REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	C.T.A. EB Nos. 1037 & 1042 (C.T.A. CASE No. 8119)
- versus -	
NORTHWIND POWER DEV'T. CORPORATION, Respondent.	Members: DEL ROSARIO, *PJ* CASTAÑEDA, JR. BAUTISTA, UY,
x--------------------------x	
NORTHWIND POWER DEV'T. CORPORATION, Petitioner,	CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS, and RINGPIS-LIBAN, *JJ.*
- versus -	
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUN 18 2015 1:50 p.m.

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RESOLUTION

***Fabon-Victorino, J.*:**

The following incidents are for the resolution of the Court:

1) Motion For Reconsideration dated January 20, 2015 filed by Northwind Power Development Corporation; and
2) Motion For Reconsideration dated January 26, 2015 filed by Commissioner of Internal Revenue.

Both motions assail the Decision dated December 16, 2014 promulgated by the Court *En Banc* denying the Petition for Review dated July 23, 2013 filed by the Commissioner of

Internal Revenue (CIR) and the Petition for Review dated July 30, 2013 filed by Northwind Power Development Corporation (Northwind), for lack of merit. In the assailed Decision, the Court *En Banc* sustained the Decision of the Court in Division partially granting Northwind's claim for refund of its unutilized input VAT attributable to zero-rated sales for the 2nd quarter of 2008.

According to Northwind, the Court erred in deducting the amount of P22,456,725.94 from its total gross receipts of P56,809,066.01 generated from its sale of electricity for the 2nd quarter of 2008 thereby reducing the amount of input VAT for refund.

Northwind likewise finds erroneous the amortization of its input VAT on the importation of capital goods pursuant to Section 110(A) of the National Internal Revenue Code (NIRC), as amended, which as well reduced the input VAT that may be refunded.

Finally, the Court erred when it disallowed the amount of P824,373.40 paid on domestic purchases evidenced by official receipts dated outside the period of the claim pursuant to RMC No. 42-2003.

Despite notice, the CIR failed to file any comment or register any opposition to the Motion for Reconsideration filed by Northwind.

In her own Motion for Reconsideration, the CIR reiterates that the official receipts and invoices presented by Northwind to substantiate its claim for refund did not comply with the invoicing requirements under Section 113(A)(B), in relation to Section 237 of the 1997 Tax Code, as implemented under Sections 4.110-8 and 4.113-1 of Revenue Regulations No. 16-05. Hence, the claim in its entirety should be denied.

The said official receipts and invoices were not duly registered with the Bureau of Internal Revenue (BIR) and do not have a BIR-issued Authority to Print (ATP).

The CIR claims that the ATP of Northwind was not issued by the correct BIR Revenue District Office (RDO) which has jurisdiction over the business establishment of

Northwind, pursuant to Revenue Memorandum Order (RMO) No. 83-90 (*sic*) and Revenue Regulations (RR) No. 18-2012. Northwind is registered with BIR RDO 044, Taguig-Pateros, from which its ATP should come from. However, the ATP of Northwind was erroneously secured from RDO 01, Laoag, Ilocos Norte. That being the case, petitioner's official receipts and invoices are deemed as not duly registered with the BIR and have no probative value justifying the denial of the entire claim.

Lastly, the CIR again avers that Northwind's sales of services related to the maintenance or operation of its power-generating plants do not qualify for VAT zero-rating pursuant to Sections 4.108-3(f) and 4.108-5(b)(7) of RR No. 1605.

Northwind belittles the allegation of the CIR that the official receipts and invoices it submitted in support of the claim do not comply with the substantiation requirements under the pertinent law and regulations. These bare allegations, according to Northwind, are mere generalizations and contradicted by the evidence on record. This is more evident from the fact, as observed by the Court in the assailed Decision, that the CIR failed to cite with particularity the non-compliant official receipts or invoices.

The CIR statement that Northwind's ATP was not issued by the correct BIR RDO rendering all the official receipts/invoices submitted in evidence invalid is likewise flawed. Northwind points out that it is registered with both RDO No. 44 - Taguig with TIN 208-101-373-000, and RDO No. 01 - Laoag with TIN 208-101-373-001. Further, RMO No. 83-99 cited by the CIR but incorrectly referred to as RMO No. 83-90, provides that the ATP shall be approved by the BIR RDO having jurisdiction over the head office while the ATP of the branch office shall be approved by the RDO having jurisdiction over the said branch. As applied in this case, since it is the branch office which issued the official receipts/invoices to its sole client, Ilocos Norte Electric Cooperative obviously located in Ilocos Norte, then the ATP was properly procured from Ilocos Norte pursuant to RMO No. 83-99.

Lastly, the contention of the CIR that Northwind is not engaged in the sales of electricity generated through renewable energy is negated not only by the evidence presented during the trial but most importantly by her own admission in the parties' Joint Stipulation of Facts and Issues (JSFI) filed with the Court that Northwind is engaged in the generation of electricity.

It is evident that both Northwind and the CIR merely lifted almost *verbatim* from their respective Petitions for Review the foregoing issues and arguments which have already been amply discussed and rejected by the Court *En Banc* in the Decision dated December 16, 2014. The Court finds no cogent reason or justification to modify much less reverse its ruling.

On the CIR's argument that all the official receipts and invoices of Northwind should be invalidated since Northwind is registered with BIR Taguig-Pateros while its ATP was procured from Laoag, Ilocos Norte, let it be stressed that no less than the CIR insisted in her pleadings filed with the Court in Division and in her Petition for Review with the Court *En Banc,* that Northwind did not have any ATP from the BIR.

Additionally, this issue was never raised before the Court in Division, hence, Northwind was not given the opportunity to be heard on the matter. Elementary is the rule that no issue may be raised on appeal unless it has been brought before the lower tribunal for its consideration.[1] It is a fundamental rule of procedure that higher courts are precluded from entertaining matters neither alleged in the pleadings nor raised during the proceedings below, but ventilated for the first time only in a motion for reconsideration or on appeal.[2] Further, it is axiomatic in pleadings and practice that no new issue in a case can be raised in a pleading which by due diligence could have been raised in previous pleadings.[3]

WHEREFORE, the Motion for Reconsideration dated January 20, 2015 filed by Northwind Power Development Corporation, and the Motion For Reconsideration dated

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[1] Sesbreño vs. Central Board of Assessment Appeals, G.R. No. 106588, March 24, 1997

[2] Maxicare PCIB Cigna Healthcare (Now Maxicare Healthcare Corporation), Eric S. Nubla, Jr. M.D. and Ruth A. Asis, M.D. vs. Marian Brigitte A. Contreras, M.D., G.R. No. 194352, January 30, 2013

[3] Toshiba Information Equipment (Phils.), Inc. vs. Commissioner of Internal Revenue, G.R. No. 157594, March 9, 2010

January 26, 2015 filed by the Commissioner of Internal Revenue, are hereby **DENIED**, for lack of merit.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice