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

## SECOND DIVISION

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| **AIR PHILIPPINES CORPORATION,** Petitioner, | **CTA CASE NOS. 7966, 7990 & 8020** |
| | **Members:** |
| **- versus -** | **CASTAÑEDA, JR.,** *Chairperson,* **CASANOVA,** *and* **COTANGCO-MANALASTAS,** ***JJ.*** |
| **COMMISSIONER OF INTERNAL REVENUE and COMMISSIONER OF CUSTOMS,** Respondents. | **Promulgated:** AUG 05 2016 3:40 pm |

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## RESOLUTION

## CASANOVA, *J.*:

Submitted before this Court are the following:

1. respondent Commissioner of Internal Revenue (CIR)'s **Motion for Partial Reconsideration (Re: Decision dated 20 April 2016)** filed on May 5, 2016, with petitioner's **Comment/Opposition** filed on May 23, 2016;

2. respondent Commissioner of Customs' (COC) **Motion for Partial Reconsideration** filed on May 6, 2016, with petitioner's **Comment/Opposition (to the Commissioner of Custom's** [*sic*] **Motion for Partial Reconsideration of the Decision dated 20 April 2016)** filed on May 30, 2016;

3. petitioner's **Motion for Partial Reconsideration of Decision and to Reopen the Case for Presentation of Evidence** filed on May 6, 2016, with respondent CIR's **Comment/Opposition (Re: Motion for Partial Reconsideration of Decision and to Reopen the Case for**

**Presentation of Evidence)** filed on May 30, 2016 and respondent COC's **Opposition (To Petitioner's Motion for Partial Reconsideration and to Reopen the Case for Presentation of Evidence)** filed, through registered mail, on June 13, 2016; and

4. petitioner's **Motion for Leave to File and to Admit the Attached Reply (To Commissioner of Customs' Opposition dated 9 June 2016)** filed on June 27, 2016.

On April 20, 2016, this Court promulgated its Decision in the consolidated cases, the *fallo* of which reads as follows:

> "**WHEREFORE**, in view of the foregoing, the Petitions for Review in CTA Case Nos. 7990 and 8020, respectively, are **GRANTED**.
>
> Accordingly, co-respondents Commissioner of Internal Revenue and Commissioner of Customs are **ORDERED TO REFUND** to Air Philippines Corporation the aggregate amount of **Seventy Million Nine Hundred Thirty-Six Thousand Seven Hundred Eighty-Eight Pesos and Eight Centavos (₱70,936,788.08)**, representing the specific tax paid for the importation of Jet A-1 aviation fuel stated below and computed as follows:

| CTA Case No. | Date of payment | Amount |
|---|---|---|
| 7990 | November 9, 2007 | 23,701,965.00 |
| 8020 | January 4, 2008 | 47,234,823.08 |
| **TOTAL** | | **₱ 70,936,788.08** |

> On the other hand, the Petition for Review filed in CTA Case No. 7966 is hereby **DENIED** for lack of merit
>
> **SO ORDERED**."

Aggrieved, the parties filed their respective Motions seeking the partial reconsideration of the above Decision.

In her Motion, respondent CIR prays that the said Decision be partially reversed and set aside on the grounds that petitioner failed to prove that Jet A-1 Aviation fuel were actually used for its transport and non-transport operations; and, that the certifications issued by the Air

Transport Office (ATO), now Civil Aviation Authority of the Philippines (CAAP), are insufficient evidence to prove that the Jet A-1 Aviation fuel is not locally available in reasonable quantity, quality or price.

Meanwhile, in his Motion, respondent COC insists that the Petitions for Review were prematurely filed since petitioner failed to exhaust administrative remedies. Respondent COC, likewise, claims that the ATO/CAAP has no authority to issue certifications pertaining to the local availability of Jet A-1 fuel. Lastly, respondent COC asserts that entries made in the Authority to Release Imported Goods (ATRIG) and the testimonies of petitioner's witnesses failed to sufficiently establish that it is indeed exempt from the payment of excise taxes.

On the other hand, petitioner, in its Motion, prays for the reconsideration of the Decision dated April 20, 2016, but with respect only to that particular portion denying the Petition for Review in CTA Case No. 7966. It argues that the Best Evidence Rule does not apply when the subject of inquiry is not the contents of a document. Nonetheless, considering that the original Exhibit "I" can no longer be located despite diligent efforts to search for them, petitioner prays for the reopening of the case so that it can be afforded sufficient opportunity to present secondary evidence to prove that it duly filed an administrative claim for refund with the CIR in CTA Case No. 7966.

Accordingly, petitioner's Motion for Leave to File and Admit the Attached Reply is hereby **GRANTED**. Thus, petitioner's Reply (To Commissioner of Customs' Opposition dated 9 June 2016) is **ADMITTED** forming part of the records of the case. Moreover, this Court finds merit in petitioner's Motion to Reopen the Case for Presentation of Evidence.

A motion to reopen trial may properly be presented after either or both parties had formally offered and closed their evidence but before judgment is rendered, and even after promulgation but before finality of judgment. The only controlling guideline governing a motion to reopen is the paramount interest of justice. The Supreme Court, in the case of *Rene Cabarles vs. Hon. Judge Bonifacio Sanz Maceda, et al.*[1], held that:

> "A motion to reopen a case to receive further proofs was not in the old rules but it was nonetheless a recognized

[1] G.R. No. 161330, February 20, 2007

> procedural recourse, deriving validity and acceptance from long, established usage. This lack of a specific provision covering motions to reopen was remedied by the Revised Rules of Criminal Procedure which took effect on December 1, 2000.
>
> *x x x*
>
> Generally, after the parties have produced their respective direct proofs, they are allowed to offer rebutting evidence only. However, the court, for good reasons, in the furtherance of justice, may allow new evidence upon their original case, and its ruling will not be disturbed in the appellate court where no abuse of discretion appears. A motion to reopen may thus properly be presented only after either or both parties had formally offered and closed their evidence, but before judgment is rendered, and even after promulgation but before finality of judgment **and the only controlling guideline governing a motion to reopen is the paramount interest of justice.** This remedy of reopening a case was meant to prevent a miscarriage of justice." *(Emphasis and Underscoring Ours)*

Considering that Section 8[2] of R.A. 1125,[3] as amended, provides that "the proceedings before this Honorable Court shall not be governed strictly by technical rules of evidence",[4] this Court finds no cogent reason to deny petitioner's plea. Technicalities and legalisms, however exalted, should not be misused by the government to keep money not belonging to it and thereby enrich itself at the expense of its law-abiding citizens. If the State expects its taxpayers to observe fairness and honesty in paying their taxes, so must it apply the same standard against itself in refunding excess payments of such taxes. Indeed, the State must lead by its own example of honor, dignity and uprightness.[5]

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[2] "**SECTION 8.** ***Court of record; seal; proceedings.*** - The Court of Tax Appeals shall be a court of record and shall have a seal which shall be judicially noticed. It shall prescribe the form of its writs and other processes. It shall have the power to promulgate rules and regulations for the conduct of the business of the Court, and as may be needful for the uniformity of decisions within its jurisdiction as conferred by law, but such proceedings shall not be governed strictly by technical rules of evidence."
[3] Otherwise known as "An Act Creating the Court of Tax Appeals"
[4] BPI-Family Savings Bank, Inc. vs. Court of Appeals, et al., G.R. No. 122480, April 12, 2000
[5] *Ibid.*

In view of the foregoing, the resolution of the parties' respective Motions for Partial Reconsideration shall be HELD IN ABEYANCE until the presentation of petitioner's additional evidence to prove its entitlement to the refund sought.

**WHEREFORE**, premises considered, petitioner's Motion to Reopen the Case for Presentation of Evidence is hereby **GRANTED**. Let the case be set for hearing on September 7, 2016 at 9:00 a.m. for the presentation of petitioner's additional evidence to prove that it duly filed an administrative claim for refund with the CIR in CTA Case No. 7966.

**SO ORDERED.**

**CAESAR A. CASANOVA**
Associate Justice

We Concur:

Juanito C. Castañeda, Jr.
**JUANITO C. CASTAÑEDA, JR.**
Associate Justice

**AMELIA R. COTANGCO-MANALASTAS**
Associate Justice