REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

ORICA PHILIPPINES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9717

Members:

DEL ROSARIO, *P.J., Chairperson, and,*
MANAHAN, *JJ.*

Promulgated:
SEP 01 2020 11:43 am

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RESOLUTION

MANAHAN, *J.:*

For this Court's resolution is petitioner's *Motion for Reconsideration and to Take Judicial Notice (re: 04 February 2020 Resolution of the Honorable Court of Tax Appeals –First Division)* filed on February 20, 2020, without respondent Commissioner of Internal Revenue's (CIR) Comment based on the Judicial Records Verification Report dated July 2, 2020.

Petitioner seeks reconsideration of the Court's Decision promulgated on February 4, 2020 (Assailed Decision), the dispositive portion of which reads:

> "**WHEREFORE,** in light of the foregoing considerations, the instant *Petition for Review* is **DENIED** for lack of merit.
>
> Accordingly, petitioner's claim for refund for alleged excess input VAT attributable to its export sales for the third quarter of fiscal year (FY) 2015 ended September 30, 2015,

or the period from April 1, 2015 to June 30, 2015 in the total amount of Php14,957,902.88 is **DENIED.**

SO ORDERED."

Petitioner assails this Court's Decision on the following grounds:

1. Petitioner should not be burdened by its faithful reliance on the methods used by the independent CPA in verifying its refund claim;

2. Petitioner was able to prove that the excess input taxes were not applied against any output value-added tax (VAT) liability; and

3. Petitioner has exhaustively explained the detailed composition of the P83,020,572.91 adjustment in CTA Case No. 9843 entitled *Orica Philippines, Inc. vs. Commissioner of Internal Revenue.*

As the claim for refund involves alleged excess input taxes, petitioner contravenes the Court's findings that it was unable to substantiate its export sales of goods, and attempts to address the following factual conclusions of the Court:

1. Although petitioner offered as evidence Exhibits "P-36-A1" to "P-36-A4"; "P-37-1" to "P-37-2"described as Bill of Lading and/or export declaration of petitioner's export sales of goods, the actual documents marked as "P-36-A1" to "P-36-A4"; "P-37-1" to "P-37-2" pertain to sales invoices and not to bills of lading or export declarations;
2. Exhibit "P-36-A4-5" supporting the sale to Orica International Pte Ltd. Asia in the amount of Php5,606,049.87 was not found in the records of the case; and
3. The BOI Certifications presented to support the zero-rated sales to BOI-registered companies in the amount of P25,809,694.25 pertained to different periods outside of petitioner's claim.

Petitioner emphasizes that it relied heavily on the examination and verification conducted by the independent certified public accountant (ICPA) and assumed the accuracy of the ICPA report hence, it no longer conducted its own independent evaluation to check whether the said ICPA report accurately matches the supporting documents it submitted as well as the documents pre-marked and submitted by the ICPA to the Court. Due to these circumstances, petitioner requests that it be given an opportunity to present the bills of lading and/or airway bills that were allegedly omitted by the ICPA or in the alternative, allow the re-opening of the case for purposes of allowing other pieces of evidence to be presented which were found to be lacking as found by the Court.

Petitioner also assails the conclusion of the Court that it was not able to prove that the excess input taxes were not applied against any output VAT liability. To prove its point, petitioner presented a comparative presentation of the information reflected in its VAT returns for the third quarter of 2015 to the second quarter of 2016 which were offered in evidence during trial as Exhibits "P-29-1" to "P-29-4". This would prove that the amount of Php14,957,902.88 sought to be refunded was already removed from the total available input tax as shown in its Amended Quarterly VAT Return for the third quarter of 2015.

In addition, petitioner requests the Court to take a look at the records of another pending case involving the same parties (CTA Case No. 9843 for taxable year 2016), which would show the detailed composition of the amount of P83,020,572.91, as testified to and explained by its witness and tax specialist, Ms. Teresa Gonzales, in her Judicial Affidavit submitted in said CTA Case No. 9843. Petitioner now asks the Court to take judicial notice of the testimony of Ms. Gonzales given in CTA Case No. 9843, as permitted by Section 3 of Rule 129 of the Revised Rules of Court.

In conclusion, petitioner requests this Court to take judicial notice of the testimony of its witness, Ms. Teresa Gonzales, given in another case pending before the Court or in the alternative, to allow the re-opening of the above-entitled case for purposes of allowing it to present Ms. Teresa Gonzales, as well as the ICPA for purposes of testifying on matters raised/explained in the judicial claim for refund docketed as CTA Case No. 9843.

As mentioned earlier, respondent CIR chose not to comment on petitioner's above allegations.

RULING OF THE COURT

We deny the motion.

The claim for refund of alleged excess input VAT attributable to its export sales was denied on factual grounds, i.e., failure of the petitioner to substantiate the factual bases of its claim with sufficient evidence.

Petitioner's reaction to such a conclusion is to challenge some of the findings of the ICPA (as embodied in the ICPA report) relative to its claim for refund and to seek a reopening of the case to present some evidence to compensate or cover for the alleged inaccuracies committed by the ICPA. Further, it requests that some of the evidence that it failed to present in the instant case which have been presented in another case involving the same parties be instead taken judicial notice of by the Court.

We find the reliefs sought for by petitioner contrary to the relevant provisions of the Revised Rules of Court, the Revised Rules of the Court of Tax Appeals (RRCTA) and relevant jurisprudence.

Section 3 of Rule 13 of the RRCTA povides as follows:

> **"Rule 13**
> **Trial by Commissioner**
>
> Sec. 3 – *Findings of independent CPA.* – The submission by the independent CPA of pre-marked documentary exhibits shall be subject to verification and comparison with the original documents, the availability of which shall be the primary responsibility of the party possessing such documents and, secondarily, by the independent CPA. The findings and conclusions of the indepedent CPA may be challenged by the parties and shall not be conclusive upon the court, **which may, in whole or in part, adopt such findings and conclusions subject to verification."** (emphasis supplied)

As an officer of the Court, the ICPA is charged with the duty of determining the factual issues of a case to enable the Court to arrive at a solid conclusion as regards the issue/s raised in a case. While it is true that the ICPA report is not conclusive upon the Court and still needs verification, the records of the instant case clearly show that the Court made its own astute determination and verification of the contents of the ICPA report and concluded that its findings are in accord with the documents presented by petitioner and was therefore given credence by the Court. To request the Court for a re-opening of the case to be able to submit evidence such as bills of lading and /or airway bills, etc., to prove that the goods were exported, is not in accord with the requirements of the Revised Rules of Court.

A motion to re-open a case like a motion for new trial may be granted only upon specific grounds as set forth under Sections 1 and 2 of Rule 37 of the Revised Rules of Court and Section 5 of Rule 15 of the RRCTA, and we quote in part as follows:

REVISED RULES OF COURT

"Rule 37
New Trial or Reconsideration

Section 1. *Grounds of and period for filing motion for new trial or reconsideration.* - Within the period for taking an appeal, the aggrieved party may move the trial court to set aside the judgment or final order and grant a new trial for one or more of the following causes materially affecting the substantial rights of said party:

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

Section 2. *Contents of motion for new trial or reconsideration and notice thereof.*- The motion shall be made in writing stating the ground or grounds therefor, a written notice of which shall be served by the movant on the adverse party.

A motion for new trial shall be proved in the manner provided for proof of motions. A motion for the cause mentioned in paragraph (a) of the preceding section shall be supported by affidavits of merits which may be rebutted by affidavits. A motion for the cause mentioned in paragraph (b) shall be supported by affidavits of witnesses by whom such evidence is expected to be given, or by duly authenticated documents which are proposed to be introduced in evidence."

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REVISED RULES OF THE COURT OF TAX APPEALS

Rule 15
Motion for Reconsideration or New Trial

Sec. 5. *Grounds of motion for new trial.* – A motion for new trial may be based on one or more of the following causes materially affecting the substantial rights of the movant:

(a) Fraud, accident, mistake or excusable negligence which ordinary prudence could not have guarded against and by reason of which the rights of such aggrieved party has probably been impaired in his rights; or
(b) Newly discovered evidence, which the party could not, with reasonable diligence, have discovered and produced at the trial and, which if presented, would probably alter the result.

The reason cited by petitioner for the re-opening of the case does not fall under any of the categories of fraud, accident, mistake or excusable negligence under subsection (a) nor can it be considered newly discovered evidence, under (b), to warrant the re-opening of the case.

Newly discovered evidence refers to evidence already in existence prior to or during the trial but which could not have been secured or presented during trial despite reasonable diligence on the part of the litigant offerring it or his counsel.[1] Forgotten evidence, on the other hand, refers to evidence already in existence or available before or during the trial; known to and obtainable by the party offerring it; and could have been presented and offered in a seasonable manner, were it not for the sheer oversight or forgetfulness of the party or

[1] Georgia A. Tumang vs. Court of Appeals and Spouses Daniel del Mundo, Jr. And Haydee T. Del Mundo, G.R.. No. 82072, April 17, 1989.

counsel.[2] While the presentation of newly discovered evidence justifies the re-opening of a case, forgotten evidence does not. In the instant case, the presentation of the bills of lading and/or airways bills cannot be categorized as "newly discovered evidence" to justify the re-opening of a case. These documents were already in existence during trial but as alleged by petitioner, were not included by the ICPA in his report. Neither can the testimony of a witness presented in another case pending before the Court, fall within the purview of the term "newly discovered evidence."

Further, petitioner also failed to comply with the required affidavits of witnesses provided under the aforequoted Section 1 (b) of Rule 37 of the Revised Rules of Court.

Petitioner's alternative request of taking judicial notice of the records and testimonies of witnesses in another case pending before the same Court is likewise an unavailable remedy for petitioner. The testimonies of witnesses in another case is not among the matters which the law *mandatorily* requires the court to take judicial notice of, without being formally offered. Section 1 of Rule 129 of the Revised Rules of Court, provides, thus:

> **"Rule 129**
> **What Need Not Be Proved**
>
> Section 1. *Judical notice, when mandatory.*- A court shall take judicial notice , without the introduction of evidence, of the existence and territorial extent of states, their political history,forms of government and symbols of nationality, the law of nations, the admiralty and maritime courts of the world and their seals, the political institution and history of the Philippines, the official acts of the legislative, executive and judicial departments of the Philippines, the laws of nature, the measure of time, and the geographical divisions."

The testimony of tax specialist, Ms. Teresa Gonzales, given in another case pending before this Court (CTA Case No. 9843), as to the detailed composition of the amount of Php83,020,572.91, cannot be considered by this Court unless formally offered.

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[2] Office of the Ombudsman vs. Carmencita D. Coronel, G.R. No. 164460, June 27, 2006.

The Court will not consider evidence which is not formally offerred.[3]

In the case of *Silkair (Singapore) Pte., Ltd. vs. CIR,*[4] the Supreme Court agreed with the Court *En Banc* when it resolved that the Court of Tax Appeals (CTA), cannot take judicial notice of the Securities and Exchange Commission (SEC) registration, though previously offerred and admitted in similar cases before the CTA, for the following reasons:

> "We quote with approval the disquisition of the CTA *En Banc* in its Decision dated May 27, 2008 on the non-admission of petitioner's Exhibits "A" , "P", "Q", and "R", wherein it said that:
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> > "Each and every case is distinct and separate in character and matter although not properly identified during trial as this has been offerred in other cases even when such case have been tried or pending in the same court. Evidence already presented and admitted by the court in a previous casecannot be adopted in a separatecase pending before the same court without the same being offerred and identified anew."
> >
> > xxx xxx xxx **a court is not compelled to take judicial notice of pieces of evidence offerred and admitted in a previous case unless the same are properly offerred 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."** (emphasis supplied)

The burden of establishing the factual basis of a claim for refund rests on the taxpayer.[5]

As cases filed before the Court are litigated *de novo,* party litigants should prove every minute aspect of their cases.[6]

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[3] **"Rule 132**

Offer and Objection

Section 34. *Offer of evidence.* – The court shall consider no evidence which has not been formally offerred. The purpose for which the evidence is offerred must be specified."

[4] G.R. No. 184398, February 25, 2010.

[5] *CIR vs. Far East Bank and Trust Co.,* G.R. No. 173854, March 15, 2010.

[6] *Dizon vs. CTA, et.al.,* G.R. No 140944, April 30, 2008.

In the instant case, petitioner failed to discharge the burden of proving its entitlement to the claim for refund.

WHEREFORE, premises considered, the *Motion for Reconsideration and to Take Judicial Notice (re: 04 February 2020 Resolution of the Honorable Court of Tax Appeals –First Division)* is **DENIED** for lack of merit.

Accordingly, the Decision of the Court in the above-captioned case dated February 4, 2020, is hereby **AFFIRMED.**

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

I CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice