Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

Third Division

THAI AIRWAYS INTERNATIONAL PUBLIC COMPANY LIMITED, *Petitioner,*	**CTA CASE NO. 8597**
	Members:
- versus -	**BAUTISTA,** *Chairperson,* **FABON-VICTORINO,** *and* **RINGPIS-LIBAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: APR 2 0 2018 3:47 p.m.

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RESOLUTION

RINGPIS-LIBAN, *J.*:

Before this Court are respondent's **Motion for Partial Reconsideration Re: Amended Decision dated October 10, 2017**, filed on November 7, 2017, with petitioner's **Comment/Opposition** filed on January 17, 2018; and petitioner's **Motion for Extension of Time** filed by registered mail on January 16, 2018 and received by the Court on January 23, 2018, with another copy of the **Comment/Opposition**.

In the interest of substantial justice, the Court finds merit in petitioner's **Motion for Extension of Time**. Accordingly, the Court shall consider petitioner's **Comment/Opposition** in resolving the instant motion for partial reconsideration.

In assailing the Amended Decision dated October 10, 2017, respondent has raised the following grounds:

> I. The Court erred in giving evidentiary weight to petitioner's evidence which was not formally offered;

II. The Court erred in cancelling the assessment for deficiency withholding tax on compensation and fringe benefit tax and in modifying the assessment for income tax, percentage tax, expanded withholding tax and deficiency withholding tax on compensation.

Respondent contends that a formal offer is but 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. Respondent claims that the reason behind such rule is to enable the trial judge to know the purpose or purposes for which the document is being offered and opportunity for opposing party to examine the evidence and object to its admissibility. Allegedly, evidence not formally offered during the trial cannot be used for or against a party.

Respondent insists that storage fee amounting to ₱14,309,779.86 was a revenue not forming part of the Gross Philippine Billings (GPB), thus it was subject to the regular rate of 35%. Respondent avers that the amount of ₱10,789,596.08 was not supported by the original documents, hence, the truthfulness of petitioner's contention could not be validated. Respondent also alleges that petitioner is liable for deficiency fringe benefit tax, interest and penalty because some of the benefits given to officers of petitioner were not included in the computation of fringe benefit tax. Also, the rent a car charges were allegedly taken from actual payment instead of the correct period of their use of vehicles, and petitioner failed to substantiate its claim when it merely showed the computation without any supporting documents.

Further, respondent maintains that petitioner is liable for deficiency withholding tax on compensation, expanded withholding tax and penalty since the latter failed to show factual proofs that the difference between salaries and wages per alpha list and per financial statement in the amount of ₱9,796,614.30 was brought about by Expat Officers' salaries paid in Thailand; that a compromise penalty of ₱3,000 was still part of the assessment for failure to file accurate information on the remittance; and that some of petitioner's income payments were not subjected to expanded withholding tax in violation of Section 57 of the National Internal Revenue Code (NIRC) of 1997, as amended, and implementing rules and regulations.

In addition, respondent claims that petitioner underdeclared its revenue in the amount of ₱64,316,514.11 for taxable year (TY) 2008 for failure to support its claim of non-revenue passengers. Respondent posits that sufficient documents must be presented to show that these passengers are indeed non-revenue passengers. Respondent states that the undeclared revenue on rebooking fee in the amount of ₱137,796.00, and undeclared commission paid to brokers in the amount of ₱4,369,695.63 and ₱9,796,614.39 must be included in the computation of gross income tax.

On the other hand, petitioner objects respondent's motion on the ground that the said motion has no merit.

Petitioner counter-argues that although Exhibits "18 to 18.11" were not specifically referred to in the formal offer of exhibits, the same were actually submitted to this Court as part of the Judicial Affidavit of Independent Certified Public Accountant (ICPA) Wilfrido C. Rodriguez. Petitioner points out that respondent had access to the documents marked as Exhibits "18 to 18.11", cross-examined the ICPA, but the latter failed to rebut the said evidence. Allegedly, respondent's averment that the Court erred in cancelling the assessment for deficiency withholding tax on compensation and fringe benefit tax and in modifying the assessment for income tax, percentage tax, expanded withholding tax and deficiency withholding tax on compensation, is a rehash of previous arguments that the Court have already ruled upon.

A careful evaluation of respondent's arguments shows that the same are mere rehash of the same facts and issues which have already been addressed extensively in the assailed Amended Decision.

It is worthy to reiterate the ruling of this Court in the Amended Decision dated October 10, 2017, *viz*:

> "The ruling of the Supreme Court in the case of *Dizon vs. Court of Tax Appeals*[1] is instructive in applying the exception to the general rule that evidence not formally offered cannot be considered by the Court, to wit:
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> > '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 submitted by the BIR, as the rules on documentary evidence require that these documents must be formally offered before the CTA. Pertinent is Section 34, Rule 132 of the Revised Rules on Evidence which reads:
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> > > **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.

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[1] G.R. No. 140944, April 30, 2008.

> The CTA and the CA rely solely on the case of *Vda. de Oñate*, which reiterated this Court's previous rulings in *People v. Napat-a* and *People v. Mate* on the admission and consideration of exhibits which were not formally offered during the trial. Although in a long line of cases many of which were decided after Vda. de Oñate, we held that courts cannot consider evidence which has not been formally offered, nevertheless, petitioner cannot validly assume that the doctrine laid down in *Vda. de Oñate* has already been abandoned. Recently, in *Ramos v. Dizon*, this Court, applying the said doctrine, ruled that the trial court judge therein committed no error when he admitted and considered the respondents' exhibits in the resolution of the case, notwithstanding the fact that the same were not formally offered. Likewise, in *Far East Bank & Trust Company v. Commissioner of Internal Revenue*, the Court made reference to said doctrine in resolving the issues therein. Indubitably, the doctrine laid down in *Vda. De Oñate* still subsists in this jurisdiction. In *Vda. de Oñate*, we held that:
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> xxx xxx xxx
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> > However, in *People v. Napat-a* [179 SCRA 403] citing *People v. Mate* [103 SCRA 484], **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.**
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> From the foregoing declaration, however, it is clear that *Vda. de Oñate* is merely an exception to the general rule. Being an exception, it may be applied only when there is strict compliance with the requisites mentioned therein; otherwise, the general rule in Section 34 of Rule 132 of the Rules of Court should prevail.'

Apparently, the evidence not formally offered may be admitted and considered by the court provided the said evidence has been duly identified by testimony duly recorded, and has been incorporated in the records of the case.

In the instant case, the invoices and official receipts have already been marked as petitioner's Exhibits '18 to 18.11' and submitted to this Court. Also, Mr. Rodriguez, the ICPA, has identified the said exhibits in his Judicial Affidavit dated February 3, 2014. However, Exhibits '18 to 18.11' have not been formally offered.

> Accordingly, although Exhibits '18 to 18.11' have not been formally offered in evidence, the Court may consider the same since the said exhibits were duly identified by Mr. Rodriguez and were submitted to this Court which formed part of the records of this case. Thus, it is deemed just to apply in this case the exception to the general rule in Section 34 of Rule 132 of the Rules of Court."

The ruling in the case of *Dizon vs. Court of Tax Appeals*[2] was reiterated by the Supreme Court in the case of *Federico Sabay vs. People of the Philippines*[3], stating that the rule in Section 34, Rule 132 of the Rules on Evidence admits an exception, *viz*:

> "Section 34 of Rule 132 of our Rules on Evidence provides that the court cannot consider any evidence that has not been formally offered. Formal offer means that the offering party shall inform the court of the purpose of introducing its exhibits into evidence, to assist the court in ruling on their admissibility in case the adverse party objects. Without a formal offer of evidence, courts cannot take notice of this evidence even if this has been previously marked and identified.
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> This rule, however, admits of an exception. The Court, in the appropriate cases, has relaxed the formal-offer rule and allowed evidence not formally offered to be admitted.
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> The cases of *People v. Napat-a*, *People v. Mate*, and *The Heirs of Romana Saves, et al. v. The Heirs of Escolastico Saves, et al.*, to cite a few, enumerated the requirements so that evidence, not previously offered, can be admitted, namely: ***first***, the evidence must have been duly identified by testimony duly recorded and, ***second***, the evidence must have been incorporated in the records of the case."

As regards the ruling of this Court in cancelling the assessment for deficiency withholding tax on compensation and fringe benefit tax and modifying the assessment for income tax, percentage tax, expanded withholding tax and deficiency withholding tax on compensation, the Court finds respondent's arguments without merit.

The Court has already discussed the correctness of the items of the subject assessment, and already ruled on the same based on the evidence presented.

Considering that there are no new arguments raised, the Court finds no cogent reason to disturb the ruling in the Amended Decision.

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[2] *Supra.*

[3] G.R. No. 192150, October 1, 2014.

WHEREFORE, premises considered, respondent's **Motion for Partial Reconsideration Re: Amended Decision dated October 10, 2017** is **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice