REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PHILEX MINING CORPORATION, Petitioner, -versus- COMMISSIONER OF INTERNAL REVENUE, Respondent.	C.T.A. CASE NOS. 8676 and 8687 Members: BAUTISTA, *Chairperson*; FABON-VICTORINO, and RINGPIS LIBAN, JJ. Promulgated: FEB 03 2016 3:40 p.m.

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RESOLUTION

FABON-VICTORINO, J.:

In the Decision dated October 12, 2015, the Court denied petitioner's claims for refund or issuance of tax credit certificate, to wit:

> **WHEREFORE**, the consolidated Petitions for Review filed by Philex Mining Corporation on July 26, 2013 and August 8, 2013, are hereby **DENIED** for insufficiency of evidence.
>
> **SO ORDERED**.

Aggrieved, petitioner filed the instant Motion for Reconsideration (of Decision dated 12 October 2015) on November 2, 2015, raising the following grounds:

I.

THE HONORABLE COURT ERRED IN NOT GIVING EVIDENCIARY VALUE TO THE VAT CERTIFICATE OF REGISTRATION THAT PETITIONER ATTACHED TO ITS PETITION FOR REVIEW AS ANNEXES "A" AND "A-1"

II.

THE HONORABLE COURT ERRED IN NOT TAKING JUDICIAL NOTICE OF THE FACT THAT IN EARLIER DECISIONS ON PETITIONER'S OTHER SIMILAR CLAIMS FOR REFUND OF INPUT VAT, THE HONORABLE COURT OF TAX APPEALS HAS CONSISTENTLY FOUND AS A FACT THAT PETITIONER IS A VAT-REGISTERED TAXPAYER.

III.

THE ASSAILED DECISION MUST BE RECONSIDERED AND THE CLAIM MUST BE GRANTED IN THE INTEREST OF JUSTICE, EQUITY AND FAIRPLAY.

In her Comment/Opposition filed on January 15, 2016, respondent counters that:

1. The Honorable Court is correct in not giving weight or evidentiary value to the VAT Certificate of Registration that Petitioner attached to its Petition for Review as Annexes A & A-1.

2. Respondent never admitted as a fact, the registration of Petitioner.

3. It is not mandatory for the Court to take judicial notice that Petitioner is VAT-Registered entity.

4. The assailed decision should be affirmed because a claim for refund should be strictly construed against the taxpayer.

The Court finds petitioner's Motion for Reconsideration devoid of merit.

The Court thoroughly explained in the assailed Decision that the main reason for the denial of petitioner's claim for refund/tax credit was its failure to prove that it was a VAT-registered taxpayer during the relevant period. While it might be true that petitioner attached its VAT Certificate of Registration in its Petition for Review, it could not be considered and given evidentiary value since it was not introduced in open court neither was it formally offered in evidence for the appreciation and evaluation of the Court, in violation of the express provision of Section 34 of Rule 132 of the Rules of Court.

In this regard, the Court, in the assailed Decision, elaborated the necessity of offering a document as evidence, in this wise:

> "A formal offer is necessary since judges are required to base their findings of fact and judgment only — and strictly — upon the evidence offered by the parties at the trial. To allow a party to attach any document to his pleading and then expect the court to consider it as evidence may draw unwarranted consequences. Besides, the opposing party will be deprived of his chance to examine the document and object to its admissibility. Unless and until admitted by the court in evidence for the purpose or purposes for which such document is offered, the same is merely a scrap of paper barren of probative weight."

Moreover, the instant case did not even fall under the exceptional circumstances when the Supreme Court recognizes relaxation of rules in certain instances when a document, not formally offered, may be admitted, since to qualify for the exception, the following requirements must concur: (1) the same must have been duly identified by testimony duly recorded; and (2) the same must have been incorporated in the records of the case, none is obtaining in the instant case.

The Court cannot also take judicial notice of the alleged consistent finding of the Court in earlier cases involving the same parties that "petitioner is a VAT-registered taxpayer".

The Supreme Court pronouncement in the case of *Silkair (Singapore) Pte. Ltd v. Commissioner of Internal Revenue*[1], is instructive on the matter, thus":

> "Each and every case is distinct and separate in character and matter although similar parties may have been involved. Thus, in a pending case, it is not mandatory upon the courts to take judicial notice of pieces of evidence which have been offered in other cases even when such cases have been tried or pending in the same court. Evidence already presented and admitted by the court in a previous case cannot be adopted in a separate case pending before the same court without the same being offered and identified anew.
>
> The cases cited by petitioner concerned similar parties before the same court but do not cover the same claim. A court is not compelled to take judicial notice of pieces of evidence offered and admitted in a previous case unless the same are properly offered or have accordingly complied with the requirements on the rules of evidence. In other words, the evidence presented in the previous cases cannot be considered in this instant case without being offered in evidence.

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[1] G.R. No. 184398, February 25, 2010, 613 SCRA 638.

> Moreover, Section 3 of Rule 129 of the Revised Rules of Court provides that hearing is necessary before judicial notice may be taken by the courts. To quote said section:
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> > Sec. 3. Judicial notice, when hearing necessary. – During the trial, the court, on its own initiative, or on request of a party, may announce its intention to take judicial notice of any matter and allow the parties to be heard thereon.
> >
> > After the trial, and before judgment or on appeal, the proper court, on its own initiative or on request of a party, may take judicial notice of any matter and allow the parties to be heard thereon if such matter is decisive of a material issue in the case.

Moreover, courts cannot be required to take judicial notice of a decision or the facts involved in another case tried by the same court itself, unless the parties introduce the same in evidence or the court, as a matter of convenience, decides to do so. Besides, judicial notice of matters which ought to be known to judges because of their judicial functions is only discretionary upon the court. It is not mandatory.[2]

It is also worth to note that the power to take judicial notice must be exercised with caution and every reasonable doubt on the subject should be ample reason for the claim of judicial notice to be promptly resolved in the negative.[3]

Finally, as to petitioner's argument that the assailed decision must be reconsidered and the claim must be granted in the interest of justice, equity and fairplay, first, the law requires petitioner to prove each and every detail of

[2] *Central Azucarera De Bais Employees Union-NFL [CABEU-NFL] v. Central Azucarera De Bais, Inc. [CAB]*, G.R. No. 186605, November 17, 2010.
[3] *Spouses Latip v. Rosalie Palaña Chua*, G.R. No. 177809, October 16, 2009.

its claim, second, a claim for tax credit or refund, as the instant case, should be treated like a tax exemption, which is strictly construed against the taxpayer. The taxpayer claiming the tax credit or refund has the burden of proving that he is entitled to the refund by showing that he has strictly complied with the conditions for the grant of the tax refund or credit.[4] Obviously, petitioner failed to discharge this burden.

WHEREFORE, petitioner's Motion for Reconsideration (of Decision dated 12 October 2015) filed on November 2, 2015, is hereby **DENIED,** for lack of merit.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

LOVELL R. BAUTISTA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[4] *Silicon Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. Nos. 184360 & 184361, February 19, 2014.