Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

UNITED COCONUT PLANTERS BANK, Petitioner,	**CTA EB Case No. 1108** (CTA Case No. 8274)
- versus -	Present: DEL ROSARIO, *P.J.*, CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS, and RINGPIS-LIBAN, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: APR 22 2015 11:15 a.m.

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RESOLUTION

CASANOVA, *J.*:

For Resolution of this Court are: (1.) petitioner's Motion for Reconsideration,[1] filed thru registered mail on December 3, 2014, and (2.) Supplemental Motion for Reconsideration,[2] filed on January 28, 2015, with respondent's Comment and/or Opposition (to the Motion for Reconsideration and Supplemental Motion for Reconsideration), filed on February 16, 2015, praying for this Court to reverse and set aside its Decision[3], promulgated on November 12, 2014 (Assailed Decision) and the Special First Division's Resolution[4] promulgated on November 26, 2013 (Assailed Resolution) and, a new one be promulgated granting petitioner's claim for refund or issuance of tax credit certificate (TCC) in the total amount of Sixty Five Million Thirty Three Thousand Nine Hundred Seventy Two Pesos (P65,033,972.00) representing unutilized creditable withholding taxes (CWT) for the taxable year 2008.

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[1] En Banc Rollo, pp. 221-233.
[2] Ibid., pp. 237-259.
[3] Id., pp. 206-216.
[4] Division Docket, pp. 590-592.

In the subject pleadings, petitioner insists that it had already presented numerous documents such as various General Ledgers for the different income payments received by petitioner, Summary Schedule of CWT supported with original BIR Form 2307, Contract to Sell (CTS), and/or Deed of Absolute Sale (DOAS) executed in 2008 and with related income/loss deferred and amortized in 2008, as well as the ICPA's report and other related documents which will prove that that its income upon which taxes were withheld had been included in its Income Tax Return.

Petitioner further claims that the substantial portion of income payments covered in the instant case pertain to its Real and Other Properties Acquired (ROPA). This ROPA includes real and other properties, other than those used for banking purposes or held in the investment portfolio, acquired by the bank judicially or extra-judicially in settlement of unpaid or delinquent loans. It further posits that, unlike most types of income where the amount subjected to withholding tax is also the amount of income/revenue recognized in the books of a taxpayer, the income (and loss in some cases) generated from the sale of ROPA is not the same as the amount subjected to withholding taxes. Accordingly, the income that is recorded in the books is the difference between the selling price and the book value of the asset which could be an income/gain or a loss. It is this gain or loss that flows into the revenue account of the taxpayer and not the amount that is subjected to withholding tax. Thus, the amount subjected to withholding tax cannot be traced to the revenue or income account of the seller.

To illustrate the same, petitioner cited specific samples of transaction involving ROPA and how said transactions are being recorded using, among others, the following documents: Transaction Sheet Register[5]; Subsidiary Ledgers and Annual Account Ledgers;[6] Statement of Income and Expenses[7]; List of Adjustments in the Proposed Adjusting Journal Entries[8]; Audited Financial Statements for 2008 under "Loss on sale of acquired assets (Note 11)"[9]; Schedule of Trading and Securities Gain per Audited Financial Statement (2008)[10]; and, 2008 Income Tax Return (ITR)[11]; Schedule of ROPA Booking Details for the CWT of Year 2008[12].

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[5] Exhibits "Q-1" to "Q-64"; Annex "A" to the Supplemental Motion for Reconsideration, En Banc Rollo, pp. 260-262.
[6] Annex "B" to the Supplemental Motion for Reconsideration, En Banc Rollo, pp. 263-296.
[7] Annex "C" to the Supplemental Motion for Reconsideration, En Banc Rollo, pp. 297-309.
[8] Annex "D" to the Supplemental Motion for Reconsideration, En Banc Rollo, pp. 310-318.
[9] Annex "E" to the Supplemental Motion for Reconsideration, En Banc Rollo, p. 319.
[10] Annex "F" to the Supplemental Motion for Reconsideration, En Banc Rollo, pp. 320.
[11] Annex "G" to the Supplemental Motion for Reconsideration, En Banc Rollo, pp. 322-324.
[12] Annex "J" to the Supplemental Motion for Reconsideration, En Banc Rollo, pp. 339-351.

While the abovementioned documents could have successfully proven that the income related to the creditable withholding tax claim actually formed part of petitioner's gross income reported in its Annual ITR for the taxable year 2008, the Court, however, found majority of the said documents to have been not formally offered in evidence:

1. Subsidiary Ledgers for Account No. 932400-"Profit/(Loss) from Assets Sold/Exchanged-SAMD";[13]

2. Subsidiary Ledgers for Account No. 932500-"Profit/(Loss) from Assets Sold/Exchanged";[14]

3. List of Adjustments in the Proposed Adjusting Journal Entries[15]

4. Statement of Income and Expenses;[16] and,

5. Schedule of Trading and Securities Gain per Audited Financial Statement (2008);[17]

Under Section 8 of RA 1125, the CTA is categorically described as a court of record. As cases filed before it are litigated de novo, party-litigants shall prove every minute aspect of their cases. **Indubitably, no evidentiary value can be given the pieces of evidence, as the rules on documentary evidence require that these documents must be formally offered before the CTA.**[18]

In relation thereto, Section 34, Rule 132 of the Revised Rules of Court states that the court shall consider no evidence which has not been formally offered, to wit:

> "SEC. 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."

[13] Annex "B" to the Supplemental Motion for Reconsideration, En Banc Rollo, pp. 263-287.
[14] Annex "B" to the Supplemental Motion for Reconsideration, En Banc Rollo, pp. 288-291.
[15] See footnote no. 6.
[16] See foot note no. 5.
[17] See footnote no.8.
[18] Rafael Arsenio S. Dizon vs. Court of Tax Appeals and Commissioner of Internal Revenue, G.R. No. 140944, April 30, 2008.

It is clear from the foregoing provision that for evidence to be considered, the same must be formally offered. The offer is necessary because it is the duty of a judge to rest his findings of facts and his judgments only and strictly upon the evidence offered by the parties at the trial.[19] Its function is to enable the trial judge to know the purpose or purposes for which the proponent is presenting the evidence. On the other hand, this allows opposing parties to examine the evidence and object to its admissibility.[20]

Further, the case at bench does not fall within the exception in *People of the Philippines vs. Susana Napat-a y Macabio*,[21] where the Court relaxed the foregoing rule and allowed evidence, not formally offered, to be admitted and considered, provided the following requirements are present: (i) the same has been duly identified by testimony duly recorded and, (ii) it has itself been recorded and incorporated in the records of the case.

Therefore, based from all the foregoing, the Court *En Banc* cannot admit and consider the aforementioned documents for its consideration. The failure of petitioner to make a formal offer of said documents was detrimental to its cause.

WHEREFORE, premises considered, petitioner's Motion for Reconsideration, filed on December 3, 2014, and Supplemental Motion for Reconsideration,[22] filed on January 28, 2015, are hereby **DENIED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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[19] Jose Tabuena vs. Court of Appeals et al., G.R. No. 85423, May 6, 1991.
[20] Heirs of Pedro Pasag et al., vs. Spouses Lorenzo and Florentina Parocha et al., G.R. No. 155483, April 27, 2007.
[21] G.R. No. 84951, November 14, 1989.
[22] En Banc Rollo, pp. 237-259.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice