REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

Special Third Division

UPS-DELBROS TRANSPORT, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9063

Members:

FABON-VICTORINO, *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:

FEB 21 2019
11:06 a.m.

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RESOLUTION

RINGPIS-LIBAN, *J.*:

For the Court's resolution are the following:

1. petitioner's **Motion for Partial Reconsideration (Re: Amended Decision dated October 19, 2018)**, filed through registered mail on November 9, 2018 and received by the Court on November 15, 2018, without respondent's comment per Records Verification Report dated January 8, 2019; and

2. respondent's **Motion for Reconsideration**, filed through registered mail on November 8, 2018 and received by the Court on November 15, 2018, with petitioner's **Comment (Re: Motion for Reconsideration dated November 8, 2018)**, filed on December 21, 2018.

Both parties seek reconsideration of this Court's Amended Decision dated October 19, 2018, the dispositive portion of which reads:

"**WHEREFORE**, premises considered, petitioner's **Motion for Partial Reconsideration (Re: Decision dated May 22, 2018)** is **PARTIALLY GRANTED.**

Accordingly, the Decision dated May 22, 2018 is amended to read as follows:

> "**WHEREFORE**, premises considered, the assessments issued by respondent against petitioner for taxable year 2005 covering deficiency income tax and value-added tax are **CANCELLED** for lack of merit, while the deficiency expanded withholding tax assessment is **AFFIRMED with modification**. Accordingly, petitioner is hereby **ORDERED TO PAY** respondent the amount of **Two Hundred Nineteen Thousand Four Hundred Twenty One Pesos and 7/100 (₱219,421.07)**, representing basic expanded withholding tax, 25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, 20% deficiency interest and 20% delinquency interest imposed under Sections 249(B) and (C), respectively, of the same Code, computed until December 31, 2017, to wit:

Basic Tax Due	₱ 41,730.40
Add: 25% Surcharge	10,432.60
20% Deficiency Interest from January 12, 2006 to June 5, 2015 (3,432 days)	78,476.02
Total Amount Due, June 5, 2015	**₱ 130,639.02**
Add: 20% Deficiency Interest from June 6, 2015 to December 31, 2017 (940 days; based on basic tax of ₱41,730.40)	21,494.01
20% Delinquency Interest from June 6, 2015 to December 31, 2017 (940 days; based on total amount due of ₱130,639.02 as of June 5, 2015)	67,288.04
Total Amount Due as of December 31, 2017	**₱ 219,421.07**

> In addition, petitioner is liable to pay delinquency interest at the rate of 12% on the total unpaid amount of ₱130,639.02 as of June 5, 2015, as determined above, computed from January 1, 2018 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended by Republic Act No. 10963, also known as Tax Reform for Acceleration and Inclusion Law and as implemented by RR No. 21-2018.
>
> **SO ORDERED.**"

SO ORDERED."

Petitioner's Motion for Partial Reconsideration

Petitioner submits that the Court erred in sustaining and upholding respondent's deficiency expanded withholding tax (EWT) assessment against petitioner for calendar year (CY) 2005, including the imposition of surcharge, as well as deficiency and delinquency interests thereon. Thus, petitioner prays for this Court to partially reconsider the above Amended Decision based on the following grounds:

1. The Waivers of the Defense of Prescription executed by petitioner are null and void for failure to comply with the requirements of a valid waiver under Section 222(b), Tax Code and Revenue Memorandum Order (RMO) No. 20-90, in relation to Revenue Delegation Authority Order (RDAO) No. 05-01;

2. There is no factual basis for respondent to assess petitioner deficiency EWT for CY 2005; and

3. Assuming arguendo that petitioner is liable for deficiency EWT, it is respectfully submitted that there is legal basis to revise the computation of the delinquency interest on deficiency EWT.

Petitioner prays that this Court reconsiders its appreciation on the validity of the Waivers dated January 6, 2009, May 18, 2009 and August 18, 2009. Petitioner argues that the waivers executed by petitioner are null and void for failure to strictly comply with the requirements of a valid waiver under Section 222(b), Tax Code and RMO No. 20-90, in relation to RDAO No. 05-01. Petitioner maintains that the said waivers did not extend the periods within which to issue the deficiency tax assessments subject of this case. Thus, petitioner alleges that respondent's right to assess it for deficiency EWT had already prescribed.

Petitioner also avers that respondent's EWT assessment should be cancelled for lack of legal basis. Petitioner maintains that it properly withheld the taxes due on its income payments in CY 2005. Petitioner reiterates that the manner of computing deficiency EWT based on income payments derived from the Accounts Payable (A/P) register for the month of December 2005 is based on mere conjecture and speculation.

Lastly, petitioner submits that the manner of computation by this Court of the deficiency and delinquency interest due on petitioner for EWT should be reconsidered as it goes against the provision of Revenue Memorandum Circular No. 46-99. According to petitioner, the imposition of 40% per annum interest on the deficiency taxes partake the nature of an imposition that is penal, rather than compensatory, and is clearly excessive and unconscionable.

The above arguments posited by petitioner are a mere rehash and restatement of its previous arguments in its Motion for Partial Reconsideration (Re: Decision dated May 22, 2018) which were already considered and passed upon in the assailed Amended Decision.

As discussed in the assailed Amended Decision, Revenue Regulations No. 21-2018 provides:

> **SECTION 6. TRANSITORY PROVISION.**—In cases where the tax liability/ies or deficiency tax/es became due before the effectivity of the TRAIN Law on January 1, 2018, and where the full payment thereof will only be accomplished after the said effectivity date, the interest rates shall be applied as follows:

Period	*Applicable Interest Type and Rate*
For the period up to December 31, 2017	Deficiency and/or delinquency interest at 20%
For the period January 1, 2018 until full payment of the tax liability	Deficiency and/or delinquency interest at 12%

> **The double imposition of both deficiency and delinquency interest under Section 249 prior to its amendment will still apply in so far as the period between the date prescribed for payment until December 31, 2017.**" *(Emphasis supplied)*

Considering that Republic Act No. 10963 or the "Tax Reform for Acceleration and Inclusion" (TRAIN) Law became effective only on January 1, 2018, then the simultaneous imposition of deficiency interest and delinquency interest provided under Section 249(B) and (C) of the Tax Code prior to its amendment by the TRAIN Law shall apply.

Respondent's Motion for Reconsideration

In his Motion for Reconsideration, respondent contends that the exhibits of the petitioner should not be given any probative value for being hearsay evidence.

Citing Section 36[1], Rule 130 of the Rules of Court, respondent submits that any probative weight given to the testimony of petitioner's witness, Ms.

[1] *Section 36. Testimony generally confined to personal knowledge; hearsay excluded.* – A witness can testify only to those facts which he knows of his personal knowledge; that is, which are derived from his own perception, except as otherwise provided in these rules.

Florinda P. Casilag, should have been limited only to those facts which she has personal knowledge.

Respondent alleges that the signatories of the Returns, Invoices and Official Receipts submitted by petitioner were not presented to testify on such relevant and material matters, hence, said Returns, Invoices and Official Receipts should be considered hearsay evidence.

On the other hand, petitioner in its comment asserts that respondent already waived his objections to the evidence offered by petitioner to this Court.

Quoting Section 36[2], Rule 132 of the Rules of Court, petitioner states that, objection to evidence must be made after the evidence is formally offered. In case of documentary evidence, offer is made after all the witness of the party making the offer testified, specifying the purpose for which the evidence is being offered. Petitioner contends that evidence may be admitted for failure to object to the testimony on the ground that it was hearsay.

Petitioner claims that respondent did not raise any objections at the time of the presentation of petitioner's evidence, specifically its witness, Ms. Florinda P. Casilag, on February 9, 2018. Thus, petitioner alleges that respondent has already waived his right to object to the admissibility of petitioner's documentary evidence for his failure to timely manifest or file his objection.

Lastly, petitioner contends that respondent cannot raise a new ground or issue for the first time at such a late stage.

Petitioner submits that respondent cannot raise a new ground or issue for the first time in his Motion for Reconsideration before this Court. According to petitioner, jurisprudence is replete with pronouncements which ruled that issues not raised during the trial cannot be raised for the first time on appeal.

Petitioner alleges that there is nothing in respondent's memorandum which would show that respondent questioned the probative value of petitioner's exhibits. Likewise, petitioner points out that respondent failed to file his Motion for Reconsideration of this Court's Decision dated May 22, 2018, instead, respondent has waited until this Amended Decision was rendered before the said argument was raised. Thus, petitioner contends that the issue on hearsay

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[2] *Section 36. Objection* – Objection to evidence offered orally must be made immediately after the offer is made.

Objection to a question propounded in the course of the oral examination of a witness shall be made as soon as the grounds therefor shall become reasonably apparent.

<u>An offer of evidence in writing shall be objected to within three (3) days after notice of the offer unless a different period is allowed by the court.</u>

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evidence appears to be a mere afterthought of respondent in his attempt to obtain a reversal of the ruling in the assailed Decision.

Respondent's motion is bereft of merit.

Records show that respondent filed his Comment to Petitioner's Formal Offer of Evidence[3] on April 26, 2016 through registered mail and received by the Court on May 12, 2016. The only objection raised therein by respondent pertains to the alleged inadmissibility of Exhibits "P-42" and "P-54" for violating the best evidence rule.

In the Resolution[4] dated June 14, 2016, the testimonial and documentary evidence offered by petitioner were all admitted by this Court except for Exhibits "P-42" and "P-54" for failure to present originals for comparison. Nevertheless, in the Resolution[5] dated September 16, 2016, upon petitioner's motion, the Court reconsidered these denied exhibits and admitted them as secondary evidence under Section 5, Rule 130 of the Rules of Court.

Respondent's objection to the Returns, Invoices and Official Receipts supposedly offered by petitioner was only raised in his Motion for Reconsideration of the Amended Decision. Hence, said objection was belatedly raised. Having failed to object to these evidence on the ground that they are allegedly hearsay evidence since the signatories of the same were not presented to testify on such relevant and material matters, respondent is now deemed to have waived his objection on this ground and cannot raise it for the first time in his Motion for Reconsideration.

In *Interpacific Transit, Inc. vs. Aviles*[6], the Supreme Court ruled when an objection to a documentary evidence must be made, to wit:

> Objection to the documentary evidence must be made at the time it is formally offered, not earlier. The identification of the document before it is marked as an exhibit does not constitute the formal offer of the document as evidence for the party presenting it. Objection to the identification and marking of the document is not equivalent to objection to the document when it is formally offered in evidence. What really matters is the objection to the document at the time it is formally offered as an exhibit.

[3] Docket, vol. 4, pp. 1633-1634.
[4] Docket, vol. 4, pp. 1645-1646.
[5] Docket, vol. 4, pp. 1703-1704.
[6] G.R. No. 86062, June 6, 1990.

In *Quebral vs. Court of Appeals, et al.*[7], the Supreme Court held that since no timely objection was ever made, the evidence not objected to became property of the case, and all the parties to the case are considered amenable to any favorable or unfavorable effects resulting from the evidence.

Furthermore, in the case of *Blas vs. Angeles-Hutalla*[8], the Supreme Court held that:

> The established doctrine is that when a party failed to interpose a timely objection to evidence at the time they were offered in evidence, such objection shall be considered as waived. In *Tison v. Court of Appeals*, the Supreme Court set out the applicable principle in the following terms:
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>> "[F]or while the documentary evidence submitted by petitioners do not strictly conform to the rules on their admissibility, we are, however, of the considered opinion that the same may be admitted by reason of private respondent's failure to interpose any timely objection thereto at the time they were being offered in evidence. It is elementary that an objection shall be made at the time when an alleged inadmissible document is offered in evidence, otherwise, the objection shall be treated as waived, since the right to object is merely a privilege which the party may waive.
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>> As explained in *Abrenica vs. Gonda, et al.*, it has been repeatedly laid down as a rule of evidence that a protest or objection against the admission of any evidence must be made at the proper time, otherwise, it will be deemed to have been waived. The proper time is when from the question addressed to the witness, or from the answer thereto, or from the presentation of the proof, the inadmissibility of the evidence is, or may be inferred.
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>> Thus, a failure to except to the evidence because it does not conform with the statute is a waiver of the provisions of the law. That objection to a question put to a witness must be made at the time the question is asked. An objection to the admission of evidence on the ground of incompetency, taken after the testimony has been given, is too late. Thus,

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7 G.R. No. 101941, January 25, 1996.

8 G.R. No. 155594, September 27, 2004.

> for instance, failure to object to parol evidence given on the stand, where the party is in a position to object, is a waiver of any objections thereto."

In the present case, respondent failed to interpose a timely objection to the Returns, Invoices and Official Receipts for allegedly being "hearsay" evidence at the time these documents were offered in evidence by petitioner. Thus, such objection shall be considered as waived. Consequently, these documents and its contents form part of the evidence of the case. All the parties to the case, therefore, are considered bound by any favorable or unfavorable effects resulting from the evidence as determined by this Court.

Respondent did not likewise question the probative value of petitioner's exhibits in any of his pleadings, in relation to his Manifestation (In Lieu of Submission of Memorandum)[9], filed on June 16, 2017 through registered mail, stating that he is adopting all his pleadings in this case, sans memorandum.

Hence, the Court finds that respondent's belated attempt to question the probative value of petitioner's Returns, Invoices and Official Receipts only in his Motion for Reconsideration of the Amended Decision, arguing that these documents should be considered hearsay evidence since the signatories thereto were not presented to testify on such relevant and material matters, is a mere afterthought in his attempt to obtain a reversal of the ruling in the assailed Amended Decision.

In *Heirs of Spouses Teofilo M. Reterta and Elisa Reterta vs. Spouses Lorenzo Mores and Virginia Lopez*[10], the Supreme Court explained the nature of a motion for reconsideration, thus:

> xxx A *motion for reconsideration* is not putting forward a new issue, or presenting new evidence, or changing the theory of the case, but is only seeking a reconsideration of the judgment or final order based on the same issues, contentions, and evidence either because: (*a*) the damages awarded are excessive; or (*b*) the evidence is insufficient to justify the decision or final order; or (*c*) the decision or final order is contrary to law.

Furthermore, Rule 37 of the Rules of Court requires the motion for reconsideration to point out specifically the findings or conclusions of the judgment or final order which are not supported by the evidence, making specific reference to the testimonial or documentary evidence presented[11], which respondent utterly failed to do so. Respondent merely stated that petitioner's "Returns, Invoices and Official Receipts" should not be given probative value

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[9] Docket, vol. 4, pp. 1792-1793.
[10] G.R. No. 159941, August 17, 2011.
[11] *Cansino and De Jesus vs. Court of Appeals, et al.*, G.R. No. 125799, August 21, 2003.

without pointing to the specific finding in the Amended Decision he is challenging which is supposedly supported by hearsay evidence, and without even stating the specific exhibit reference. It should be noted that the Amended Decision dated October 19, 2018 did not refer to any invoice or official receipt in its ruling. Moreover, petitioner did not offer any official receipt in its Formal Offer of Evidence[12], filed on April 25, 2016.

Among the ends to which a motion for reconsideration is addressed, one is precisely to convince the court that its ruling is erroneous and improper, contrary to law or the evidence, and in so doing, the movant has to dwell of necessity upon the issues passed upon by the court.[13] Hence, respondent is required to "point out specifically the findings or conclusions of the judgment or final order which are not supported by the evidence or which are contrary to law, making express reference to the testimonial or documentary evidence or to the provisions of law alleged to be contrary to such findings or conclusions."

As to the value-added tax (VAT) and EWT returns[14] for CY 2005, which were considered by the Court in the Amended Decision in determining the prescribed portion of the deficiency VAT and EWT assessments, the Court finds that petitioner's witness, Ms. Florinda P. Casilag, duly identified these returns in her Amended Sworn Statement[15]. She testified that as the Finance and Accounting Manager of UPS International General Services Co., she is responsible for the maintenance and safekeeping of petitioner's financial statements, tax returns, and other financial records.[16] Moreover, the Court noted that petitioner's Quarterly VAT returns and monthly EWT returns were filed through eFPS, hence, no signatory can be seen on these returns. As testified to by Ms. Casilag, petitioner filed its returns through eFPS and likewise explained how taxpayers file their returns and pay their taxes through eFPS.[17] Hence, petitioner's witness testified on matters which she knows of her personal knowledge. Also, petitioner's voluminous documentary evidence was examined by the Court-commissioned Independent Certified Public Accountant, Atty. Maria Myla S. Maralit, in accordance with Section 5, Rule 12 and Rule 13 of the Revised Rules of the Court of Tax Appeals. Thus, petitioner's evidence cannot be considered hearsay evidence.

Based on the foregoing, this Court finds no compelling reason to reverse or modify the assailed Amended Decision.

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[12] Docket, vol. 3, pp. 971-998.

[13] *Dineros, et al. vs. Roque, et al.*, G.R. No. L-38837, February 27, 1979.

[14] Exhibits "P-2" to "P-5" and "P-6" to "P-17", respectively, docket, vol. 3, pp. 1003-1012 and 1013-1017, 1027-1030, 1040-1043, 1054-1057, 1068-1070, 1094-1096, 1081-1084, 1097-1100, 1109-114, 1125-1128, 1137-1140 and 1149-1152.

[15] Exhibit "P-59", docket, vol. 2, pp. 871-892.

[16] Q/A6, Exhibit "P-59", docket, vol. 2, p. 872.

[17] Q/A24 to Q/A26, Exhibit "P-59", docket, vol. 2, pp. 878-879.

WHEREFORE, premises considered, petitioner's **Motion for Partial Reconsideration (Re: Amended Decision dated October 19, 2018)** and respondent's **Motion for Reconsideration** are **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

I CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice