**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

## SPECIAL SECOND DIVISION

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| **VESTAS SERVICES PHILIPPINES, INC.,** Petitioner, | **CTA CASE NO. 8888** |
| | Members: |
| - versus - | **CASTAÑEDA, JR.,** *Chairperson, and* **MANAHAN,** *JJ.* |
| **COMMISSIONER OF INTERNAL REVENUE,** Respondent. | Promulgated: DEC 17 2018 3:07 pm |

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## RESOLUTION

For resolution is respondent's **Motion for Reconsideration (On the Amended Decision promulgated on August 31, 2018)**, filed through registered mail on September 16, 2018 and received by the Court on September 25, 2018, with petitioner's **Comment (to Respondent's Motion for Reconsideration dated 13 September 2018)**, filed on November 8, 2018.

The Amended Decision dated August 31, 2018 (assailed Amended Decision) partially granted petitioner's Petition for Review after determining that both administrative and judicial claims for refund were timely filed. The dispositive portion of the assailed Amended Decision reads:

> "**WHEREFORE**, premises considered, petitioner's **Motion for Reconsideration (RE: Decision dated 26 May 2017)** is **PARTIALLY GRANTED**. Accordingly, the dispositive portion of this Court's Decision dated May 26, 2017 is amended to read as follows:

> 'WHEREFORE, in view of the foregoing, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** to petitioner in the amount of **₱4,390,198.45** representing its unutilized input VAT for the 4th quarter of CY 2013, attributable to its zero-rated receipts for the same period.
>
> **SO ORDERED.**'
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> **SO ORDERED.**"

In the instant motion, respondent asserts that petitioner unwittingly and effectively changed its theory of the case with respect to the reckoning of the 30-day period to file a judicial appeal with the Court of Tax Appeals (CTA). Moreover, respondent reiterates that petitioner is disqualified from claiming for a tax credit certificate (TCC) or a refund of its creditable input tax due or paid attributable to its sales as it recorded an excess input tax carried over from previous quarter in its value-added tax (VAT) return for the quarter ended March 31, 2014.

Petitioner, on the other hand, submits that it did not change its position with regard to the reckoning of the period to appeal its claim for refund with the CTA. Petitioner maintains that it appealed the denial of its administrative claim with the CTA within 30 days from receipt of the unfavorable decision of respondent. Moreover, petitioner claims that when the transmittal letter establishing the submission of additional supporting documents was admitted as secondary evidence, the Court still found that the judicial claim was timely filed. Hence, petitioner argues that, either way, the appeal was instituted on time. Also, petitioner reiterates that it was able to prove, through the presentation of various documentary and testimonial evidence, its eligibility for a claim for refund. However, due to incompleteness or insufficiency of receipts and/or documents, a portion of the gross receipts arising from the subject transactions was disqualified for VAT zero-rating.

The Court finds respondent's motion bereft of merit.

At the outset, it must be noted that the grounds raised by respondent in his motion were already passed upon and resolved by the Court in the Resolutions dated September 28, 2017,[1] April 4, 2018 and in the assailed Amended Decision.

In the Resolution dated September 28, 2017, the Court allowed petitioner to present additional evidence applying the well-settled jurisprudential rule that technical rules of procedure are not ends in themselves but are primarily designed to aid in the administration of justice, which must be liberally construed in order to promote its objective of securing a just, speedy and inexpensive disposition of every action and proceeding.

In the same resolution, the Court, cited the case of *BPI-Family Savings Bank, Inc. vs. Court of Appeals, et al.*,[2] wherein the Supreme Court considered the taxpayer's annual income tax return which was only attached to its motion for reconsideration before the CTA, in evaluating its claim for refund. Particularly, the Supreme Court held:

> "True, strict procedural rules generally frown upon the submission of the Return after the trial. The law creating the Court of Tax Appeals, however, specifically provides that proceedings before it 'shall not be governed strictly by the technical rules of evidence.' The paramount consideration remains the ascertainment of truth. Verily, the quest for orderly presentation of issues is not an absolute. It should not bar courts from considering undisputed facts to arrive at a just determination of a controversy.
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> xxx xxx xxx
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> It should be stressed that the rationale of the rules of procedure is to secure a just determination of every action. They are tools designed to facilitate the attainment of justice. But there can be no just determination of the present action if we ignore, on grounds of strict technicality, the Return submitted before the CTA and even before this Court. To repeat, the undisputed fact is that petitioner suffered a net loss in 1990; accordingly, it incurred no tax liability to which the

[1] Docket (Vol.) II, pp. 549-554.
[2] G.R. No. 122480, April 12, 2000.

> tax credit could be applied. Consequently, there is no reason for the BIR and this Court to withhold the tax refund which rightfully belongs to the petitioner." (*Citations omitted*)

It must be emphasized that, while respondent opposed petitioner's Motion for Reconsideration with Motion with Leave of Court to Reopen the Case for Presentation of Additional Evidence, he interposed no objection as regards petitioner's Supplemental Formal Offer of Evidence. Respondent did not controvert the veracity of the photocopy of the transmittal letter dated April 11, 2014. In addition, he failed to file his memorandum within the period granted by the Court.

The Court admitted petitioner's additional evidence in the Resolution dated April 4, 2018. In addition, the Court also found probative weight on the admitted additional evidence, thereby ruling that the judicial claim was filed by petitioner on time. Accordingly, the Court amended its original decision and partially granted petitioner's claim for refund.

Dissatisfied with the Amended Decision of the Court, respondent maintains that petitioner is disqualified from claiming a TCC or refund considering that its VAT return for the 1st quarter of 2014 disclosed that it recorded an excess input tax carried over from previous quarter in the amount of ₱107,309,259.02.

This argument is a mere rehash of respondent's Answer and the Court has already made a determination, as discussed in the Amended Decision, that petitioner's input VAT remained unutilized and was not reflected as carry over in petitioner's succeeding Quarterly VAT Returns for the 1st and 2nd quarters of CY 2014.

Clearly, there is no cogent reason to disturb the assailed Amended Decision.

**WHEREFORE**, in view of the foregoing, respondent's **Motion for Reconsideration (On the Amended Decision promulgated on August 31, 2018)** is **DENIED** for lack of merit.

**SO ORDERED.**

**JUANITO C. CASTAÑEDA, JR.**
Associate Justice

**CATHERINE T. MANAHAN**
Associate Justice