REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION
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CE CASECNAN WATER AND ENERGY COMPANY, INC., Petitioner,	**CTA Case No. 7891**
	Members:
- versus -	**UY, *Chairperson,*** and **FABON-VICTORINO,** <u>*JJ.*</u>
	Promulgated:
COMMISSIONER OF INTERNAL REVENUE, Respondent.	DEC 13 2016 ; 1:28 p.m.

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RESOLUTION

UY, <u>J.</u>:

For resolution is the **"MOTION FOR PARTIAL RECONSIDERATION"** of respondent Commissioner of Internal Revenue (CIR) filed on August 31, 2016, with petitioner's **"COMMENT *(On Respondent's Motion for Partial Reconsideration dated August 31, 2016)*"** filed on November 14, 2016, praying for the reconsideration and setting aside of this Court's Decision promulgated on August 10, 2016, the dispositive portion of which reads:

> "**WHEREFORE,** in light of the foregoing considerations, the instant Petition for Review is **PARTIALLY GRANTED**. Respondent is **ORDERED** to refund petitioner or issue a TCC in its favor in the amount of ₱13,504,405.02, representing its unutilized excess input VAT for the four quarters of CY 2007.
>
> **SO ORDERED.**"

In the instant *Motion*, respondent argues that Section 112(D)[1] of the Tax Code clearly requires the submission of complete documents in support of the application filed with the Bureau of Internal Revenue (BIR) before the 120-day audit period shall apply, and before the taxpayer could avail of judicial remedies as provided for in the law. According to respondent, far from complying with the said provision, evidence on record shows the discrepancy in documents submitted in the administrative and judicial claims filed by petitioner. Particularly, respondent claims that those reviewed by the Independent Certified Public Accountant (ICPA) are substantially more comprehensive than those presented for the BIR's administrative audit, and thus, respondent was deprived of the chance to act on petitioner's claim for refund.

Moreover, respondent maintains that before judicial inquiry into the issue of whether taxpayers, in general, are entitled to a refund/tax credit under substantive law may be considered, they have an initial burden to discharge. Invoking the case of *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue* (hereinafter referred as "*Atlas* case")[2], respondent emphasizes that said taxpayers must prove that they complied with all the administrative requirements continuing up to judicial review; and that before trial *de novo* proceeds and disposes of the issue of refund entitlement under substantive law, it must first be proved that there was procedural compliance in pursuing the administrative claim leading to the appellate proceedings.

Furthermore, respondent alleges that the necessity for petitioner to submit all relevant documents to substantiate its administrative claim is imperative; that the filing of the petition for review to this Court must be due to the denial of its claim or inaction which is tantamount to a denial of the said action; and that absent

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[1] This provision has been renumbered under Republic Act No. 9337 as Section 112(C), which provides as follows:

"SEC. 112. *Refunds or Tax Credits of Input Tax.* —

xxx xxx xxx

(C) *Period within which Refund or Tax Credit of Input Taxes shall be made.* - In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.

In case of full and partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals."

[2] G.R. No. 145526, March 16, 2007.

these circumstances, the judicial claim merely becomes an attempt by the taxpayer to circumvent the role and duties of the CIR in evaluating the taxpayer's claim for refund.

Upon the other hand, in its *Comment*, petitioner contends that it submitted complete documents in support of its administrative claim for refund; and that judicial claims for refund, which are litigated *de novo*, should be decided on the basis of documents offered in evidence.

THE COURT'S RULING

Respondent CIR's *Motion for Partial Reconsideration* lacks merit.

The doctrine laid down in the *Atlas* case that *"it was necessary for petitioner to show the CTA not only that it was entitled under substantive law to the grant of its claims but also that it satisfied all the documentary and evidentiary requirements for an administrative claim for refund or tax credit"* is not disputed. However, in the fairly recent case of *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue*,[3] the Supreme Court clarified the said doctrine in this wise, to wit:

> "At this stage, a review of the nature of a judicial claim before the CTA is in order. In *Atlas Consolidated Mining and Development Corporation v. CIR*, it was ruled —
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>> x x x First, a judicial claim for refund or tax credit in the CTA is by no means an original action but rather an *appeal* by way of petition for review of a previous, unsuccessful administrative claim. Therefore, as in every appeal or petition for review, a petitioner has to convince the appellate court that the quasi-judicial agency a quo did not have any reason to deny its claims. <u>In this case, it was necessary for petitioner to show the CTA not only that it was entitled under substantive law to the grant of its claims but also that it satisfied all the documentary and evidentiary</u>

[3] G.R. No. 207112, December 8, 2015.

> requirements for an administrative claim for refund or tax credit. Second, cases filed in the CTA are litigated *de novo*. Thus, a petitioner should prove every minute aspect of its case by presenting, formally offering and submitting its evidence to the CTA. Since it is crucial for a petitioner in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place, part of the evidence to be submitted to the CTA must necessarily include whatever is required for the successful prosecution of an administrative claim. [Underscoring Supplied]

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.

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 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**

> **<u>that may not have been submitted to the CIR as the case is being essentially decided in the first instance.</u>** 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." *(Emphases and underscoring supplied)*

Based on these pronouncements vis-a-vis Section 112(C)[4] of the NIRC of 1997, as amended by RA No. 9337, the administrative claim for refund of unutilized input VAT may either be granted, denied, or not acted upon by the CIR. In case of denial by the CIR upon the ground that the taxpayer-claimant failed to submit complete documents despite notice/request, this Court, upon appeal or filing of a petition for review of such denial and upon proof of such failure, must dismiss the same, not for lack of jurisdiction, but for the taxpayer's failure to substantiate the claim at the administrative level. This is the essence of the doctrine laid down in the *Atlas* case. Thus, in such case, it becomes imperative for the taxpayer-claimant to show this Court 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.

Upon the other hand, in case the administrative claim was never acted upon by the CIR, this Court, upon appeal or filing of a petition for review of such inaction, may not dismiss the case on the ground that the taxpayer failed to submit all documentary and evidentiary requirements at the administrative level. The Court instead may give credence to all evidence presented by the taxpayer-claimant to prove his refund claim, including those that may not have been submitted to the CIR as the case is being essentially decided in the first instance, there being no decision for this Court to review on appeal *per se*.

In this case, the instant *Petition for Review* was filed by petitioner with this Court due to the inaction of respondent CIR on its administrative claim,[5] and this inaction was confirmed by the lack of BIR Records being submitted to this Court albeit required under

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[4] Refer to Footnote No. 1, *supra*.
[5] Par. 25, Petition for Review, Docket – Vol. I, p. 15.

Section 5(b),[6] Rule 6 of the Revised Rules of the Court of Tax Appeals.

Thus, it is clear that there was no decision for this Court to review on appeal *per se*. Accordingly, the Court may give credence to all evidence presented by petitioner, including those that may not have been submitted to respondent CIR at the administrative level as the case is being essentially decided in the first instance. Such being the case, it is of no moment that the evidence on record shows the discrepancy between the documents submitted in the administrative and judicial claims filed by petitioner.

As a corollary, since there was inaction on his part, respondent cannot validly raise the argument that petitioner did not submit complete documents in support of the latter's refund claim at the administrative level. In this connection, it must be emphasized that the submission of complete supporting documents by the taxpayer-claimant at the administrative level is presumed, pursuant to the ruling in the case of *CBK Power Company Limited vs. Commissioner of Internal Revenue*,[7] to wit:

> "Bearing in mind that the burden to prove entitlement to a tax refund is on the taxpayer, **it is presumed that in order to discharge its burden, petitioner had attached complete supporting documents necessary to prove its entitlement to a refund in its application, absent any evidence to the contrary.**"[8]

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[6] "SEC. 5. *Answer.* —

xxx xxx xxx

(b) *Transmittal of records.* — The respondent Commissioner of Internal Revenue, xxx, within ten days after his answer, xxx, shall certify and forward to the Court all the records of the case in their possession, with the pages duly numbered, and, if the records are in separate folders, then the folders will also be numbered. If there are no records, such fact shall be manifested to the Court within the same period of ten days. The Court may, on motion, and for good cause shown, grant an extension of time within which to submit the aforesaid records of the case. Failure to transmit the records within the time prescribed herein or within the time allowed by the Court may constitute indirect contempt of court."

[7] G.R. Nos. 198729-90, January 15, 2014.

[8] Read also *Applied Food Ingredients Company, Inc. vs. Commissioner of Internal Revenue* (G.R. No. 184266, November 11, 2013), wherein the Supreme Court ruled that "...**absent any evidence to the contrary and bearing in mind that the burden to prove entitlement to a tax refund is on the taxpayer, it is presumed that in order to discharge its burden, petitioner had attached complete supporting documents necessary to prove its entitlement to a refund** in its application filed on 26 March 2002 and 28 June 2002. Therefore, the CIR's 120-day period to decide on petitioner's administrative claim commenced to run on 26 March 2002 and 28 June 2002, respectively." *(Emphasis supplied)*

WHEREFORE, in light of the foregoing considerations, respondent's *Motion for Partial Reconsideration* is **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

I CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice