REPUBLIC OF THE PHILIPPINES

Court of Tax Appeals

QUEZON CITY

Third Division

COLT COMMERCIAL, INC.
Petitioner,

- *versus* -

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9205

Members:
BAUTISTA, *Chairperson*
FABON-VICTORINO, *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:
APR 20 2018
3:43 p.m.

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AMENDED DECISION

BAUTISTA, J.:

For resolution is petitioner's Motion for Reconsideration (of the Decision dated February 6, 2018) ("Motion for Reconsideration") filed on February 23, 2018; with no comment from respondent despite due notice.

On February 6, 2018, the Court rendered a Decision, the dispositive portion of which reads as follows:

> **WHEREFORE,** premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**[1]

The Court ruled that petitioner's claim was not prematurely filed, and that the Court has jurisdiction over the instant case. Having settled that petitioner timely filed the Petition for Review, the Court proceeded to determine petitioner's compliance with the other

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[1] Emphases retained.

requisites, pursuant to *Section 112(A) of the 1997 National Internal Revenue Code, as amended ("1997 NIRC")*. While the Court found that petitioner is compliant with the first four (4) requisites provided, *per* evidence actually admitted, excess input taxes were carried over to succeeding quarters. The relevant portion of the Decision reads in the following manner:

> However, a scrutiny of the original return (BIR Form No. 2550-Q) for the 2nd quarter of TY 2015[2] reveals that the amount deducted as "VAT Refund/TCC Claimed" was Php2,194,583.72. This amount is the excess input tax for the **3RD QUARTER** of TY 2013, and not for the claim period of **2ND QUARTER** of TY 2013, for reference:

Input VAT on goods other than capital goods	Php 586,650.58[3]
Input VAT on Importation	2,662,153.00[4]
Total	Php 3,248,803.58
Less: Output VAT	1,054,219.86[5]
EXCESS INPUT FOR THE 3RD QUARTER OF TY 2013	**PHP 2,194,583.72**

> Subsequently, petitioner amended its BIR Form No. 2550-Q for the 2nd quarter of 2015 on February 12, 2016, and indicated an amount deducted as "VAT Refund/TCC Claimed" of Php3,653,420.12[6], which can be reconciled as follows:

2ND QTR. OF 2015			
Input VAT on:			
Cap. Goods not exceeding 1M		Php 7,714.29	
Goods other than cap. Goods		443,770.31	
Importation of Goods		2,231,498.00	
Others		29,130.04	
Total		Php2,712,112.64	
Input Vat on Cap. Good from Previous Qtr.	Php 498,010.62		
Input Vat on Cap. Good deferred to succeeding Qtr.	465,878.46	Php 32,132.16	
Total		Php2,744,244.80	
Less:			
Output VAT	Php1,216,431.90		
Input tax on sale to government closed to expense	6,060.56	Php1,222,492.46	
EXCESS INPUT TAX FOR THE 2ND QTR. OF 2015			**Php1,521,752.34**
2ND QTR. OF 2013			
Input VAT on:			
Goods other than cap. Goods		Php 971,257.68	
Importation of Goods		1,820,309.24	
Total		Php2,791,566.92	
Less:			
Output VAT		Php 660,111.64	
EXCESS INPUT TAX FOR THE 2ND QTR OF 2013 (SUBJECT CLAIM)			**2,131,455.28**
DEDUCTED AS "VAT REFUND/TCC CLAIMED" IN THE 2ND QTR OF CY 2015			**3,653,207.62[7]**

> However, this document (amended BIR Form 2550-Q for the 2nd quarter of 2015) was not formally offered by petitioner

[2] *Records, Vol. 2, Exhibit "P-18,"* p. 725.
[3] *Id., Vol. 1, Exhibit "P-19-C," line 21F,* p. 403.
[4] *Id., line 21H,* p. 403.
[5] *Id., line 19B,* p. 403.
[6] *Green Folder, Exhibit P-43."*
[7] Difference of Php212.50.

> and was never admitted by the Court, thus, cannot be given evidentiary value. Consequently, *per* evidence actually offered and admitted, the subject claim was carried-over to the succeeding periods.[8]

In petitioner's Motion for Reconsideration, it avers that the amended BIR Form No. 2550-Q for the second quarter of taxable year ("TY") 2015 was attached as *Exhibit* "P-43" of the Independent Certified Public Accountant ("ICPA") Report dated August 18, 2016; that in his Report, the ICPA Mr. Garry Pagaspas ("ICPA Pagaspas") duly identified and marked the said exhibit; and that based on record, the ICPA Report and its attachments were formally offered and admitted as evidence of petitioner as *Exhibit* "P-29." Petitioner continues that even under the assumption that the amended BIR Form No. 2550-Q was not formally offered by petitioner, the rule that courts are mandated to rest their factual findings and their judgment only upon evidence offered by the parties at the trial admits exceptions. Petitioner cited the cases of *People of the Philippines v. Napat-a*[9], *People of the Philippines v. Mate*[10], and *Heirs of Romana Saves, et. al. v. Escolastico Saves, et. al.*[11], wherein the Supreme Court recognized the exception from the requirement of a formal offer, namely: *(1)* the evidence must have been duly identified by testimony duly recorded, and *(2)* the evidence is incorporated in the records of the case. Petitioner applied the above doctrine to the case at bar finding that *(1)* witness Cyrus S. Chung duly identified the existence of the return in his Judicial Affidavit dated March 22, 2016 as *Exhibit* "P-26;" *(2)* in the ICPA Report, ICPA Pagaspas identified the said return as *Exhibit* "P-43" of his Report, this was likewise referred to in his Judicial Affidavit dated October 5, 2016; *(3)* ICPA Pagaspas certified that he has ascertained that the photocopies of the documents are faithful reproductions of the originals and pre-marked in accordance with *CTA Circular No. 1-95*, as amended by *CTA Circular No. 10-97*; and *(4)* the return was an integral part of the ICPA Report, hence part of the records of the case.

On March 13, 2018, the Court ordered respondent to file his comment to petitioner's Motion for Reconsideration. Records reveal that respondent received the Resolution on March 19, 2018. Hence, respondent had until March 29, 2018 to file his comment.

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[8] Emphases retained.
[9] G.R. No. 84951, November 14, 1989, 179 SCRA 403.
[10] G.R. No. L-34754, March 27, 1981, 103 SCRA 484.
[11] G.R. No. 152866, October 6, 2010, 632 SCRA 236.

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On April 4, 2018, the Judicial Records Division issued a Records Verification Report stating that respondent failed to file his comment.

The Court finds merit in petitioner's Motion for Reconsideration.

As a general rule, pursuant to *Section 34 of Rule 132 of the Revised Rules of Court*, "[t]he court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified."

Below are the relevant portions of the cases relied upon by petitioner in claiming exception to the general rule:

1. *People of the Philippines v. Napat-a*

> Appellant's contention that the trial court erred in convicting her in view of the prosecution's failure to present to the Court the brown carton box (Exh. B) and its contents (dried marijuana leaves) (Exhs. C, D, E and F) is not well taken. Carlos V. Figueroa, Forensic Chemist of the PC Crime Laboratory, <u>testified that the box and its contents were presented, Identified and marked as exhibits in court</u> (t.s.n. November 6, 1985, pp. 3-8). The subsequent loss of these exhibits did not affect the case for the trial court had described the evidence in the records (t.s.n. April 13, 1988, p. 2). In People vs. Mate, 103 SCRA 484, we ruled that <u>"(e)ven without the exhibits which have been incorporated into the records of the case, the prosecution can still establish the case because the witnesses properly Identified those exhibits and their testimonies are recorded."</u> Furthermore, in this case, <u>appellant's counsel had cross-examined the prosecution witnesses who testified on those exhibits</u> (t.s.n. November 6, 1985, pp. 8-9).[12]

2. *People of the Philippines v. Mate*

> <u>The defense questions also the failure of the state prosecutor Cornelio Melendres to make a formal offer of his exhibits, although they have been marked and identified. Such an oversight appears trivial because the entire evidence for the prosecution is recorded.</u> Even without the exhibits which have been incorporated into the records of the case, the prosecution

[12] Underscoring ours.

can still establish the case because the witnesses properly identified those exhibits and their testimonies are recorded.[13]

3. *Heirs of Romana Saves, et. al. v. Escolastico Saves, et. al.*

It is a basic procedural rule that the court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified. A formal offer is necessary 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 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.

However, in People v. Napat-a, citing People v. Mate, we relaxed the foregoing rule and allowed evidence not formally offered to be admitted and considered by the trial court provided the following requirements are present, viz: first, the same must have been duly identified by testimony duly recorded and, second, the same must have been incorporated in the records of the case.[14]

Applying the forgoing to the case at bar, the Court deems it proper to determine the following: *(1)* whether *Exhibit* "P-43" was duly identified by testimony duly recorded; and *(2)* whether *Exhibit* "P-43" was incorporated in the records of the case.

Here, the BIR Form No. 2550-Q for the 2nd quarter of TY 2015, pre-marked as *Exhibit "P-43,"* was not formally offered by petitioner. Nonetheless, said exhibit was identified by the ICPA Pagaspas, in his Judicial Affidavit in Question and Answer No. 7; and is part of the ICPA Report. Thus, the Court deems it proper to apply the exception to the general rule in *Section 34 of Rule 132 of the Revised Rules of Court.*

WHEREFORE, petitioner's Motion for Reconsideration (of the Decision dated February 6, 2018) is **GRANTED**. Accordingly, the

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[13] Underscoring ours.
[14] Underscoring ours.

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assailed Decision dated February 6, 2018 is amended to read as follows:

> **WHEREFORE,** the instant Petition for Review is **PARTIALLY GRANTED.** Accordingly, respondent is **ORDERED TO REFUND** to petitioner, in the reduced amount of **Php1,491,631.04,** representing its unutilized input taxes attributable to its zero-rated sales for the second quarter of the taxable year 2013.
>
> **SO ORDERED.**

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ATTESTATION

I attest that the conclusions in the above Amended Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to *Article VIII, Section 13 of the Constitution,* and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Amended 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