REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC
****

AIR LIQUIDE PHILIPPINES, INC. Petitioner,	**CTA EB No. 1377** (CTA Case Nos. 8259 and 8296)
	Present:
- versus -	**DEL ROSARIO,** *P.J.*, **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN,** and **MANAHAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** APR 04 2017 3:27 p.m.

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DECISION

UY, *J.*:

Before the Court *En Banc* is a Petition for Review[1] filed by Air Liquide Philippines, Inc. on November 3, 2015 against the Commissioner of Internal Revenue, seeking the reversal of the Decision dated May 27, 2015[2] and the Resolution dated October 13, 2015[3], both rendered by the Third Division of this Court (Court in Division) in CTA Case Nos. 8259 and 8296, entitled *"Air Liquide Philippines, Inc., Petitioner, vs. Commissioner of Internal Revenue, Respondent"*, the dispositive portions of which respectively read:

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[1] EB Docket, pp. 1 to 25.
[2] EB Docket, pp. 28 to 77; Penned by Associate Justice Ma. Belen M. Ringpis-Liban, and concurred by Associate Justice Lovell R. Bautista and Associate Justice Esperanza R. Fabon-Victorino. It is noted that the Petition for Review erroneously referred to the date of the Decision as "27 May 2013" (Refer to page 18 thereof).
[3] EB Docket, pp. 79 to 86; Supra.

<u>Decision dated May 27, 2015</u>:

> "**WHEREFORE,** premises considered, the consolidated petitions are **DENIED** for lack of merit.
>
> **SO ORDERED.**"

<u>Resolution dated October 13, 2015</u>:

> "**WHEREFORE,** premises considered, petitioner's Motion for Reconsideration (And to Reopen Trial for Reception of Additional Evidence) (Decision 29 May 2015) is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**"

THE FACTS

Petitioner Air Liquide Philippines, Inc. is a domestic corporation duly registered with and authorized by the Securities and Exchange Commission to engage in the manufacture, production, purchase, wholesale, importation, marketing and dealing in general of all kinds of industrial, medical and specialty liquid gases, other chemicals and their residual components. Its principal place of business is at 12/F Ecotower Building, 32nd Avenue cor. 7th Street, Bonifacio Global City, Taguig City.

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), vested with authority to, *inter alia*, decide refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code (NIRC) or other laws administered by the BIR, and holding office at the BIR National Office Building, Diliman, Quezon City.

In the course of its operations, petitioner generates sales subject to value-added tax (VAT), VAT-exempt sales, and VAT zero-rated sales, by selling its products and rendering related services to various domestic entities, including corporations registered with the Philippine Economic Zone Authority (PEZA) under Republic Act (RA) No. 7916, as amended, with the Subic Bay Metropolitan Authority (SBMA) under RA No. 7227, as amended, and with the Board of Investments (BOI) under Executive Order (EO) No. 226, with whom petitioner deals with, pursuant to service agreements.

For the first and second quarters of 2009, petitioner recorded its VATable, VAT-exempt, and VAT zero-rated sales in the following amounts:

CY 2009	VATable sales	VAT-exempt sales	VAT zero-rated sales	TOTAL SALES
First Quarter	₱64,069,544.00	₱1,068,794.40	₱145,334,264.90	₱210,472,603.30
Second Quarter	83,724,354.42	1,263,093.64	159,178,836.06	244,166,284.12
TOTAL	**₱147,793,898.42**	**₱2,331,888.04**	**₱304,513,100.96**	**₱454,638,887.42**

For the same period, petitioner recorded the following amounts of output VAT resulting from its VATable sales, pursuant to the Tax Code and Revenue Regulations (RR) No. 16-2005, as amended:

CY 2009	Output VAT recorded
First Quarter	₱ 7,688,345.28
Second Quarter	10,046,922.53
TOTAL	**₱ 17,735,267.81**

As a corporation transacting business in the Philippines, petitioner pays the VAT passed on to it by its suppliers for its domestic purchases of supplies and services in addition to the VAT it pays for importing materials, thereby incurring input VAT pursuant to the Tax Code and RR No. 16-2005.

Thus, for the first and second quarters of 2009, petitioner recorded the following amounts of input VAT:

CY 2009	Input VAT from domestic purchases of goods	Input VAT from domestic purchases of services	Input VAT from importation of goods	TOTAL INPUT VAT
First Quarter	₱ 2,441,526.42	₱ 8,893,809.49	₱ 3,011,079.00	₱ 14,346,414.91
Second Quarter	1,963,791.28	9,334,403.67	1,773,381.10	13,071,576.05
TOTAL	**₱ 4,405,317.70**	**₱ 18,228,213.04**	**₱ 4,784,460.10**	**₱ 27,417,990.96**

At the start of the first quarter of 2009, petitioner recorded an allowable input VAT in the amount of ₱184,190,750.03 which was comprised of input VAT carried over from previous quarters and deferred input VAT. By the end of the second quarter of 2009 (start of the third quarter of 2009), petitioner recorded an allowable input VAT in the amount ₱191,908,928.75 which likewise was comprised of input VAT carried over from previous quarters and deferred input VAT.

Considering the availability of input VAT carried over from previous quarters, petitioner also carried-over the input VAT it incurred from the first and second quarters of 2009 to succeeding quarters, deducting them from any available output VAT, pursuant to the principle of "first in, first out" enunciated in RR No. 16-2005.

By the third quarter of 2009, however, petitioner's carry-over input VAT had already grown considerably, and petitioner decided to claim the unutilized input VAT from the first quarter of 2009 as tax credit or for refund. Thus, petitioner indicated in its Amended Quarterly VAT Return for the third quarter of 2010 that it was claiming ₱10,303,119.23 for refund/tax credit, thereby taking out the amount from the bulk of input VAT to be carried-over to succeeding quarters.

Also, by the fourth quarter of 2010, petitioner decided to claim the unutilized input VAT from the second quarter of 2009 as tax credit or for refund by indicating in its Quarterly VAT Return for the fourth quarter of 2010 that it was claiming ₱8,521,726.37 for refund/tax credit, thereby taking out the amount from the bulk of input VAT to be carried-over to succeeding quarters.

Combining both amounts, petitioner claims the total amount of ₱18,824,845.60, representing excess and unutilized input VAT from the first and second quarters of 2009 attributable to its VAT zero-rated sales.

Pursuant to the Tax Code and prevailing BIR regulations, petitioner filed its administrative applications for issuance of tax credit certificate/refund of excess input tax for the first and second quarters of 2009, with the BIR's Large Taxpayers Audit and Investigation Division II (BIR-LTAID).

The application for the first quarter of 2009 was filed with the BIR-LTAID on November 5, 2010, complete with supporting documents; while the application for the second quarter of 2009 was filed with the same BIR office on January 27, 2011, likewise complete with supporting documents.

After 120 days without action on the part of respondent, petitioner elevated its claims for refund/tax credit to the Court in Division via Petitions for Review. Its *Petition for Review* for its claim for the first quarter of 2009 was filed on April 1, 2011 and was docketed as CTA Case No. 8259; while its *Petition for Review* for its claim for the second quarter of 2009 was filed on June 21, 2011, and was docketed as CTA Case No. 8296.

Respondent filed his *Answer* in CTA Case No. 8259 on May 27, 2011, after having sought extension to file the same. His *Answer* in CTA Case No. 8296, on the other hand, was filed on July 21, 2011. Both Answers cited the following Special and Affirmative Defenses, to wit:

1. A valid claim for refund should consist of the following:

    a) a written claim for refund filed by the taxpayer with the Commissioner of Internal Revenue which is a mandatory requirement. Without this requirement, the said Commissioner is without any authority to refund;

    b) the claim for refund must be a categorical demand for reimbursement; and

    c) the claim for refund must be filed within two years from date of payment of the tax or penalty regardless of any supervening cause. In claims for refund, the thirty-day period to appeal should be within the two-year prescriptive period;

2. It is incumbent upon petitioner to prove that the alleged claim for refund was filed within the prescriptive period provided under the law, rules, and jurisprudence;

3. Petitioner must prove that the input taxes allegedly paid by petitioner on its domestic purchases of non-capital goods and service, services rendered by non-residents and importation of non-capital goods for the first and second quarters of 2009 were attributable to its zero-rated sales and such have not been applied against any output tax and were not carried over in the succeeding taxable quarter or quarters;

4. Petitioner must prove that its domestic purchases of goods and services were made in the course of its trade or business, properly supported by VAT invoices and/or official receipts and other documents, such as subsidiary purchase journal, showing that it actually paid VAT in compliance with Sections 110(A)(2), 113(A) and 237 of the Tax Code, and in pursuance to Section 4.104.5(a) and (b) of RR No. 7-95;

5. Petitioner must substantiate its claim for refund in accordance with RR No. 53-1998 which provides requirements in claims for refund involving excess or unutilized input VAT;

6. Petitioner's claim for refund is subject to administrative

investigation/examination and pending closure of this investigation, no grant of refund may be given to petitioner based on the file claim; and

7. A claim for refund partakes the nature of exemption from taxation and is thus, construed against the taxpayer and in favor of the State.

Upon petitioner's motion, CTA Case No. 8296 was ordered consolidated with CTA Case No. 8259 in the Resolution dated October 27, 2011.

The Pre-Trial Conference was held on July 12, 2012, wherein both petitioner and respondent agreed to file a joint stipulation of facts and issues. Both parties filed their *Joint Stipulation of Facts and Issues* on August 10, 2012. The *Pre-Trial Order* for the consolidated cases was issued on September 10, 2012, thereby terminating the pre-trial.

Trial ensued thereafter. Petitioner presented its witnesses: 1) Leah R. Acasio, its Accounting Manager, who testified on matters in her Sworn Statement dated October 3, 2012; 2) Daisy C. Egpit, its Sales Administration Assistant Manager, who testified on matters in her Sworn Statement dated April 24, 2013; and 3) Emmanuel Y. Mendoza, the Independent Certified Public Accountant commissioned by the Court in Division for the consolidated cases who testified on matters in his Sworn Statement dated May 27, 2013.

On June 19, 2013, petitioner filed its *Formal Offer of Evidence* to which respondent filed his *Comment* on June 25, 2013.

After further proceedings and after having filed its *Supplemental Formal Offer of Exhibits* on November 5, 2013, petitioner formally rested its case on January 3, 2014. Respondent then manifested that he would not be presenting evidence.

In the Resolution dated January 3, 2014, the parties were given time to file their respective memoranda.

On February 28, 2014, respondent filed his *Manifestation* that respondent would be adopting the arguments raised in the Answers filed on May 27, 2011, and July 21, 2011, in CTA Case No. 8259 and CTA Case No. 8296, respectively, as his *Memorandum*.

Petitioner filed its *Memorandum* on March 11, 2014, together with a *Motion to Admit* the same for having been filed beyond the extended period allowed by the Court in Division. This motion was granted by the latter in the Resolution dated May 19, 2014. Considering petitioner's *Memorandum* and respondent's *Manifestation*, the case was then submitted for decision by the Court in Division.

In the assailed Decision,[4] the Court in Division denied the consolidated petitions for lack of merit. The Court in Division ruled, *inter alia*, that petitioner's properly substantiated input taxes for the first and second quarters of 2009 are not enough to cover its output taxes for the same period; and that while petitioner reflected in its Quarterly VAT Return for the first quarter of 2009 the amount of ₱181,171,453.02 as *"Input Tax Carried Over from Previous Quarter"*, petitioner failed to present VAT invoices or receipts to prove the existence of such amount.

Petitioner filed its *Motion for Reconsideration (And to Reopen Trial for Reception of Additional Evidence) (Decision 29 May 2015)* on June 11, 2015.[5]

In the assailed Resolution,[6] the Court in Division denied petitioner's *Motion* for lack of merit.

Petitioner then filed the instant Petition for Review on November 3, 2015.[7]

In the Resolution dated January 5, 2016,[8] the Court *En Banc* directed respondent to file his Comment, within ten (10) days from receipt of said Resolution. Respondent, however, filed a *Motion for Extension To File Comment* on January 28, 2016.[9] The Court *En Banc* granted respondent a final and non-extendible period of ten (10) days from January 28, 2016, or until February 7, 2016, within which to file his *Comment* on the Petition for Review.[10]

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[4] EB Docket, pp. 28 to 77; Division Docket (CTA Case No. 8259) – Vol. 4, pp. 1756 to 1805.
[5] EB Docket, pp. 87 to 95; Division Docket (CTA Case No. 8259) – Vol. 4, pp. 1806 to 1814.
[6] EB Docket, pp. 79 to 86; Division Docket (CTA Case No. 8259) – Vol. 4, pp. 1825 to 1832.
[7] EB Docket, pp. 1 to 25.
[8] EB Docket, pp. 98 to 99.
[9] EB Docket, pp. 100 to 103.
[10] Minute Resolution dated February 1, 2016, EB Docket, p. 105.

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Respondent filed his *Comment (Re: Petition for Review dated 3 November 2015)* on February 9, 2016.[11]

In the Resolution dated April 6, 2016,[12] the Court *En Banc* resolved to give due course to the instant *Petition for Review*, and required the parties to submit their respective memorandum.

Petitioner filed its Memorandum on May 12, 2016.[13] Upon the other hand, on May 17, 2016, respondent filed a *Manifestation*,[14] manifesting that after going over the records, he is adopting the arguments raised in his *Comment* dated February 9, 2016, as his *Memorandum*.

Subsequently, the Court *En Banc* deemed the instant case submitted for decision in the Resolution dated June 24, 2016.[15]

Hence, this Decision.

THE ISSUE

In the instant Petition for Review, petitioner raises the following issue for the Court *En Banc*'s resolution, to wit:

> "WHETHER THE 3rd DIVISION COMMITTED REVERSIBLE ERROR WHEN IT DENIED THE INPUT VAT CARRIED OVER FROM PREVIOUS QUARTER IN THE AMOUNT OF P181,171,453.02; DENIED PETITIONER'S PRAYER FOR REOPENING THE TRIAL FOR RECEPTION OF ADDITIONAL EVIDENCE; AND SUBSEQUENTLY DENIED PETITIONER'S APPLICATION FOR VAT REFUND."[16]

Petitioner's arguments:

Petitioner argues that the Court in Division's Decision did not conform with the principle on prospectivity of court decisions and statutes. According to petitioner, when the appealed decision was on

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[11] EB Docket, pp. 106 to 110.
[12] EB Docket, pp. 123 to 124.
[13] EB Docket, pp. 141 to 147.
[14] EB Docket, pp. 137 to 139.
[15] EB Docket, pp. 152 to 153.
[16] EB Docket, p. 10.

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trial, there was no court decision yet requiring input VAT carried over from previous quarter to be covered by the substantiation requirement on VAT refunds.

Moreover, petitioner contends that fairness and justice demands that it should not be prejudiced with a new decision; and that it relied, in good faith, on the existing Court of Tax Appeals decision at the time it presented its evidence.

Lastly, petitioner avers that the Court of Tax Appeals is not bound by technical rules of evidence, and that it can reopen the case on the ground of paramount interest of justice.

Respondent's counter-arguments:

Respondent counter-argues that the Court in Division correctly found that petitioner failed to substantiate its claim for refund; and that it is the nature of refund cases that the applicant must show by satisfactory proof that he is entitled to the same.

According to respondent, petitioner failed to give a reasonable ground or basis to overturn the assailed decision and to re-open this case. Petitioner should not allegedly be allowed to introduce evidence, which it failed to present when it had the opportunity to do so, at this point in time, and after it had received an adverse decision.

Respondent likewise claims that it has always been incumbent upon petitioner to prove its entitlement to a refund by proving that he has complied with all the necessary requirements to avail of the same. It must allegedly be taken into account that this is a case for a tax refund, and refunds, being in the nature of a tax exemption, petitioner must follow to the letter the requirements laid down by law to avail of it, as well as, to establish its right thereto by competent evidence. Petitioner however failed to do so in this case.

Finally, tax refunds are a derogation of the State's taxing power, and hence, like tax exemptions, they are construed strictly against the taxpayer and liberally in favor of the State.

THE COURT *EN BANC*'S RULING

The Petition for Review lacks merit.

The Court in Division did not err when it disallowed the amount of input VAT carried over by petitioner from the previous quarter for failure to prove the same.

Petitioner argues that fairness and justice demands that it should not be prejudiced with a new decision, *i.e.*, the ruling made in CTA Case Nos. 7898, 7980 and 8008 entitled *"Total Philippines Corporation vs. Commissioner of Internal Revenue"* promulgated on July 24, 2013, wherein this Court first disallowed Input VAT Carried Over from Previous Quarter for failure to present invoices and receipts. In this connection, petitioner points out that the filing of its Petition for Review (*i.e.*, on June 21, 2011); that the submission of the Report of the Independent Certified Public Accountant (ICPA) (*i.e.*, on January 2, 2013), and as to when the said ICPA testified to on the said Report (*i.e.*, on May 30, 2013), all happened prior to the said date of promulgation of the said decision in CTA Case Nos. 7898, 7980 and 8008 on July 24, 2013.

Petitioner's reasoning is specious.

As early as the year 2005, the Supreme Court, in *Commissioner of Internal Revenue vs. Manila Mining Corporation*,[17] has already made the following pronouncements, to wit:

> "Under Section 8 of RA 1125, the CTA is described as a court of record. **As cases filed before it are litigated *de novo*, party-litigants shall prove <u>every minute aspect</u> of their cases.** xxx." *(Emphasis and underscoring supplied)*

Needless to state, the phrase *"shall prove every minute aspect"* includes proving not only the amount of input VAT for the period under consideration, but also the amount of input VAT carried over from the previous quarter, if any, since this latter aspect is greatly significant in determining whether the claimant is indeed entitled to the refund of the input VAT being sought.

Parenthetically, the said pronouncements have been reiterated in subsequent Supreme Court cases, such as in *Atlas Consolidated*

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[17] G.R. No. 153204, August 31, 2005.

Mining and Development Corporation vs. Commissioner of Internal Revenue,[18] in the year 2007; and in *Dizon vs. Court of Tax Appeals, et al.*,[19] in the year 2008. Furthermore, judicial decisions of the Supreme Court assume the same authority as the statute itself.[20]

Thus, the ruling made by this Court in *"Total Philippines Corporation vs. Commissioner of Internal Revenue"* (CTA Case Nos. 7898, 7980 and 8008), disallowing input VAT carried over from the previous quarter for failure to present invoices and receipts, hardly qualifies as a new decision, since it is consistent with, if not made pursuant to, the High Court's edict that that *"party-litigants shall prove every minute aspect of their cases"*.

Moreover, in addition to the above reason, there can be no merit on petitioner's argument that the said ruling in the case of *"Total Philippines Corporation vs. Commissioner of Internal Revenue"* (CTA Case Nos. 7898, 7980 and 8008) should only be applied prospectively. Petitioner cannot validly invoke the cases of *Co vs. Court of Appeals, et al.*[21] and *Columbia Pictures, Inc., et al. vs. Court of Appeals, et al.*[22], which both relate to the rule regarding the prospectivity of judicial decisions, to justify its stand. To put it succinctly, petitioner misread the ruling in the said cases.

The said cases invoked by petitioner echo the ruling of the Supreme Court in the case of *People of the Philippines vs. Jabinal*,[23] which states:

> "**<u>Decisions of this Court</u>**, although in themselves not laws, are nevertheless evidence of what the laws mean, and this is the reason why under Article 8 of the New Civil Code 'Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system ...' The interpretation upon a law **<u>by this Court</u>** constitutes, in a way, a part of the law as of the date that law originally passed, since **<u>this Court's construction</u>** merely establishes the contemporaneous legislative intent that the law thus construed intends to effectuate. The settled rule supported by numerous authorities is a

[18] G.R. No. 145526, March 16, 2007.
[19] G.R. No. 140944, April 30, 2008.
[20] *Floresca, et al. vs. Philex Mining Corporation, et al.*, G.R. No. L-30642, April 30, 1985, citing *Caltex vs, Palomer*, 18 SCRA 247; 124 Phil. 763.
[21] G.R. No. 100776, October 28, 1993.
[22] G.R. No. 110318, August 28, 1996.
[23] G.R. No. L-30061, February 27, 1974, 55 SCRA 607.

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> restatement of legal maxim *'legis interpretatio legis vim obtinet'* — the interpretation placed upon the written law by a competent court has the force of law. xxx, but **when a doctrine of this Court is overruled and a different view is adopted, the new doctrine should be applied prospectively, and should not apply to parties who had relied on the old doctrine and acted on the faith thereof**. xxx." *(Emphases and underscoring supplied)*

It is clear from the foregoing that the "decisions" being referred to are decisions of the Supreme Court, and not that of the lower courts, including this Court; and that the rule of prospectivity of the said decision is dependent upon whether there is a *"new doctrine"* vis-à-vis an *"old doctrine"*.

Anent the term *"decisions"*, in *The Insular Life Assurance Co., Ltd., Employees Association-NATU, et al. vs. The Insular Life Assurance Co., Ltd., et al.,*[24] the Supreme Court said:

> "...the decisions referred to in article 8 of the Civil Code which reads: 'Judicial decisions applying or interpreting the laws of the Constitution shall form a part of the legal system of the Philippines,' **are only those enunciated by this Court of last resort.** We said in no uncertain terms in *Miranda, et al. vs. Imperial, et al.* (77 Phil. 1066) that **'[O]nly the decisions of this Honorable Court establish jurisprudence or doctrines in this jurisdiction.'** xxx." *(Emphases supplied)*

Thus, on this score alone, the invocation of the cases of *Co vs. Court of Appeals, et al.*[25] and *Columbia Pictures, Inc., et al. vs. Court of Appeals, et al.*[26] to have the effect of the prospective application of the ruling in *"Total Philippines Corporation vs. Commissioner of Internal Revenue"* (CTA Case Nos. 7898, 7980 and 8008), is already misplaced, since the latter was not rendered by the Supreme Court.

More importantly, there is no *"old"* judicial decision which was overruled by a *"new"* judicial decision. Thus, the rule on prospectivity of judicial decisions is not warranted in this case.

But even when We ought to consider the said ruling in *"Total*

[24] G.R. No. L-25291, January 30, 1971.
[25] Supra.
[26] Supra.

Philippines Corporation vs. Commissioner of Internal Revenue" (CTA Case Nos. 7898, 7980 and 8008) as a *"judicial decision"* as contemplated under Article 8 of the Civil Code, the rule on prospectivity thereof still does not apply. This is so because there was no *"old doctrine"* to speak of that was overruled by the said case.

Correspondingly, the Court in Division did not err when it disallowed the input VAT carried over by petitioner from the previous quarter in the amount of ₱181,171,453.02, since it was not duly proven via the presentation of VAT invoices or receipts.

The Court* En Banc *sees no valid justification to reopen the case for the reception of additional evidence.

To reiterate, petitioner avers that the Court of Tax Appeals is not bound by technical rules of evidence, and that it can reopen the case on the ground of paramount interest of justice.

The Court *En Banc* does not refute these statements. However, they are not applicable to the case of petitioner.

Although it is true that this Court is not strictly governed by technical rules of evidence, the invoicing and substantiation requirements must, nevertheless, be followed because it is the only way to determine the veracity of petitioner's claim.[27] In other words, as rules of procedure are not ends in themselves but are primarily intended as tools in the administration of justice, the presentation of the purchase receipts and/or invoices is not mere procedural technicality which may be disregarded considering that it is the only means by which the Court may ascertain and verify the truth of petitioner's claim.[28]

Furthermore, anent the motion to re-open the case *a quo*, the Court in Division did not err in denying the same.

In *Cabarles vs. Maceda, et al.*,[29] the Supreme Court said:

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[27] Refer to *Kepco Philippines Corporation vs. Commissioner of Internal Revenue*, G.R. No. 181858, November 24, 2010.

[28] Refer to *Commissioner of Internal Revenue vs. Manila Mining Corporation*, G.R. No. 153204, August 31, 2005; and *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 145526, March 16, 2007.

[29] G.R. No. 161330, February 20, 2007.

> "A motion to reopen a case to receive further proofs was not in the old rules but it was nonetheless a recognized procedural recourse, deriving validity and acceptance from long, established usage. xxx.
>
> xxx xxx xxx
>
> Generally, after the parties have produced their respective direct proofs, they are allowed to offer rebutting evidence only. However, **the court, <u>for good reasons, in the furtherance of justice</u>, may allow <u>new evidence</u> upon their original case, and its ruling will not be disturbed in the appellate court where no abuse of discretion appears. A motion to reopen may thus properly be presented** only after either or both parties had formally offered and closed their evidence, but before judgment is rendered, and **even after promulgation but before finality of judgment and <u>the only controlling guideline governing a motion to reopen is the paramount interest of justice.</u>** This remedy of reopening a case was meant to prevent a miscarriage of justice."

Based on the foregoing, the Court in Division is empowered to allow new evidence, for good reasons, and in the furtherance of justice.

In this case, however, petitioner has not shown any good reason why a reopening of the case *a quo* should have been granted by the Court in Division. Neither did petitioner show that the paramount interest of justice would be served in granting its motion to reopen the case.

As already discussed, the reason advanced by petitioner to justify the reopening of the case, *i.e.*, that the disallowance by the Court *a quo* was based on a new requirement not yet required when petitioner presented its evidentiary documents, deserves scant consideration, since it has already been decreed by the Supreme Court, as early as the year 2005, that *"party-litigants shall prove <u>every minute aspect</u> of their cases."*

In addition, petitioner cannot feign ignorance of the long-established doctrine that tax refunds, like tax exemptions, are construed *strictissimi juris*. As early as the year 1961, the Supreme Court has already made the following ruling:

> "... when the issue is whether or not the exemption from a tax imposed by law is applicable, the rule is that the exempting provision is to be construed liberally in favor of the taxing authority and strictly against exemption from tax liability, **the result being that statutory provisions for the refund of taxes are strictly construed in favor of the State and against the taxpayer** (82 C.J.S. pp. 957-958; Helvering vs. Northwest Steel Rolling Mills, 311 US 46, 85 L. ed. 29 S. Ct., 51 Am. Jur. p. 526). xxx."[30] *(Emphasis supplied)*

As such, it is axiomatic that a claimant has the burden of proof to establish the factual basis of his or her claim for tax credit or refund.[31] In this case, petitioner failed to properly discharge the said burden of proof.

WHEREFORE, in light of the foregoing considerations, the Petition for Review is **DENIED** for lack of merit. Accordingly, the Decision dated May 27, 2015 and Resolution dated October 13, 2015 of the Court in Division in CTA Case Nos. 8259 & 8296, are hereby **AFFIRMED**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

(See Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

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[30] *La Carlota Sugar Central, et al. vs. Jimenez, et al.*, G.R. No. L-12436, May 31, 1961.
[31] *Paseo Realty & Development Corporation vs. Court of Appeals, et al.*, G.R. No. 119286, October 13, 2004.

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

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COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**Promulgated:** APR 04 2017 3:27 p.m.

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CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur with the *ponencia* in denying the Petition for Review filed by Air Liquide Philippines, Inc. thereby affirming the assailed Decision dated May 27, 2015 and Resolution dated October 13, 2015 of the Court in Division.

In its Petition for Review, as in its Motion for Reconsideration of the Court in Division's assailed Resolution, petitioner prays that the trial of the case be re-opened to allow it to introduce additional documents in evidence to substantiate its input VAT carried over from previous quarters.

In several cases, I took the position that re-opening of cases even after decisions have been rendered may be allowed. These cases, however, involve scenarios wherein a plain perusal of the additional documents sought to be admitted in evidence, which are attached to the motions for reconsideration, would reveal that they are vital documents, which if considered by the Court in resolving the motions would materially alter the conclusions reached by the Court in the assailed decisions.

The foregoing position is consistent with the pronoucement of the Supreme Court in ***BPI-Family Savings Bank vs. Court of Appeals***[1] wherein the Court of Tax Appeals (CTA) dismissed the petition on the ground that petitioner failed to present as evidence its Annual Income Tax Return (ITR) for 1990 to establish the fact that petitioner had not yet credited the amount being claimed for refund to its 1990 tax liability. **Petitioner filed a motion for reconsideration attaching thereto a copy of the ITR for 1990 but the same was ignored by the CTA**. The Court of Appeals (CA) affirmed the decision of the CTA. The Supreme Court, however, reversed the CA and held the following:

> "**More important, a copy of the Final Adjustment Return for 1990 was attached to petitioner's Motion for Reconsideration filed before the CTA.** A final adjustment return shows whether a corporation incurred a loss or gained a profit during the taxable year. In this case, that Return clearly showed that petitioner incurred P52,480,173 as net loss in 1990. Clearly, it could not have applied the amount in dispute as a tax credit. Again, the BIR did not controvert the veracity of the said return. It did not even file an opposition to petitioner's Motion and the 1990 Final Adjustment Return attached thereto. In denying the Motion for Reconsideration, however, the CTA ignored the said Return. In the same vein, the CA did not pass upon that significant document.
>
> Xxx xxx xxx.
>
> In the present case, **the Return attached to the Motion for Reconsideration clearly showed that petitioner suffered a net loss in 1990**. Contrary to the holding of the CA and the CTA, petitioner could not have applied the amount as a tax credit. In failing to consider the said Return, as well as the other documentary evidence presented during the trial, the appellate court committed a reversible error. (Boldfacing and underscoring supplied)

Thus, in *Chevron Holdings Inc. [formerly Caltex (Asia) Limited] vs. Commissioner of Internal Revenue,*[2] Chevron, petitioner therein,

[1] G.R. No. 122480, April 12, 2000.
[2] CTA Case No. 8241, August 11, 2015.

filed a Motion for Partial Reconsideration with Motion for New Trial attaching thereto copies of the Articles of Incorporation and company profiles of its foreign affiliate customers, thereby giving the Court basis in determining how the documents it intends to present as additional evidence may materially alter the result of the case. In view of the relevance of the attached documents and considering that the Commissioner of Internal Revenue (CIR) failed to dispute the facts which the documents attached to the Motion for Partial Reconsideration with Motion for New Trial sought to prove, the Court allowed the re-opening of the case for their presentation.

In the case at bar, petitioner merely "manifests that it has all the supporting documents to substantiate Input VAT carried over from 2008 to 2009".[3] Apart from such allegation, however, petitioner did not attach any supporting document (not even a summary of the relevant official VAT invoices and/or receipts) to its Motion for Reconsideration in the Court in Division or even to its Petition for Review before the Court *En Banc*. Attaching the additional documents sought to be admitted in evidence to the motion for reconsideration is vital for the Court to determine whether a re-opening is indeed necessary as when the Court's initial evaluation of their relevance and materiality would show that if such documents are presented and admitted into evidence, the conclusion reached in the decision being assailed would indeed be materially altered.

In fine, I submit that the Court in Division did not err in denying petitioner's motion to re-open the case.

All told, I vote to DENY the Petition for Review filed by AIR LIQUIDE PHILIPPINES, INC. and AFFIRM the assailed Decision dated May 27, 2015 and Resolution dated October 13, 2015 of the Court in Division.

ROMAN G. DEL ROSARIO
Presiding Justice

[3] Par. 43, Petition for Review, CTA EB No. 1377 Docket, p.17.