REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

ONCHO PHILIPPINES, INCORPORATED,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9442

Members:

CASTAÑEDA, JR., *Chairperson, and*
MANAHAN, *JJ.*

Promulgated:
APR 05 2019 10:33 am

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RESOLUTION

CASTAÑEDA, JR., *J.*:

For the Court's resolution is respondent's **Motion for Partial Reconsideration**, filed through registered mail on January 31, 2019 and received by this Court on February 7, 2019, with petitioner's **Comment/Opposition (To Respondent's Motion for Partial Reconsideration)**, filed on March 1, 2019.

Respondent moves for the reconsideration and setting aside of the Decision dated January 14, 2019, the dispositive portion of which reads:

> **WHEREFORE,** premises considered, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND** to petitioner the amount of **₱2,563,990.68**, representing its excess and unutilized input VAT attributable to zero-rated sales for the four quarters of CY 2014.

SO ORDERED.

Respondent raises the following allegations in his motion:

1. Petitioner's sales to BeltonTotoku Philippines, Inc. and Hadoron Studio, Inc. should not be considered as zero-rated sales;

2. Petitioner failed to prove or substantiate with proper documentary evidence its claim for refund or tax credit of input VAT on its domestic purchases of services with official receipts and input VAT on its domestic purchases of goods with invoices; and

3. Taxes paid and collected are presumed to be made in accordance with the laws and regulations, hence, not creditable or refundable.

Respondent claims that the Philippine Economic Zone Authority ("PEZA") Certificates of Registration of BeltonTotoku Philippines, Inc. and Hadoron Studio, Inc. were not properly identified and marked during the Commissioner's Hearing on June 7, 2017. According to respondent, considering that the said PEZA certificates were not pre-marked during the Commissioner's Hearing, respondent was not able to check and verify with the original documents said PEZA certificates. Respondent further argues that considering that said PEZA certificates were not available and submitted during the administrative claim for refund, such should not be properly admitted as evidence to prove registration with PEZA. Accordingly, petitioner's sales to such clients should not be considered as zero-rated sales and the claim of input VAT attributable to such sales should be disallowed.

Also, respondent claims that some of the domestic purchases of goods by petitioner, as correctly pointed out by the Independent Certified Public Accountant, were supported by both official receipts and sales invoices, which is a violation of the invoicing requirements under Section 113(A) of the Tax Code, hence, its claim should be disallowed. Further, respondent avers that petitioner's claims which do not have authority to print, those which are not a valid source of input VAT, those documents which are out of claim period, those entries which were unreadable and those purchases which are unsupported should likewise be disallowed.

Finally, respondent argues that it is an established principle that refunds and tax credits are in the nature of tax exemptions, hence, should be strictly construed against the taxpayer. The taxpayer claiming for tax refund or credit has the burden of proving that he is entitled for [*sic*] such refund or credit by proving evidence of compliance of certain conditions of the law under which the privilege of exemption is granted. Respondent avers that in a refund process, the taxpayer is bound to comply not only with substantiation requirements but also with the procedural due process to prove its entitlement to the refund.

Petitioner opposes the foregoing arguments and alleges that all the documentary exhibits that were formally offered were duly marked, presented, shown and identified during the proceedings in this instant case. Petitioner argues that respondent should have questioned the PEZA certificates, invoices, and official receipts when the same were submitted as evidence for petitioner or should have even raised an issue thereof. According to petitioner, respondent miserably failed to do so and it is only now that the issue is being raised in his motion for partial reconsideration. Petitioner maintains that such deliberate failure on the part of respondent to raise such issues are deemed waiver of such rights and should no longer be entertained by the Court.

Further, petitioner argues that respondent even manifested, on record, through its Comment (To Petitioner's Formal Offer of Evidence) dated July 18, 2018, that respondent had no objection to the admission of petitioner's exhibits. Accordingly, assuming that there were some certificates that were not submitted during the administrative claim that were not pre-marked, respondent should be considered to have waived his right to question the same.

Also, petitioner argues that the Government is not exempt from the application of *solutio indebiti.* According to petitioner, if the State expects it taxpayers to observe fairness and honesty in paying their taxes, it must hold itself against the same standard in refunding excess (or erroneous) payments of such taxes. It should not unjustly enrich itself at the expense of taxpayers.

A scrutiny of the foregoing allegations shows that they had been substantially considered and addressed in the assailed Decision. In fact, the arguments in respondent's motion are the same as the averments interposed in his Memorandum filed through registered mail on December 27, 2017 and received by this Court on January 10, 2018.[1]

Anent petitioner's alleged failure to submit the PEZA certificates of Belton Totoku Philippines, Inc. and Hadoron Studio, Inc. at the administrative level, suffice it to say that the documents submitted, or the lack thereof, at the administrative level of a claim for refund of unutilized input VAT is irrelevant when the claim has already reached the Court after inaction on the part of the respondent.

This issue has long been laid to rest in a number of cases. In one case[2], the Supreme Court held as follows:

> A distinction must, thus, be made between administrative cases appealed due to inaction and those dismissed at the administrative level due to the failure of the taxpayer to submit supporting documents. If an administrative claim was dismissed by the CIR due to the taxpayer's failure to submit complete documents despite notice/request, then the judicial claim before the CTA would be dismissible, not for lack of jurisdiction, but for the taxpayer's failure to substantiate the claim at the administrative level. When a judicial claim for refund or tax credit in the CTA is an appeal of an unsuccessful administrative claim, the taxpayer has to convince the CTA that the CIR had no reason to deny its claim. It, thus, becomes imperative for the taxpayer to show the CTA that not only is he entitled under substantive law to his claim for refund or tax credit, but also that he satisfied all the documentary and evidentiary requirements for an administrative claim. It is, thus, crucial for a taxpayer in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place. Consequently, a taxpayer cannot cure its failure to submit a document requested by the BIR at the administrative level by filing the said document before the CTA.
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> In the present case, however, Total Gas filed its judicial claim due to the inaction of the BIR. Considering that the administrative claim was never acted upon; there

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[1] Docket, vol. III, pp. 1305-1308.

[2] *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 207112, December 8, 2015.

> was no decision for the CTA to review on appeal *per se.* Consequently, the CTA may give credence to all evidence presented by Total Gas, including those that may not have been submitted to the CIR as the case is being essentially decided in the first instance. The Total Gas must prove every minute aspect of its case by presenting and formally offering its evidence to the CTA, which must necessarily include whatever is required for the successful prosecution of an administrative claim.

Jurisprudentially, and considering that respondent failed to act on the administrative claim filed by petitioner, the Court may give credence to all evidence presented during trial on the merits, including those that may not have been submitted to respondent as the case is being essentially decided in the first instance by the Court.

To be sure, this Court is not precluded from admitting evidence even assuming that they were not presented to respondent at the administrative level. After all, cases filed in the Court of Tax Appeals are litigated *de novo*. Thus, petitioner should prove every minute aspect of its case by presenting, formally offering and submitting to the Court of Tax Appeals all evidence required to justify the grant of its claim for refund.[3]

In any case, the rule is that evidence not objected to is deemed admitted and may be validly considered by the court in arriving at its judgment.[4] This is true even if by its nature the evidence is inadmissible and would have surely been rejected if it had been challenged at the proper time.[5] Accordingly, assuming for the sake of argument that the Court is precluded from admitting evidence for failure to be presented to respondent at the administrative level, the Court validly considered the subject PEZA certificates considering respondent's failure to object to the same upon their submission as evidence for petitioner.

To reiterate, petitioner had valid VAT zero-rated sales of ₱99,719,809.38 for CY 2014, excluding, among others, zero-rated sales to Belton Totoku in the amount of ₱1,580,000.00 considering

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[3] *Commissioner of Internal Revenue vs. Philippine National Bank,* G.R. No. 180290, September 29, 2014.

[4] *Interpacific Transit vs. Aviles,* G.R. No. 86062, June 6, 1990.

[5] *Spouses Tapayan vs. Martinez,* G.R. No. 207786, January 30, 2017, citing *Lorenzana vs. Lelina,* G.R. No. 187850, August 17, 2016.

that the purported supporting official receipts are unreadable and to Hadoron Studio, Inc. totaling ₱10,000.00 for overclaimed zero-sales.

The Court has already ruled in the assailed Decision that only the input VAT of ₱2,563,990.68 is attributable to valid zero-rated sales of ₱99,719,809.38. The record also shows that the Court made a very detailed determination of petitioner's entitlement to the claim for refund as well as the substantiation of the precise amount to be refunded. In contrast, respondent made mere sweeping generalizations that some of the domestic purchases of goods by petitioner were supported by both official receipts and sales invoices without stating the specific purchases referred to for his determination of the merit of its claim for refund/tax credit and that the Court should disallow petitioner's claims which do not have authority to print, those which are not a valid source of input VAT, those documents which are out of claim period, those entries which were unreadable, and those purchases which are unsupported without stating the specific evidence or invoices and official receipts where petitioner did not indicate in full, if any, the required information under Section 113(A), of the Tax Code, or where petitioner failed to substantiate the claim for refund. It goes without saying that grounds for objection must be specified in any case.[6]

At this juncture, it must be emphasized that while it is true that a tax refund is in the nature of a tax exemption which must be construed *strictissimi juris* against the taxpayer[7], petitioner in this case was able to present sufficient evidence to substantiate its claim for refund, albeit partially. Thus, the Court finds the instant motion bereft of merit.

Accordingly, the Court finds no sufficient and valid reason to disturb the assailed Decision.

WHEREFORE, finding no cogent reason to reverse the ruling in the assailed Decision, respondent's **Motion for Partial Reconsideration** is **DENIED** for lack of merit.

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[6] *Spouses Tapayan vs. Martinez*, G.R. No. 207786, January 30, 2017, citing *Lorenzana vs. Lelina*, G.R. No. 187850, August 17, 2016.

[7] *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 159490, February 18, 2008.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CATHERINE T. MANAHAN
Associate Justice