REPUBLIC OF THE PHILIPPINES

Court of Tax Appeals

QUEZON CITY

Third Division

PHIL. GOLD PROCESSING & REFINING CORP.,
Petitioner,

- *versus* -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8763

Members:
Bautista, *Chairperson*
Fabon-Victorino, *and*
Ringpis-Liban, JJ.

Promulgated:

MAY 25 2017
11:02 a.m.

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RESOLUTION

BAUTISTA, J:

For resolution is petitioner's Motion for Reconsideration (the "MR") filed on March 8, 2017; with respondent's Comment/Opposition (Re: Petitioner's Motion for Reconsideration dated 06 March 2017) (the "Comment") filed on March 22, 2017.

On February 15, 2017, the Court promulgated a Decision[1] (the "Assailed Decision"), the dispositive portion of which states:[2]

> **WHEREFORE,** premises considered, the instant Petition for Review is hereby **DENIED** for insufficiency of evidence.
>
> **SO ORDERED.**

In its MR, petitioner claims that the fact that its export sales are subject to value-added tax ("VAT") at zero-rate has already been established by the issuance by the Board of Investments ("BOI") of a Certification that petitioner exported 100% of its total sales for the

[1] *Records, Vol. 4, CTA Case No. 8763,* pp. 2155-2172.
[2] *Id.,* pp. 1357-1358.

calendar year January 1, 2009 to December 31, 2009; and that BOI issued a Certification attesting to the fact that petitioner exported 100% of its total sales of fiscal year covering the period July 1, 2011 to June 30, 2012.

Petitioner wants the Court to take judicial notice of the fact that it favorably granted similar petitions for review that it filed with the different divisions of the Court and that through these cases, the Court has already recognized its status as VAT zero-rated. Petitioner asserts that the Court is of the mindset that it should establish its VAT zero-rated status for each quarter that it seeks to recover unutilized input VAT; that assuming that it has to establish its VAT status *per* quarter, petitioner insists that it has already sufficiently proven that it made zero-rated sales for the pertinent quarters. Petitioner disagrees with the Court that the only acceptable proof of actual shipment of goods from the Philippines to a foreign country must necessarily be the export documents and the bills of lading or airway bills.

Petitioner argues that proof beyond reasonable doubt is not required in civil cases; that it is sufficient to establish payment by the buyer *via* letter of credit as an acknowledgment by the latter that it in fact received the goods; that mere summary of the export sales generated which identifies the invoice number and the customer is more than sufficient to establish consummation of the sale; and that payments confirms delivery of the goods.

Lastly, petitioner alleges that since the court appointed independent certified public accountant ("ICPA") has verified that the summary of export sales prepared by petitioner are footed correctly, its VAT zero-rated status has been substantially established; and that since there was no issue as to the validity of the amounts of unused input VAT as duly reviewed and verified by the ICPA, its petition for review should have been granted.

On the other hand, the CIR counter-argues that the Court correctly ruled that petitioner is not entitled to the issuance of a TCC due to insufficiency of evidence; that in a claim for tax refund or TCC, the applicant must prove not only entitlement to the grant of the claim under substantive law, but the taxpayer must further comply with the invoicing and accounting requirements mandated under the *1997 National Internal Revenue Code, as amended ("1997 NIRC"),* and by the revenue regulations implementing them. Respondent also aver that tax refunds are in the nature of tax exemptions, thus, it should be strictly construed against the taxpayer, being highly disfavored; and that those who claim to be exempt from the payment of a particular tax must do so under clear and unmistakable terms found in the statute.

The Court resolves.

The Court agrees with petitioner that proof beyond reasonable doubt is not required in civil cases. The party having the burden of proof must establish his case by preponderance of evidence, or that evidence which is of greater weight or more convincing than that which is in opposition to it.[3] It does not mean absolute truth; rather, it means that the testimony of one side is more believable than that of the other side, and that the probability of truth is on one side than on the other[4]. In the instant case, petitioner failed to convince the Court of the probability of truth regarding its claim.

Petitioner anchors its claim on *Section 106 of the 1997 National Internal Revenue Code, as amended ("1997 NIRC")*. Said section defines export sales as "<u>the sale and actual shipment of goods from the Philippines to a foreign country</u>, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the [BSP]; xxx"

Based on the afore-quoted provision, there should be actual shipment of the goods, and the best proof that the goods were actually shipped to its clients are the export declarations and bills of lading or airway bills, which petitioner failed to present. Moreover, petitioner failed to explain why the foreign currency remittances as indicated in the HSBC Certification do not reconcile with those

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[3] *Bank of the Philippine Islands vs. Jesusa P. Reyes and Conrado B. Reyes*, G.R. No. 157177, February 11, 2008, 544 SCRA 206.
[4] *Id.*

reflected in the invoices it issued to its clients for the third and fourth quarters of fiscal year ending June 30, 2012. Such failure is fatal to its cause.

Petitioner also wants the Court to take judicial notice of the fact that it favorably granted similar petitions for review that it filed with the different divisions of the Court and that through these cases, the Court has already recognized its status as VAT zero-rated.

The Court does not agree. The Court cannot take judicial notice of decisions in the other divisions. It bears stressing that the Court in Division is not bound by decisions or findings by another Division. Decisions of the Court of Tax Appeals ("CTA") do not constitute precedents, and do not bind other courts or the public; that is why decisions of the Court in Division are appealable to the CTA *En Banc,* and the decisions of the latter are appealable to the Supreme Court, which may affirm, reverse or modify its decisions as the facts and the law may warrant. Only decisions of the Supreme Court constitute binding precedents, forming part of the Philippine legal system.[5]

Lastly, petitioner insists that its petition for review should have been granted because the ICPA has duly reviewed and verified petitioner's claims as well as its supporting documents.

Petitioner's argument is bereft of merit. *Section 3 of Rule 13*[6] *of the Revised Rules of the Court of Tax Appeals ("RRCTA"), as amended*[7], provides that "the findings and conclusions of the ICPA 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 conclusion subject to verification." The Court is not bound by the findings of the ICPA. The ICPA Report is but a tool or guide to aid the Court in the resolution of the case. The determination of the merit or the probative value of such report is still within the province of the Court, it is free to adopt or disregard, completely or partially, the findings of the ICPA. It can even make its own audit and evaluation of the

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[5] *Nippon Express (Philippines) Corporation vs. Commissioner of Internal Revenue,* G.R. No. 196907, March 13, 2013, 693 SCRA 456, citing *Commissioner of Internal Revenue vs. San Roque Power Corporation,* G.R. No. 187485, February 12, 2013, 690 SCRA 336.
[6] A.M. No. 05-11-07-CTA.
[7] Supreme Court Resolution dated September 16, 2008, which took effect on October 15, 2008.

documents pertinent to the case presented during the trial in order to intelligently resolve the conflict brought before it.[8]

It is worthy to stress that the Court of Tax Appeals is a court of record, and that cases filed before it are *litigated de novo,* thus, the claimant should prove every minute aspect of its case,[9] and the appreciation of the evidence lies within the sound discretion of the Court.

WHEREFORE, premises considered, the Motion for Reconsideration is hereby **DENIED** for lack of merit. Accordingly, the Decision dated February 15, 2017 is **AFFIRMED** and **UPHELD.**

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

Ma. Belen S L

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[8] *Stateland, Inc. vs. Commissioner of Internal Revenue*, CTA EB No. 1148, July 4, 2016, citing *First Lepanto Taisho Insurance Corporation vs. Commissioner of Internal Revenue*, CTA EB Case No. 563, March 1, 2011.

[9] *Commissioner of Internal Revenue v. Philippine National Bank,* G.R. No. 180290, September 29, 2014, 736 SCRA 609.