REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

*EN BANC*

**AIR LIQUIDE PHILIPPINES, INC.,**

Petitioner,

-versus-

**COMMISSIONER OF INTERNAL REVENUE,**

Respondent.

**CTA EB NO. 1307**
**(CTA Case No. 8114)**

**Present:**

**Del Rosario,** *P.J.,*
**Castañeda, Jr.,**
**Bautista,**
**Uy,**
**Casanova,**
**Fabon-Victorino,**
**Mindaro-Grulla,**
**Ringpis-Liban,** ***and***
**Manahan,** *JJ.*

**Promulgated:**

APR 19 2017 4:07p.m.

x- - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - x

# RESOLUTION

**RINGPIS-LIBAN, *J.*:**

For resolution is petitioner's "Motion for Reconsideration (Re: Decision dated 01 September 2016)" without respondent's Comment.

Petitioner seeks reconsideration of this Court's Decision, the dispositive portion of which reads as follows:

> "**WHEREFORE**, premises considered, the Petition for Review is hereby **DENIED for lack of merit**. Accordingly, the

decision dated December 10, 2014 and Resolution dated April 21, 2015 are hereby affirmed.

**SO ORDERED.**"

Petitioner avers that this Court committed reversible error and moves for reconsideration of the Decision on the grounds that the 2013 case of *Total Philippines Corporation v. Commissioner of Internal Revenue (CTA Case Nos. 7898, 7980 and 8088)* involves an interpretation of Section 110 of the Tax Code, hence, it should be prospective in application; and that in the case of *Air Philippines Corporation v. Commissioner of Internal and Commissioner of Customs (CTA Case Nos. 7252, 7362, 7383, 7445, 7494, 7517, 7521 & 7566)*, a motion to re-open trial, made after promulgation but before finality of the decision, is proper even if not pre-conditioned upon the grounds for a new trial.

This Court finds no merit in the instant Motion for Reconsideration.

A perusal of petitioner's motion shows that the arguments raised by petitioner are substantially the same as its previous arguments which have been fully addressed and discussed by the Court in the assailed Decision.

This Court reiterates its ruling that petitioner's arguments are unmeritorious. Petitioner should not blame the July 24, 2013 Court Decision (Total (Philippines) Corporation vs. Commissioner of Internal Revenue, CTA Case Nos. 7898, 7980 and 8008) as the reason why its petition was denied because of the pronouncement in that case that input VAT claim carried over from the previous quarter should be substantiated to be allowed refund. Air Liquide should be aware that even prior to the promulgation of the said case (Total Philippines), it is already required that input VAT claim carried over from previous quarter should be substantiated or proven. Said requirement was provided in Section 110 (A)(1) and (B) in relation to Section 112, of the NIRC of 1997 as amended. Moreover, re-opening of the case based on petitioner's plea to introduce additional documents to substantiate its input VAT carried over from previous quarter is unjustified. Petitioner failed to state in its petition the circumstances that may constitute grounds for new trial of the case as provided in Sections 5 and 6, Rule 15 of the Revised Rules of the Court of Tax Appeals.

In fine, this Court finds no cogent reason to deviate from the previous ruling that petitioner was not able to satisfy the legal requirements for its entitlement to refund or issuance of tax credit certificate.

In *Ferdinand Marcos et al. vs. Hon. Raul Manglapus et al.*[1], the Supreme Court emphasized that in all motions for reconsideration, the burden is upon the

---

[1] *Marcos vs. Manglapuz,* G.R. No. 88211, October 27, 1989.

movant, petitioner herein, to show that there are compelling reasons to reconsider the decision of the Court. In this case, petitioner did not satisfy this burden.

**WHEREFORE**, premises considered, the "Motion for Reconsideration (Re: Decision dated 01 September 2016)" is hereby **DENIED for lack of merit**.

**SO ORDERED.**

Ma. Belen S.

**MA. BELEN M. RINGPIS-LIBAN**
Associate Justice

WE CONCUR:

*(See Concurring Opinion)*
**ROMAN G. DEL ROSARIO**
Presiding Justice

J. C. Castañeda, Jr.
**JUANITO C. CASTAÑEDA, JR.**
Associate Justice

**LOVELL R. BAUTISTA**
Associate Justice

(On Leave)
**ERLINDA P. UY**
Associate Justice

**CAESAR A. CASANOVA**
Associate Justice

**ESPERANZA R. FABON-VICTORINO**
Associate Justice

Cielito N. Mindaro-Grulla
**CIELITO N. MINDARO-GRULLA**
Associate Justice

Catherine T. Manahan
**CATHERINE T. MANAHAN**
Associate Justice

REPUBLIC OF THE PHILIPPINES
***COURT OF TAX APPEALS***
QUEZON CITY

## ***EN BANC***

| | |
|---|---|
| **AIR LIQUIDE PHILIPPINES, INC.,** *Petitioner,* | **CTA EB NO. 1307** (CTA Case No. 8114) |
| | Present: |
| -versus- | **DEL ROSARIO**, *P.J.*, **CASTAÑEDA, JR.**, **BAUTISTA**, **UY**, **CASANOVA**, **FABON-VICTORINO**, **MINDARO-GRULLA**, **RINGPIS-LIBAN**, and **MANAHAN**, *JJ.* |
| **COMMISSIONER OF INTERNAL REVENUE,** *Respondent.* | **Promulgated:** APR 19 2017 4:07 p.m. |

x- - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - -x

# CONCURRING OPINION

***DEL ROSARIO, P.J.:***

I concur with the *ponencia* in denying the "Motion for Reconsideration (Re: Decision dated 01 September 2016)" filed by Air Liquide Philippines, Inc.

In its Petition for Review, as in its Motion for Reconsideration of the Court in Division's assailed Decision, petitioner prays that the trial of the case be re-opened to allow it to introduce additional documents in evidence to substantiate its input VAT carried over from previous quarters.

In several cases, I took the position that re-opening of cases even after decisions have been rendered may be allowed. These cases, however, involve scenarios wherein a plain perusal of the additional documents sought to be admitted in evidence, which are attached to the motions for reconsideration, would reveal that they are vital documents, which if considered by the Court in resolving the motions would materially alter the conclusions reached by the Court in the assailed decisions.

The foregoing position is consistent with the pronouncement of the Supreme Court in ***BPI-Family Savings Bank vs. Court of Appeals***[1] wherein the Court of Tax Appeals (CTA) dismissed the petition on the ground that petitioner failed to present as evidence its Annual Income Tax Return (ITR) for 1990 to establish the fact that petitioner had not yet credited the amount being claimed for refund to its 1990 tax liability. **Petitioner filed a motion for reconsideration <u>attaching thereto a copy of the ITR for 1990</u> but the same was ignored by the CTA**. The Court of Appeals (CA) affirmed the decision of the CTA. The Supreme Court, however, reversed the CA and held the following:

> "**More important, a copy of the Final Adjustment Return for 1990 was <u>attached</u> to petitioner's Motion for Reconsideration filed before the CTA.** A final adjustment return shows whether a corporation incurred a loss or gained a profit during the taxable year. In this case, that Return clearly showed that petitioner incurred P52,480,173 as net loss in 1990. Clearly, it could not have applied the amount in dispute as a tax credit. Again, the BIR did not controvert the veracity of the said return. It did not even file an opposition to petitioner's Motion and the 1990 Final Adjustment Return attached thereto. In denying the Motion for Reconsideration, however, the CTA ignored the said Return. In the same vein, the CA did not pass upon that significant document.
>
> Xxx xxx xxx.
>
> In the present case, **the Return <u>attached to the Motion for Reconsideration</u> 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." (Boldfacing and underscoring supplied)

Thus, in *Chevron Holdings Inc. [formerly Caltex (Asia) Limited] vs. Commissioner of Internal Revenue,*[2] petitioner Chevron filed a Motion for Partial Reconsideration with Motion for New Trial <u>attaching</u>

---

[1] G.R. No. 122480, April 12, 2000.
[2] CTA Case No. 8241, August 11, 2015.

thereto copies of the Articles of Incorporation and company profiles of its foreign affiliate customers, thereby giving the Court basis in determining how the documents it intends to present as additional evidence may materially alter the result of the case. In view of the relevance of the attached documents and considering that the Commissioner of Internal Revenue (CIR) failed to dispute the facts which the documents attached to the Motion for Partial Reconsideration with Motion for New Trial sought to prove, the Court allowed the re-opening of the case for their presentation.

In the case at bar, petitioner merely *"manifests that it has all the supporting documents to substantiate Input VAT carried over from 2007 to 2008"*.[3] Apart from such allegation, however, petitioner did not attach any supporting document (not even a summary of the relevant official VAT invoices and/or official receipts) to its Motion for Reconsideration in the Court in Division or even to its Petition for Review before the Court *En Banc*. Attaching the additional documents sought to be admitted in evidence to the motion for reconsideration is vital for the Court to determine whether a re-opening is indeed necessary as when the Court's initial evaluation of their relevance and materiality would show that if such documents are presented and admitted into evidence, the conclusion reached in the decision being assailed would indeed be materially altered.

In fine, I submit that the Court in Division and the Court *En Banc* did not err in denying petitioner's prayer for re-opening of trial to allow it to introduce additional documents in evidence and substantiate its input VAT carried over from previous quarters.

All told, I vote to DENY the "Motion for Reconsideration (Re: Decision dated 01 September 2016)" filed by Air Liquide Philippines, Inc.

**ROMAN G. DEL ROSARIO**
Presiding Justice

[3] Par. 30, Petition for Review, CTA EB No. 1307 Docket, p. 24.