18-000487-0091

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

CTA CASE NO. 9970

IBMS TECHNOLOGY PHILS. CORPORATION,
Petitioner,

- versus -

NOTICE OF RESOLUTION

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street, Legazpi Village
Makati City

ATTY. CARL FITRI A. HUSSIN
ATTY. JONELLE ELLAINE A. MAGALONG
Bureau of Internal Revenue
Legal Division, Revenue Region 8A
36th Floor, Export Bank Plaza Bldg.
Sen. Gil Puyat Avenue cor. Chino Roces Avenue
Makati City

S.H. BUENAVENTURA LAW OFFICE
20-O, 20/F, Burgundy Corporate Tower
252 Sen. Gil Puyat Avenue, 1230 Makati City

GREETINGS:

You are hereby notified by these presents that on **March 27, 2024,** a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **April 1, 2024.**

Atty. Maria Johoanna F. Chan-Te
Executive Clerk of Court II

REPUBLIC OF THE PHILIPPINES
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SPECIAL FIRST DIVISION

IBMS TECHNOLOGY PHILS. CORPORATION,
Petitioner,

-*versus*-

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9970

Members:

DEL ROSARIO, *P.J., Chairperson,*
MANAHAN, *and*
REYES-FAJARDO, *JJ.*

Promulgated:

MAR 2 7 2024 10:20AM

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RESOLUTION

MANAHAN, *J.*:

For the Court's resolution is petitioner's *Motion for Partial Reconsideration With Motion to Set for Hearing and Motion for Leave to Present Additional Evidence* filed on October 26, 2023 ("*Motion*"),[1] with respondent's *Comment/Opposition (To Petitioner's Motion for Partial Reconsideration with Motion to Set for Hearing and Motion for Leave to Present Additional Evidence)* filed on December 11, 2023.[2]

Petitioner's *Motion* assails the Court's *Decision* dated October 5, 2023,[3] which cancelled the value-added tax (VAT) assessment and compromise penalties but affirmed with modification the assessments for deficiency income tax, expanded withholding tax (EWT), withholding tax on compensation (WTC), final withholding tax (FWT), documentary stamp tax (DST), and improperly accumulated earnings tax (IAET).

Petitioner argues as follows: *first*, respondent's failure to complete the audit within 180 days and up to one (1) year and seven (7) months from the date of issuance of the Letter of

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[1] Docket – Vol. III, pp. 1115-1124.
[2] Docket – Vol. III, pp. 1276-1284.
[3] Docket – Vol. II, pp. 1079-1114.

Authority (LOA) on May 13, 2016 constituted a violation of its constitutional right to speedy disposition of cases; *second*, respondent violated petitioner's right to due process when it issued the Formal Assessment Notice (FAN) without the Preliminary Assessment Notice (PAN) being duly served and received by petitioner at least fifteen (15) days prior thereto; and *third*, the assessments should be cancelled on the following grounds: *i.* the fringe benefits in the amount of P458,304.01 are substantiated by evidence which should not have been denied admission by the Court; *ii.* the amount of P12,440,005.03 are not salaries and wages but are payments to subcontractors and/or independent contractors subjected to withholding taxes, and such fact of withholding is supported by the alphalists of the monthly remittance returns contained in the Bureau of Internal Revenue (BIR) Records; *iii.* the disallowed creditable withholding tax in the amount of P442,601.71 are substantiated by evidence which should not have been denied admission by the Court; and *iv.* although petitioner failed to submit duly marked exhibits to support its payment of FWT, the same documents are contained in the BIR Records.

Petitioner further submits evidence to prove that the assessed DST pertains to its deposit for future increase in capital stock, and that the assessed IAET should be cancelled as petitioner appropriated portions of its retained earnings for the acquisition of land/property to be used for its office and for future expansion.

Respondent counterargues that failure to complete the audit within the prescribed period does not nullify the assessments, and that the evidence on record, including the testimony of petitioner's witness, clearly establishes that respondent fully complied with the due process requirements under the law and regulations. Respondent opposes the *Motion* on the ground that piecemeal presentation of evidence is disallowed as it is not in accord with orderly justice and it sets a precedent of never-ending suits.

We agree with respondent.

A fundamental rule of evidence is that it must be formally offered to be considered by the court.[4] Formal offer of evidence

[4] RULES OF COURT, Rule 132, Sec. 34.

enables the judge to know the purpose or purposes for which the proponent is presenting the evidence, and it allows the opposing party to interpose defenses. The rule on formal offer is not merely a technical matter as it is intertwined with the constitutional guarantee of due process. Parties must be given the opportunity to review the evidence submitted against them and to take the necessary actions to secure their case. Without formal offer, the opposing party is effectively deprived of the opportunity to object.[5] Hence, any document or object that was marked for identification is not evidence unless it was formally offered and the opposing party was given opportunity to cross-examine the witness called upon to identify it.[6]

The necessity of the formal offer of evidence, especially before this Court where cases are litigated *de novo*, has been stressed in *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.*:[7]

> Under Section 8 of Republic Act (R.A.) No. 1125, the CTA is categorically described as a court of record . . . *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.*
>
> . . .
>
> In the case at bar, petitioner categorically admitted that it failed to formally offer the PANs as evidence. Worse, it advanced no justifiable reason for such fatal omission. Instead, it merely alleged that the existence and due execution of the PANs were duly tackled by petitioner's witnesses. We hold that such is not sufficient to seek exception from the general rule requiring a formal offer of evidence, since no evidence of positive identification of such PANs by petitioner's witnesses was presented. Hence, we agree with the CTA *En Banc's* observation that the 1994 and 1998 PANs for EWT deficiencies were not duly identified by testimony and were not

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[5] *Agravante v. Commission on Elections*, G.R. No. 264029, August 8, 2023 [Per C.J. Gesmundo, *En Banc*].

[6] *Republic v. Spouses Gimenez*, G.R. No. 174673, January 11, 2016 [Per J. Leonen, Second Division].

[7] G.R. No. 197515, July 2, 2014 [Per J. Peralta, Third Division] (Emphasis supplied, citations omitted). *See also Commissioner of Internal Revenue v. Ocier*, G.R. No. 192023, November 21, 2018 [Per J. Bersamin, First Division].

> incorporated in the records of the case, as required by jurisprudence.

Petitioner urges the Court to reconsider the case based on evidence already denied admission by the Court and on evidence not formally offered. To grant the same would be without legal and jurisprudential basis. Although the Supreme Court in appropriate instances had relaxed the rule on formal offer of evidence,[8] these were subject to the following requirements: *first*, that the evidence must have been duly identified by testimony duly recorded; and *second*, that the evidence must have been incorporated in the records of the case.[9] The first requisite does not obtain in this case. Being an exception, strict compliance with the requisites must be made; otherwise, the general rule in Rule 132, Section 34 on formal offer of evidence shall prevail.[10]

With regard to the additional evidence petitioner seeks to present, Rule 15, Section 5 of Republic Act No. 1125 or the Revised Rules of the Court of Tax Appeals, as amended, in relation to Rule 37, Section 1 of the Rules of Court, governs:

> **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:
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> (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.

As can be gleaned from the above-cited provision, the Rules restrict the presentation of additional evidence to newly discovered evidence. To qualify as newly-discovered, evidence must be: 1.) discovered after trial; 2.) could not have been discovered and produced at the trial despite reasonable

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[8] *See Sabay v. People*, G.R. No. 192150, October 1, 2014 [Per J. Brion, Second Division].
[9] *Zambales v. Zambales*, G.R. No. 216878, April 3, 2019 [Per J. Peralta, Third Division].
[10] *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, July 2, 2014 [Per J. Peralta, Third Division].

diligence; 3.) material, not merely cumulative, corroborative, or impeaching; and 4.) of such weight that it would probably change the judgment if admitted.[11]

A simple look at the documents petitioner adduced in its *Motion* would instantly show that they are not newly discovered evidence. Petitioner already knew of their existence before trial and could have seasonably produced the same through the exercise of reasonable diligence.

It bears to stress that parties to a case must diligently and conscientiously present to the court all available evidence and arguments in support of their respective positions before the case is deemed submitted for judgment. This petitioner failed to do. Only under exceptional circumstances may the court receive new evidence after having rendered judgment; otherwise, judgments may never attain finality, since the parties may continually refute the findings therein with further evidence.[12]

ACCORDINGLY, petitioner's *Motion for Partial Reconsideration With Motion to Set for Hearing and Motion for Leave to Present Additional Evidence* filed on October 26, 2023 is **DENIED** for lack of merit.

SO ORDERED.

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

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[11] *People v. Li Ka Kim*, G. R. No. 148586, May 25, 2004 [Per J. Vitug, *En Banc*].
[12] *Alamayri v. Pabale*, G.R. No. 151243, April 30, 2008 [Per J. Chico-Nazario, Third Division].