REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC
****

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 2488** (CTA Case No. 9266)
	Present:
- versus -	**DEL ROSARIO,** *PJ*, **UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID,** *and* **FERRER-FLORES,** *JJ.*
CHEVRON HOLDINGS, INC., Respondent.	***Promulgated:*** FEB 23 2023 10:16am

x - x

RESOLUTION

UY, *J*.:

For resolution is the ***MOTION FOR RECONSIDERATION (Decision promulgated 21 September 2022)*** filed by petitioner Commissioner of Internal Revenue (CIR) on October 10, 2022,[1] with ***Comment (Re: Motion for Reconsideration dated October 3, 2022)*** filed by respondent Chevron Holdings, Inc., (Chevron) on November 7, 2022.[2]

In the said *Motion*, the CIR prays that the Decision dated September 21, 2022 of the Court in *En Banc* be reversed and set aside, the dispositive portion of which reads:

[1] EB Docket, pp. 226 to 246.
[2] EB Docket, pp. 250 to 264.

"**WHEREFORE**, in light of the foregoing considerations, the Commissioner of Internal Revenue's *Petition for Review* filed on June 22, 2021 and *Supplemental Petition for Review* filed on June 21, 2022 are hereby **DISMISSED**.

SO ORDERED."

The CIR's Motion for Reconsideration:

The CIR argues that when he filed on October 26, 2020, a Motion for Partial Reconsideration of the Court in Division's Decision dated October 7, 2020, the Court in Division denied the said motion for lack of merit in the Resolution dated May 31, 2021. The CIR submits that since the Court in Division already ruled on the CIR's motion for partial reconsideration, the proper recourse from the said denial was to file a Petition for Review before the Court *En Banc*.

Allegedly, to require the CIR to file a Motion for Reconsideration of the Amended Decision would be an exercise in futility since the same arguments that which were already passed upon by the Court in Division when it rendered the Amended Decision will be raised.

As to Chevron's entitlement of its claim for refund of creditable input value-added tax (VAT) attributable to its zero-rated sales, the CIR maintains that the law requires that only "creditable input taxes" that are "directly attributable" may be refunded. The CIR insists that no attributability was established between the input tax on purchases vis-à-vis the zero-rated sales of respondent. As a claim for refund, Chevron must establish its claim by the quantum of evidence and not by assumption.

The CIR reiterates that to be creditable under Sections 112 (A) and 110 of the National Internal Revenue Code (NIRC) of 1997, as amended, the input tax must come from purchases of goods that form part of the finished product of the taxpayer or it must be directly used in the chain of production. Further, the connection between the purchases and the finished product is "concrete" and not "imaginary" or "remote". In this case, there was nothing mentioned in the assailed Decision showing the direct attributability of the purchases of input tax to the finished product whose sales were zero rated.

MT

The CIR stresses that tax refunds are in the nature of an exemption, hence it must be strictly construed against the taxpayer and convincing evidence must be presented to substantiate such claim. Having failed to do so, petitioner argues that respondent fell short of its burden to prove the veracity of its application for refund.

Lastly, the CIR contends that the Court in Division erred in granting Chevron's motion to reopen the case in CTA Case No. 9266.

The CIR invokes various decisions of the Court of Tax Appeals (CTA), wherein the Court disallowed the same, and argue that a motion to reopen trial may be resorted to only before judgment has been rendered. The CIR further alleges that Chevron simply wants to reap the benefits of the very stringent motion for new trial, but does so via the more liberal motion to reopen, which trivializes or misuses the Rules of Procedure. Hence, this should not be countenanced as Chevron's motion to reopen trial has no legal basis.

Chevron's Comment on the CIR's Motion for Reconsideration:

Chevron counter-argues that the Petition for Review was prematurely filed and should be dismissed outright for lack of jurisdiction. Chevron submits that the Resolution dated May 31, 2021 (First Resolution) is an interlocutory order that did not terminate or finally dispose of case in CTA Case No. 9266. Hence, the First Resolution was not yet appealable to the Court *En* Banc.

Moreover, Chevron asserts that the filing of the Supplemental Petition for Review by the CIR will not also cure the premature filing of the Petition for Review before the Court *En Banc* since the same was without prior leave of Court, and therefore, cannot be admitted by the Court *En Banc*.

As regards to the CIR's insistence that creditable input taxes should be directly attributable to zero rated sales, Chevron counters that the there is nothing in Section 112 (A) of the NIRC of 1997, as amended, revenue regulations and jurisprudence that imposes such a requirement. "*Ubi lex non distinguit nec nos distinguere debemos.*" When the law does not distinguish, neither should we.

Finally, Chevron argues that the Court *En Banc* did not err in affirming the Court in Division in granting its Motion to Reopen the

Case. Chevron submits that as correctly ruled in the assailed Decision, a motion to reopen trial may properly be presented, even after promulgation of judgment, but before its finality in the interest of substantial justice and to prevent miscarriage of justice.

We resolve.

The CIR's *Motion for Reconsideration* lacks merit.

An examination of the CIR's Motion for Reconsideration readily shows that no new issues have been raised, as the arguments presented therein, save for his objection that the Petition for Review was prematurely filed, are mere reiterations of statements in its Petition for Review filed on June 22, 2021 before the Court *En Banc*, his Motion for Partial Reconsideration to the Court in Division's Decision dated October 7, 2020, and his Supplemental Petition for Review filed on June 21, 2022, which have already been duly considered, weighed and addressed by the Court *En Banc* in the assailed Decision.

Nevertheless, for clarity, the Court *En Banc* hereby summarizes and reiterates the salient points of its ruling in the assailed Decision.

The *Petition for Review* filed before the Court *En Banc* was prematurely filed.

To be clear, the Petition for Review filed by the CIR on June 22, 2021 before the Court *En Banc* assails the Decision dated October 7, 2020 and the Resolution dated May 31, 2021 of the Court in Division. It bears noting, however, that in the Resolution dated May 31, 2021, the Court in Division denied the CIR's *Motion for Partial Reconsideration (Re: Decision promulgated 7 October 2020)*, while the same granted Chevron's *Urgent Motion to Reopen Case*, and pending the presentation of Chevron's evidence in support of its motion, the Court in Division declared that the resolution of Chevron's *Motion for Reconsideration (Re: Decision dated October 7, 2020)* be held in abeyance.

It is apparent that the May 31, 2021 Resolution did not completely dispose of CTA Case No. 9266, since at the time of the filing of the Petition for Review before the Court *En Banc*, there were matters that remained pending before the Court in Division. The assailed Resolution was therefore interlocutory in nature.

To reiterate, an order that does not terminate or finally disposes of a case, because it leaves something to be done by the court before the case is finally decided on the merit is said to be interlocutory.[3] Based on Section 1, Rule 41 of the 1997 Rules of Civil Procedure, only judgments or final orders that completely dispose of a case may be appealed, among others, and no appeal may be taken from orders or resolutions that are merely interlocutory in nature. Clearly, only decisions or orders which have been resolved with finality or which completely disposes of a case, are appealable to the Court *En Banc*.

Verily, in the case of *Commissioner of Internal Revenue vs. Court of Tax Appeals and CBK Power Company Limited*,[4] the Supreme Court held that the "*CTA En Banc has jurisdiction over final order or judgment* ***but not over interlocutory orders issued by the CTA in division***". In sum, the Petition for Review before the Court *En Banc* was prematurely filed and the same must be dismissed for lack of jurisdiction.

Section 112(A) of the NIRC of 1997, as amended, does not require that the input VAT must be "directly attributable" **to zero-rated sales to be creditable.**

Contrary to the CIR's assertion that the subject claim for refund of input VAT must be directly attributable to or must form part of the finished product, Section 112 (A)[5] of the NIRC of 1997, as amended, expressly states that it only requires that the creditable input VAT should be "*attributable*" to the zero-rated or effectively zero-rated sales.

---

[3] *Philippine Stock Exchange, Inc. and the Members of its Board of Governors vs. The Manila Banking Corporation et al.*, G.R. No. 147778, July 23, 2008.
[4] G.R. Nos. 203054-55, July 29, 2015.
[5] SEC. 112. Refunds or Tax Credits of Input Tax. –

(A) Zero-rated or Effectively Zero-rated Sales. – Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: x x x *Provided, further,* **That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales."** (*Emphases Added*)

In fact, as We explained in the assailed Decision, Section 112 (A) of the NIRC of 1997, as amended, caters to instances wherein the taxpayer is engaged in zero-rated or effectively zero-rated sales and in taxable or exempt sales, and the input taxes cannot be directly or entirely attributed to any of the sales. The law allows the allocation of creditable input taxes which cannot be directly or entirely attributable to zero-rated sales, in which case, the input taxes shall be allocated proportionately on the bases of the volume sales. Simply put, the attribution of input VAT to a taxpayer's zero-rated sales may either have a direct or indirect connection in order to be creditable.

The Court in Division did not err in granting Chevron's Motion to Reopen the Case and allowing it to present supplemental evidence.

In his Motion for Reconsideration, the CIR cites as bases various decisions of the CTA,[6] and reiterates his position that a motion to reopen trial may be resorted to only before judgment has been rendered.

The CIR's argument deserves scant consideration.

In the case of *Commissioner of Internal Revenue vs. San Roque Power Corporation*,[7] the Supreme Court has emphasized that CTA decisions do not constitute as binding precedents to wit:

> "xxx xxx xxx **Suffice it to state that CTA decisions do not constitute precedents, and do not bind this Court or the public.** That is why CTA decisions are appealable to this Court, which may affirm, reverse or modify the CTA decisions as the facts and the law may warrant. **Only decisions of this Court constitute binding precedents, forming part of the Philippine legal system.**" (*Emphasis added*)

---

[6] Phil. Gold Processing & Refining Corp. vs. CIR, CTA Case Nos. 8327 & 8328, ; Air Philippines Corporation vs. CIR and COC, CTA Case Nos. 8039, 8069, 8104 and 8113; Carmen Copper Corporation vs. CIR, CTA Case No. 9543; CIR vs. Air Philippines Corporation, CTA Case Nos. 7872, 7883, 7922, 7929 and 7952, CTA EB Nos. 2064; Maxima Machineries Inc vs. CIR, CTA Case No. 9210; Dissenting Opinion of AJ Jean Marie A. Bacorro-Villena, Carmen Copper vs CIR, CTA Case No. 9569.
[7] G.R. Nos. 187485, 196113 & 197156, February 12, 2013.

Based on the foregoing pronouncements, only decisions of the Supreme Court and not the decisions of the CTA constitute binding precedents. Judgments of lower courts or other collegiate courts bind only the parties of specific cases, unlike decisions of the Supreme Court which are universal in their scope and application as well as mandatory in character.[8] Thus, the CTA decisions relied upon by the CIR cannot be treated as doctrinal pronouncements and the Court is not bound by the same.

Thus, We reiterate that the Court in Division committed no error in allowing Chevron to reopen the case and present supplemental evidence as We have explained in the assailed Decision, citing *Cabarles vs. Maceda*,[9] that a motion to reopen may be properly presented **even after promulgation of but before finality of judgment** and the only controlling guideline governing the motion to reopen is the paramount interest of justice and to prevent miscarriage of justice.

Furthermore, the law creating the CTA specifically provides that proceedings before the CTA are not governed strictly by the technical rules of evidence.[10] The paramount consideration remains the ascertainment of truth.[11]

In view of the foregoing, We find no compelling reason to modify or reverse Our findings and conclusions reached in the Assailed Decision.

WHEREFORE, the CIR's *Motion for Reconsideration* is **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

---

[8] *The Philippine Veteran Affairs Office vs. Segundo*, G.R. No. L-51570, August 15, 1988.
[9] G.R. No, 161330, February 20, 2007.
[10] *Commissioner of Internal Revenue vs. Univation Motor Philippines, Inc. (Formerly Nissan Motor Philippines, Inc.)*, G.R. No. 231581, April 10, 2019.
[11] *Id.*

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice