REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

NATIONAL GRID CORPORATION OF THE PHILIPPINES,
Petitioner,

-versus-

THE CITY OF TACLOBAN and **ZOSIMA A. CORDAÑO,** in her capacity as City Treasurer of Tacloban,
Respondents.

CTA EB No. 2133
(CTA AC No. 181)

Present:

DEL ROSARIO, *PJ,*
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO, and
CUI-DAVID, *JJ.*

Promulgated:

MAR 3 1 2022 3:05 p.m.

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DECISION

REYES-FAJARDO, J.:

Challenged in the Petition for Review[1] dated September 6, 2019 are the Decision[2] dated January 30, 2019 and Resolution[3] dated August 14, 2019 in CTA AC No. 181, whereby the Court in Division sustained the City Treasurer of Tacloban's deficiency contractor's tax assessment issued against National Grid Corporation of the Philippines for the year 2009 in the total amount of ₱2,022,863.81.

The facts follow.

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1 *Rollo,* pp. 1-20.
2 Id. at pp. 30-44.
3 Id. at pp. 149-155.

Petitioner National Grid Corporation of the Philippines is a corporation created and existing under the laws of the Republic of the Philippines, with principal office address at the NGCP Building, Quezon Avenue corner BIR Road, Diliman, Quezon City. Subject to certain limitations, petitioner was granted a legislative franchise to operate, manage and maintain, and in connection therewith, to engage in the business of conveying or transmitting electricity through high voltage back-bone system of interconnected transmission lines, substations and related facilities, systems operations, and other activities that are necessary to support the safe and reliable operation of a transmission system and to construct, install, finance, manage, improve, expand, operate, maintain, rehabilitate, repair and refurbish the present nationwide transmission system of the Republic of the Philippines, pursuant to Section 1 of Republic Act (RA) No. 9511.

Respondents City of Tacloban and Zosima A. Cordaño are the local government unit (LGU) and the City Treasurer of Tacloban City, respectively. They respectively hold office at the Office of the City Mayor and the Office of the City Treasurer of Tacloban, City Hall Compound, Tacloban City.

In the Letter dated September 28, 2009, respondent City Treasurer Cordaño stated that with reference to the power bills paid by petitioner to Leyte II Electric Cooperative, Inc. (LEYECO II) for the period covering 2001 to August 2009 in the amount of ₱1,565,687,633.11, petitioner is requested to pay the assessment in the amount of ₱29,493,740.76, as provided under Section 80 of Ordinance 2007-10-67.

In the Letter dated November 3, 2009, petitioner protested respondent City Treasurer's assessment embodied in the Letter dated September 28, 2009.

On February 3, 2010, petitioner received the Letter dated February 1, 2010 from respondent City Treasurer, reducing its previous assessment of the tax due to a total amount of ₱2,022,863.81, covering the period beginning January to December 2009. Respondent City Treasurer maintained that the contractor's tax assessed against petitioner is separate and is not subsumed by the 3% franchise tax under Section 9 of RA No. 9511.

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On February 18, 2010, petitioner filed a Petition[4] with RTC - Branch 8 of Tacloban City (RTC-Tacloban), praying, *inter alia,* for the nullification and cancellation of the tax assessments dated September 28, 2009 and February 1, 2010 issued by respondent City Treasurer. The case was docketed as Civil Case No. 2010-02-24.

On April 12, 2013, the RTC-Tacloban rendered a Decision,[5] disposing the case as follows:

> **WHEREFORE,** foregoing premises considered, the appeal is hereby **DISMISSED**. Costs against (petitioner).
>
> **SO ORDERED.**

Petitioner filed its Motion for Reconsideration dated August 14, 2013 to the Decision dated April 12, 2013, to which respondents filed their Comment/Opposition, followed by petitioner's Reply thereto dated October 23, 2013.

In the Order dated December 14, 2016,[6] the RTC-Tacloban denied petitioner's Motion for Reconsideration dated August 14, 2013.

On February 3, 2017, petitioner filed a Petition for Review[7] before the Court in Division seeking for the reversal of the Decision dated April 12, 2013 and Order dated December 14, 2016, both rendered by the RTC-Tacloban.

On January 30, 2019, the Court in Division rendered the challenged Decision,[8] the dispositive portion of which states:

> **WHEREFORE,** in light of the foregoing considerations, the instant Petition for Review is **DENIED** for failure of petitioner to prove payment of the required 3% franchise tax for taxable year 2009.
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> Accordingly, the assessed contractor's tax against petitioner for the year 2009 in the aggregate amount of ₱2,022,863.81, as

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4 Docket (CTA AC No. 181), pp. 59-69.
5 Id. at pp. 29-37.
6 Id. at pp. 38-39.
7 Id. at pp. 8-28.
8 *Supra,* at note 2.

> demanded in the letter dated February 1, 2010 issued by respondent City Treasurer, and as reflected in the notice of assessment attached thereto, is **UPHELD**. Petitioner is hereby **ORDERED TO PAY** the aggregate amount of ₱2,022,863.81 to respondent City of Tacloban.
>
> **SO ORDERED.**

On March 5, 2019, petitioner filed its Motion for Reconsideration[9] to the challenged Decision dated January 30, 2019, enclosing a copy of a Certification[10] dated September 4, 2018 issued by the LT-Document Processing & Quality Assurance Division, Large Taxpayer's Service of the Bureau of Internal Revenue (BIR) to show that it paid the 3% franchise tax for the year 2009.

In the equally challenged Resolution[11] dated August 14, 2019, the Court in Division denied petitioner's Motion for Reconsideration in the following manner:

> **WHEREFORE**, in light of the foregoing considerations, the instant *Motion for Reconsideration* is **DENIED** for lack of merit.
>
> **SO ORDERED.**

Hence, this Decision.

Petitioner argues that the payment of the 3% franchise tax is not a pre-requisite for the enjoyment of the tax-exempt privileges under Section 9 of RA No. 9511 given that there is nothing in said law imposing such a requirement. Assuming for the sake of argument that prior payment of the 3% franchise tax is a requirement for the enjoyment of tax exemption under said law, petitioner nonetheless asserts that by its presentation of the BIR Certification dated September 4, 2018, it had satisfactorily proved that it paid its franchise taxes for the year 2009.

Petitioner complains that since the matter of actual payment of 3% franchise tax was not advanced as an issue before the RTC-Tacloban, it cannot be addressed by the Court in Division on appeal.

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9 Docket (AC No. 181), pp. 260-271.

10 Annex "B," petitioner's Motion for Reconsideration dated March 4, 2019. Id. at pp. 288-290.

11 *Supra*, at note 3.

In closing, petitioner states that respondent City Treasurer's deficiency contractor's tax assessment amounting to of ₱2,022,863.81 for calendar year 2009 must perforce be invalidated.

On the other hand, respondent City Treasurer theorizes that the Letter dated February 1, 2010, reducing her previous assessment from ₱29,493,740.76 to ₱2,022,863.81 is a new assessment; hence, petitioner should have protested it anew under Section 195 of the LGC. As such, petitioner's resort to the RTC-Tacloban to assail the same was improper.

Respondent City Treasurer maintains that the tax exemption under Section 9 of RA No. 9511 does not include the deficiency contractor's tax she imposed against petitioner because it is pursuant to a local ordinance promulgated in the exercise of the City of Tacloban's local taxing power.

THE RULING OF THE COURT

The Petition is denied.

Section 9 of RA No. 9511 reads:

> **Section 9.** ***Tax Provisions.*** - In consideration of the franchise and rights hereby granted, the Grantee, its successors or assigns, shall pay a franchise tax equivalent to three percent (3%) of all gross receipts derived by the Grantee from its operation under this franchise. Said tax shall in lieu of income tax and any and all taxes, duties, fees and charges of any kind, nature or description levied, established or collected by any authority whatsoever, local or national, on its franchise, rights, privileges, receipts, revenues and profits, and on properties used in connection with its franchise, from which taxes, duties and charges, the Grantee is hereby expressly exempted: *Provided,* That the Grantee, its successors or assigns, shall be liable to pay the same taxes on their real estate, buildings and personal property, exclusive of this franchise, as other corporations are now or hereby may be required by law to pay: *Provided, further,* That payment by Grantee of the concession fees due to PSALM under the concession agreement shall not be subject to income tax and value-added tax (VAT).

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Petitioner argues that the payment of the 3% franchise tax is not a precondition for the enjoyment of its tax exemption under Section 9 of RA No. 9511.

The Court disagrees.

In *National Grid Corporation of the Philippines v. Oliva, (Oliva)*[12] and as applied by the Court in one case,[13] it has been ruled that petitioner's payment of the 3% franchise tax based on the gross receipts it derived from the exercise of its franchise is in lieu of all taxes, whether national or local, thus:

> *Second.* The "in lieu of all taxes" clause is strictly limited to the kind of taxes, taxing authority, and object of taxes specified in the law.
>
> Section 9 of RA 9511 states that NGCP's payment of franchise tax is in lieu of payment of "income tax and any and all taxes, duties, fees and charges of any kind, nature or description levied, established or collected by any authority whatsoever, **local or national,** on its franchise, rights, privileges, receipts, revenues and profits, and on properties used in connection with its franchise. Thus, ... Section 9 of RA 9511 clearly stated that the NGCP's "in lieu of all taxes" clause includes taxes imposed by the local government on properties used in connection with NGCP's franchise.
>
> ...

The Supreme Court went on further to declare in *Oliva* that petitioner's payment of the 3% franchise tax based on the gross receipts it derived from the exercise of its franchise is sufficient for petitioner to invoke its tax exemption under Section 9 of RA No. 9511, to wit:

> ...
>
> Section 9 of RA 9511 provides that NGCP shall pay "a franchise tax equivalent to three percent (3%) of all gross receipts derived by the Grantee from its operation under this franchise." This franchise tax is "**in lieu of** income tax and **any and all taxes,** duties, fees and charges of any kind, nature or description levied, **established or collected by any authority whatsoever, local or national,** on its franchise, rights, privileges, receipts, revenues and profits, and **on properties used in connection with its franchise, from which**

12 G.R. No. 213157, August 10, 2016.

13 See *City Assessor's Office of Valenzuela City v. National Grid Corporation of the Philippines,* CTA EB No. 2100, September 23, 2020.

> **taxes,** duties and charges, **the Grantee is hereby expressly exempted."**
>
> It is very clear that NGCP's payment of franchise tax exempts it from payment of real property taxes on properties used in connection with its franchise. However, NGCP's tax exempt status on real property due to the "in lieu of all taxes" clause is qualified: NGCP shall be liable to pay the same tax as other corporations on real estate, buildings and personal property exclusive of their franchise. The phrase "exclusive of this franchise" means that real estate, buildings, and personal property used in the exercise of the franchise are not subject to the same tax as other corporations.[14]

Just as petitioner's payment of the 3% franchise tax in *Oliva* is the operative act to claim exemption from real property tax under Section 9 of RA No. 9511, so too should the same standard be applied in the present case to exempt petitioner from the payment of other local taxes. Section 9 of RA No. 9511 covers not only real property taxes, but also other local taxes as well. Thus, proof of petitioner's prior payment of the 3% franchise tax based on its gross receipts derived from its operation under its franchise is required to reap the benefits of the national and local tax exemption set forth in Section 9 of RA No. 9511. In reverse, failure to prove such prior payment of the required 3% franchise tax would lead to petitioner's non-entitlement to its national and local tax exemption specified under Section 9 of RA No. 9511.

Petitioner asserts that by its presentation of the BIR Certification dated September 4, 2018, it had satisfactorily proved that it paid its franchise taxes for the year 2009.

The Court differs.

Section 34, Rule 132 of the Rules of Court, as amended provides that courts shall not consider any evidence which was not formally offered.[15] The reason for this rule is:

> ... because judges are mandated to rest their findings of facts and their judgment only and strictly upon the evidence offered by the parties at the trial. Its function is to enable the trial judge to know the purpose or purposes for which the proponent is presenting the

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[14] Boldfacing in the original. Underscoring supplied.

[15] **Section 34.** *Offer of evidence.* - The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified. See *Montelibano v. Yap*, G.R. No. 197475, December 6, 2017.

> evidence. *On the other hand, this allows opposing parties to examine the evidence and object to its admissibility.* Moreover, it facilitates review as the appellate court will not be required to review documents not previously scrutinized by the trial court.[16]

Relevantly, the Rules of Court are clear as to *when* petitioner should present evidence. These are: *first,* during trial whereby the parties present their evidence to prove their respective cause of action or defense;[17] *second,* after trial but *before* judgment by moving for the reopening of the case;[18] and *third, after* judgment and within the period of taking an appeal by moving for new trial.[19]

Here, petitioner could have earlier obtained a BIR Certification and presented it as evidence in the proceedings before the RTC-Tacloban for evaluation and consideration thereof, yet it failed. Neither did petitioner move for reopening of the case or for new trial to admit such document as evidence by the RTC-Tacloban. Only when the judgment rendered by the Court in Division proved averse to its cause did petitioner opt to belatedly enclose the BIR Certification for the first time in its Motion for Reconsideration thereof. Hence, the Court may not consider the document now. It should be noted that evidence not formally offered has no probative value and must be excluded by the court.[20]

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16 *Republic of the Philippines v. Gimenez,* G.R. No. 174673, January 11, 2016.

17 Section 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:
(a) The plaintiff shall adduce evidence in support of his or her complaint;
(b) The defendant shall then adduce evidence in support of his or her defense, counterclaim, cross-claim and third-party complaint;
...

18 In *Sindophil, Inc. v. Republic of the Philippines,* G.R. No. 204594, November 7, 2018, the Supreme Court ruled that the reopening of a case to introduce new evidence is governed by Section 5(f), Rule 30 of the Rules of Court which provides: "(f) The parties may then respectively adduce rebutting evidence only, unless the court, for good reasons and in the furtherance of justice, permits them to adduce evidence upon their original case; ..."

19 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:
(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
(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.
...

20 *Republic of the Philippines v. Gimenez, supra,* at note 16.

The Court is not unmindful of the exception to the rule on formal offer under Section 34, Rule 132 of the Rules of Court. Specifically, evidence not formally offered may be considered by the Court provided the following requisites are present: (1) the evidence must have been duly identified by testimony duly recorded; and (2) the same must have been incorporated in the records of the case.[21] Petitioner failed to satisfy the *first* requisite.

While the BIR Certification dated September 4, 2018 was incorporated in the record of the case by attaching the same to petitioner's Motion for Reconsideration before the Court in Division, such document was not identified by testimony duly recorded; hence, the exception to the rule on formal offer under Section 34, Rule 132 of the Rules of Court may not be applied in this case.

Granting for the sake of argument that the BIR Certification dated September 4, 2018[22] may be used in deciding this case, the information contained therein leaves much to be desired. To be precise, the BIR Certification dated September 4, 2018 states that franchise taxes in the total amount of ₱1,055,119.672.75 were collected from petitioner in 2009, among others. However, such Certification failed to demonstrate that: *first*, the amounts collected from petitioner were the very same franchise taxes referred in Section 9 of RA No. 9511; and *second*, the franchise taxes in the total amount of ₱1,055,119.672.75 collected from petitioner in 2009 corresponds to 3% of its gross receipts derived from its operations under its franchise as mandated Section 9 of RA No. 9511.

In a last-ditch effort to ward off defeat, petitioner complains that the Court in Division erred in addressing the issue of its alleged payment of franchise taxes for 2009 given that it was not raised as an issue before the RTC-Tacloban.

Petitioner is in error.

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21 *Heirs of Mabborang v. Mabborang*, G.R. No. 182805, April 22, 2015; *Sabay v. People*, G.R. No. 192150, October 1, 2014; *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, July 2, 2014; *Star Two (SPV-AMC), Inc. v. Ko*, G.R. No. 185454, March 23, 2011; and *The Heirs of Romana Saves v. The Heirs of Escolastico Saves*, G.R. No. 152866, October 6, 2010.

22 *Supra*, at note 10.

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Section 1, Rule 14[23] of the Revised Rules of the Court of Tax Appeals[24] provides that the Court is not bound by the issues raised by the parties and is expressly allowed to rule on related issues necessary to achieve an orderly disposition of the case.

True, the issue on petitioner's actual payment of the required 3% franchise tax was not raised before the RTC-Tacloban. However, the Court in Division may rule on such matter because petitioner's payment of the 3% franchise tax based on its gross receipts derived from the exercise of its franchise is determinative of the issue of whether it is liable for respondent City Treasurer's deficiency contractor's tax assessment in the total amount of ₱2,022,863.81 for the periods January to December 2009.

WHEREFORE, the Petition for Review dated September 6, 2019 filed by National Grid Corporation of the Philippines is **DENIED**. The Decision dated January 30, 2019 and Resolution dated August 14, 2019 in CTA AC No. 181 are **AFFIRMED**.

SO ORDERED.

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

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

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

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[23] **SECTION 1.** *Rendition of judgment.* - ...

In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.

[24] A.M. No. 05-11-07-CTA.

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

With Concurring and Dissenting Opinion
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

LANEE S. CUI-DAVID
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

NATIONAL GRID CORPORATION OF THE PHILIPPINES, *Petitioner,*	**CTA EB No. 2133** (CTA AC No. 181)
	Present:
-*versus*-	Del Rosario, *P.J.* Castañeda, Jr., Uy, Ringpis-Liban, Manahan, Bacorro-Villena, Modesto-San Pedro, Reyes-Fajardo, and Cui-David, JJ.
THE CITY OF TACLOBAN and **ZOSIMA A. CORDAÑO**, in her capacity as City Treasurer of Tacloban, *Respondent.*	Promulgated: MAR 3 1 2022 3:05 p.m.

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CONCURRING AND DISSENTING OPINION

MANAHAN, *J.:*

I concur with the Decision of my esteemed colleague, Justice Marian Ivy F. Reyes-Fajardo, that petitioner's payment of the 3% franchise tax based on gross receipts derived from the exercise of its franchise is in lieu of all taxes, whether national or local.[1] Thus, proof of petitioner's prior payment of the 3% franchise tax based on its gross receipts derived from its operation under its franchise is required to reap the benefits of the national and local tax exemption set forth in Section 9 of Republic Act (RA) No. 9511.[2]

However, the *ponencia* did not consider the Bureau of Internal Revenue (BIR) Certification dated September 4, 2018 which was attached to petitioner's Motion for Reconsideration filed before the Court of Tax Appeals (CTA) Division on March

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[1] *National Grid Corporation of the Philippines v. Oliva*, G.R. No. 213157, August 10, 2016.

[2] Decision, p. 7.

5, 2019, for not having been formally offered and admitted into evidence.

In this instance, I differ with respect to the value given the said BIR Certification dated September 4, 2018 and I am inclined to give credence to the BIR Certification despite not having been formally offered and admitted during trial.

In *Filminera Resources Corporation v. Commissioner of Internal Revenue*,[3] the Supreme Court ruled that substantial justice would justify the admission of an exhibit which was merely attached to the Motion for Reconsideration, citing *BPI-Family Savings Bank, Inc. v. Court of Appeals et al.*[4], as follows:

> At the outset, it is undisputed that petitioner had substantially proven the existence of excess input VAT amounting to P49,489,584.45 for the period covering January 1, 2011 to March 31, 2011 for fiscal year ending in June 30, 2011. However, the question as to whether the said excess input VAT was utilized or carried over credit to the succeeding quarters may only be resolved upon final determination of the admissibility of Annex "P-1."
>
> The CTA chose to err on the side of caution in deciding to deny the admission of the document which would prove the remaining issue on the entitlement to a refund of petitioner. The CTA was looking for a specific allegation of inadvertence or the intention to correct the evidence previously offered, which petitioner failed to state in its motion for reconsideration.
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> We, however, rule that substantial justice would justify the admission of the Annex "P-1" in favor of petitioner.
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> Section 8 of Republic Act (RA) No. 1125 or An Act Creating the Court of Tax Appeals, as amended by RA No. 9282, specifically provides:
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>> Section 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 notices. It shall prescribe the form of its writs and processes. **It shall have the power to promulgate rules and regulations** for the conduct of the business of the Court, and as

[3] G.R. No. 233581, March 11, 2019 Resolution.
[4] G.R. No. 122480, April 12, 2000. *am*

> 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**. (emphasis ours)

Clearly, liberal application of technical rules of evidence is generally allowed in proceedings before the CTA.

Contrary to the cited jurisprudence of the CTA, We found a more appropriate ruling of this Court on the matter of admission of belatedly submitted evidence. In *BPI-Family Savings Bank, Inc. v. Court of Appeals, et al.,*, the taxpayer was able to prove that it had excess withholding taxes for the year 1989 and was, thus, entitled to a refund amounting to P112,491.00. The CTA and CA, however, denied the claim for tax refund. Since petitioner declared in its 1989 Income tax Return that it would apply the excess withholding tax as a tax credit for the following year, the tax court held that petitioner was presumed to have done so. The CTA and the CA ruled that petitioner failed to overcome this presumption because it did not present its 1990 Return, which would have shown that the amount in dispute was not applied as a tax credit. However, a copy of the Final Adjustment Return for 1990 was attached to petitioner's Motion for Reconsideration filed before the CTA. Thus, the Court has held:

> True, strict procedural rules generally frown upon the submission of the Return after the trial. The law creating the Court of Tax Appeals, however, specifically provides that proceedings before it "shall not be governed strictly by the technical rules of evidence." The paramount consideration remains the ascertainment of truth. Verily, the quest for orderly presentation of issues is not an absolute. It should not bar courts from considering undisputed facts to arrive at a just determination of a controversy.
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> 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. *on*

> It should be stressed that the rationale of the rules of procedure is to secure a just determination of every action. They are tools designed to facilitate the attainment of justice. But there can be no just determination of the present action if we ignore, on grounds of strict technicality, the Return submitted before the CTA and even before this Court. To repeat, the undisputed fact is that petitioner suffered a net loss in 1990; accordingly, it incurred no tax liability to which the tax credit could be applied. Consequently, there is no reason for the BIR and this Court to withhold the tax refund which rightfully belongs to petitioner.
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> x x x x
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> Finally, respondents argue that tax refunds are in the nature of tax exemptions and are to be construed *strictissimi juris* against the claimant. Under the facts of this case, we hold that petitioner has established its claim. Petitioner may have failed to strictly comply with the rules of procedure; it may have even been negligent. These circumstances, however, should not compel the Court to disregard this cold, undisputed fact: that petitioner suffered a net loss in 1990, and that it could not have applied the amount claimed as tax credits.
>
> Substantial justice, equity and fair play are on the side of petitioner. Technicalities and legalisms, however, exalted, should not be misused by the government to keep money not belonging to it and thereby enrich itself at the expense of its law-abiding citizens. If the State expects its taxpayers to observe fairness and honesty in paying their taxes, so must it apply the same standard against itself in refunding excess payments of such taxes. Indeed, the State must lead by its own example of honor, dignity and uprightness. (citations omitted)

Similarly, in *CIR v. Ironcon Builders and Development Corporation*, We have held:

> The rule is that before a refund may be granted, respondent Ironcon must show that it had not used the creditable amount or carried it over to succeeding taxable quarters. Originally, the CTA's Second Division said in its January 5, 2006 decision that Ironcon's failure to offer in

evidence its quarterly returns for 2001 was fatal to its claim. Ironcon filed a motion for reconsideration, attaching its 2001 returns, and, at the hearing of the motion, had these returns marked as Exhibits "A-1," "B-1,", "C-1," and "D-1". Petitioner CIR argues that these Exhibits should be deemed inadmissible considering that they were offered only after trial had ended and should be treated as forgotten evidence.

Citing *BPI-Family Savings Bank v. Court of Appeals*, the CTA ruled that once a claim for refund has been clearly established, it may set aside technicalities in the presentation of evidence. Petitioner CIR points out, however that the present case is not on all fours with BPI. The latter case dealt with refund of creditable income taxes withheld, for which the NIRC specifically grants taxpayers the option to apply for refund of any excess.

But, considering the CTA's finding in the present case that Ironcon had excess creditable VAT withheld for which it was entitled to a refund, it makes no sense to deny Ironcon the benenfit of the *BPI* ruling that overlooks technicalities in the presentation of evidence. In *BPI*, this Court admitted an exhibit attached to the claimant's motion for reconsideration, even if the claimant submitted it only after the trial.

> [The claimant] may have failed to strictly comply with the rules of procedure; it may have even been negligent. These circumstances, however, should not compel the Court to disregard this cold, undisputed fact: that [the claimant] xxx could not have applied the amount claimed as tax credits.

Substantial justice dictates that the government should not keep money that does not belong to it at the expense of citizens. Since he ought to know the tax records of all taxpayers, petitioner CIR could have easily disproved the claimant's allegations. That he chose not to amounts to a waiver of that right. Also, the CIR failed in this case to make a timely objection to or comment on respondent Ironcon's offer of the documents in question despite an opportunity to do so. Taking all these circumstances together, it was sufficiently

> proved that Ironcon's excess creditable VAT withheld was not carried over to succeeding taxable quarters.

> In this case, there is no doubt that petitioner was able to prove its excess input VAT. The amended BIR Form 2550Q for the first quarter of 2012 shows that petitioner has a VAT refund/TCC claim in the total amount of P360,739,406.52 which is inclusive of the proven excess input VAT of P49,489,584.45 for the period January to March 2011. Additionally, in its Formal Offer of Evidence, although it had attached the original BIR 2550Q for the 1st quarter of fiscal year 2012, the intention to show that petitioner has deducted in its allowable input VAT the originally claimed P51,966,544.20 was apparent when it mentioned the purpose of offering Annex "P-19", xxx

> xxx

> A careful scrutiny of Annex "P-19" shows that there is nothing indicated on the spaces provided for "VAT refund/TCC claimed," thus, it could not serve the very purpose of offering the said exhibit, and consequently, it was the basis of the CTA Division in denying the claim. However, upon the presentation of the amended form which was attached as Annex "P-1" in petitioner's Motion for Reconsideration, it became clear and evident that it was the form that petitioner was referring to in its Formal Offer of Evidence. Therefore, we see no reason to deprive petitioner of what is rightfully theirs only because the aforesaid amended BIR Form was belatedly submitted.

> This is not to say that we should overlook the government's right to due process by allowing the admission of the document without petitioner having formally offered the same and without giving the CIR the chance to examine its due execution and authenticity. In admitting Annex "P-1," We bear in mind that this form was submitted to the BIR thru its electronic filing and payment system (eFPS), thus, it has every opportunity to verify through its system the veracity of the attached document.

While not on all fours with the case at bar, the needs of substantial justice similarly call for the liberal application of the technical rules of evidence in this case.

As found by the *ponencia*, the payment of the 3% franchise tax is the operative act to claim the national and local tax exemption set forth in Section 9 of RA No. 9511. The only remaining fact to be proven is whether petitioner herein paid the 3% franchise tax based on its gross receipts derived from the operation of its franchise. To prove such payments, petitioner attached the BIR Certification dated September 4, 2018.

A perusal of the BIR Certification shows that: (i) it was issued by the Large Taxpayers Service (LTS)-Document Processing & Quality Assurance Division of the BIR; (ii) it contains a summary of tax payments made by petitioner through BIR Form No. 2551M,[5] for the periods covering February 2009 up to December 2017; and, (iii) that it contains statement that the "collection listed above representing payment(s) of Franchise Tax was/were made thru Electronic Filing and Payment System (eFPS)."[6]

While respondents City of Tacloban and City Treasurer Zosima A. Cordaño have no means of verifying the above BIR Certification, I submit that the said BIR Certification, issued by the BIR, which is the agency tasked with the collection of all national internal revenue taxes,[7] enjoys the presumption of regularity in the performance of official duties, and is sufficient to prove the fact of payment of the 3% franchise tax for the periods stated in the BIR Certification.

Worthy of note is the fact that the issue of payment of the 3% franchise tax was never raised by the parties in the Regional Trial Court (RTC)-Tacloban and before the CTA Division. While it is true that the CTA can validly resolve issues not raised by the parties if resolving such related issues is necessary to achieve an orderly disposition of the case,[8] petitioner cannot be expected to have presented the said BIR Certification to prove its payment, when payment was not an issue.

It should also be noted that trial only occurred before the RTC, wherein the issue of payment of the 3% franchise tax was not raised. On the other hand, no trial was held before the CTA Division which would grant petitioner the opportunity to present and formally offer the said BIR Certification.

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[5] This pertains to percentage tax return which franchisees and other non-VAT registered taxpayers are obliged to file with the BIR

[6] CTA AC No. 181 Docket, p. 290.

[7] Section 2, 1997 NIRC, as amended.

[8] Section 1, Rule 14 of the Revised Rules of the CTA.

Based on the foregoing, I highly recommend that the BIR Certification be given credence as to the fact of petitioner's payment of the 3% franchise tax. However, considering that the period of the proposed contractor's tax assessment by respondents is January to December 2009 and the collections indicated in the BIR Certification for taxable year 2009 covered only the periods February to December 2009, there is a need to determine if any contractor's tax payment for the month of January 2009 is due in view of the non-filing of BIR Form No. 2551M by petitioner for the said period.

Thus, I vote to partially grant petition for review. The contractor's tax assessments from the period February to December 2009 should be nullified and cancelled. However, as regards the potential tax liability for the January 2009 tax return period, the case should be remanded to the RTC-Tacloban for the determination of petitioner's potential contractor's tax liability for January 2009.

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice