REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

TAGANITO MINING CORPORATION,
Petitioner,

- versus –

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8822

Members:

CASTAÑEDA, JR., *Chairperson,*
CASANOVA, and
COTANGCO-MANALASTAS, *JJ.*

Promulgated:
DEC 04 2015 12:03 pm

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RESOLUTION

CASTAÑEDA, JR., *J.:*

For resolution are:

1. Respondent's *Motion for Partial Reconsideration (Re: Decision promulgated 14 September 2015)* filed on September 28, 2015 with petitioner's *Comment To Respondent's Motion for Partial Reconsideration* filed on November 2, 2015; and

2. Petitioner's *Motion for Partial Reconsideration and/or New Trial* filed on September 30, 2015 with respondent's *Comment/Opposition (Re: Motion for Partial Reconsideration and/or New Trial)* filed on October 21, 2015.

Both petitioner and respondent assail the Decision dated September 14, 2015,[1] (the "Assailed Decision") of this Court partially

[1] Division Docket, pp. 316-347.

granting the subject Petition for Review. The dispositive portion of the Assailed Decision reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Respondent is hereby **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** to petitioner in the reduced amount of ₱10,343,265.07 representing its unutilized amortized input taxes on importation and domestic purchases of capital goods with aggregate acquisition cost exceeding P1 Million incurred during the taxable years 2010, 2011 and 2012 and are attributable to zero-rated sales in the taxable years 2012 and 2013.
>
> **SO ORDERED.**"

Respondent's Motion for Partial Reconsideration

In her Motion, respondent invokes Revenue Memorandum Order (RMO) No. 53-98 which allegedly requires the submission of all supporting and relevant documents to warrant the grant of the application for refund. According to respondent, petitioner merely submitted seven (7) documents in support of its administrative claim for refund.[2] Respondent also posits that this Court cannot exercise its jurisdiction to entertain the instant case because no valid administrative claim for refund was filed on account of petitioner's alleged failure to submit the required supporting documents.

Respondent likewise avers that petitioner failed to prove that no other [similar] claim for refund [covering the same period] has been filed [by petitioner] with the Board of Investment, Department of Finance, [or] Special Economic Zones/Freeport Zones since petitioner allegedly failed to present any certification to that effect from the aforesaid agencies.[3] Accordingly, the application for refund must be denied.

In response, petitioner counters that it was able to present evidence that it did not file any similar claims covering that same period. This document was, in fact, included as the 3rd item in its Formal Offer of Evidence. Jr

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[2] *Ibid.*, p. 349.
[3] *Id.*

At the outset, it bear stressing that the first issue raised by respondent in her Motion regarding compliance with the submission of complete documents pursuant to RMO No. 53-98 was already passed upon and adequately discussed by this Court in the Assailed Decision. Nevertheless, the Court will again address such matter if only to reinforce the discussion in the Assailed Decision.

As previously mentioned in the Assailed Decision, there is no need for the petitioner to submit the complete documents required under RMO No. 53-98 in relation to Section 112 (C) of the National Internal Revenue Code of 1997, as amended. Any question as to the foregoing has been laid to rest by the Supreme Court in *Commissioner of Internal Revenue vs. Team Sual Corporation (formerly Mirant Sual Corporation),*[4] wherein it instructively held:

> The CIR's reliance on RMO 53-98 is misplaced. **There is nothing in Section 112 of the NIRC**, RR 3-88 **or RMO 53-98 itself that requires submission of the complete documents enumerated in RMO 53-98 for a grant of a refund or credit of input VAT**. The subject of RMO 53-98 states that it is a "Checklist of Documents to be Submitted by a Taxpayer upon **Audit** of his Tax Liabilities xxx." In this case, TSC was applying for a grant of refund or credit of its input tax. There was no allegation of an audit being conducted by the CIR. Even assuming that RMO 53-98 applies, it specifically states that some documents are required to be submitted by the taxpayer "if applicable." *(Emphasis supplied)*

In claims for VAT refund, the non-submission of complete supporting documents in the administrative level is not fatal to petitioner's judicial claim. This Court is not barred from receiving, evaluating and appreciating evidence submitted before it. Once the claim for refund has been elevated to the Court, the admissibility, materiality, relevance, probative value and weight of evidence presented therein become subject to the relevant provisions of the Rules of Court. The question of whether or not the evidence submitted by a party is sufficient to warrant the grant of a claim for refund lies within the sound discretion and judgment of the Court.[5] *Jc*

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[4] G.R. No. 205055, July 18, 2014, 730 SCRA 242, 255.

[5] *Commissioner of Internal Revenue vs. CE Luzon Geothermal Power Company, Inc.*, CTA EB No. 474, September 1, 2009; *Commissioner of Internal Revenue vs. Toledo Power Company*, CTA EB No. 589, September 15, 2010; *Commissioner of Internal Revenue vs. San Roque Power Corporation*, CTA EB No. 657, April 4, 2012.

Notably, in *Commissioner of Internal Revenue v. Philippine Airlines, Inc.*,[6] the CTA *En Banc* ruled that:

> "It has been settled in several CTA *en banc* cases that judicial claims should not be denied on the sole ground that the taxpayer allegedly failed to submit before the BIR the complete documents in support of its administrative claim for refund. In the case of *Philippine Bank of Communications vs. Commissioner of Internal Revenue*, We passed upon the issue on the non-submission of supporting documents in the administrative level as NOT fatal to a claim for refund. The pertinent portion of the Decision provides:
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> > '**Non-submission of supporting documents in the administrative level is not fatal to a claim for refund. Judicial claims are litigated *de novo* and decided based on what has been presented and formally offered by the parties during the trial.** In the case of *CIR vs. Manila Mining Corporation*, it was explained that 'Under Section 8 of RA 1125, the CTA is described as a court of record. As cases filed before it are litigated *de novo*, party litigants should prove every minute aspect of their cases.' Finally, pieces of evidence submitted in the administrative proceeding have no evidentiary value unless presented and formally offered before the Court.
>
> This Court is not barred from receiving, evaluating and appreciating evidence formally offered before it. Once the claim for refund has been elevated to the Court, the admissibility, materiality, relevancy, probative value and weight of evidence presented therein become subject to the Rules of Court. The question of whether or not the evidence submitted by a party is sufficient to warrant the granting of a claim for refund lies within the sound discretion and judgment of the Court. The CTA being a court of record, the cases filed before it are litigated *de novo* and party litigants should prove every minute aspect of their cases. Otherwise stated, **judicial claims are being decided based on what has been presented and formally offered by party litigants during the trial of**

[6] CTA EB No. 775, November 13, 2012.

> **the case before the Court and not on the mere allegation of non-submission of complete documents before the BIR.**" *(Citations omitted and emphasis supplied)*

With respect to the other issue, contrary to respondent's contention, petitioner was able to present evidence that it did not file any similar claim for refund covering that same period. Petitioner presented, as part of its Formal Offer of Evidence, a copy of the certification issued by the Department of Finance stating that as of December 20, 2013, petitioner has no similar previous and/or outstanding application for tax credit and duty drawback for the period of January 1, 2008 to December 31, 2012.

Petitioner's Motion for Partial Reconsideration/New Trial

In its Motion, petitioner moves for a new trial of the Assailed Decision based on "honest mistake" and "excusable negligence". Particularly, petitioner avers that:

1. The ICPA's failure to include certain documents were clearly based on honest mistake caused by confusion, an impression, belief or opinion that the documents reviewed constitute sufficient basis to support her findings based on existing laws, rules and regulations, or by sheer inadvertence;

2. The ICPA may be considered to have committed such mistake out of misplaced confidence of her interpretation of what constitutes "sufficient support" for transactions, without which she would not have taken exceptions thereto;

3. In deference to the ICPA's professional opinion of what constitutes sufficient support of her findings, Petitioner did not interfere in the ICPA's procedures and appreciation of documents;

4. Due to limited time given to the ICPA to conduct a special audit of petitioner's voluminous supporting documents, petitioner was deprived of the opportunity to scrutinize the correctness and propriety of the voluminous supporting documents [examined by] the ICPA, one by one given that there were no findings of insufficiency made therein; and

5. Petitioner had no reason to question ICPA's reliance on the supporting documents appended to the ICPA given that the years of its audit experience with respondent's examiners, the production or presentation of the "lacking documents' were never absolutely required.[7]

In support of its Motion, petitioner attached the Affidavits of Merit separately executed by its Vice-President for Finance Lennie A. Terre[8] and ICPA Maria Gracia L. Morfe[9] as well as copies of documents which petitioner intends to present as additional evidence such as the Bank Credit Advices, Bills of Lading and PEZA Certifications of its customers.[10]

Petitioner likewise moves for partial reconsideration of the Assailed Decision. It submits that the evidence considered by the Court does not justify the findings and conclusions arrived at, and that the Court's findings do not agree with the applicable law and established jurisprudence.[11] Petitioner claims that the pieces of evidence it presented are sufficiently adequate and provide incontrovertible proof of the transactions involved in its claim.

Respondent, on the other hand, contends that the documents sought to be presented are neither newly discovered nor inadvertently omitted due to fraud, accident, mistake, or excusable negligence.[12] Thus, the reopening of the case for the purpose of presenting additional evidence is not warranted.

After a circumspect consideration of the grounds and arguments interposed by petitioner, the Court finds that the grant of new trial for the presentation of additional evidence is in order.

In *BPI Family Savings Bank vs. Court of Appeals, et al.*,[13] the Supreme Court allowed the appreciation of the document attached to the Motion for Reconsideration filed before the CTA. In the said case, the Supreme Court pointed out that the law creating the CTA specifically provides that proceedings before it shall not be governed strictly by the technical rules of evidence. The High Court added that:

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[7] Division Docket, pp. 357-358.
[8] *Ibid*, Annex "B", pp. 366-367.
[9] *Id.*, Annex "A", pp. 363-365.
[10] *Id.*, Annexes 1-1 to 1-12, pp. 374-389; Annex 1-13, p. 390 & Annexes 1-14 to 1-15, pp. 391-392.
[11] *Id.*, p. 356.
[12] *Id.*, p. 401.
[13] G.R. No. 122480, April 12, 2000, 330 SCRA 507.

> "xxx The paramount consideration remains the ascertainment of truth. Verily, the quest for orderly presentation of issues is not an absolute. It should not bar courts from considering undisputed facts to arrive at a just determination of a controversy."[14]

The foregoing pronouncement is consistent with the avowed policy of this Court to liberally apply its rules of procedure to promote their objective of securing a just, speedy, and inexpensive determination of every action and proceeding before the Court.[15]

Indeed, in *Felix Lim and Jose Lee v. Court of Appeals et. al.*,[16] the Supreme Court aptly stated as follows:

> "xxx In meritorious cases, a liberal not literal interpretation of the rules becomes imperative and technicalities should not be resorted to in derogation of the intent of the rules which is the proper and just determination of litigations. Litigations should, as much as possible be decided on their merits and not on technicality, x x x. As has been the constant ruling of this Court, every party-litigant should be afforded the amplest opportunity for the proper and just disposition of his cause free from the constraints of technicalities."

Nevertheless, the Supreme Court held in *Dizon vs. Court of Tax Appeals and Commissioner of Internal Revenue*[17] that this Court must not consider evidence which has not been formally offered. Thus, in the interest of substantial justice and to give petitioner final opportunity to prove its claim for refund, this Court deems it proper to allow and require petitioner to present and formally offer, the documents mentioned and attached to its Motion. Their submission, however, is still subject to the Court's final evaluation and/or appreciation of their relevance, competence and probative value to the issues involved in the present case.

WHEREFORE, in view of the foregoing, the Court hereby resolves:

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[14] *Ibid.*, p. 515.
[15] Section 2, Rule 1, Revised Rules of the Court of Tax Appeals (RRCTA), as amended.
[16] G.R. Nos. 84154-55, July 28, 1990, 128 SCRA 23, 33 citing *Fonseca v. CA*, G.R. No. L-36035, August 30, 1988; *Hernandez v. Quirtan*, G.R. No. L-48457, November 29, 1988, 168 SCRA 99.
[17] G.R. No. 140944, April 30, 2008, 553 SCRA 111.

a. To **DENY** respondent's Motion for Partial Reconsideration for lack of merit; and

b. To **SET THIS CASE FOR HEARING** for the presentation of the documents mentioned and attached to the petitioner's Motion for Partial Reconsideration/New Trial on February 1, 2016 at 9:00 a.m. Meanwhile, the resolution of petitioner's Motion for Partial Reconsideration is held in abeyance pending the submission and formal offer of the aforesaid documents.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice