REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

STAGES PRODUCTION SPECIALISTS, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA *EB* NO. 2658
(CTA Case No. 9817)

Present:

DEL ROSARIO, *P.J.*,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, *and*
ANGELES, *JJ.*

Promulgated:
FEB 23 2024 3:35pm

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RESOLUTION

CUI-DAVID, J.:

Before the Court *En Banc* is petitioner's ***Motion for Reconsideration*** filed on October 24, 2023, with respondent's ***Comment/Opposition (on Motion for Reconsideration)*** filed on October 31, 2023.

Petitioner seeks reconsideration of the Court's *Decision* dated October 4, 2023, with the following dispositive portion:

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

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Petitioner argues that the Court erred in disregarding creditable withholding taxes (**CWT**) amounting to ₱666,596.18, even if the original copies of the respective certificates were not produced under the Original Document Rule. According to petitioner, a duplicate is admissible to the same extent as the original, and that respondent did not file any comment or opposition to petitioner's *Offer of Exhibits*.

Petitioner also argues that the Court erred in finding that the pieces of evidence it submitted were insufficient to prove that the income payments subjected to CWT were declared in its 2015 income tax return (**ITR**). According to petitioner, the testimonies of Ms. Michelle Lacsamana and Ms. Evangeline G. Agustin and the documentary exhibits submitted more than sufficiently proved that the income payment received is part of petitioner's gross income.

Petitioner also faults the Court for strictly construing tax refunds. According to petitioner, the case of *Petron Corporation v. Commissioner of Internal Revenue*[1] ruled otherwise.

In his *Comment*, respondent argues against the admissibility of petitioner's exhibits. First, respondent points out that petitioner did not file a motion for reconsideration to the resolution/order denying its exhibits. Second, respondent argues that the absence of respondent's objections does not refrain the Court from ruling on the inadmissibility of documentary evidence presented by petitioner.

Respondent ends his argument by stating that tax refunds are in the nature of tax exemptions, and hence, these must be construed strictly against the taxpayer.

Petitioner's *Motion* is not impressed with merit.

Petitioner cannot belatedly question the Court in Division's denial of admission of its Certificates of Creditable Taxes Withheld.

To reiterate, petitioner argues that the Court erred in disregarding CWTs amounting to ₱666,596.18, even if the

[1] G.R. No. 255961, March 20, 2023.

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respective original copies of the individual certificates were not produced under the Original Document Rule.

A perusal of the records reveals that the Court in Division made the denial of admission of the said Certificates of Creditable Taxes Withheld in its *Resolution* dated June 3, 2020.[2] Consequently, the following CWTs were disallowed:

Exhibit No.	Payor's Name	Amount of Income Payment	Amount of Tax Withheld
"P-10-l"	Asian Academy of Television Arts Inc.	₱82,352.94	₱12,352.94
"P-10-m"	Ayala Land, Inc.	512,249.05	10,244.98
"P-10-u"	Bloomberry Resorts and Hotels, Inc	11,274.11	225.48
"P-10-v"	Bloomberry Resorts and Hotels, Inc	14,705.36	294.11
"P-10-ii"	Creative Juice Communications, Inc.	145,542.75	21,831.41
"P-10-xx"	Smart Communications, Inc.	8,084.13	161.68
"P-10-bbb"	GMA Network, Inc.	117,647.06	11,764.71
"P-10-ccc"	Golden Arches Development Corporation	94,117.64	14,117.65
"P-10-eee"	Grolier International, Inc.	89,751.40	13,462.71
"P-10-fff"	GV Productions, Inc.	16,666.67	1,666.67
"P-10-iii"	Intelligent Beauty Skin Solutions Inc.	35,714.29	714.29
"P-10-mmm"	Magic Leaf Marine Logistics Corp.	35,294.12	5,294.12
"P-10-mmm"	Magic Leaf Marine Logistics Corp.	58,823.53	8,823.53
"P-10-nnn"	Makati Shangri-la Hotel & Resort, Inc.	1,021,964.27	153,294.64
"P-10-ppp"	Manuela Corporation	105,882.36	15,882.35
"P-10-sss"	Marivent Resort Hotel Inc.	1,000,000.00	20,000.00
"P-10-aaaa"	Pilipino Cable Corporation	141,176.47	21,176.47
"P-10-bbbb"	Philippine Long Distance Telephone Company	175,434.00	3,508.68
"P-10-cccc"	Prime Events Force Unlimited Inc.	141,176.47	21,176.47
"P-10-dddd"	Push Associates Inc	141,176.47	21,176.47
"P-10-eeee"	Red Events & Communications, Inc.	117,647.06	17,647.06
"P-10-ffff"	Red Events & Communications, Inc.	176,470.59	26,470.59
"P-10-gggg"	Robinsons Land Corporation (Crowne Plaza Galleria Manila)	159,793.73	23,969.06

[2] CTA Case No. 9817, Docket – Vol. II, pp. 1302 to 1303.

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"P-10-llll"	Sky Cable Corporation	70,588.27	10,588.24
"P-10-nnnn"	Smart Communications, Inc.	8,084.13	161.68
"P-10-oooo"	SPI CRM Inc	1,172,766.64	23,455.34
"P-10-pppp"	Strategic Works (Stratworks), Inc.	80,357.14	12,053.57
"P-10-qqqq"	Strategic Works (Stratworks), Inc.	80,357.14	12,053.57
"P-10-wwww"	The Philippine American Life and General Insurance Company	1,248,578.89	24,971.58
"P-10-yyyy"	The Philippine American Life and General Insurance Company	638,197.46	12,763.95
"P-10-zzzz"	The Philippine American Life and General Insurance Company	638,197.46	12,763.95
"P-10-ddddd"	Tupperware Brands Phils. Inc.	90,721.65	13,608.25
"P-10-hhhhh"	United Coconut Planters Bank	1,769,249.34	35,384.98
"P-10-iiiii"	United Coconut Planters Bank	35,114.05	5,267.11
"P-10-jjjjj"	Vidanes, Elizabeth Alviar	52,941.17	7,941.18
"P-10-mmmmm"	SPI CRM Inc	530,640.60	10,612.81
"P-10-ooooo"	Ayala Land, Inc.	277,158.43	5,543.17
	Subtotal	***13,804,433.06***	***666,596.18***

A further examination of the records reveals that petitioner *did not* file any motion for reconsideration or any objection to the ruling made by the Court in Division in its *Resolution*. Further, petitioner failed to file any tender of excluded evidence.

In light of this, the ruling of the Supreme Court in *Fortune Tobacco Corp. v. Commissioner of Internal Revenue* [3] is elucidating, to wit:

> At any rate, even if the Court should find fault in the ruling of the CTA Division in denying the admission of petitioner's evidence, **the result would be the same because petitioner failed to offer any proof or tender of excluded evidence.** As aptly discussed by the CTA En Banc:
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>> Petitioner posits that if their exhibits, specifically Exhibits "G", "G-1" to "G-7" and Exhibit "H", are admitted together with the testimony of their witness, the same would sufficiently prove their claim. A closer scrutiny of the records shows that petitioner did not file any offer of proof or tender of excluded evidence.

[3] G.R. No. 192024, July 1, 2015, 762 PHIL 450-467.

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> Section 40, Rule 132 of the Rules of Court provides:
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>> Sec. 40. Tender of excluded evidence. — If documents or things offered in evidence are excluded by the court, the offeror may have the same attached to or made part of the record. If the evidence excluded is oral, the offeror may state for the record the name and other personal circumstances of the witness and the substance of the proposed testimony.
>
> The rule is that evidence formally offered by a party may be admitted or excluded by the court. If a party's offered documentary or object evidence is excluded, he may move or request that it be attached to form part of the records of the case. If the excluded evidence is oral, he may state for the record the name and other personal circumstances of the witness and the substance of the proposed testimony. These procedures are known as offer of proof or tender of excluded evidence and are made for purposes of appeal. If an adverse judgment is eventually rendered against the offeror, he may in his appeal assign as error the rejection of the excluded evidence.
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> It is of record that the denial of the excluded evidence was never assigned as an error in this appeal. Thus, this Court cannot pass upon nor consider the propriety of their denial. Moreover, this Court cannot and should not consider the documentary and oral evidence presented which are not considered to be part of the records in the first place. Thus, Exhibits "G", "G-1" to "G-7" and Exhibit "H", together with the testimony of petitioner's witness thereon, cannot be admitted and be given probative value.

It has been repeatedly ruled that where documentary evidence was rejected by the lower court and the offeror did not move that the same be attached to the record, the same cannot be considered by the appellate court, as documents forming no part of proofs before the appellate court cannot be considered in disposing the case. For the appellate court to consider as evidence, which was not offered by one party at all during the proceedings below, would infringe the constitutional right of the adverse party — in this case, the CIR, to due process of law. [*Emphasis supplied*]

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Thus, the Court *En Banc* cannot belatedly reverse the ruling of the Court in Division in relation to the denial of admission of the said exhibits.

Petitioner failed to prove that the income payments subjected to CWT were declared in its 2015 ITR.

As mentioned in the assailed Decision, to prove that the income payments related to the claimed CWT formed part of petitioner's declared income per ITR, petitioner presented its original and amended Annual ITRs for TY 2015,[4] Quarterly ITRs for TY 2015,[5] Summary Alphalist of Withholding Taxes (**SAWT**) for TY 2015,[6] 2015 Audited Financial Statements (**AFS**),[7] and its witnesses, Ms. Michelle Lacsamana and Ms. Evangeline G. Agustin.

However, petitioner's *Motion for Reconsideration* merely reiterated its argument in its *Petition for Review* that it was able to prove that the income payments subjected to CWT were declared in its 2015 ITR. We quote our assailed *Decision*:

> **Notwithstanding the foregoing testimonies and the above-mentioned documentary exhibits, the Court is unable to verify whether the income payments subjected to CWTs for TY 2015 were indeed reported and formed part of petitioner's 2015 gross income.** The bare testimonies of Ms. Michelle Lacsamana and Ms. Evangeline G. Agustin in their respective Judicial Affidavits, stating by way of a hasty conclusion that the amounts withheld were declared as part of the income of petitioner for TY 2015, without guiding this Court as to how the amounts indicated in the SAWT and the *Certificates of Creditable Tax Withheld at Source* formed part of the declared income in the 2015 Annual ITR, were not sufficient to prove that income payments subjected to CWTs were declared as part of petitioner's gross income in its 2015 Annual ITR.
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> Simply put, petitioner's failure to prove its compliance with the *third requisite* is fatal to the present refund claim. [*Emphasis supplied*]

[4] Exhibits "P-1-a" and "P-1", CTA Case No. 9817, Docket – Vol. II, pp. 1062 to 1069 and 1054 to 1061.
[5] Exhibits "P-3", "P-4", "P-5", and "P-5-a", CTA Case No. 9817, Docket – Vol. II, pp. 1078 to 1087.
[6] Exhibit "P-2", CTA Case No. 9817, Docket – Vol. II, pp. 1071 to 1076.
[7] Exhibit "P-15", CTA Case No. 9817, Docket – Vol. II, pp. 1268 to 1282.

There is no automatic grant of a tax refund.[8] As We have stated, the burden is on the taxpayer to show that he has strictly complied with the conditions for the grant of the tax refund or credit. Since taxes are the lifeblood of the government, tax laws must be faithfully and strictly implemented, as they are not intended to be liberally construed.[9]

In its final attempt to convince the Court, petitioner invokes *Petron Corporation v. CIR (Petron* case), [10] which, according to petitioner, reversed the long-standing principle that tax refunds are to be strictly construed against the taxpayer.

Petitioner's invocation is misplaced.

The *Petron* case, citing *CIR v. Philippine American Accident Insurance Co., Inc. (Philippine American Accident Insurance* case),[11] ruled:

> The rule that tax exemptions should be construed strictly against the taxpayer presupposes that the taxpayer is clearly subject to the tax being levied against him. Unless a statute imposes a tax clearly, expressly and unambiguously, what applies is the equally well-settled rule that the imposition of a tax cannot be presumed. Where there is doubt, tax laws must be construed strictly against the government and in favor of the taxpayer. This is because taxes are burdens on the taxpayer, and should not be unduly imposed or presumed beyond what the statutes expressly and clearly import.

We note that this ruling is inapplicable to petitioner. In the *Petron* case, Petron's production of alkylates was ruled to be not subject to the excise tax on manufactured oils and other fuels. In the *Philippine American Accident Insurance* case, petitioner therein was judged to be not subject to fixed tax on lending investors as it is an insurance company. In both cases, the burden of proof is indeed on the State, as the State must prove that petitioners therein are properly subject to tax for the State to deny their claim for refund. Hence, the Supreme Court ruled that "tax laws must be construed strictly against the government and in favor of the taxpayer."

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[8] *CIR vs. Far East Bank & Trust Company*, G.R. No. 173854, March 15, 2010, 629 SCRA 405-418.
[9] *Coca-Cola Bottlers Philippines, Inc. vs. CIR*, G.R. No. 222428, February 19, 2018.
[10] G.R. No. 255961, March 20, 2023.
[11] G.R. No. 141658, March 18, 2005, 493 PHIL 785-803.

However, the instant case is far from similar. Here, petitioner is undoubtedly subject to the regular corporate income tax imposed by Section 27(A) of the NIRC of 1997, as amended. The imposition is clear; hence, the rule of strict construction of tax laws *against the government* is inapplicable. The claim for refund in this case does not arise out of clear exemptions by law but because of alleged unutilized CWTs, which petitioner must prove.

The general rule remains that tax refunds are strictly construed against the claimant, and it is incumbent upon the taxpayer to prove their entitlement thereto. Unfortunately for petitioner, petitioner failed to overcome its burden of proof.

The Court reiterates the time-honored principle that tax refunds are construed strictly against the taxpayer, and liberally in favor of the State. Hence, the law upon which the claim of refund is made, and the documents presented to prove such entitlement to the refund are construed *strictissimi juris* against the taxpayer and are *strictissimi* scrutinized.[12]

Accordingly, it is incumbent upon the claimant to establish the factual basis of his or her claim for tax credit or refund. This petitioner failed to do.

WHEREFORE, premises considered, the instant *Motion for Reconsideration* is DENIED for lack of merit.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

WE CONCUR:

(I reiterate my Concurring Opinion in the assailed Decision of the Court in Division)
ROMAN G. DEL ROSARIO
Presiding Justice

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[12] *Tanduay Distillers, Inc. v. Commissioner of Internal Revenue*, G.R. No. 256740 (Notice), February 13, 2023.

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MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

ON OFFICIAL BUSINESS
HENRY S. ANGELES
Associate Justice