REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

CTA CASE NO. 10187

GHD PTY LTD. (FORMERLY GUTTERIDGE HASKINS & DAVEY PTY LTD.),
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

NOTICE OF RESOLUTION

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street, Legazpi Village
Makati City

ATTY. ALBERT C. ARPON
ATTY. CARL FITRI A. HUSSIN
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1226 Makati City

GREETINGS:

You are hereby notified by these presents that on **May 6, 2024,** a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **May 7, 2024.**

Atty. Maria Johoanna F. Chan-Te
Executive Clerk of Court II

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GHD PTY LTD. (FORMERLY GUTTERIDGE HASKINS & DAVEY PTY LTD.),
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 10187

Members:

DEL ROSARIO, *P.J., Chairperson*
MANAHAN *and*
REYES-FAJARDO, *JJ.*

Promulgated:

MAY 0 6 2024 8:40 AM

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RESOLUTION

MANAHAN, *J.:*

Submitted before the Court is petitioner's **Motion for Reconsideration with Motion to Reopen Trial** filed on January 17, 2024, with respondent's **Comment/Opposition (Re: Petitioner's Motion for Reconsideration with Motion to Reopen Trial dated 17 January 2024)** filed, *via* licensed private courier, on February 5, 2024 and received by the Court on February 6, 2024.

On December 19, 2023, the Court promulgated a Decision denying petitioner's claim for refund of unutilized creditable withholding tax (CWT) for fiscal year 2017 in the amount of ₱46,771,638.00, for failing to sufficiently prove that the income upon which the subject taxes were withheld was included and reported in its annual income tax return, the dispositive portion of which states:

> "**WHEREFORE**, in light of the foregoing considerations, the present *Petition for Review* is **DENIED** for lack of merit.
>
> **SO ORDERED.**"

In its Motion, petitioner prays that the Court reconsider the said Decision based on the following grounds, *viz.*:

I. The Court erred in holding that petitioner failed to present evidence that would allow the Court to verify whether the income in the amount of ₱47,419,584.34, as declared in the CWT Certificates received by petitioner in fiscal year (FY) 2017, was actually reported and declared as part of gross income in the annual income tax return (ITR) for FY 2016.

II. The Court erred in holding that petitioner failed to prove that the income in the amount of ₱247,597,871.34 that was subjected to CWT in the amount of ₱37,041,165.14 was reported as part of the gross income declared in petitioner's annual ITR for FY 2017.

III. The Supreme Court has ruled that claims for refund of erroneously paid taxes are civil in nature. As such, petitioner, as claimant, though having a heavy burden of showing entitlement, needs only prove a preponderance of evidence to recover its excess tax credits.

Notwithstanding the foregoing assertions, petitioner also prays, in the alternative, for the reopening of trial for reception of additional evidence. Petitioner primarily anchors its arguments on in its Omnibus Motion for Reconsideration that was filed on October 19, 2021, wherein it claims that the Court erroneously denied its request for the presentation of additional evidence notwithstanding the fact that at the time of the filing of its Omnibus Motion, petitioner has not yet formally rested its case which, therefore, still gives it the right to present additional evidence in chief.

On the other hand, in his Comment, respondent opposes petitioner's Motion for Reconsideration with Motion to Reopen Trial, reiterating that the disallowance of CWT in the amount of ₱17,233,132.06 out of ₱46,771,638.00 for being unsupported by CWT certificates is proper. Respondent also agrees with the Court that petitioner failed to sufficiently establish that its income was declared as part of its gross income reported in its Annual ITRs for FY 2016 and 2017, and that petitioner further failed to provide any valid ground to support its motion to re-open trial. Lastly, respondent asserts that the burden is on the taxpayer to show that it has strictly complied with the conditions for the grant of the tax refund or credit since actions for tax refund or credit, as in the present case, are in the nature of tax exemptions.

After due consideration, the Court finds petitioner's Motion for Reconsideration with Motion to Reopen Trial bereft of merit.

Anent the first ground raised by petitioner, it asserts that it presented sufficient documents to support its claim for refund, to wit: annual ITR for FY 2016; CWT Certificates supporting its CWT claims for revenue reported in annual ITR for FY 2016 but collected in FY 2017; official receipts (ORs) supporting the CWT claims for revenue reported in its annual ITR for FY 2016 but collected in FY 2017; and, billing statements supporting the CWT claims for revenue in its annual ITR for FY 2016. Petitioner argues that the aforementioned documents sufficiently prove that the income of ₱47,419,584.34, which was subjected to CWT of ₱9,730,473.92 in FY 2017, was reported as part of its gross income in its annual ITR for FY 2016.

The Court finds petitioner's argument untenable.

Indeed, in petitioner's Formal Offer of Evidence filed on March 18, 2021, petitioner offered its "Annual ITR for Taxable Year 2016" as Exhibit "P-20-10". Unfortunately, however, in the Court's Resolutions dated December 3, 2021 and May 11, 2022,[1] the Court denied the admission of the said exhibit for not being found in the records of the case. Furthermore, aside from the annual ITR for FY 2016, no other piece of evidence was submitted to corroborate and verify that the income in the amount of ₱47,419,584.34 that was subjected to CWT of ₱9,730,473.92 in FY 2017, was truly reported as part of its gross income in the annual ITR for FY 2016. Correspondingly, petitioner failed to comply with the third requisite to prove its CWT claim.

With regard to the second ground, petitioner insists that the income payments that were subjected to CWT were declared as part of its gross income. Petitioner explains that while the Independent Certified Public Accountant (ICPA) found a variance between the gross revenue reported in petitioner's annual ITR of FY 2017 and the revenue subjected to CWT per General Ledger (GL), the ICPA was eventually able to reconcile this variance in his ICPA Report. Petitioner also points out that

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[1] Docket (Vol. II), pp. 714 to 717; and pp. 760 to 766.

the gross revenue reported in its annual ITR (₱536,581,845.00) is substantially higher than the amount of sales subjected to CWT per Schedule (₱247,560,889.04), thus, it can be reasonably inferred that the income payments subject to CWT form part of the gross revenues declared in the annual ITR and GL.

Unfortunately, the Court is not swayed.

In the assailed Decision, this Court noted the following discrepancies: (i.) ₱212,454,212.17 - the Schedule of CWT for FY 2017 as against sales per GL, (ii.) ₱76,566,743.79 - Net Sales/Revenues/ Receipts/Fees reported in the Annual ITR for FY 2017 against total revenues in the GL, and (iii.) ₱16,332,273.00 - Service Fees per AFS for FY 2017 against Sales of Services per Annual ITR for FY 2017.

Apparently, the records show that no evidence was presented by petitioner and ICPA to justify said discrepancies, thereby making the veracity of the amounts reflected in the GL *vis-a-vis* those declared in the annual ITR and Audited Financial Statement (AFS) for FY 2017 uncertain. As such, considering that the income subjected to CWT was reported as part of petitioner's gross income for FY 2017 could not be verified, the Court maintains the disallowance thereof.

Lastly, as to the third ground, petitioner claims that being civil in nature, petitioner needs only prove a preponderance of evidence to recover its excess tax credits.

The Court finds petitioner's arguments misplaced.

The ruling of the Supreme Court in the case of *Commissioner of Internal Revenue v. Far East Bank & Trust Company, (Now Bank of the Philippine Islands)*,[2] is instructive on the matter, to wit:

> "The burden is on the taxpayer to prove its entitlement to the refund.
>
> Moreover, the fact that the petitioner failed to present any evidence or to refute the evidence presented by respondent does not *ipso facto* entitle the respondent to a tax refund. It is not the duty of the government to disprove a taxpayer's claim for refund. Rather, the burden of establishing the factual basis of a claim for a refund rests on the taxpayer.

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[2] G.R. No. 173854, March 15, 2010.

> And while the petitioner has the power to make an examination of the returns and to assess the correct amount of tax, his failure to exercise such powers does not create a presumption in favor of the correctness of the returns. The taxpayer must still present substantial evidence to prove his claim for refund. As we have said, there is no automatic grant of a tax refund."

It is clear from the above that tax refunds partake of the nature of tax exemptions, which are construed *strictissimi juris* against the taxpayer. Being treated as such, the pieces of evidence presented entitling a taxpayer to an exemption is *strictissimi* scrutinized and must be duly proven.[3] On the other hand, the term "preponderance of evidence" means that the evidence as a whole adduced by one side is superior to that of the other.[4] Considering that it is not the duty of the government to disprove a taxpayer's claim for refund. Rather, the burden of establishing the factual basis of a claim for a refund rests on the taxpayer, which must still present substantial evidence to prove his claim for refund.

Moreover, insofar as tax refunds are concerned, the National Internal Revenue Code (NIRC) of 1997, as amended, is a special law, which prevails over a general law, which is the New Civil Code.

The power of taxation is an inherent attribute of sovereignty; hence, the dictum that "taxes are the lifeblood of the government." For this reason, the right of taxation cannot easily be surrendered; statutes granting tax exemptions are considered as a derogation of the sovereign authority and are strictly construed against the person or entity claiming the exemption. The taxpayer is charged with the heavy burden of proving that he has complied with and satisfied all the statutory and administrative requirements to be entitled to the tax refund.[5]

That having been settled, the Court shall now proceed to discuss petitioner's Motion to Reopen Trial.

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

[4] Ricardo J. Francisco on *Evidence*, Third Edition 1996, citing Municipality of Moncada v. Cajuigan, 21 Phil. 184 and Nolan vs. Jalandoni, 23 Phil. 292.

[5] *Commissioner of Internal Revenue v. Eastern Telecommunications Philippines, Inc.*, G.R. No. 163835, July 7, 2010.

Petitioner argues that it still has the right to present evidence as it has not yet formally rested its case when it filed the second Omnibus Motion for Reconsideration on October 19, 2021. Citing the case of *Ramon J. Alegre v. Hon. Manuel T. Reyes, et al.*,[6] petitioner stresses that it is only after the party has rested its case that the reception of additional evidence becomes discretionary upon the Court. Hence, the Court erred in denying its Omnibus Motions for the presentation of additional evidence.

The Court does not agree.

To recapitulate, in the Resolution dated September 17, 2021,[7] the Court denied the *first* Omnibus Motion filed on March 17, 2021, requesting petitioner to present additional evidence because in spite of having ample time to review its own records (*i.e.*, whether the supporting document submitted for verification to the ICPA were already complete considering the additional CWT Certificates were already in its possession), petitioner only presented the additional certificates after the findings were noted by ICPA – a fault which the Court finds attributable to petitioner, hence, it is not an excusable negligence.

In the same vein, the Resolution dated December 3, 2021,[8] denied petitioner's *second* Omnibus Motion filed on October 19, 2021 on the ground that the arguments and reliefs being asked by petitioner are the same as that of the *first* Omnibus Motion, which was already resolved and passed upon by the Court. Moreover, the said Resolution also stated that with the admission of its evidence, the Court deemed petitioner to have rested its case.

It is well-settled in this jurisdiction that cases filed before this Court are litigated *de novo*. No evidentiary value can be given to a document as the rules on documentary evidence require that these documents must be formally offered during trial before this Court.[9] A party should present all its evidence at first instance and not by piecemeal to avoid injurious surprises to the other party.

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[6] G.R. No. L-56923. May 9, 1988
[7] Docket (Vol. II), pp. 682 to 684.
[8] Docket (Vol. II), pp. 714 to 717.
[9] See *Rafael Arsenio S. Dizon, et al., v. Court of Tax Appeals, et al.*, G.R. No. 140944, 30 April 2008.

Perusal of petitioner's Motion to Reopen suggests that the additional evidence to be presented in the instant motion are the same evidence stated in its previously filed Omnibus Motions, which were denied by the Court due to the inexcusable negligence on the part of the petitioner when it only submitted the additional CWT certificates and other documents after the findings were noted by the ICPA.

Albeit Section 8 of Republic Act (RA) No. 1125,[10] as amended by RA No. 9282, expressly provides that proceedings before this Court shall not be governed strictly by technical rules of evidence, the same should still be balanced considering that application of technical rules may be relaxed only in the interest of substantial justice and to benefit the deserving.

In *Republic of the Philippines v. Sandiganbayan, et al.*,[11] the Supreme Court stressed the general rule that evidence may not be given piecemeal. However, when the attendant facts warrant the introduction of further evidence that would qualify a good reason for reopening the case and would serve the interest of justice, the Court may allow the reception of additional evidence.

Here, petitioner failed to discharge this burden. The present Motion to Reopen does not offer any justification for the correction to warrant the subsequent submission of such exhibits after judgment was already rendered. What is apparent is that petitioner failed to carefully examine and scrutinize all of its supporting evidence before submitting the same to the Court during the trial stage. By exercising reasonable diligence, petitioner could have immediately prepared and presented the "supporting documents" in a timely manner. Absent justifiable explanation, a liberal application of the rules of procedure to suit petitioner's purpose would clearly pave the way for injustice as it would be rewarding an act of negligence with undeserved tolerance.[12]

In view of the aforementioned disquisitions, the Court finds no compelling reason to reverse, amend, or modify the Decision promulgated on December 19, 2023.

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[10] "An Act Creating the Court of Tax Appeals", June 16, 1954.
[11] G.R. No. 152375, December 13, 2011.
[12] *Commissioner of Internal Revenue v. A. Soriano Corporation, et. al.*, G.R. No. 113703, January 31, 1997.

WHEREFORE, premises considered, petitioner's Motion for Reconsideration with Motion to Reopen Trial is **DENIED** for lack of merit.

SO ORDERED.

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

(No Part)
ROMAN G. DEL ROSARIO
Presiding Justice

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