REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

ARMADILLO HOLDINGS, INC.,
Respondent.

CTA EB No. 1245
(CTA Case No. 8323)

Present:
DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, *and*
MANAHAN, *JJ.*

Promulgated:
MAR 09 2017 10:18 a.m.

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RESOLUTION

For resolution is the "Motion for Reconsideration" of petitioner Commissioner of Internal Revenue (CIR) filed through registered mail which the Court received on August 22, 2016 asking the Court *En Banc* to reconsider its Decision dated July 21, 2016 on the following grounds:

1. Respondent's failure to file a valid protest renders the assessment final, executory and demandable;

2. Respondent's failure to submit relevant documents in support of its protest, renders the assessment against it final and executory; and

3. Respondent's protest letter was filed out of time.

In a Resolution dated October 3, 2016 the Court *En Banc* ordered respondent to file its Comment.

On November 7, 2016, respondent filed its Comment/Opposition arguing that no new matters were raised to warrant a modification, much less a reversal, of the Court's earlier findings and conclusion, and that the motion is pro-forma.

Respondent also alleges that, contrary to the allegations of petitioner in its motion, there is evidence on record that petitioner treated respondent's letter dated February 18, 2011 as an administrative protest; that petitioner explicitly granted its request for investigation which rendered the issue on the timeliness and validity of filing the administrative protest immaterial, moot, and academic; that the issue on the timeliness of the administrative protest is being raised by petitioner for the first time; that the BIR Record was never identified during trial nor has it been formally offered in evidence; that petitioner is estopped from questioning the validity of the administrative protest.

After considering the arguments of both parties, it is apparent to this Court that, indeed, the arguments raised by the CIR in its Motion for Reconsideration are not new. They have been previously discussed and considered in the Decision dated June 11, 2014 and the Resolution dated October 9, 2014 of the First Division in CTA Case No. 8323. More importantly, they have also been exhaustively studied and considered by this Court prior to rendering our Decision dated July 21, 2016.

Considering that no new matters have been raised, the CIR's "Motion for Reconsideration" is **DENIED** for lack of merit.

SO ORDERED.

(See Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

With due respect, I maintain my Concurring & Dissenting Opinion
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

Ma. Belen M. Ringpis-Liban

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

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Court of Tax Appeals
QUEZON CITY

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Manahan, JJ.

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DISSENTING OPINION

DEL ROSARIO, P.J.:

I dissent with the *ponencia* in denying the Motion for Reconsideration posted by the Commissioner of Internal Revenue (CIR) on August 3, 2016.

In my Dissenting Opinion on the Court in Division's Decision dated June 11, 2014 and Resolution dated October 9, 2014, I have taken the position that Armadillo Holdings, Inc.'s (AHI) Petition for Review should be dismissed for lack of jurisdiction as the Final Assessment Notices (FANs) had become final and executory. In making such conclusion, I made the following observation: ***first*** – AHI's protest letter against the FANs failed to state the factual and legal bases thereof as required under Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, and Section 3.1.5 of Revenue Regulations No. 12-99; and, ***second*** – the FANs, as contained in the Bureau of Internal Revenue (BIR) Records, indicate that they have been received by AHI on January 14, 2011, albeit AHI filed its protest letter only on February 18, 2011, or five (5) days beyond the reglementary period within which to file the same. The *ponencia* of the assailed Decision of the Court in Division, however, proceeded to rule on the merits on the premise that the FANs were received by AHI on January 20, 2011 as alleged in the protest letter.

Though the FANs, found in the BIR Records, were not offered in evidence (unlike the protest upon which the Court in Division made its finding), I took the position that evidentiary value can be afforded to the said FANs by relying on the doctrine laid down in ***Commissioner of Internal Revenue vs. Court of Tax Appeals, et al.***[1] where the Supreme Court ruled that **records of the proceedings before the Collector of Customs form part of the records of the case which the Court can properly consider**. Hence, I was of the opinion that the Court in Division should have considered the FANs as found in the BIR Records in deciding the case since an appeal before the Court of Tax Appeals (CTA) is a mere continuation of the administrative proceedings before the BIR. I reiterated this position in my Dissenting Opinion on the Assailed Decision of the Court *En Banc.*

In the very recent decision of the Supreme Court in ***Pilipinas Shell Petroleum Corporation vs. Commissioner of Customs,***[2] the Supreme Court held that for evidence to be considered by the court, the same must be formally offered; and that even if a documentary evidence was included as part of the Bureau of Customs (BOC) Records submitted before the CTA in compliance with a lawful order of the court, it does not permit the trial court to consider the same as the Rules prohibit it. Pertinent parts of the Supreme Court's pronouncement are quoted hereunder:

> "In the case at bench, a perusal of the records reveals that there is neither any iota of evidence nor concrete proof offered and admitted to clearly establish that petitioner committed any fraudulent acts. **The CTA in Division relied solely on the Memorandum dated 2 February 2001 issued by the CIIS-IPD of the BOC in ruling the existence of fraud committed by petitioner. However, there is no showing that· such document was ever presented, identified, and testified to or offered in evidence by either party before the trial court**.
>
> Time and again, this Court has consistently declared that cases filed before the CTA are litigated *de novo*, party-litigants must prove every minute aspect of their cases. Section 8 of R.A.

[1] G.R. No. 132929, July 3, 2000.
[2] G.R. No. 195876, December 5, 2016.

No. 1125, as amended by R.A. No. 9282, categorically described the CTA as a court of record. Indubitably, no evidentiary value can be given to any documentary evidence merely attached to the BOC Records, as the rules on documentary evidence require that such documents must be formally offered before the CTA. Pertinent is Section 34, Rule 132 of the Rules of Court which reads:

Xxx xxx xxx.

From the foregoing provision, it is clear that for evidence to be considered by the court, the same must be formally offered. Corollarily, the mere fact that a particular document is identified and marked as an exhibit does not mean that it has already been offered as part of the evidence of a party. In *Interpacific Transit, Inc. v. Aviles*, We had the occasion to make a distinction between identification of documentary evidence and its formal offer as an exhibit. We said that the first is done in the course of the trial and is accompanied by the marking of the evidence as an exhibit while the second is done only when the party rests its case and not before. A party, therefore, may opt to formally offer his evidence if he believes that it will advance his cause or not to do so at all. In the event he chooses to do the latter, the trial court is not authorized by the Rules to consider the same.

The Rule on this matter is patent that even documents which are identified and marked as exhibits cannot be considered into evidence when the same have not been formally offered as part of the evidence, but more so if the same were not identified and marked as exhibits, such as in the present case. An assay of the records reveals that the subject Memorandum dated 2 February 2001 was neither identified nor offered in evidence by respondent during the entire proceedings before the CTA in Division. Consequently, this is fatal to respondent's cause in establishing the existence of fraud committed by petitioner since the burden of proof to establish the same lies with the former alone.

As a matter of fact, even if the aforesaid documentary evidence was included as part of the BOC Records submitted before the CTA in compliance with a lawful order of the court, this does not permit the trial court to consider the same in view of the fact that the Rules prohibit it. The reasoning forwarded by the CTA in Division in its Resolution dated 24 February 2009, that the apparent purpose of transmittal of the records is to enable it to appreciate and properly review the proceedings and findings before an administrative agency, is misplaced. **Unless any of the party formally offered in evidence said Memorandum, and accordingly, admitted by the court *a quo*, it cannot be considered as among the legal and factual bases in resolving the controversy presented before it**.

Xxx xxx xxx.

Clearly therefore, evidence not formally offered during the trial cannot be used for or against a party litigant by the trial court in deciding the merits of the case. Neither may it be taken into

> account on appeal. Since the rule on formal offer of evidence is not a trivial matter, failure to make a formal offer within a considerable period of time shall be deemed a waiver to submit it. Consequently, any evidence that has not been offered and admitted thereafter shall be excluded and rejected."

I submit that unless and until modified by the Supreme Court *En Banc*, the more recent pronouncement in the ***Shell case*** should be applied in determining whether evidentiary value may be given to the FANs which were not formally offered in evidence but found in the BIR Records. Indeed, the Supreme Court, by tradition and in our system of judicial administration, has the last word on what the law is; it is the final arbiter of any justiceable controversy. There is only one Supreme Court from whose decisions all other courts should take their bearings.[3]

After re-assessment of the case and taking into consideration the pronouncement of the Supreme Court in the ***Shell case***, I reconsider my earlier position that the FANs, though not formally offered in evidence, could be given probative value as they are found in the BIR Records. Thus, I assent to the Court in Division's premise that the FANs were received by AHI on January 20, 2011 as alleged in AHI's protest letter.

Notwithstanding the timely filing of AHI's protest letter, I still maintain my position that the protest letter is void and without force and effect as it failed to state the facts, applicable laws, rules and regulations or jurisprudence on which the protest is based. **This position has been exhaustively amplified on pages 4 to 6 of my Dissenting Opinion on the assailed Decision of the Court *En Banc*.** Since petitioner failed to file a valid protest against the FANs, the FANs had become final, executory and demandable.

All told, I VOTE to GRANT the Motion for Reconsideration filed by the CIR.

ROMAN G. DEL ROSARIO
Presiding Justice

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[3] *Development Bank of the Philippines v. NLRC*, March 1, 1995, 242 SCRA 59; *Albert v. Court of First Instance of Manila (Branch VI)*, L-26364, May 29, 1968, 23 SCRA 948 cited in the Concurring Opinion of Sandoval-Gutierrez, J., *Raul L. Lambino v. The Commission on Elections*, G.R. No. 174153, October 25, 2006.