REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

CORAL BAY NICKEL CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 7895

Members:

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

Promulgated:

JAN 27 2015 3:04 p.m.

x- x

RESOLUTION

***Fabon-Victorino, J.*:**

For resolution are the following:

1. Respondent's *Motion for Partial Reconsideration Re: Decision dated 1 September 2014*[1] filed on September 22, 2014, with petitioner's *Comment/Opposition* thereto filed on November 6, 2014; and

2. Petitioner's *Motion for Reconsideration/New Trial*[2] filed on September 18, 2014, with respondent's *Comment* filed on November 6, 2014.

Both petitioner and respondent seek reconsideration of the Decision[3] promulgated on September 1, 2014, the dispositive portion of which reads:

[1] Docket, pp. 1046-1062.
[2] Docket, pp. 1066-1081.
[3] Docket, pp. 1013-1045.

> **WHEREFORE**, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is hereby **DIRECTED TO REFUND** or **TOISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of ₱5,706,706.49,representing its unutilized excess input VAT for the four taxable quarters of 2007 attributable to its zero-rated sales for the same period.
>
> **SO ORDERED**.

Respondent's Motion for Partial Reconsideration

Respondent's *motion* is anchored solely on the following ground:

> WITH ALL DUE RESPECT, THE HONORABLE COURT MISAPPRECIATED THE EVIDENCE PRESENTED IN PARTIALLY GRANTING THE CLAIMED REFUND/CREDIT CONSIDERING THAT THE EVIDENCE PRESENTED DURING THE ADMINISTRATIVE LEVEL IS INSUFFICIENT IN FORM ALTHOUGH THE SAME WAS COMPLETELY FILLED UP DURING PRESENTATION OF PETITIONER'S EVIDENCE.

In support of the foregoing argument, respondent claims that the denial of petitioner's administrative claim for refund was justified by the BIR's finding that the invoices it presented for the period January 1, 2007 to December 31, 2007 failed to comply with the invoicing requirements under Section 110 and 113 of the National Internal Revenue Code (NIRC) of 1997, as amended. Respondent theorizes that prior to their presentation to the Court, the said invoices were "magically" completed or filled-up to comply with the invoicing requirements, as shown in the different handwriting and pen used.

In its *Comment/Opposition*, petitioner on the contrary states that the official receipts issued to it by SMCC Philippines, Inc. (SMCC) for taxable year 2007 were all compliant with the invoicing requirements under the Tax Code and related BIR issuances.

Moreover, it is for respondent to establish that the invoices were bogus. As it is, respondent merely rely on the photocopies of the alleged non-compliant SMCC official receipts on top of the self-serving testimony of her witness revenue officer. In fine, respondent cannot bank on photocopies of the alleged non-compliant receipts which were mere secondary evidence, the requisites for admission was not established.

Respondent's *motion* must fail.

Respondent obviously failed to consider that under Section 8 of Republic Act No. 1125,[4] the Court of Tax Appeals is a court of record and as such it is required to conduct a formal trial (trial *de novo*) where the parties to a case must present their respective evidence in support of their respective cases for the appreciation of the Court.[5] It has been ruled that cases filed before this Court are litigated de novo, hence, party-litigants are mandated to prove every minute aspect of their cases.[6] The evidence offered and admitted shall be subject of the Court's appreciation and shall become the basis of its judgment.

In the instant case, all the official receipts presented by petitioner to the Court were found compliant with the invoicing requirements under the Tax Code and related BIR issuances justifying the grant of the petition, albeit partially.

Petitioner's Motion for Reconsideration/New Trial

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[4]An Act Creating the Court of Tax Appeals.
[5]*Commissioner of Internal Revenue vs. Manila Mining Corporation,* G.R. No. 153204, August 31, 2005.
[6]*Dizon vs. Court of Tax Appeals, et al.,* G.R. No. 140944, April 30, 2008.

In its Motion for Reconsideration/New Trial, petitioner prays for reconsideration of the September 1, 2014 Decision, or in the alternative, for a new trial for it to present the additional pieces of evidence attached to its *motion* to prove the input taxes relating to purchases from SMCC in the amount of ₱13,178,915.64 and to justify its inclusion for refund or tax credit.

According to petitioner the Court partially erred in disallowing its claim for tax refund/credit for taxable year 2007 on the following grounds:

I. The official receipts issued to Petitioner for taxable year 2007 complied with the invoicing and accounting requirements for VAT registered persons under the Tax Code and related BIR issuances.

II. If indeed the official receipts issued by SMCC to Petitioner are not compliant, there was a mistake on the representations of the commissioned Independent Certified Public Accountant (ICPA) that the official receipts issued by SMCC to Petitioner complied with the invoicing and accounting requirements for VAT registered persons under the Tax Code and related BIR issuances.

III. Petitioner's claim for tax refund/credit must be reconsidered in the greater interest of justice, equity and fair play.

IV. Petitioner has accurately reconciled the alleged discrepancies noted by the Court.

In her *Comment*, respondent prays that petitioner's *Motion for Reconsideration/New Trial* be denied for utter lack of merit. For respondent, petitioner's allegation that all the official receipts issued by SMCC for taxable year 2007 complied with the invoicing requirements of the Tax Code carries no weight since as early as audit and investigation, she already noticed that the original documents, including receipts and invoices, did not comply with the invoicing requirements precisely the denial of its administrative claim for refund/tax credit. More importantly, the exhibits cited by petitioner in its *Motion for Reconsideration/New Trial* are the same documents her witness Revenue Officer III Jesus DS. Reyes testified to on rebuttal as non-compliant with the invoicing requirements.

Respondent likewise rejects petitioner's request for new trial to present additional evidence contending that it will delay the determination of the case. To repeat, the alleged official receipts are the same non-compliant receipts examined and testified to by her witness and considered by the Court in the resolution of the case.

Petitioner's *Motion for Reconsideration/New Trial* must likewise fail.

Petitioner admits lapses on its part as it heavily relied on the ICPA's representation that the official receipts issued by SMCC for the taxable year 2007 were compliant with the invoicing requirements under the Tax Code as well as related BIR issuances. Per the ICPA report, no specific alterations on the official receipts or any additions or alterations that were not authorized by SMCC. Hence, petitioner should not be faulted in relying on the said finding of the ICPA, who was under oath when he made the pronouncement. The fact that voluminous documents are involved in the instant case must also be considered.

The Court is not convinced.

Petitioner's ground hardly qualifies for new trial. Section 1 of Rule 37 of the 1997 Rules of Civil Procedure, as amended, provides:

> "Section 1.*Grounds of and period for filing a motion for new trial or reconsideration*. – Within the period for taking an appeal, the aggrieved party may move the trial court to set aside the

> judgment or final order and grant a new trial for one or more of the following causes materially affecting the substantial rights of said party:
>
> (a) Fraud, accident, mistake or excusable negligence which ordinary prudence could not have guarded against and by reason of which such aggrieved party has probably been impaired in his rights; or"

Note that the "mistake" allowed under Rule 37 is one which ordinary prudence could not have guarded against.[7] This is not obtaining in the present case.

Note that the Court disallowed the amount of ₱13,178,915.64, representing petitioner's input taxes on purchases from SMCC, because the supporting invoices or official receipts have alterations or additions without counter-signature or with counter-signature but could not be ascertained whether the person who counter-signed the alterations or additions was authorized.

During the hearing on November 22, 2012, respondent's witness Revenue Officer III Jesus DS. Reyes testified that as early as their actual vouching and verification of petitioner's documents, their group already noticed that the original documents[8], including receipts and invoices were non-compliant with the requisites as to justify the grant of refund/tax credit prayed for. The same witness confirmed that he was familiar with the receipts and invoices which petitioner presented to the Court. He stressed that there was substantial difference between the official receipts given to them by petitioner and those it presented to the Court. He noted that latter documents already bear the breakdown of the amount paid with indication that VAT was included.

Indeed, it is incredible that petitioner was unaware of the insertions/alterations on the official receipts issued to it

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[7]*Viking Industrial Corp. vs. Court of Appeals*, G.R. No. 143794, July 13, 2004.
[8]Exhibits "5" to "34" inclusive of sub-markings.

by SMCC. In the first place, petitioner would not have asked SMCC to insert or add the required information in the receipts to make them compliant. While petitioner had the right to request its supplier to issue a compliant receipt/invoice, it had the corresponding obligation to check whether the insertions/alterations were properly validated or countersigned by the authorized signatory. Petitioner in this regard miserably failed. For failure to have the insertions/alterations in the official receipts issued to it by SMCC countersigned by the authorized signatory, petitioner is not deemed to have acted with ordinary prudence in connection with its claim for refund.

On petitioner's alleged reliance on the report of the ICPA, suffice it to say that the Court is not bound by the ICPA's report or findings for they are mere tools or guide to aid the Court in the determination of the case. The Court may either completely or partially adopt it or totally disregard it. The Court can even come up with its own findings and evaluation of the pieces of evidence submitted by the parties in support of their respective positions.

We now proceed to petitioner's *Motion for Reconsideration*.

To repeat, the amount of ₱13,178,915.64, representing input VAT on purchases of goods or services from SMCC, were disallowed because the supporting invoices or official receipts have alterations or additions without counter-signature or with counter-signature but could not be ascertained whether the person who counter-signed the alterations or additions was an authorized representative of the supplier.

In other words, without the validation of the alterations or additions on the said invoices or receipts, the said documents failed to satisfy the requirements of the law. Consequently, they cannot be considered in favor of petitioner.

More importantly, the attached copies of the alleged proofs of remittances is of no consequence, since the said documents were not formally offered and admitted in evidence.

Section 34, Rule 132 of the Rules of Court provides that "*the court shall consider no evidence which has not been formally offered.*" A formal offer is required since judges are mandated to anchor their findings of facts and judgment on evidence formally offered and duly admitted by the Court. The formal offer will also define the purpose or purposes for which they are being offered by the proponent. The same procedure would allow 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.[9]

In *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue,*[10] the Supreme Court ruled:

> ". . . the Rules of Court, which is suppletory in quasi-judicial proceedings, particularly **Sec. 34 of Rule 132, Revised Rules on Evidence, is clear that no evidence which has not been formally offered shall be considered**. Thus, where the pertinent invoices or receipts purportedly evidencing the VAT paid by Atlas were not submitted, the courts a quo evidently could not determine the veracity of the input VAT Atlas has paid. Moreover, when Atlas likewise failed to submit pertinent export documents to prove actual export sales with due certification from accredited banks on the export proceeds in foreign currency with the corresponding conversion rate into Philippine currency, the courts a quo likewise could not determine the veracity of the export sales

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[9] *Heirs of Pedro Pasag, et al. vs. Spouses Parocha, et al.*, G.R. No. 155483, April 27, 2007.
[10] G.R. No. 159490, February 18, 2008.

as indicated in Atlas' amended VAT return."(*Boldfacing supplied*)

As earlier stated, under Section 8 of Republic Act No. 1125, the Court 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.[11] Indubitably, no evidentiary value can be given to the pieces of evidence submitted by petitioner attached to the instant *motion*, as the rules on documentary evidence require that these documents must be formally offered before this Court.[12]

Finally, it has been the consistent holding in this jurisdiction, that tax refunds partake the nature of tax exemptions. They are regarded as a derogation of sovereign authority and is to be construed in *strictissimi juris* against the person or entity claiming the exemption.[13] In an action for refund, therefore, the burden of proof is upon the claimant to establish a right to refund. Claimant's failure to discharge its burden will result in the denial of the claim for refund.

WHEREFORE, respondent Commissioner of Internal Revenue's *Motion for Partial Reconsideration Re: Decision dated 1 September 2014* and petitioner Coral Bay Nickel Corporation's *Motion for Reconsideration/New Trial* are hereby **DENIED**, for lack of merit.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

[11] *Dizon vs. Court of Tax Appeals, et al.*, G.R. No. 140944, April 30, 2008.
[12] *Ibid.*
[13] *Far East Bank and Trust Company v. Commissioner of Internal Revenue*, G.R. No. 138919, 488 SCRA 473; May 2, 2006.

We concur:

LOVELL R. BAUTISTA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice