REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

SUTHERLAND GLOBAL SERVICES PHILIPPINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8558

Members:

DEL ROSARIO, *P.J., Chairperson,*
UY, *and*
MINDARO-GRULLA, *JJ.*

Promulgated:

JAN 24 2017 :2:52p.m.

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RESOLUTION

MINDARO-GRULLA, *J.*:

For this Court's resolution are the following:

1. petitioner's **Motion for Partial Reconsideration**, filed on August 8, 2016, without respondent's comment as per Records Verification dated September 22, 2016; and

2. respondent's **Motion for Reconsideration**, filed through registered mail on August 5, 2016, and received by the Court on August 22, 2016, with petitioner's **Comment/Opposition (To the Commissioner of Internal Revenue's Motion for Reconsideration dated 5 August 2016)**, filed through registered mail on September 23, 2016 and received by the Court on October 13, 2016.

In its motion, petitioner seeks reconsideration of the Court's Decision promulgated on July 21, 2016 (assailed Decision), the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND** the amount of ₱11,493,196.61 to petitioner, representing its erroneously paid income tax for the fiscal year ending June 30, 2010.
>
> **SO ORDERED.**"

Petitioner prays that the Court reconsider its Decision insofar as it denied the refund of the amount of ₱5,874,793.33 which is part of petitioner's claim allegedly representing erroneously paid taxes for fiscal year (FY) 2010. It avers that the Court acted beyond its jurisdiction when it assessed income tax of ₱5,874,793.33 on petitioner's operations in the Export Bank facility. Petitioner asserts that according to Section 2 of the National Internal Revenue Code (NIRC) of 1997, as amended, the power to assess national internal revenue taxes lies with the BIR, and not with the Court.

Moreover, petitioner claims that its Export Bank facility enjoyed an Income Tax Holiday incentive during FY 2010. According to petitioner, it validly reported its income from said facility as exempt from income tax, hence the amount of ₱5,874,793.33 assessed for its Export Bank facility is erroneous.

On the other hand, respondent, in his motion, argues that the Court has no jurisdiction over the instant claim because the instant Petition for Review was filed only on October 17, 2012 or two days after the lapse of the two-year prescriptive period. Respondent insists that the case of *ACCRA Investments Corporation vs. Court of Appeals*[1] cited by petitioner does not apply to the instant case because the filing of petitioner's Annual Income Tax Return and the payment of the tax thereon were belatedly made on October 20, 2010.

The Court finds the parties' respective motions bereft of merit.

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[1] G.R. No. 96322, December 20, 1991.

With regard to petitioner's contention that the Court acted beyond its jurisdiction because the power to assess national internal revenue taxes lies with the BIR, the Court emphasizes that it did not assess taxes when it adjusted petitioner's entitlement to a refund of its erroneously paid income tax. Instead, the Court merely considered the evidence presented to it to determine whether or not petitioner is indeed entitled to a refund in the amount prayed for.

As mentioned above, petitioner also claims that its Export Bank facility enjoyed an Income Tax Holiday incentive during FY 2010. It attached a letter from the Philippine Economic Zone Authority (PEZA), confirming that it has issued to petitioner Notice of Income Tax Holiday (ITH) Extension Approval No. 10-015 dated February 19, 2010 and Notice of ITH Extension Approval No. 10-032 dated April 29, 2010, for entitlement of two bonus years of Income Tax Holiday of the project at the Export Bank Plaza Building.

In the case of *Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc.*[2], the Court had the occasion to rule that:

> "Under Section 8 of Republic Act (R.A.) No. 1125, the CTA is categorically described as a court of record. As such, it shall have the power to promulgate rules and regulations for the conduct of its business, and as may be needed, for the uniformity of decisions within its jurisdiction. Moreover, as cases filed before it are litigated de novo, party-litigants shall prove every minute aspect of their cases. Thus, no evidentiary value can be given the pieces of evidence submitted by the BIR, as the rules on documentary evidence require that these documents must be formally offered before the CTA. Pertinent is Section 34, Rule 132 of the Revised Rules on Evidence which reads:
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> > SEC. 34. Offer of evidence. – The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified.
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> Although in a long line of cases, we have relaxed the foregoing rule and allowed evidence not formally

[2] G.R. No. 197515, July 2, 2014.

offered to be admitted and considered by the trial court, we exercised extreme caution in applying the exceptions to the rule, as pronounced in *Vda. de Oñate v. Court of Appeals*, thus:

> From the foregoing provision, *it is clear that for evidence to be considered, the same must be formally offered.* Corollarily, the mere fact that a particular document is identified and marked as an exhibit does not mean that it has already been offered as part of the evidence of a party. In *Interpacific Transit, Inc. v. Aviles* [186 SCRA 385, 388-389 (1990)], we had the occasion to make a distinction between identification of documentary evidence and its formal offer as an exhibit. We said that the first is done in the course of the trial and is accompanied by the marking of the evidence as an exhibit while the second is done only when the party rests its case and not before. A party, therefore, may opt to formally offer his evidence if he believes that it will advance his cause or not to do so at all. In the event he chooses to do the latter, the trial court is not authorized by the Rules to consider the same.
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> However, in *People v. Napat-a* [179 SCRA 403 (1989)] citing *People v. Mate* [103 SCRA 484 (1980)], **we relaxed the foregoing rule and allowed evidence not formally offered to be admitted and considered by the trial court provided the following requirements are present**, *viz.*: *first, the same must have been duly identified by testimony duly recorded and, second, the same must have been incorporated in the records of the case.*

The evidence may, therefore, be admitted provided the following requirements are present: (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. Being an exception, the same may only be applied when there is strict compliance with the requisites mentioned above; otherwise, the general rule in Section 34 of Rule 132 of the Rules of Court should prevail."

In the instant case, the document presented by petitioner has not been formally offered during trial nor has it been duly identified by testimony duly recorded. Hence, the Court cannot give probative value to the document attached to the motion. Without any evidence to support its allegation, petitioner's motion should fail.

Furthermore, a claimant has the burden of proof to establish the factual basis of his or her claim for tax credit or refund.[3] Tax refunds are in the nature of tax exemptions. As such, they are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the refund.[4] Considering that petitioner was able to support his claim in the amount only of ₱11,493,196.61, then the Court cannot grant petitioner's motion.

With regard to respondent's motion, he insists that petitioner belatedly filed its Petition for Review two days after the lapse of the two-year prescriptive period. However, as stated by the Court in the assailed Decision, the issues on prescription have already been resolved by the Court in the Resolution dated May 2, 2013, wherein the Court ruled that the administrative and the judicial claim for refund on October 15, 2012 and on October 17, 2012, respectively, were made within the two-year reglementary period. To reiterate the pertinent portion of the assailed Decision:

> "The issues on prescription have already been resolved by this Court in a Resolution dated May 02, 2013,[5] wherein the Court ruled that the filing of the administrative[6] and judicial claims for refund on October 15, 2010 and October 17, 2010, respectively, were made within the two-year reglementary period. The significant portion of this Court's Resolution reads as follows:
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> > 'Again in the case of *Commissioner of Internal Revenue vs. Court of Appeals,* the Supreme Court agreed with therein petitioner

[3] *Citibank, N.A. vs. Court of Appeals and the Commissioner of Internal Revenue,* G.R. No. 107434, October 10, 1997.
[4] *Commissioner of Internal Revenue vs. S.C. Johnson & Son, Inc. , et al. ,* G.R. No. 127105 , June 25, 1999.
[5] Docket, pp. 130 to 136.
[6] Exhibit "P-36".

that the two-year prescriptive period should be computed from April 2, 1984, when the final adjustment return was actually filed therein, because that is the time of payment of the tax, within the meaning of 229 of the NIRC of 1997.

Thus, it had been settled by the Supreme Court that the two-year period of prescription counted "from the date of payment of the tax" within the framework of Section 229 of the NIRC of 1997, actually pertains to the two-year period counted from the time of the actual filing of the corporate taxpayer's Annual Income Tax Return for it is at this point where it can already be determined whether there has been an overpayment by the taxpayer.

In the same vein, the actual date of filing of the Annual Income Tax Return and the payment of tax was made by petitioner on October 20, 2010 and it was only this time that the amount to be refunded was ascertained. Considering so, October 20, 2010 is the reckoning date of the two-year prescriptive period prescribed in Section 229 of the NIRC of 1997. Thus, the filling of the administrative and judicial claims for refund on October 15, 2010 and October 17, 2010, respectively, were made within the two-year reglementary period.'

WHEREFORE, premises considered, respondent's Motion to Dismiss is hereby **DENIED** for lack of merit."

Moreover, respondent contends that petitioner did not submit evidence that it complied with the requirement under Revenue Memorandum Circular (RMC) No. 15-2007 stating that all registered enterprises entitled to ITH and/or 5% Gross Income Tax incentive should secure from PEZA on an annual basis a certification that the enterprise is a bona fide PEZA-registered enterprise entitled to such incentive, and to attach the said certification to its annual ITR's upon filing thereof.

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However, as correctly pointed out by petitioner, RMC No. 14-2012 revoked RMC No. 15-2007 on April 4, 2012. Further, the Court finds that petitioner has established with sufficient proof that its income for fiscal year ended June 30, 2010 was actually derived from PEZA-registered activities.

From the foregoing, finding no cogent reason to disturb the Court's findings in the assailed Decision, the Court denies both motions for reconsideration.

WHEREFORE, premises considered, petitioner's **Motion for Partial Reconsideration** and respondent's **Motion for Reconsideration** are hereby **DENIED** for lack of merit.

SO ORDERED.

CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice