REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

IMPSA CONSTRUCTION CORPORATION,
Respondent.

CTA EB No. 720
(CTA Case Nos. 6921 and 7172)

Present:

ACOSTA, *P.J.*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
PALANCA-ENRIQUEZ,
FABON-VICTORINO,
MINDARO-GRULLA, *and*
COTANGCO-MANALASTAS, *JJ.*

Promulgated:

JAN 0 2 2012 cwApolinario 1:30 p.m.

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DECISION

UY, J.:

In this Petition for Review filed on February 10, 2011, the Commissioner of Internal Revenue prays for the reversal and setting aside of the Amended Decision dated September 3, 2010 and the Resolution dated January 11, 2011,[1] both rendered by the Special First Division of this Court in CTA Case Nos. 6921 and 7172, entitled *"Impsa Construction Corporation, petitioner, vs. Commissioner*

[1] Ponencia of Associate Justice Lovell R. Bautista, and concurred by Chairperson and Presiding Justice Ernesto D. Acosta and Associate Justice Caesar A. Casanova of the Special First Division of this Court, Docket, pp. 21 to 38.

of Internal Revenue, respondent", the dispositive portions of which respectively read:

Amended Decision dated September 3, 2010:

"**WHEREFORE,** petitioner's *Motion for Reconsideration* is hereby **PARTIALLY GRANTED** and the assailed Decision promulgated on January 5, 2010 is hereby **MODIFIED**. Accordingly, respondent is hereby **ORDERED TO REFUND** to petitioner the amount of **FIFTY-FOUR MILLION TWO HUNDRED SIXTY THOUSAND FOUR HUNDRED EIGHTY-TWO PESOS AND 78/100 PESOS (P54,260,482.78)**, representing its excess tax credits for taxable year 2003.

SO ORDERED."

Resolution dated January 11, 2011:

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

SO ORDERED."

THE FACTS

Petitioner, Commissioner of Internal Revenue (hereinafter referred to as the Commissioner), is a public officer duly appointed by the President of the Philippines as head of the Bureau of Internal Revenue (BIR), the government agency officially responsible for the assessment and collection of all national and internal revenue taxes. She is vested with the power and authority to refund any internal revenue tax erroneously or illegally assessed or collected, any penalty collected without authority, or any sum excessively or in any manner wrongfully collected; including excess income tax payments and creditable withholding taxes.

On the other hand, respondent, IMPSA Construction Corporation (hereinafter referred to as IMPSA) is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office at the NPC Compound, San Juan, Kalayaan, Laguna 4015. It is a duly registered taxpayer engaged in the construction business and other allied business, including the design, supply, assembly, erection, commissioning, constructing, enlarging, repairing, removing, developing and other related activities, but limited to projects either primarily foreign-funded or registered under the build-rehabilitate-operate-transfer arrangements, pursuant to Republic Act No. 6957, as amended.

On August 18, 2000, IMPSA entered into a Turnkey Contract with CBK Power Company Limited (hereinafter referred to as "CBK") for the construction of power plants located at Caliraya, Botocan, and Kalayaan, Laguna Province. For services rendered to CBK, IMPSA received income payments which were allegedly subjected to creditable withholding tax.

On April 10, 2002, IMPSA filed with the BIR its Annual Income Tax Return for taxable year 2001, reflecting no income tax liability as it declared a net loss in the amount of ₱ 16,264,545.00. Consequently, IMPSA was unable to utilize the reported income tax payment for the first three quarters amounting to ₱ 3,286,262.00 and creditable taxes withheld during the year amounting to ₱ 90,055,266.00, totaling ₱ 93,341,528.00, as shown below:

Sales/Revenues/Receipts/Fees		₱	5,467,939,353.00
Less:	Cost of Sales/Services		5,467,597,240.00
Gross Income from Operation		₱	342,113.00
Add:	Non-operating & Other Income		3,974,816.00
Total Gross Income		₱	4,316,929.00
Less:	Deductions		20,581,474.00
Taxable Income		**₱**	**(16,264,545.00)**
Income Tax Due		₱	-

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Less:	Tax Credits/Payments	
	Tax Payments for the First Three Quarters	3,286,262.00
	Creditable Tax Withheld for the First Three Quarters	33,535,733.00
	Creditable Tax Withheld for the Fourth Quarter	56,519,533.00
	Total Tax Credits/Payments	93,341,528.00
Tax Overpayment		**₱ (93,341,528.00)**

IMPSA opted to carry-over its income tax overpayment of ₱ 93,341,528.00 as tax credit to the succeeding year/quarter by putting an "x" mark on the corresponding box in the return.

In its Annual Income Tax Return for taxable year 2002 filed with the BIR on March 20, 2003, IMPSA's total tax credits amounted to ₱ 200,621,201.00, representing the sum of the prior year's excess credits (2001) in the amount of ₱ 93,341,528.00 and creditable taxes withheld during the year 2002 in the amount of ₱ 107,279,673.00. Likewise, it reflected an income tax due of ₱ 2,146,686.00, which was offset against total tax credits of ₱ 200,621,201.00, leaving an overpayment of ₱ 198,474,515.00; computed as follows:

Sales/Revenues/Receipts/Fees		₱ 6,094,078,251.00
Less:	Cost of Sales/Services	6,070,834,209.00
Gross Income from Operation		₱ 23,244,042.00
Add:	Non-operating & Other Income	32,918,128.00
Total Gross Income		₱ 56,162,170.00
Less:	Deductions	49,453,775.00
Taxable Income		**₱ 6,708,395.00**
Income Tax Due		₱ 2,146,686.00
Less:	Tax Credits/Payments	
	Prior Year's Excess Credits	93,341,528.00
	Creditable Tax Withheld for the First Three Quarters	79,337,653.00
	Creditable Tax Withheld for the Fourth Quarter	27,942,020.00
	Total Tax Credits/Payments	200,621,201.00
Tax Overpayment		**₱ (198,474,515.00)**

As indicated in the return, IMPSA elected to carry-over the income tax overpayment of ₱ 198,474,515.00 to the succeeding year/quarter .

On May 20, 2003, IMPSA filed Amended Annual Income Tax Returns for taxable years 2001 and 2002, revising its chosen option from "*To be carried over as tax credit next year/quarter*" *to "To be refunded"*. Notwithstanding the marking of the option "*To be refunded*" in its Amended Annual Income Tax Return for taxable year 2001, the 2001 excess tax credits/payment of ₱ 93,341,528.00 was reflected as "*Prior Year's Excess Credits*" in its Amended Annual Income Tax Return for taxable year 2002.

On August 11, 2003, IMPSA filed its second Amended Annual Income Tax Return for taxable year 2002, this time indicating no amount of "*Prior Year's Excess Credits*" and declaring a lower refundable amount of ₱ 105,132,987.00, as shown below:

Sales/Revenues/Receipts/Fees		₱	6,094,078,251.00
Less:	Cost of Sales/Services		6,070,834,209.00
Gross Income from Operation		₱	23,244,042.00
Add:	Non-operating & Other Income		32,918,128.00
Total Gross Income		₱	56,162,170.00
Less:	Deductions		49,453,775.00
Taxable Income		**₱**	**6,708,395.00**
Income Tax Due		₱	2,146,686.00
Less:	Tax Credits/Payments		
	Prior Year's Excess Credits		
	Creditable Tax Withheld for the First Three Quarters		79,337,653.00
	Creditable Tax Withheld for the Fourth Quarter		27,942,020.00
	Total Tax Credits/Payments		107,279,673.00
Tax Overpayment		**₱**	**(105,132,987.00)**

On April 2, 2004, IMPSA filed its Annual Income Tax Return for taxable year 2003, declaring no income tax liability and unutilized creditable taxes withheld during the year 2003 in the amount of ₱ 56,250,759.75, which respondent opted "*To be refunded*", detailed as follows:

Sales/Revenues/Receipts/Fees		₱ 1,654,294,127.00
Less:	Cost of Sales/Services	2,093,082,271.00
Gross Income from Operation		₱ (438,788,144.00)
Add:	Non-operating & Other Income	24,331,706.00
Total Gross Income		₱ (414,456,438.00)
Less:	Deductions	2,216,650.00
Taxable Income		**₱ (416,673,088.00)**
Income Tax Due		₱ -
Less:	Tax Credits	
	Creditable Tax Withheld for the First Three Quarters	46,150,415.47
	Creditable Tax Withheld for the Fourth Quarter	10,100,344.28
	Total Tax Credits/Payments	56,250,759.75
Tax Overpayment		**₱ (56,250,759.75)**

On April 5, 2004 and July 15, 2004, IMPSA filed with the BIR its claim for refund of its excess income taxes paid/withheld for taxable year 2001 in the amount of ₱ 93,341,528.00 and for taxable years 2002 and 2003 in the amount of ₱ 161,383,746.24.

Due to the Commissioner's inaction on both claims and in order to toll the running of the two-year prescriptive period, IMPSA filed two (2) separate Petitions for Review in CTA Case Nos. 6921 and 7172, details of which are as follows:

CTA Case No.	Petition for Review filed on	Taxable year covered	Amount of claim	
6921	April 6, 2004	2001		₱ 93,341,528.00
7172	March 18, 2005	2002	₱ 105,132,987.00	
		2003	56,250,759.75	161,383,746.75
			Total	**₱ 254,725,274.75**

On May 19, 2004 and May 25, 2005, the Commissioner filed her Answers in CTA Case Nos. 6921 and 7172 raising therein, Special and Affirmative

Defenses. On June 3, 2005, IMPSA filed a motion for the consolidation of CTA Case No. 7172 with CTA Case No. 6921 on the ground that said cases involve common questions of law and of facts, albeit for different years. Said motion was granted in the Resolution dated June 15, 2005.

During trial, IMPSA Construction Corporation proffered testimonial and documentary evidence in said cases. On the other hand, the Commissioner, through counsel, waived her right to present evidence therein, as no report was furnished by Revenue District Office No. 55. Thus, the cases were submitted for decision on January 9, 2009, after the parties filed their respective memorandum.

On January 5, 2010, the Former First Division of this Court promulgated its Decision, denying respondent's claim for refund for lack of merit. The Court held that for taxable years 2001 and 2002, considering that IMPSA originally elected to have the respective excess tax credits/payments to be carried over the succeeding year, such election is irrevocable, pursuant to Section 76 of the National Internal Revenue Code (NIRC) of 1997. Anent the taxable year 2003, while IMPSA opted to refund the excess/unutilized creditable withholding taxes, it failed to present the Quarterly Income Tax Returns (ITRs) for 2004.

The Court *a quo* ruled that the presentation of said Returns is very important as it will settle the question of whether respondent carried over said excess tax credits/payments for taxable year 2003.

On January 22, 2010, IMPSA filed its Motion for Reconsideration of the said Decision arguing that: (1) it has not carried-over nor utilized its 2003 excess creditable withholding taxes as evidenced by its Quarterly ITRs for the first, second, and third quarters of 2004 and its 2004 Annual Income Tax Return; and

(2) it is entitled to a refund of its 2001 and 2002 excess income tax payments and creditable withholding taxes. Thus, it prayed that the Court (1) admit into evidence and consider for purposes of resolving the Motion and the case, the Supplemental Judicial Affidavit of its witness, Noralyn Sy, and the exhibits attached thereto (consisting of photocopies of its Quarterly ITRs for the first, second, and third quarters of 2004); and (2) reconsider and set aside the said Decision, and grant its claim for refund in the amounts of ₱ 93,341,528.00, ₱ 105,132,986.55, and ₱ 56,250,759.75, or a total amount of ₱ 254,725,274.30, representing excess income tax payments and creditable income taxes withheld for taxable years 2001, 2002, and 2003, respectively.

In the Order dated January 23, 2010,[2] the Court *a quo* directed the Commissioner to file her Comment to said Motion for Reconsideration of IMPSA. Before the former was able to file said Comment, the latter filed on February 2, 2010, a Motion To Set Case for Hearing (To Identify the Supplemental Affidavit of Noralyn R. Sy).

Thereafter, the Commissioner filed the required Comment/Opposition to IMPSA's Motion for Reconsideration and Motion to Set Case for Hearing on February 4, 2010, arguing that: (1) IMPSA failed to formally offer its supplemental documentary and testimonial evidence; and (2) IMPSA's Motion for Reconsideration is not in accordance with law and jurisprudence. Accordingly, the Commissioner prayed for the dismissal and denial of both Motions.

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[2] Order dated January 23, 2010, CTA Case Nos. 6921 and 7172 Docket ,Vol. II, p. 1206.

As the Motion for Reconsideration had not yet been resolved, the Court *a quo* denied the Motion to Set Case for Hearing.[3] On February 23, 2010, IMPSA filed a Motion To Admit Reply, attaching therewith its Reply to the Comment/ Opposition filed by the Commissioner.

In the Resolution dated March 8, 2010,[4] the Special First Division allowed IMPSA to present the documents attached to its Motion for Reconsideration as Annexes "A" to "D" for consideration and evaluation, subject to the Court's final evaluation and/or appreciation of their purposes, materiality, relevance, and probative value to the issues involved. After marking the exhibits during the hearing held on April 20, 2010,[5] IMPSA filed its Formal Offer of Documentary Evidence (Re: Motion for Reconsideration dated January 21, 2010)[6] on April 22, 2010.

Subsequently, on April 29, 2010, IMPSA filed its Memorandum (Re: Motion for Reconsideration dated January 21, 2010)[7].

On April 30, 2010, the Commissioner filed her Comment[8] to respondent's Formal Offer and on May 11, 2010, a Manifestation[9] alleging her intention to adopt the relevant facts, proceeding, issue, and discussion specifically declared in her Comment/Opposition to IMPSA's Motion for Reconsideration. In the Resolution dated May 25, 2010,[10] evidence proffered by IMPSA were admitted

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[3] Order dated February 10, 2010, Division Docket-Vol. II, p. 1226.
[4] Division Docket-Vol. II, pp. 1242 to 1244.
[5] Minutes of hearing held on April 20, 2010, Division Docket, p. 1245.
[6] Division Docket-Vol. II, pp. 1246 to 1271.
[7] Division Docket-Vol. II, pp. 1272 to 1288.
[8] Division Docket-Vol. II, pp. 1289 to 1293.
[9] Division Docket-Vol. II, pp. 1295 to 1298.
[10] Division Docket-Vol. II, pp. 1301 to 1302.

by the Court *a quo* and it also considered IMPSA's Motion for Reconsideration submitted for resolution.

In the assailed Amended Decision dated September 3, 2010, the Special First Division partially granted IMPSA's Motion for Reconsideration, and correspondingly modified the Decision dated January 5, 2010. The Commissioner was ordered to refund respondent the amount of ₱ 54,260,482.78, representing the latter's excess tax credits for taxable year 2003.

On September 22, 2010, the Commissioner filed a Motion for Partial Reconsideration[11], praying for the partial reversal and setting aside of the said Amended Decision. The Commissioner argues that IMPSA's presentation of its final adjustment return for taxable year 2004 was not enough to conclude that it did not apply the said unutilized creditable withholding taxes against the income tax due for the first three quarters of 2004; and that IMPSA should have presented its 2004 Quarterly ITRs.

In its Opposition[12] to said Motion for Partial Reconsideration, IMPSA submits that said Motion is *pro forma*, and does not cite new arguments or compelling reasons to warrant reconsideration and reversal of the Amended Decision; and that contrary to the Commissioner's contention, it presented and offered in evidence its Quarterly ITRs for 2004 to prove that it did not carry over and apply its excess creditable withholding tax for taxable year 2003 against its income tax liabilities for the succeeding quarters of 2004.

The Special First Division of this Court denied the Commissioner's Motion for Partial Reconsideration for lack of merit in the Resolution dated January 10,

[11] Division Docket-Vol. II, pp. 1319 to 1325.
[12] Division Docket-Vol. II, pp. 1527 to 1533.

2011.

Hence, the Commissioner filed the instant Petition for Review[13] praying for the reversal of the assailed Amended Decision dated September 3, 2010 and Resolution dated January 11, 2011.

In the Resolution dated March 1, 2011,[14] the Court *En Banc* directed IMPSA to file a Comment to the instant Petition within ten (10) days from receipt thereof. On March 30, 2011, IMPSA filed the required Comment[15] within the extension period of ten (10) days, or from March 21, 2011 or until March 31, 2011. Thereafter, the Court *En Banc* gave due course to the instant Petition for Review[16] and the parties were required to submit their respective Memorandum, within a non-extendible period of thirty (30) days from receipt of said Resolution.[17]

IMPSA filed its Memorandum on July 4, 2011[18] while the Commissioner failed to do so. On September 6, 2011, this case was deemed submitted for decision in the Resolution dated September 6, 2011.[19]

Hence, this Decision.

THE ISSUE

A sole issue is raised for the resolution of the Court *En Banc,* as follows:

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[13] For its part, respondent filed a Petition for Review before the Court *En Banc* on October 6, 2010, questioning the Decision dated January 5, 2010 and Amended Decision dated September 3, 2010, respectively rendered by the First Division and the Special First Division, both of this Court. The case was docketed as CTA EB No. 685.
[14] Docket, pp. 43 to 44.
[15] Docket, pp. 50-62
[16] Resolution dated May 23, 2011, Docket, pp. 69-70
[17] Docket, pp. 69 to 70.
[18] Docket, pp. 71 to 93.
[19] Docket, pp. 97 to 98.

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"THE HONORABLE COURT'S FIRST DIVISION ERRED IN PARTIALLY GRANTING RESPONDENT'S PETITION FOR REVIEW BY MODIFYING ITS EARLIER DECISION AND ORDERING PETITIONER TO REFUND TO RESPONDENT THE AMOUNT OF P54,260,482.78, REPRESENTING ITS EXCESS TAX CREDITS FOR TAXABLE YEAR 2003."

Petitioner's Arguments

The Commissioner argues that during the presentation of its evidence-in-chief, IMPSA failed to formally offer its supplemental documentary and testimonial evidence consisting of the supplemental Judicial Affidavit of its witness, Noralyn Sy and its 2004 Quarterly Income Tax Returns to establish that it had not carried-over its claimed creditable withholding taxes of ₱ 54,250,759.75 for the taxable year 2003 to the succeeding first, second, and third quarters of 2004. Allegedly, it is well-settled that the Court shall consider as evidence only those that were formally offered. Conversely, evidence not formally offered cannot be considered by the Court in deciding the case at hand.

Furthermore, the Commissioner submits that IMPSA's Motion for Reconsideration praying that the First Division allow it to submit its belated supplemental documentary and testimonial evidence to establish the legal and factual basis of its claim for a tax credit or refund, is not in accordance with law and jurisprudence. According to the Commissioner, IMPSA is guilty of inexcusable negligence in the prosecution of its case because it exercised lack of ordinary diligence to ensure that all proofs under the rules are duly presented as it was in possession of those documents at the time of the trial, had all the opportunity to present and to offer those documents and affidavits of its witness in order to comply with the law, but it did not.

Respondent's Counter-Arguments

On the other hand, IMPSA counter-argues that the First Division correctly acted in allowing it to formally offer in evidence its 2004 Quarterly ITRs and the Supplemental Judicial Affidavit of Ms. Sy, in connection with its Motion for Reconsideration based on the prevailing circumstances therein. Allegedly, these circumstances include, (i) its reliance in good faith on cases decided by this Court prior to the 2009 *Millenium* case[20], which did not require the presentation of Quarterly ITRs, and in fact explicitly stated that their presentation was not necessary, and (ii) the question of whether the submission of Quarterly ITRs is required, appears to be a question which even this Court has found difficult to resolve, as evidenced by the fact that even after the said 2009 *Millenium* case, this Court has rendered decisions which appear to rule that their submission is not necessary.

IMPSA also stresses that the cases cited by the Commissioner in the instant Petition for Review are not applicable to this case.

Finally, it is submitted by IMPSA that the admission of respondent's 2004 Quarterly ITRs is consistent with jurisprudence.

THE COURT EN BANC'S RULING

Existing jurisprudence is to the effect that the court may still consider IMPSA's 2004 Quarterly ITRs evidence even if the same was presented only after trial.

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[20] *Millenium Business Services, Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 7441, February 11, 2009.

In *Commissioner of Internal Revenue vs. Perf Realty Corporation*,[21] the Supreme Court said:

> "The CIR takes the view that the CA erred in considering the 1998 ITR of PERF. It was not formally offered in evidence. Section 34, Rule 132 of the Revised Rules of Court states that the court shall consider no evidence which has not been formally offered.
>
> The reasoning is specious.
>
> PERF attached its 1998 ITR to its motion for reconsideration. The 1998 ITR is a part of the records of the case and clearly showed that income taxes in the amount of ₱1,280,504.00 were not claimed as tax credit in 1998.
>
> In *Filinvest Development Corporation v. Commissioner of Internal Revenue*,[22] the Court held that <u>the 1997 ITR attached to the motion for reconsideration is part of the records of that case and cannot be simply ignored by the CTA. Moreover, technicalities should not be used to defeat substantive rights, especially those that have been held as a matter of right</u>. We quote:
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>> In the proceedings before the CTA, petitioner presented in evidence its letter of claim for refund before the BIR to show that it was made within the two-year reglementary period; its Income Tax Returns for the years 1995 and 1996 to prove its total creditable withholding tax and the fact that the amounts were declared as part of its gross income; and several certificates of income tax withheld at source corresponding to the period of claim to prove the total amount of the taxes erroneously withheld. More importantly, petitioner attached its 1997 Income Tax Return to its Motion for Reconsideration, making the same part of the records of the case. The CTA cannot simply ignore this document.
>>
>> Thus, we hold that petitioner has complied with all the requirements to prove its claim for tax refund. The CA, therefore, erred in denying the petition for review of the CTA's denial of petitioner's claim for tax refund on the ground that it failed to present its 1997 Income Tax Return.
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>> <u>**The CA's reliance on Rule 132, Section 34 26 of the Rules on Evidence is misplaced. This provision must be taken in the light of Republic Act No. 1125, as amended, the law creating the CTA, which provides that proceedings therein**</u>

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[21] G.R. No. 163345, July 4, 2008.
[22] G.R. No. 146941, August 9, 2007.

shall not be governed strictly by technical rules of evidence. Moreover, this Court has held time and again that technicalities should not be used to defeat substantive rights, especially those that have been established as a matter of fact.

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We must also point out that, simply by exercising the CIR's power to examine and verify petitioner's claim for tax exemption as granted by law, respondent CIR could have easily verified petitioner's claim by presenting the latter's 1997 Income Tax Return, the original of which it has in its files. However, records show that in the proceedings before the CTA, respondent CIR failed to comment on petitioner's formal offer of evidence, waived its right to present its own evidence, and failed to file its memorandum. Neither did it file an opposition to petitioner's motion to reconsider the CTA decision to which the 1997 Income Tax Return was appended.

That no one shall unjustly enrich oneself at the expense of another is a long-standing principle prevailing in our legal system. This applies not only to individuals but to the State as well. In the field of taxation where the State exacts strict compliance upon its citizens, the State must likewise deal with taxpayers with fairness and honesty. The harsh power of taxation must be tempered with evenhandedness. Hence, under the principle of *solutio indebiti*, the Government has to restore to petitioner the sums representing erroneous payments of taxes.

Further, We sustain the CA that there is no need to rule on the issue of the admissibility of the 1998 ITR since the CTA ruled that PERF already complied with the requisites of applying for a tax refund. The verification process is not incumbent on PERF; it is the duty of the CIR to verify whether or not PERF had carried over the 1997 excess income taxes." *(Underscoring supplied)*

Also, in *BPI-Family Savings Bank, Inc. vs. Court of Appeals, et al.*,[23] the High Court declared:

"True, strict procedural rules generally frown upon the submission of the Return after the trial. The law creating the Court of Tax Appeals, however, specifically provides that proceedings before it 'shall not be governed strictly by the technical rules of evidence.' **The paramount consideration remains the ascertainment of truth. Verily, the quest for orderly presentation of issues is not an absolute. It should not**

[23] G.R. No. 122480, April 12, 2000.

> **bar courts from considering undisputed facts to arrive at a just determination of a controversy.**
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> xxx xxx xxx
>
> It should be stressed that the rationale of the rules of procedure is to secure a just determination of every action. They are tools designed to facilitate the attainment of justice. **But there can be no just determination of the present action if we ignore, on grounds of strict technicality, the Return submitted before the CTA** and even before this Court. To repeat, the undisputed fact is that petitioner suffered a net loss in 1990; accordingly, it incurred no tax liability to which the tax credit could be applied. Consequently, there is no reason for the BIR and this Court to withhold the tax refund which rightfully belongs to the petitioner." *(Emphases supplied)*

Thus, contrary to the assertion of the Commissioner, the submission and presentation of IMPSA's supplemental documentary and testimonial evidence, even after trial, may be justified under the foregoing jurisprudence, which clearly considered and have given effect to a document merely attached to a motion for reconsideration. Moreover, it must be emphasized that the Court *a quo* has already made a finding, in the assailed Amended Decision, that, for taxable year 2003, IMPSA has complied with the requisites of applying for a tax refund, albeit in the reduced amount of ₱ 54,260,482.78—a fact which was never disproved in the instant Petition for Review, nor in the Court below. Such being the case, and pursuant to the above-quoted rulings, there is no legal obstacle for the grant of the said reduced refundable amount.

The cases relied upon by the Commissioner is not applicable to the instant case.

The Commissioner relies on the following cases in support of the instant Petition, *viz*: *Dizon vs. Court of Tax Appeals, et al.*;[24] *Atlas Consolidated Mining*

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[24] G.R. No. 140944, April 30, 2008.

and Development Corporation vs. Commissioner of Internal Revenue;[25] and *M.E. Holding Corporation vs. Court of Appeals, et al.*[26]

The foregoing cases, however, fail to convince Us that they are squarely applicable to the instant case. Unlike the earlier quoted cases of *Commissioner of Internal Revenue vs. Perf Realty Corporation* and *BPI-Family Savings Bank, Inc. vs. Court of Appeals, et al.*, the cases relied upon by the Commissioner do not involve: (1) the fact that the taxpayer has complied with the requisites of applying for a tax refund, and (2) the issue of whether or not to consider the subsequent tax return presented after trial to establish that the excess income tax paid was carried over in the succeeding period.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED**. The assailed Amended Decision promulgated on September 3, 2010 and Resolution dated January 11, 2011 rendered by the Special First Division of this Court, are hereby **AFFIRMED**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

[25] G.R. No. 159490, February 18, 2008.
[26] G.R. No. 160193, March 3, 2008.

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court *En Banc*.

ERNESTO D. ACOSTA
Presiding Justice