entitlement to VAT

...

8 AN ACT PROMOTING THE DEVELOPMENT, UTILIZATION AND COMMERCIALIZATION OF RENEWABLE ENERGY RESOURCES AND FOR OTHER PURPOSES.

9 **SEC. 15**. *Incentives for Renewable Energy Projects and Activities.* — RE Developers of renewable energy facilities, including hybrid systems, in proportion to and to the extent of the RE component, for both power and non-power applications, as duly certified by the DOE, **in consultation with the BOI**, shall be entitled to the following incentives:

...

(g) Zero Percent Value-Added Tax Rate — The sale of fuel or power generated from renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy and other emerging energy sources using technologies such as fuel cells and hydrogen fuels, shall be subject to zero percent (0%) value-added tax (VAT), pursuant to the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act No. 9337.

All RE Developers shall be entitled to zero-rated value added tax on its purchases of local supply of goods, properties and services needed for the development, construction and installation of its plant facilities.

This provision shall also apply to the whole process of exploring and developing renewable energy sources up to its conversion into power, including, but not limited to, the services performed by subcontractors and/or contractors.

...

10 **SEC. 25**. *Registration of RE Developers and Local Manufacturers, Fabricators and Suppliers of Locally-Produced Renewable Energy Equipment.* — RE Developers and local manufacturers, fabricators and suppliers of locally-produced renewable energy equipment shall register with the Department of Energy, through the Renewable Energy Management Bureau. Upon registration, a certification shall be issued to each RE Developer and local manufacturer, fabricator and supplier of locally-produced renewable energy equipment to serve as the basis of their entitlement to incentives provided under Chapter VII of this Act.

zero-rating is concerned. According to petitioner, such conflict should be resolved in favor of RA 9513 as a law enacted by Congress outweighs the rules promulgated by an administrative agency to implement such law. Even assuming *arguendo* that the IRR did not deviate from RA 9513 in giving additional requirements for VAT zero-rating, petitioner argues that, under the IRR of RA 9513 itself, the BOI Certificate of Registration and the DOE Certificate of Endorsement are not necessary for entitlement to the VAT zero-rating incentive.

Petitioner also contends that there is an apparent conflict between Section 18(B) and (C)[11] of the IRR of RA 9513, which includes the BOI Certificate of Registration and the DOE Certificate of Endorsement as conditions for availing of incentives in general, and Section 13(G)[12] of the IRR of RA 9513, which states that the DOE,

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[11] **SEC. 18**. *Conditions for Availment of Incentives and Other Privileges. —*

...

B. *Registration with the Board of Investments (BOI)*

...

To qualify for the availment of the incentives under Sections 13 and 15 of this IRR, RE Developers, and manufacturers, fabricators, and suppliers of locally-produced RE equipment, shall register with the BOI.

The registration with the BOI shall be carried out through an agreement and an administrative arrangement between the BOI and the DOE, with the end-view of facilitating the registration of qualified RE facilities. The applications for registration shall be favorably acted upon immediately by the BOI, on the basis of the certification issued by the DOE.

C. *Certificate of Endorsement by the DOE*

RE Developers, and manufacturers, fabricators, and suppliers of locally-produced RE equipment shall be qualified to avail of the incentives provided for in the Act only after securing a Certificate of Endorsement from the DOE, through the REMB, on a per transaction basis.

The DOE, through the REMB, shall issue said certification within fifteen (15) days upon request of the RE Developer or manufacturer, fabricator, and supplier; Provided, That the certification issued by the DOE shall be without prejudice to any further requirements that may be imposed by the government agencies tasked with the administration of the fiscal incentives mentioned under Rule 5 of this IRR.

...

[12] **SEC. 13**. *Fiscal Incentives for Renewable Energy Projects and Activities. —*

...

G. Zero Percent Value-Added Tax Rate

The following transactions/activities shall be subject to zero percent (0%) value-added tax (VAT), pursuant to the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act No. 9337:

(a) Sale of fuel from RE sources or power generated from renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy, and other emerging energy sources using technologies such as fuel cells and hydrogen fuels;

(b) Purchase of local goods, properties and services needed for the development, construction, and installation of the plant facilities of RE Developers; and

Bureau of Internal Revenue (**BIR**) and Department of Finance (**DOF**) shall jointly come up with guidelines specifically for the VAT zero-rating incentive. In issuing the IRR of RA 9513, petitioner points out that the DOE acted alone in prescribing the BOI Certificate of Registration and the DOE Certificate of Endorsement as requisites for VAT zero-rating.

To resolve the alleged conflict, petitioner claims that Section 13(G)[13] of the IRR of RA 9513 should apply to the VAT zero-rating incentive, while Section 18(B) and (C)[14] of the IRR of RA 9513 should apply to all other fiscal incentives granted under RA 9513.

Lastly, petitioner submits that, in other occasions, the Court did not require the BOI Certificate of Registration and the DOE Certificate of Endorsement for purposes of VAT zero-rating. In previous rulings dealing with incentives granted to RE Developers, the Court did not require such requirements, particularly in the cases of *BJ Well Services Company (Philippines), Inc. v. Commissioner of Internal Revenue*[15] (**BJ Well**) and *CBK Power Company Limited v. Commissioner of Internal Revenue*[16] (**CBK**). Petitioner thus maintains that a DOE Certificate of Registration (unaccompanied by the BOI Certificate of Registration and the DOE Certificate of Endorsement) is sufficient for purposes of VAT zero-rating under RA 9513.

Alternatively, should the Court still require compliance with all three (3) aforementioned conditions for availing of incentives under Section 18 of the IRR of RA 9513, petitioner attaches the following documents to its MR and asks the Court to consider and admit the same to form part of the records of the case: (1) BOI Certificate of Registration No. 2012-024[17] issued to Energy Development Corporation (**EDC**); (2) Letter-Endorsement[18] from the DOE's Renewable Energy Management Bureau (**REMB**) addressed to the BIR, endorsing EDC's

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(c) Whole process of exploration and development of RE sources up to its conversion into power, including, but not limited to, the services performed by subcontractors and/or contractors.

The DOE, BIR and DOF shall, within six (6) months from issuance of this IRR, formulate the necessary mechanisms/guidelines to implement this provision.

13 Supra at note 12.
14 Supra at note 11.
15 CTA Case No. 8859, 08 February 2017.
16 CTA Case No. 8784, 23 February 2017.
17 Annex "A", Division Docket, p. 983.
18 Annex "B", id., pp. 984-985.

projects relative to VAT zero-rating of local purchases needed for RE operations; (3) BIR Ruling No. VAT-0218-2020[19] confirming that EDC's purchases of goods and services are subject to zero-rated VAT; (4) BOI Certificate of Registration No. 2011-006[20] issued to Maibarara Geothermal Inc. (**MGI**); and, (5) Letter-Endorsement[21] from the DOE's REMB addressed to the BIR, endorsing MGI's request for a certification on its entitlement to VAT zero-rating on its purchases of local goods and services for its geothermal operations.

Contrary to petitioner's arguments, respondent, in his Comment, states that the conditions prescribed under Section 18[22] of the IRR of RA 9513 do not contradict the provisions of RA 9513 as they are germane to the objects and purposes of the law in regard to the grant of fiscal incentives to RE Developers. Respondent further asserts that the *BJ Well* case is not applicable to the instant case as the Court therein failed to take into consideration the provisions of Section 18 of the IRR of RA 9513.

Regarding petitioner's alternative prayer for reopening of trial for the admission of supplemental evidence, respondent contends that petitioner chose the wrong remedy because a motion to reopen trial can only be filed before the rendition of a judgment.

Respondent also claims that petitioner failed to specify any valid ground to justify the reopening of the case for reception of new evidence. As the Court is merely asked to reconsider its findings of law or its appreciation of facts, an MR is not the proper remedy to reopen the case for further proceedings. At this point in the proceedings, petitioner maintains that the introduction of new evidence is already barred.

On the other hand, as regards his MPR, respondent argues that this Court erred in finding that petitioner had complied with the documentary requirements for refund of input VAT amounting to ₱55,610.23 (attributable to its zero-rated sales in the amount of ₱893,544.26).

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19 Annex "C", id., pp. 986-992.
20 Annex "D", id., pp. 993-999.
21 Annex "E", id., p. 1000.
22 Supra at note 11.

According to respondent, petitioner was unable to substantiate its claim for refund considering that Mr. Neil U. Sison (**Sison**), the Court-commissioned Independent Certified Public Accountant (**ICPA**) had no personal knowledge of the documentary evidence (*i.e.*, sales invoices and official receipts) presented in support of petitioner's claim and such documentary evidence were not verified by individuals who have personal knowledge of the same. Respondent further stresses that petitioner was unable to prove completely that its sales qualify as zero-rated sales.

Respondent also claims that this Court erred in not treating as VAT-able the amount pertaining to services to corporations not considered as non-resident foreign corporations doing business outside the Philippines under Section 108(B)(2)[23] of the National Internal Revenue Code (**NIRC**) of 1997, as amended. Since the Court declared that only the total amount of ₱893,544.26 qualifies for VAT zero-rating under Section 106(A)(2)(a)(1)[24] of the NIRC of 1997, as amended, the alleged total sales receipts net of the amount of valid zero-rated sales amounting to ₱174,328,273.80 should be VAT-able or subject to 12% output VAT. Accordingly, respondent asserts that petitioner should thus be adjudged liable for output VAT of ₱20,919,392.85.

Aside from the foregoing, respondent goes on to say that part of the amount that did not qualify as valid zero-rated sales were also from

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23 **SEC. 108**. *Value-added Tax on Sale of Services and Use or Lease of Properties.* —

...

(B) *Transactions Subject to Zero Percent (0%) Rate.* — The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:

...

(2) Services other than those mentioned in the preceding paragraph, rendered to a person engaged in business conducted outside the Philippines or to a nonresident person not engaged in business who is outside the Philippines when the services are performed, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP)[.]

24 **SEC. 106**. *Value-added Tax on Sale of Goods or Properties.* —

...

(A) Rate and Base of Tax. — ...

...

(2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:

(a) Export Sales. — The term 'export sales' means:

(1) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP)[.]

sales to RE Developers deemed not qualified to avail of the VAT zero-rating incentive under RA 9513 for non-submission of the abovementioned necessary requirements. As such, respondent likewise contends that this be considered a ground for the imposition of 12% output VAT.

In its comment to respondent's MPR, petitioner avers that it is already too late for respondent to object on the admissibility of petitioner's documentary evidence. Having failed to raise such objection before the Court had ruled on petitioner's Formal Offer of Evidence (**FOE**), respondent is now estopped from assailing the admissibility of petitioner's documentary evidence. In any case, since the subject pieces of documentary evidence were voluminous, the Court allowed petitioner to engage an ICPA's services pursuant to Sections 1 and 2, Rule 13 of the Revised Rules of the Court of Tax Appeals (**RRCTA**).

With respect to respondent's second argument on the imposition of 12% output VAT, petitioner echoes the ruling in CTA Case No. 9449 that it is unfair to automatically offset its alleged VAT deficiency against its claim for refund and that the Court does not have the power to assess taxpayers because such power rightfully belongs to the Commissioner of Internal Revenue (**CIR**). Petitioner thus concludes that the purpose of the determination of entitlement to VAT zero-rating in a VAT refund case is merely to ascertain the propriety of granting the VAT refund claim, not to assess deficiency taxes.

We resolve below.

PETITIONER'S MOTION FOR RECONSIDERATION OR REOPENING OF TRIAL

After an assiduous review of the parties' contrasting arguments and a second hard look on the records of the instant case, the Court finds no compelling reason to modify or reverse our earlier finding that petitioner failed to prove with sufficient evidence that the services it rendered to its RE Developer-clients, namely, EDC and MGI, qualify for VAT zero-rating under Section 15(g)[25] of RA 9513 and its IRR.

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[25] Supra at note 9.

As discussed in the Assailed Decision, Section 18 of the IRR of RA 9513 clearly requires the submission of the RE Developers' Registration with BOI and Certificate of Endorsement by the DOE as additional conditions to avail of the fiscal incentives under RA 9513. The pertinent portion of Section 18 is quoted below:

> ...
>
> Section 18. *Conditions for Availment of Incentives and Other Privileges.* —
>
> A. Registration/Accreditation with the DOE
>
> **<u>For purposes of entitlement to the incentives and privileges under the Act</u>, <u>existing and new RE Developers</u>, and manufacturers, fabricators, and suppliers of locally-produced RE equipment shall register with the DOE, through the Renewable Energy Management Bureau (REMB).** The following certifications shall be issued:
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> **(1) DOE Certificate of Registration – issued to an RE Developer holding a valid RE Service/Operating Contract.**
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> ...
>
> B. Registration with the Board of Investments (BOI)
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> ...
>
> **To qualify for the availment of the incentives under Sections 13 and 15 of this IRR, <u>RE Developers</u>, and manufacturers, fabricators, and suppliers of locally-produced RE equipment, <u>shall register with the BOI</u>.**
>
> ...
>
> **C. Certificate of Endorsement by the DOE**
>
> **<u>RE Developers</u>, and manufacturers, fabricators, and suppliers of locally-produced RE equipment shall be <u>qualified to avail of the incentives provided for in the Act only after securing a Certificate of Endorsement from the DOE, through the REMB, on a per transaction basis</u>.**[26]
>
> ...

Clearly, from the foregoing, for a sale transaction to an RE Developer to qualify for VAT zero-rating under RA 9513 and its IRR,

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[26] Emphasis and underscoring supplied.

petitioner must have secured from its RE Developer-clients and presented in evidence the following documentary requirements:

1. DOE Certificate of Registration;
2. BOI Certificate of Registration; and,
3. DOE Certificate of Endorsement.

It is noteworthy that Section 18[27] of the IRR of RA 9513, as quoted above, uses the word "shall" in requiring RE Developers to register with the DOE and the BOI and to secure a Certificate of Endorsement from the DOE (on a *per* transaction basis). The use of the word "shall" indicates that the requirement of presenting all of the aforementioned documents is compulsory or mandatory.

Likewise, Section 18 of the IRR of RA 9513 does not distinguish as to the type or kind of fiscal incentive the conditions for availment should apply. As such, proof of compliance with all three (3) conditions must be shown in order for petitioner's sales transactions with RE Developers to be treated as VAT zero-rated.

This Court is also unconvinced of petitioner's argument that there is a conflict between RA 9513[28] and its IRR insofar as the latter provides for additional requirements for VAT zero-rating. The mere fact that it was only the DOE which issued the IRR does warrant the conclusion that it acted alone in prescribing the BOI Certificate of Registration and the DOE Certificate of Endorsement as conditions for VAT zero-rating. On the contrary, the DOE issued the subject IRR "in consultation with the Senate and House of Representatives Committees on Energy, relevant government agencies, and all [RE] stakeholders" pursuant to Section 33[29] of RA 9513.

Although petitioner invokes previous Court of Tax Appeals (**CTA**) rulings (particularly, *BJ Well* and *CBK*) where the submission of the BOI Certificate of Registration and the DOE Certificate of Endorsement were not mentioned as requirements for purposes of VAT zero-rating, it must be stressed that the rulings of this Court

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27 Supra at note 11.

28 Supra at note 8.

29 **SEC. 33**. *Implementing Rules and Regulations (IRR)*. — Within six (6) months from the effectivity of this Act, the DOE shall, in consultation with the Senate and House of Representatives Committees on Energy, relevant government agencies and RE stakeholders, promulgate the IRR of [RA 9513].

either acting through one of its divisions or sitting *en banc* are not binding precedents. By the doctrine of *stare decisis*, only decisions of the Supreme Court are controlling. The Supreme Court in *United Coconut Planters Bank v. Spouses Walter Uy and Lily Uy*[30] explains, thus:

> ...
>
> ... It is true regardless whether the decisions of the lower courts are logically or legally sound as only decisions issued by this Court become part of the legal system. At the most, decisions of lower courts only have a persuasive effect. Thus, respondents are correct in contesting the application of the doctrine of *stare decisis* when the CA relied on decisions it had issued.
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> ...

It bears to emphasize that tax refunds are in the nature of a claim for tax exemption and the law is not only construed in *strictissimi juris* against the taxpayer, but also the pieces of evidence presented entitling a taxpayer to an exemption is *strictissimi* scrutinized and must be duly proven.[31] As a rule, therefore, the burden of proof rests on the taxpayer in actions involving claims for refund of taxes assessed and collected.

Accordingly, when petitioner did not present in evidence EDC's and MGI's respective BOI Certificate of Registration and DOE Certificate of Endorsement, this Court concluded that petitioner failed to prove that its reported zero-rated sales to EDC and MGI qualify for VAT zero-rating under Section 15(g)[32] of RA 9513 and its IRR.

As to petitioner's alternative prayer for reopening of trial for the admission of supplemental evidence, We are not inclined to grant the same.

The issue of re-opening of the trial and subsequent admission of evidence after the parties have already rested, is not novel. The ruling of the Supreme Court in *Rivera v. Sandiganbayan, et al.*[33] (**Rivera**) is enlightening:

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30 *United Coconut Planters Bank v. Spouses Walter Uy and Lily Uy*, 823 Phil. 284 (2018).

31 *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 159490, 18 February 2008.

32 Supra at note 9.

33 G.R. No. 157824, 17 January 2005.

...

... **The Rules of Court does not contain any provision prohibiting the trial court from allowing a party to offer additional proofs on the evidence-in-chief or rebuttal evidence after it had rested its case, or even after the case has been submitted for decision <u>but before the rendition thereof</u>.** Neither does the Rules of Court contain a specific rule allowing the reopening of a case to allow a party to adduce additional proofs. However, the reopening of a case by the court either on its own motion or on motion of a party, allowing him or them to present additional proofs, is a recognized procedural recourse or device, deriving validity and acceptance from long-established usage. **The matter of the trial court's allowing the reopening of a case for additional proof by a party or by the parties is addressed to the court's discretion provided that, by reopening the case, the court does not commit a grave abuse of its discretion.** The trial court may allow the reopening of a case and the presentation of additional proofs for the orderly administration of justice or where evidence has been omitted by a party, through inadvertence or mistake, or oversight.[34]

...

Based on the foregoing, the Court, in its discretion, may allow the reopening of trial after the parties have rested the presentation of their evidence in chief, but *before* a decision is rendered, and provided that, by so doing, it does not commit grave abuse of discretion.

In *Republic of the Philippines v. Sandiganbayan, et al.*[35] (**Republic**), the Supreme Court explained the basis for a motion to reopen a case to introduce further evidence, as follows:

...

The basis for a motion to reopen a case to introduce further evidence is Section 5, Rule 30 of the Rules of Court, which reads:

Sec. 5. *Order of trial.* — Subject to the provisions of section 2 of Rule 31, and unless the court for special reasons otherwise directs, the trial shall be limited to the issues stated in the pre-trial order and shall proceed as follows:

xxx xxx xxx

(f) The parties may then respectively adduce rebutting evidence only, **unless** the court, for **good**

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34 Citations omitted, emphasis and underscoring supplied.

35 G.R. No. 152375, 16 December 2011.

> **reasons and in the furtherance of justice**, permits them to **adduce evidence upon their original case**[.] [emphases ours]

Under this rule, a party who has the burden of proof must introduce, at the first instance, all the evidence he relies upon and such evidence cannot be given piecemeal. The obvious rationale of the requirement is to avoid injurious surprises to the other party and the consequent delay in the administration of justice.

A party's declaration of the completion of the presentation of his evidence prevents him from introducing further evidence; but where the evidence is *rebuttal* in character, whose necessity, for instance, arose from the shifting of the burden of evidence from one party to the other; or where the evidence sought to be presented is in the nature of *newly discovered evidence*, the party's right to introduce further evidence must be recognized. Otherwise, the aggrieved party *may* avail of the remedy of *certiorari*.

Largely, the exercise of the courts discretion under the exception of Section 5(f), Rule 30 of the Rules of Court depends on the **attendant facts** — *i.e.*, on whether the evidence would qualify as a "good reason" and be in furtherance of the "interest of justice." ...

In *Lopez v. Liboro*, we had occasion to make the following pronouncement:

> After the parties have produced their respective direct proofs, they are allowed to offer rebutting evidence only, but, it has been held, the court, for good reasons, in the furtherance of justice, may permit them to offer evidence upon their original case, and its ruling will not be disturbed in the appellate court where no abuse of discretion appears. **So, generally, additional evidence is allowed** when it is newly discovered, or **where it has been omitted through inadvertence or mistake**, or where the purpose of the evidence is to correct evidence previously offered. ...[36]

...

In *Republic*, the Supreme Court stressed the general rule that evidence may not be given piecemeal. However, when the attendant facts warrant the introduction of further evidence that would qualify as a good reason for reopening the case and would serve the interest of justice, the Court may allow the reception of additional evidence.

[36] Citations omitted, emphasis and italics in the original text.

In this case, however, petitioner asked for the reopening of trial only after the Court had promulgated the Assailed Decision. Following the ruling in *Rivera*, there is no legal basis to grant petitioner's alternative prayer because the Court has already rendered a decision. Instead, We shall treat petitioner's MR as a Motion for New Trial.

In *Agulto v. Court of Appeals, et al.*[37], the Supreme Court distinguished the remedy of a Motion to Reopen Trial relative to a Motion for New Trial, to wit:

> ...
>
> A distinction should be made between a Motion for New Trial and a Motion to Reopen Trial.
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> A Motion for New Trial **<u>may be filed after judgment but within the period for perfecting an appeal</u>** (Sec. 1, Rule 37, Rules of Court).
>
> A Motion to Reopen Trial **<u>may be presented only after either or both parties have formally offered and closed their evidence, but before judgment</u>**. There is no specific provision in the Rules of Court for motions to reopen trial. It is albeit a recognized procedural recourse or devise, deriving validity and acceptance from long established usage. The reopening of a case for the reception of further evidence before judgment is not the granting of a new trial (Alegre vs. Reyes, 161 SCRA 226).[38]
>
> ...

Section 1, Rule 37 of the Rules of Court (**ROC**) provides for the grounds of a Motion for New Trial, to wit:

> ...
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> Section 1. *Grounds of and period for filing motion for new trial or reconsideration.* — Within the period for taking an appeal, the aggrieved party may move the trial court to set aside the judgment or final order and grant a new trial for one or more of the following causes materially affecting the substantial rights of said party:
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> (a) **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**; or

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37 G.R. No. L-52728, 17 January 1990.
38 Emphasis and underscoring supplied.

> (b) **Newly discovered evidence, which he could not, with reasonable diligence, have discovered and produced at the trial, and which if presented would probably alter the result.**
>
> Within the same period, the aggrieved party may also move for reconsideration upon the grounds that the damages awarded are excessive, that the evidence is insufficient to justify the decision or final order, or that the decision or final order is contrary to law.[39]
>
> ...

Based on the foregoing provisions, a Motion for New Trial may only be granted if the case falls under any of the following circumstances: (1) if there is fraud, accident, mistake or excusable negligence impairing the rights of the aggrieved party; or (2) on account of newly discovered evidence.

It is well-established that a Motion to Reopen Trial like a Motion for New Trial may be granted only upon specific, well-defined grounds set forth in the ROC. Unfortunately, petitioner did not mention any circumstance that would justify the reopening of the case for reception of additional evidence.

Here, the additional documents which petitioner asks us to consider and admit are neither newly discovered evidence nor omitted due to fraud, accident, mistake or excusable negligence. Certainly, by exercising reasonable diligence, it could have requested and offered in evidence the BOI Certificate of Registration and the DOE Certificate of Endorsement of the concerned RE Developers in support of its application for VAT refund. On this basis, the documents attached to petitioner's MR cannot be considered as newly discovered evidence but merely forgotten evidence.

Forgotten evidence refers to evidence already in existence or available before or during a trial; known to and obtainable by the party offering it; and could have been presented and offered in a seasonable manner, were it not for the sheer oversight or forgetfulness of the party or the counsel. Presentation of forgotten evidence is disallowed because it results in a piecemeal presentation of evidence, a procedure that is not in accord with orderly justice and serves only to delay the

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[39] Emphasis supplied.

proceedings. A contrary ruling may open the floodgates to an endless review of decisions, whether through a motion for reconsideration or for a new trial, in the guise of newly discovered evidence.[40]

Although Section 8[41] of RA 1125, as amended, creating the CTA, expressly provides that proceedings before this Court shall not be governed strictly by technical rules of evidence and there are instances where the Court allows the reopening of trial even though judgment has already been rendered, still, We find that petitioner has not demonstrated any convincing reason for the Court to apply the technical rules liberally.

RESPONDENT'S MOTION FOR PARTIAL RECONSIDERATION

We disagree with respondent's contentions.

It is well-settled that the question of tax deficiency is distinct and unrelated to a taxpayer's entitlement to a refund.[42] To automatically "offset" petitioner's alleged tax liabilities against the claim for refund would be unfair as it would deprive the latter of the opportunity to dispute the same in the proper venue with all the defenses available under the law such as prescription. Further, this Court does not have the power to assess taxpayers because such power rightfully belongs to the CIR. The Supreme Court made this clear in the case of *Commissioner of Internal Revenue v. Toledo Power Company*[43], when it ruled thus:

> ...
> Besides, it would be unfair to allow the CIR to use a claim for refund under Section 112 of the NIRC as a means to assess a taxpayer for any deficiency VAT, especially if the period to assess had already prescribed. As we have said, the courts have no assessment powers, and therefore, cannot issue assessments against taxpayers. The

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40 *Office of the Ombudsman v. Coronel*, G.R. No. 164460, 27 June 2006.

41 **SEC. 8.** *Court of record; seal; proceedings.* — The Court of Tax Appeals shall be a court of record and shall have a seal which shall be judicially noticed. It shall prescribe the form of its writs and other processes. It shall have the power to promulgate rules and regulations for the conduct of the business of the Court, and as may be needful for the uniformity of decisions within its jurisdiction as conferred by law, but such proceedings shall not be governed strictly by technical rules of evidence.

42 *SMI-ED Philippines Technology, Inc. v. Commissioner of Internal Revenue*, G.R. No. 175410, 12 November 2014.

43 G.R. Nos. 196415 and 196451, 02 December 2015.

> courts can only review the assessments issued by the CIR, who under the law is vested with the powers to assess and collect taxes and the duty to issue tax assessments within the prescribed period.[44]
>
> ...

Accordingly, respondent's allegation that petitioner's sales or receipts that did not qualify as zero-rated sales (*i.e.*, the amount of ₱174,328,273.80 which is the difference between its total sales or receipts *per* quarterly VAT returns for TY 2015 and the amount of valid zero-rated sales or receipts) should be considered as VAT-able or subject to 12% output VAT is without basis, and thus, cannot be upheld or sustained by this Court.

Finally, with regard to respondent's contention that petitioner failed to substantiate its claim for refund, this issue of appreciation of evidence had already been thoroughly passed upon and resolved by the Court in the Assailed Decision. Hence, the Court sees no relevant need to reiterate our findings and conclusions.

WHEREFORE, premises considered, petitioner's "Motion for Reconsideration or Reopening of Trial" and respondent's "Motion for Partial Reconsideration" are hereby **DENIED** for lack of merit.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

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

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[44] Citations omitted.