REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

CHEVRON HOLDINGS, INC.,
Petitioner,

-versus-

COMMISSIONER OFINTERNAL REVENUE,
Respondent.

C.T.A. CASENO. 8436

Members:

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

Promulgated:

APR 13 2015
4:06 p.m.

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RESOLUTION

FABON-VICTORINO, J.:

In the Decision dated October 22, 2014, the Court partially granted petitioner's claim for refund or issuance of tax credit certificate, in this wise:

> **WHEREFORE**, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is hereby **DIRECTED** to **REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner Chevron Holdings Inc. in the reduced amount of ₱31,119,589.65, representing unutilized and excess input VAT for the four taxable quarters of CY 2010 attributable to its zero-rated receipts.
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> **SO ORDERED**.

Both aggrieved, petitioner and respondent are now before the Court with the following incidents for resolution:

1) Respondent's Motion for Partial Reconsideration of the Decision promulgated 22 October 2014, filed on October 30, 2014 with petitioner's Comment filed on December 10, 2014;

2) Petitioner's Omnibus Motion (For Partial Reconsideration and To Reopen Trial) posted on November 7, 2014, with respondent's Opposition filed on December 10, 2014;

3) Petitioner's Supplemental Motion for Partial Reconsideration (With Motion for Leave) filed on December 10, 2014, with respondent's Opposition filed on January 20, 2015.

On respondent's Motion for Partial Reconsideration:

In her Motion for Partial Reconsideration, respondent faults the Court for granting petitioner's claim for refund of its alleged unutilized and excess input VAT attributable to its zero-rated receipts for the four taxable quarters of Calendar Year 2010 in the reduced amount of ₱31,119,589.65. Respondent posits that petitioner is not entitled to any refund as it was not able to substantiate its claim having failed to comply with the invoicing and accounting requirements under Sections 113, 114 and 236 of the National Internal Revenue Code (NIRC) of 1997, as amended, and Revenue Regulations (RR) No. 16-2005. Petitioner likewise failed to prove that it submitted all relevant supporting documents in the administrative level as mandated under Revenue Memorandum Order (RMO) No. 53-98 and other existing BIR rules and regulations. For the said lapses, petitioner failed to exhaust available administrative remedies, thereby depriving the Court of jurisdiction to entertain the petition.

Saying the opposite, petitioner claims that it has complied with the invoicing requirements laid down in Sections 113, 114 and 236, Tax Code, and the relevant BIR rules and regulations. It submitted relevant documents it deemed would support its administrative claim for refund. Moreover, the prerogative to determine what constitutes "relevant supporting documents" for its administrative claim for refund belongs to petitioner and not to respondent.

Finally, submission of certifications from other government agencies indicating that petitioner has not commenced or filed any action or proceeding in connection with the said claim for refund of the subject amount is not warranted since the Verification and Certification against forum shopping incorporated in the Petition is sufficient for that purpose.

Respondent's Motion for Partial Reconsideration should be denied for lack of merit.

A second hard look at respondent's arguments will show that they are a *replica* of those in her Answer filed on March 29, 2012[1]. Contrary to respondent's claim, petitioner was able to substantiate its claim for refund albeit in the reduced amount of ₱31,119,589.65 through the documents it presented in Court all enumerated in the assailed Decision of October 22, 2014, specifically in pages 11 to 12 thereof.

Besides, there is no indication that respondent required or even notified petitioner of the need to submit additional documents in the administrative level and that petitioner failed to comply. In the consolidated cases of *Team Sual Corporation (formerly: Mirant Sual Corporation) vs. Commissioner of Internal Revenue, and Commissioner of Internal Revenue vs. Team Sual Corporation (formerly Mirant Sual Corporation)*[2], the Court *En Banc* held **the completeness of documents to support a claim for refund is determined by the taxpayer** and not by the BIR whose duty under Section 112(C) of the NIRC of 1997 is to act on the claim within the allowable period of 120-day period from the date of submission of complete documents.

Anent the non-submission of complete documents in the administrative level, to repeat, this is not fatal to petitioner's claim for refund in the judicial level. In *Commissioner of*

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[1]Docket, Vol.1, pp. 31-39.
[2]CTA EB Nos. 649 and 651, March 21 , 2012.

Internal Revenue vs. Toledo Power Company[3], the Court *En Banc* had the occasion to clarify this issue in this fashion:

> "In a VAT refund case such as the present case, **the alleged non-submission of complete documents at the administrative level is not fatal to a claim for refund in the judicial level** as held in several CTA *En Banc* cases one of which is *Commissioner of Internal Revenue vs. CE Luzon Geothermal Power Company, Inc.* It will not bar the CTA from receiving, evaluating, and appreciating evidence submitted before it. **Once the claim for refund has been elevated to the CTA, 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**." *(Emphasis supplied)*

On petitioner's Omnibus Motion:

In its Omnibus Motion, petitioner prays to reconsider the Court's denial of its zero-rated receipts in the total amount of P492,998,804.48 and the deduction of its output VAT liability for CY 2010 in the amount of P18,741,363.34. In connection with the foregoing, petitioner prays for the reopening of the case so that it may be able to present additional evidence attached to its motion which will allegedly establish that its affiliates are doing business outside the Philippines.

While some of its documents were considered for purpose of establishing that its clients are non-resident foreign entities doing business outside the country, the Court rejected for the same purpose the Service Agreements executed by petitioner with some of its foreign affiliates wherein the addresses of petitioner's clients were indicated.

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[3]CTA EB No. 589, January 12, 2011.

The Court as well erred when it did not consider the Philippines SEC Certificate of Non-Registation and other documents showing that its clients are doing business abroad.

On this regard, respondent argues that it was incumbent for petitioner to prove its entitlement to the refund sought and it failed. Petitioner likewise ignored the tenet that claims for refund are strictly construed against the claimant as they partake the nature of a tax exemption.

Petitioner's contention is as well bereft of merit.

In a litany of cases, this Court has ruled that the Certification of Non-Registration of Corporation/Partnership, standing alone, is insufficient to prove that the taxpayer's clients are non-resident foreign entities doing business outside the country. Since the instant case is one for refunds, a more strict standard is warranted in determining whether the evidence submitted by petitioner are sufficient to substantiate its claim for refund or issuance of tax credit certificate. Petitioner simply failed to discharge this burden.

On this issue, the Court, in the assailed Decision, ruled, thus:

> "Each one of the enumerated documents, standing alone, is inadequate proof that petitioner's client is a non-resident foreign corporation doing business outside the Philippines. While the SEC Certificates of Non-Registration show that the named entities therein are not registered corporations/partnerships in the Philippines, the same do not prove that such entities are non-resident foreign corporations doing business outside the Philippines. Likewise, the Service Agreements only indicate the names and addresses of petitioner's customers to whom it rendered services but the same do not establish that such customers are non-resident foreign corporations doing business outside the Philippines. The same with the Articles of Association, Articles/Certificate of Incorporation,

> Inline Report of the Corporate Profile, and printed screenshots of the United States SEC website for company filings of Chevron Corporation which only prove that the entities named therein were incorporated or organized abroad but not the fact that they are not doing business in the Philippines.
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> To be considered as a non-resident foreign corporation doing business outside the Philippines, each entity must be supported at the very least by **both** SEC Certificate of Non-Registration of Corporation/Partnership **and** Memorandum/Articles of Association, Certificate of Incorporation/Registration, Articles of Merger, Certificate of Change of Name and Incorporation, Inline Report of the Corporate Profile **or** printed screenshots of US SEC website showing the state/province/country where the entity was organized. xxxx."

Petitioner further contends that it was erroneous for the Court to rule that its submitted documents were insufficient to prove the existence of its reported VAT carry-over from the previous year especially on account that respondent did not even offer any proof to that effect. Apart from this, the submission of VAT invoices/receipts is not among the requirements to prove entitlement to a claim for VAT refund or credit.

Again, the Court is not persuaded.

Obviously, petitioner failed to contemplate on the indispensability of substantiation of input VAT to ensure that the amount for refund are only those taxes that have actually been remitted and paid to the Government which have not been utilized by the taxpayer-claimant in the succeeding quarters.

The Supreme Court in the case of *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*[4], emphasized that applications for refund/credit of input VAT with the BIR must comply with

[4] G.R. Nos. 141104 & 148763, June 8, 2007, 524 SCRA 105.

the appropriate revenue regulations. Thus, the issuance of appropriate invoice or receipt to establish zero-rated sale transaction is a legal requirement that cannot be ignored.

As regards petitioner's theory that claims for refund of erroneously paid taxes are in the nature of civil cases, therefore, only preponderance of evidence is required, that it is sufficient that its evidence is more credible and conclusive than that of respondent especially considering that the latter did not present any evidence to contradict its contentions, the ruling in *Commissioner of Internal Revenue vs. Far East Bank & Trust Company,(Now Bank of the Philippine Islands),*[5] is instructive, to wit:

> "**Entitlement to a tax refund is for the taxpayer to prove and not for the government to disprove.**
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> xxx xxx xxx
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> Moreover, **the fact that the petitioner [Commissioner of Internal Revenue] failed to present any evidence or to refute the evidence presented by respondent does not ipso facto entitle the respondent to a tax refund. It is not the duty of the government to disprove a taxpayer's claim for refund. Rather, the burden of establishing the factual basis of a claim for a refund rests on the taxpayer.**
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> And while the petitioner has the power to make an examination of the returns and to assess the correct amount of tax, his failure to exercise such powers does not create a presumption in favor of the correctness of the returns. **The taxpayer must still present substantial evidence to prove his claim for refund. As we have said, there is no automatic grant of a tax refund.**
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> Hence, for failing to prove its entitlement to a tax refund, respondent's claim must be denied. Since tax refunds partake of the nature of tax exemptions, which are construed strictissimi

[5] G.R. No. 173854, March 15, 2010.

> juris against the taxpayer, evidence in support of a claim must likewise be strictissimi scrutinized and duly proven." (Emphases supplied)

Additionally, substantial evidence has been construed to mean not necessarily preponderant proof as is required in ordinary civil action, but such kind of "relevant evidence as a reasonable man might accept as adequate in support of a conclusion."[6]

The foregoing premises considered, petitioner's contention that the strict construction of refund claims does not apply to overpaid or erroneously paid taxes is utterly misplaced.

Insofar as petitioner's Motion to Re-open Trial for presentation of evidence attached to its motion allegedly to prove that all its affiliates are doing business outside the Philippines is concerned, suffice it to say that petitioner admits that these attached documents at the time of the filing of the instant claim already existed only that it was difficult for it to secure them due to the sheer number of its affiliates some of which were not within its control and management. In fine, they are neither newly discovered nor inadvertently omitted due to fraud, accident, mistake or excusable negligence which merit a reopening of the case.

Finally, on petitioner's Supplemental Motion for Partial Reconsideration (with Motion for Leave), the same is merely a reiteration of petitioner's prayer to reopen the case and to admit the attached Supplemental ICPA Report to be identified upon recall the ICPA. In addition, petitioner also moves to present two more witnesses, namely its current Finance Coordinator, Godofredo L. Tolores, to identify its Quarterly VAT Returns and SLP and its Optimization Manager, Ms. Hyacinth Pacifico-Carreon, to identify Annexes A to K of its Omnibus Motion dated November 7, 2014.

As stated by respondent, who strongly objects to the proposed submission of a Supplemental ICPA Report and other evidence, those pieces of evidence were not do on the

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[6] *Commissioner of Internal Revenue vs. Manila Machinery and Supply Company, et al.*, G.R. No. L-25653, February 28, 1983.

same ground cited contending that evidence not formally offered are inadmissible and have no probative value.

Reopening of a case is not merely rooted on the interest of justice but rest within the sound discretion of the Court. And the Court cannot simply relax the rules without justifiable grounds.

In the case of *Republic of the Philippines vs. The Hon. Sandiganbayan*[7], it was held:

> ". . . Admission of additional evidence is addressed to the sound discretion of the trial court. Indeed, in the furtherance of justice, the court may grant the parties the opportunity to adduce additional evidence bearing upon the main issue in question. The remedy of reopening a case for presenting further proofs was meant to prevent a miscarriage of justice.
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> While it is true that the 1997 Rules of Civil Procedure, as amended, prescribed an order of trial (Section 5, Rule 30), relaxation of the rule is permitted in sound discretion of the court. According to Justice Jose Y. Feria in his annotations on civil procedure:
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> After the parties have produced their respective direct proofs, they are allowed to offer rebutting evidence only, but, it has been held, the court, for good reasons in the furtherance of justice, may permit them to offer evidence upon their original case, and its ruling will not be disturbed in the appellate court where no abuse of discretion appears. **So, generally, additional evidence is allowed when it is newly discovered, or where it has been omitted through inadvertence or mistake, or where the purpose of the evidence is to correct evidence previously offered.**"

Evidently, petitioner only has itself to blame for the lapses committed. It is not for the Court to dictate what

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[7] G.R. No. 159275, August 25, 2010, 629 SCRA 55.

evidence to present to prove petitioner's case, specifically those that will show that all its clients are non-resident entities doing business outside the Philippines for it is the very core of its claim for refund. As taxpayer-claimant, petitioner has the burden of proof to establish not only the factual but also the legal basis of its claim but it miserably failed.

Petitioner cannot also seek refuge in the liberal application of the rules. In the case of *Commissioner of Internal Revenue vs. A. Soriano Corporation, Court of Tax Appeals and Court of Appeals*[8], the Supreme Court had this to say - "for this act of negligence, the petitioner cannot be allowed to seek refuge in a liberal application of the Rules for it should not be forgotten that the first and fundamental concern of the rules of procedure is to secure a just determination of every action. A liberal application of the rules of procedure to suit the petitioner's purpose would clearly pave the way for injustice as it would be rewarding an act of negligence with undeserved tolerance."

The Court cannot take up petitioner's cause given that it had ample opportunity to present all its evidence during trial of the case. The record speaks for itself. Petitioner was remiss in its obligation to properly and orderly prosecute its case and avail of appropriate remedies under the rules within the allowable period or reasonable time.

Thus, to allow petitioner to present additional evidence after it had been given ample opportunity to justify its claim for refund/credit will give rise to a dangerous precedent where there will be no end to a litigation.

Neither can the present motion for reopening of the case be considered as a motion for new trial.

Section 1 of Rule 37 of the Rules of Civil Procedure, enumerates the following grounds for filing a motion for new trial:

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[8] G.R. No. 113703, January 31, 1997.

> (a)Fraud, accident, mistake or excusable negligence which ordinary prudence could not have guarded against and by reason of which such aggrieved party ha probably been impaired in his rights;
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> (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.

In the present case the subject documents cannot be considered as newly discovered evidence but merely forgotten evidence. Jurisprudence has it that forgotten evidence, not presented during the trial nor formally offered, is not newly found evidence that merits a new trial.[9] Let it be a constant reminder that a litigation is not a "trial and error" proceeding. To allow a party to belatedly submit such evidence which could have been offered with the exercise of due diligence goes against the orderly administration of justice.

Finally, while it is true that rules of procedure are not cast in stone, it is equally true that strict compliance with the Rules is indispensable for the prevention of needless delays and for the orderly and expeditious dispatch of judicial business.[10]

WHEREFORE, respondent's Motion for Partial Reconsideration filed on October 30, 2014, petitioner's Omnibus Motion (For Partial Reconsideration and To Reopen Trial) posted on November 7, 2014 and its subsequent Supplemental Motion for Partial Reconsideration (With Motion for Leave) filed on December 10, 2014, are hereby **DENIED**, for lack of merit.

SO ORDERED.

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[9]*Atlas Consolidated Mining & Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 159490, February 18, 2008.

[10]*Villanueva vs. Court of Appeals*, January 27, 1992, 205 SCRA 537, *citing Tropical Homes, Inc. vs. National Housing Authority*, No. L-48672, 152 SCRA 540 (1987), *Borre vs. Court of Appeals*, No. L-57204, 158 SCRA 560 (1988) and *Ozaeta vs. Court of Appeals*, G.R. No. 83281, 179 SCRA 800 (1989).

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

LOVELL R. BAUTISTA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice