REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION[1]

SHENILYN ABALOS, ET AL.,
Petitioners,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9089

Members:

Castañeda, Jr., *Chairperson,*
Manahan, and
Fabon-Victorino, *JJ.*

Promulgated:

JAN 1 1 2019 10:15 Am

x---x

RESOLUTION

CASTAÑEDA, JR., *J.*:

For resolution is the August 29, 2018 Motion for Reconsideration of petitioners,[2] without any comment from respondent, praying that the August 10, 2018 Decision of the Court be reconsidered and that their administrative claims for refund be admitted as evidence in substantial compliance under the law. The dispositive portion of the decision reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit.

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[1] Section 1, Rule VIII of the Internal Rules of the Court of Tax Appeals: "Section 1. *Case assigned to a justice for study and report.* --- Every Division Case, whether appealed or original, assigned to a Justice for study and report shall be retained by him even if he is transferred to another Division. The Justice, though transferred, shall write the report with the other members of the Division to which the case was originally submitted for decision. Their Division shall be called Special (No.) Division."

[2] Docket, Vol. II, pp. 875-880.

SO ORDERED."

We resolve to deny the motion for lack of merit.

First, the CTA is a court of record, thus, the cases filed before it are litigated *de novo* and party litigants should prove every minute aspect of their cases.[3] Otherwise stated, cases are decided based on what has been presented and formally offered by party litigants during the trial of the case and not on mere allegations.

Second, petitioners do not deny that they failed to offer in evidence the written administrative claims for refund.[4] But in appealing for the relaxation of the rules of procedure and on the strength of the testimony of Atty. Peter Paul S. Romero,[5] petitioners ask the Court to admit Annexes A to G of the Petition for Review,[6] even though these are mere *photocopies* of the administrative claims for refund allegedly filed with the Bureau of Internal Revenue (BIR).

Said testimony, however, failed to even account for the reason why the *original* documents were not presented and identified during trial. In other words, in lieu of the *best evidence* of their written administrative claims, petitioners are asking the Court to consider the *photocopies* which were not even offered in evidence in violation of Rule 130 Section 3 of the Rules of Court:

> "Sec. 3. *Original document must be produced; exceptions.* --- When the subject of inquiry is the contents of a documents, no evidence shall be admissible other than the original document itself, except in the following cases:
>
> (a) When the original has been lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror;
>
> (b) When the original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice;
>
> (c) When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of

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[3] *Commissioner of Internal Revenue v. Manila Mining Corporation*, G.R. No. 153204, August 31, 2005.
[4] Par. 6, Motion for Reconsideration, Docket, Vol II, p. 876.
[5] Q3, Amended Judicial Affidavit of Peter Paul S. Romero, Exhibit P-12, Docket, Vol II, p. 747.
[6] Docket, Vol I, pp. 135-220.

time and the fact sought to be established from them is only the general result of the whole; and

(d) When the original is a public record in the custody of a public officer or is recorded in a public office."

Furthermore, Section 5, Rule 130 of the Rules of Court states:

"Sec. 5 *When original document is unavailable.* --- When the original document has been lost or destroyed, or cannot be produced in court, the offeror, upon proof of its execution or existence and the cause of its unavailability without bad faith on his part, may prove its contents by a copy, or by a recital of its contents in some authentic document, or by the testimony of witnesses in the order stated."

A photocopy, being a mere secondary evidence, is not admissible unless it is shown that the original is unavailable. Thus, before a party is allowed to adduce secondary evidence to prove the contents of the original, the offeror must prove the following: (1) the existence or due execution of the original; (2) the loss and destruction of the original or the reason for its non-production in court; and (3) on the part of the offeror, the absence of bad faith to which the unavailability of the original can be attributed. The correct order of proof is as follows: existence, execution, loss, and contents.[7]

WHEREFORE, premises considered, the respondent's Motion for Reconsideration is **DENIED** for lack of merit.

SO ORDERED.

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

[7] *Country Bankers Insurance Corporation v. Antonio Lagman*, G.R. No. 165487, July 13, 2011.

WE CONCUR:

With all due respect to my esteemed colleagues,
I maintain my dissenting opinion.
CATHERINE T. MANAHAN
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice