Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

CBK POWER COMPANY LIMITED,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8624

Members:
CASTAÑEDA, JR., Chairperson
CASANOVA, and
COTANGCO-MANALASTAS, J.J.

Promulgated:
NOV 2 3 2015 4:03 pm

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RESOLUTION

CASANOVA, J.:

This resolves respondent's Motion for Partial Reconsideration Re: Decision dated September 14, 2015 filed, on September 30, 2015, with petitioner's Comment on/Opposition to Respondent's Motion for Partial Reconsideration filed, on October 19, 2015, praying that this Court's Decision dated September 14, 2015 (the Assailed Decision) be modified and the claim for refund/credit be denied in its entirety.

The dispositive portion of the Assailed Decision reads:

> "**WHEREFORE**, the instant Petition for Review is hereby **PARTIALLY GRANTED.** Accordingly, respondent is hereby **ORDERED** to **ISSUE A TAX REFUND**, in favor of petitioner, in the reduced amount of ₱66,701,986.82, representing unutilized excess input VAT incurred in relation to its zero-rated sales of electricity to the NPC for the period January 1, 2011 to December 31, 2011.
>
> **SO ORDERED."**

In the subject Motion, respondent raised this sole issue for resolution of this Court:

> **Petitioner failed to submit the complete documents to support its claim, thus, the 120-day period under Section 112 (C) will not commence to run rendering the Honorable Court without jurisdiction over the pending case.**

Respondent argues that petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau of Internal Revenue; that a claim for refund is not *ipso facto* granted because respondent Commissioner of Internal Revenue (Commissioner) still has to investigate and ascertain the validity of the claim; that only action taken by the Commissioner, in response to taxpayer-claimant's written claim for refund/credit, would constitute the decision which is appealable to the Court of Tax Appeals; and, that since petitioner failed to submit the complete documents to support its claim, the 120-day period will not commence to run rendering the Honorable Court without jurisdiction over the pending case.

By way of comment/opposition, petitioner insists that all the arguments raised in the present motion are the same arguments which have been previously articulated and duly considered in the Assailed Decision rendered by the Court of Tax Appeals. Thus, said Motion should be denied for lack of merit.

We find no valid reason to grant respondent's Motion.

This Court has consistently held that the term "complete documents" should be understood to refer to those documents that are necessary to support the application for refund or tax credit certificate, as determined by the taxpayer. The BIR examiner can require the taxpayer to submit additional documents but the examiner cannot demand what type of supporting documents should be submitted. Otherwise, the taxpayer will be at the mercy of the examiner, who may require the production of documents that the taxpayer cannot submit. Moreover, it is basic that petitioner ought to know the tax records of all taxpayers.[1]

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[1] Commissioner of Internal Revenue vs. Dakudao & Sons, Incorporated, C.T.A. E.B. Case No. 1150 (CTA Case No. 8501), May 12, 2015, citing the cases of Diageo Philippines v. Commissioner of Internal Revenue, CTA Case Nos. 7846 and 7865, January 16, 2012, citing BPI-Family Savings Bank, Inc. v. Court of Appeals, et al., G.R. No. 122480, April 12, 2000, and Commissioner of Internal Revenue v. Ironcon Builders and Development Corporation, G.R. No. 180042, February 8, 2010.

Moreover, in the case of *Commissioner of Internal Revenue vs. Philippine Bank of Communications*[2], citing the case of *Commissioner of Internal Revenue vs. Philippine Airlines, Inc.,*[3] the Court *En Banc* ruled that the failure to submit documents in support of the taxpayer's administrative claim is not fatal to his judicial claim, to wit:

> "It has been settled in several CTA *en banc* cases that **judicial claims should not be denied on the sole ground that the taxpayer allegedly failed to submit before the BIR the complete documents in support of its administrative claim for refund.** In the case of *Philippine Bank of Communications vs. Commissioner of Internal Revenue,* We passed upon the issue on the non-submission of supporting documents in the administrative level as NOT fatal to a claim for refund. The pertinent portion of the Decision provides:
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> > '**Non-submission of supporting documents in the administrative level is not fatal to a claim for refund. Judicial claims are litigated de novo and decided based on what has been presented and formally offered by the parties during the trial.** In the case of *CIR vs. Manila Mining Corporation,* it was explained that '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 should prove every minute aspect of their cases.' Finally, pieces of evidence submitted in the administrative proceeding have no evidentiary value unless presented and formally offered before the Court.
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> x x x The CTA being a court of record, the cases filed before it are litigated de novo and party litigants should prove every minute aspect of their cases. Otherwise stated, **judicial claims are being decided based on what has been presented and formally offered by party litigants during the trial of the case before the Court and not on the mere allegation of non-submission of complete documents before the BIR."** (Emphases Ours)

By such reasons, *We* reiterate *Our* stand that since there was no written notice sent by the Bureau of Internal Revenue informing petitioner that the documents it submitted were not complete or

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[2] CTA EB Case No. 933 (CTA Case No. 7915), October 7, 2013.
[3] CTA EB Case No. 775 (CTA Case No. 7828), July 24, 2012.

requiring petitioner to submit additional documents, the one hundred twenty (120)-day period started and continued to run from November 28, 2012, the date petitioner submitted its administrative claim for refund. Hence, applying subsection (C) of Section 112, respondent has 120 days or until March 28, 2013 to act on the said application. After the lapse of the 120-day period, petitioner may appeal the unacted administrative claim within thirty (30) days or until April 27, 2013. Consequently, there is no doubt that petitioner's judicial claim was timely filed on April 1, 2013.

In light of the foregoing, the Court finds no cogent justification to disturb the findings and conclusions spelled out in its September 14, 2015 Decision.

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

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice