REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

HALLIBURTON WORLDWIDE LIMITED-PHILIPPINE BRANCH,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9449

Members:

CASTAÑEDA, JR., *Chairperson*
MANAHAN, *JJ.*

Promulgated:

FEB 14 2019 2:10 pm

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RESOLUTION

MANAHAN, J.:

For resolution are the following:

1. Petitioner's *Omnibus Motion (1) For Partial Reconsideration (Re: Decision dated October 18, 2018); and (2) For Reopening of Trial)* posted on November 15, 2018 without respondent's Comment;

2. Respondent's *Motion for Partial Reconsideration* posted on November 6, *2018* with petitioner's *Comment/Opposition (Re: CIR's Motion for Reconsideration dated November 5, 2018).*

Both parties seek partial reconsideration of the Court's Decision dated October 18, 2018 (assailed Decision), the dispositive portion of which reads:

"WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby **PARTIALLY GRANTED.**

> Accordingly, respondent is **ORDERED TO REFUND or TO ISSUE A TAX CREDIT CERTIFICATE** in the amount of **EIGHT HUNDRED FORTY FOUR THOUSAND ONE HUNDRED NINETY FOUR** and 90/100 Pesos (Php844,194.90) representing its unutilized excess input VAT for the four taxable quarters of CY 2014 which is attributable to its zero rated sales/receipts for the same period.
>
> SO ORDERED."

Petitioner's Omnibus Motion for (1) Partial Reconsideration; (Reopening of Trial)

In its motion for partial reconsideration, petitioner disagrees with the Court's findings that the partial grant of its claim for refund of input VAT was due to non-compliance with the substantiation requirements prescribed by law and regulations. Petitioner takes exception to the findings of the Court that disallowed a significant portion of its input VAT in the total amount of Php10,337,850.09 for its alleged failure to present the payment confirmation receipts corresponding to BIR Forms No. 1600. On the contrary, petitioner insists that it was able to prove its excess and unutilized input VAT attributable to its zero-rated sales during the four (4) quarters of CY 2014 by its filing of BIR Form No. 1600 which constitutes sufficient documentary substantiation of the input VAT rendered by non-residents. Petitioner cites Revenue Regulations (RR) No. 8-02 which provides that only the duly filed BIR Form No. 1600 is required to prove remittance of the tax insofar as the claimed input VAT on services rendered by non-residents is concerned.

Petitioner deems BIR Form No. 1600 as sufficient proof of input tax payments made to non-residents in the light of the doctrine that civil cases necessitate a mere preponderance of evidence for its approbation. In comparison with respondent's evidence, petitioner claims that its evidence is more credible and conclusive which would warrant a grant of its claim for refund.

Be that as it may, petitioner expresses its willingness to present supplemental evidence such as the payment confirmation receipts to erase any doubt as to whether petitioner's input VAT for services rendered by non-residents amounting to Php9,668,175.09 are properly supported and compliant with the substantiation requirements. It is for this reason, that petitioner also prays for the Court to grant its

Motion to Reopen Trial for an opportunity to present the evidence required to fully convince this Court of the veracity and validity of its entire claim for refund.

The Court finds petitioner's arguments without merit.

The pieces of evidence submitted by petitioner relative to its claim for refund of alleged excess and unutilized input VAT attributable to zero-rated sales for the four (4) quarters of CY 2014 have been thoroughly studied by the Court and from this bases, made its conclusion on the sufficiency thereof in the light of the six (6) requisites laid down in several Supreme Court decisions, to wit:

1) That the taxpayer is VAT-registered;
2) That there must be zero-rated or effectively zero-rated sales;
3) That input taxes were incurred or paid;
4) That such input taxes are attributable to zero-rated or effectively zero-rated sales;
5) That said input taxes were not applied against any output VAT liability, and
6) That the claim was filed within the prescribed periods both in the administrative and judicial levels.

In the course of our study of the evidence presented by petitioner, this Court found that the total amount of Php10,337,850.09 representing the alleged input VAT should be disallowed for the following reasons, and we quote relevant portions of the assailed Decision, thus:

> "Aside from the ICPA recommended disallowance of Php295,460.95, the following input VAT in the amount of Php10,337,850.09 should likewise be disallowed for failure to meet the substantiation requirements prescribed under the aforementioned VAT law and regulations."

The argument of petitioner that BIR Form 1600 is sufficient proof to substantiate the input VAT on services rendered by non-residents without need to submit any confirmation receipts is without merit. The filing of BIR Form 1600 is insufficient to prove the amount actually remitted to the BIR and the dates when these were remitted and as such, these must be supported by payment confirmation receipts.

Without these confirmation receipts, this Court could not determine the amount actually withheld and remitted/paid to the BIR and the corresponding date of payment.

While we acknowledge that the standard of proof in civil cases (such as judicial claims for refund) is only preponderance of evidence which is linked to the concept of *solutio indebiti*[1], the strict construction in the appreciation of evidence will still apply in cases where compliance with conditions are an important facet to determine whether or not the taxpayer is entitled to the claim for refund as in claims for refund of alleged excess/unutilized input VAT attributable to zero-rated sales.

With regard to petitioner's motion to reopen trial for the submission of supplemental evidence, this Court cannot grant the same.

It is well-established that a motion to re-open the case like a motion for new trial may be granted only upon specific, well-defined grounds, set forth in the Rules.[2] Petitioner did not mention any circumstance that would justify the grant of re-opening a case for reception of additional evidence. Neither did petitioner attach any document required under the Rules of Court that is inherent in a motion for new trial.

We quote Sections 1 and 2 of Rule 37 of the Rules of Court to illustrate our point:

> 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
> (b) Newly discovered evidence, which he could not, with reasonable diligence have discovered and produced at the trial, and which if presented would probably alter the result.

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[1] CIR vs. Mirant Pagbilao Corporation, G.R. No.172129, September 12, 2008.
[2] Ramon Alegre vs. Manuel Reyes, G.R. No. L-56923, May 9, 1988.

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Section 2. *Contents of motion for new trial or reconsideration and notice thereof.* - xxx xxx

A motion for new trial shall be proved in the manner provided for proof of motions. **A motion for the cause mentioned in paragraph (a) of the preceding section shall be supported by affidavits of merits which may be rebutted by affidavits. A motion for the cause mentioned in paragraph (b) shall be supported by affidavits of witnesses by whom such evidence is expected to be given, or by duly authenticated documents which are proposed to be introduced in evidence.**" (emphasis supplied)

xxx xxx xxx

Based on the foregoing provisions of the Rules of Court, petitioner failed to comply with the requirements for establishing its cause that would enable this Court to determine the merits of its motion to re-open the case. Besides, the payment confirmation receipts do not constitute newly-discovered evidence. Petitioner should have presented these together with BIR Form 1600.

Respondent's Motion for Partial Reconsideration

On the other hand, in respondent's *Motion for Partial Reconsideration,* respondent argues that sale of services that do not qualify as zero-rated should be subject to the 12% output VAT so it is logical to conclude that the corresponding VAT liability of petitioner in the total amount of Php4,885,160.17 (representing petitioner's sale of services that do not qualify for zero-rating) should be computed and deducted from the refundable amount. Respondent disassociates himself from the suggestion that this Court should make an assessment on the aforesaid amount but merely asks this amount to be deducted from the total amount to be refunded to petitioner.

Respondent also asserts that petitioner failed to comply with the invoicing requirements under Section 113 of the 1997 National Internal Revenue Code (NIRC), as amended. Respondent takes note of the discrepancies and defects in the sales invoices and receipts submitted by petitioner, e.g. failure to indicate the Tax Identification Number (TIN) and address of petitioner; VAT not separately indicated in the VAT official receipts/sales invoices, hence must have led this Court to conclude that petitioner failed to substantiate its zero-rated sales for CY 2014 and that the amount of Php844,194.90 in the assailed Decision should not have been granted by the Court in the assailed Decision.

In Petitioner's *Comment/Opposition* to respondent's *Motion for Partial Reconsideration,* it avers that it would suffer grave injustice if the entire amount of Php4,885,160.71 would be subjected to VAT merely because the evidence fell short of qualifying these as VAT zero-rated. Petitioner reminds respondent that the finding of the Court that it was not able to submit sufficient documents to show that these sales were zero-rated, does not necessarily mean that these sales are vatable. Petitioner theorizes that to request the Court to render these sales vatable is to actually expect the Court of Tax Appeals to issue an assessment which is beyond its authority and would infringe on its right to due process as such argument would circumvent the prescriptive period on tax assessments as provided under the 1997 NIRC, as amended.

Lastly, petitioner maintains that it sufficiently proved its entitlement to the claim for refund of excess input VAT for CY 2014 contrary to the contention of respondent.

We cannot subscribe to respondent's assertions.

It is well-settled that the question of tax deficiency is distinct and unrelated to a taxpayer's entitlement to a refund.[3] To automatically "offset" the petitioner's alleged tax liabilities against the claim for refund would be unfair as it would deprive the latter to dispute the same in the proper venue with all the defenses available under the law such as prescription. Further, this Court does not have the power to assess taxpayers because such power rightfully belongs to the Commissioner of Internal Revenue. The Supreme Court made this clear in the case of *CIR vs. Toledo Power Co.*[4], when it ruled thus:

> **"Besides, it would be unfair to allow the CIR to use a claim for refund under Section 112 of the NIRC as a means to assess a taxpayer for any deficiency VAT xxx xxx.** As we have said, the courts have no assessment power, and therefore cannot issue assessments against taxpayers. **The courts can only review the assessments issued by the CIR, who under the law is vested with powers to assess and collect taxes and the duty to issue tax assessments within the prescribed period."** (emphasis supplied).

[3] SMI-ED Philippines Technology,Inc. vs. CIR, G.R. No. 175410, November 12, 2014
[4] G.R. Nos. 196415 and 196451, December 2, 2015.

As to the argument of respondent that petitioner failed to substantiate its claim for refund, this issue of appreciation of evidence had already been thoroughly passed upon and resolved by the Court in the assailed decision, hence we no longer see the necessity of reiterating our findings and conclusions.

WHEREFORE, premises considered, petitioner's *Omnibus Motion (1) For Partial Reconsideration (Re: Decision dated October 18, 2018); and (2) For Reopening of Trial)* and respondent's *Motion for Partial Reconsideration* are **DENIED** for lack of merit.

SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

I CONCUR:

Juanito C. Castañeda, Jr.

JUANITO C. CASTAÑEDA, JR.
Associate Justice