REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

FIRST GEN HYDRO POWER CORPORATION, *Petitioner,*	**CTA EB No. 2456** (CTA Case No. 9889)
	Present:
-versus-	**DEL ROSARIO**, *P.J.*, **UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO**, and **CUI-DAVID**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: AUG 18 2022 2:42 pm

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DECISION

REYES-FAJARDO, J.:

THE CASE

This is a Petition for Review filed by petitioner First Gen Hydro Power Corporation appealing the Decision dated October 29, 2020[1] (the "Decision") rendered by the Second Division of this Court (the "Court in Division"), and the Resolution dated March 5, 2021[2] (the "Resolution") denying petitioner's Motion for Reconsideration and alternative prayer to allow presentation of supplemental evidence.

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1 Decision, Docket – Vol. I, p. 71.
2 Resolution, Docket – Vol. I, p. 123.

In the assailed Decision, the Court in Division denied petitioner's claim for refund amounting to Fifteen Million Nine Hundred Fifty Thousand Seven Hundred Twenty and 98/100 Pesos (₱15,950,720.98), allegedly representing petitioner's unutilized input value-added tax (VAT) attributable to zero-rated sales for the four (4) quarters of calendar year (CY) 2016 for lack of merit.[3]

THE PARTIES

Petitioner First Gen Hydro Power Corporation is a corporation organized and existing under the laws of the Republic of the Philippines. It is registered with the Bureau of Internal Revenue (BIR) as a large taxpayer and a VAT-taxable entity under Taxpayer's Identification Number (TIN) 244-335-986-00000, with office address at 6/F Rockwell Business Center, Tower 3, Ortigas Avenue, Brgy. Ugong, Pasig City. [4]

On the other hand, respondent is the appointed Commissioner of Internal Revenue (CIR) vested with the authority to carry out the functions, duties and responsibilities of said Office, including the power to decide, approve, and grant refunds of excess and unutilized input VAT pursuant to the provisions of the National Internal Revenue Code (NIRC) of 1997, as amended, and other tax laws, rules and regulations.[5]

THE FACTS

The facts, as found by the Court in Division, are as follows:

On March 28, 2018, petitioner filed an Application for Tax Credits/Refunds (BIR Form No. 1914), with attached letter dated March 23, 2018, requesting for the refund of its alleged unutilized input VAT covering the period from January 1, 2016 to December 31, 2016, in the amount of ₱15,950,720.98.[6]

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3 Decision, Docket – Vol. I, p. 71.
4 *Id.*
5 *Id.*
6 *Id.* at p. 72.

Thereafter, on June 26, 2018, petitioner received a VAT Refund/Notice from Teresita M. Dizon, the OIC-Assistant Commissioner of the Large Taxpayers Service, denying petitioner's administrative claim for refund.[7]

On July 26, 2018, petitioner filed its Petition for Review with the Court in Division. During trial, petitioner presented documentary and testimonial evidence. Petitioner proffered the testimonies of: (1) Maria Carmina Z. Ubaña, petitioner's Vice President and Comptroller; and (2) Enrico E. Baluyot, the Court-commissioned Independent Certified Public Accountant (ICPA).[8]

Thereafter, on March 4, 2019, petitioner filed a Formal Offer of Evidence. Respondent filed a Comment (Re: Petitioner's Formal Offer of Evidence) on March 6, 2019. In a Resolution dated April 8, 2019, the Court admitted petitioner's exhibits, but denied some for failure to present the originals for comparison; for failure to identify; and for not being found in the records of the case.[9]

On April 29, 2019, petitioner filed a Motion for Partial Reconsideration with Submission (Re: Resolution dated April 8, 2019), praying for the admission of the following Exhibits: "P-27-a" to "P-27-d", "P-38-IC" to "P-38-JL", "P-41-AL", "P-44-A", "P-45-A" to "P-45-C", "P-48-AO" to "P-48-AS", "P-49-AH" to "P-49-AK", "P-52-A", "P-66-A" to "P-66-R", "P-67-A" to "P-67-I", "P-68-A" to "P-68-EA", "P-78-B", "P-80-AN", and "P-81-AQ".[10]

On May 3, 2019, petitioner also filed a Manifestation with Submission (Re: Motion for Reconsideration dated April 29, 2019), stating that it already submitted a new universal serial bus (USB) containing the scanned copies of the documentary exhibits relevant to its Motion for Partial Reconsideration, and that petitioner attached the transcript of stenographic notes dated December 5, 2018 that could prove that Exhibits "P-27-a", "P-27-b", "P-27-c", and "P-27-d" pertain to Tax Debit Memos that were duly marked and identified by petitioner's witness.[11]

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7 Decision, Docket – Vol. I, p. 71.
8 Docket – Vol. I, p. 14.
9 Docket – Vol. I, p. 15.
10 *Id.*
11 Docket – Vol. I, p. 74.

In a Resolution dated June 28, 2019, the Court in Division: (1) partially granted petitioner's Motion for Partial Reconsideration with Submission (Re: Resolution dated April 8, 2019); (2) noted petitioner's Manifestation with Submission (Re: Motion for Reconsideration dated April 29, 2019); (3) admitted petitioner's Exhibits "P-27-a", "P-27-b", "P-27-c", "P-27-d", "P-44-A", "P-45-A to P-45-C", "P-48-AO to P-48-AS", "P-49-AH to P-49-AK", "P-52-A", "P-78-B", "P-80-AN", and "P-81-AQ"; and (4) still denied the admission of Exhibits "P-38-IC" to "P-38-JL", "P-41-AL", "P-66-A to P-66-R", "P-67-A" to "P-67-I" and "P-68-A" to "P-68-EA".[12]

Respondent presented documentary evidence and its lone witness, Ana Veronica A. Asis, Revenue Officer II of the Regular Large Taxpayers Audit Division III of the BIR.[13]

On October 29, 2020, the Court in Division promulgated the Decision denying petitioner's claim for refund of its unutilized zero-rated input VAT for failure to prove compliance with the requisites for VAT refund.[14]

On November 18, 2020, petitioner filed a Motion for Reconsideration (Re: Decision dated October 29, 2020) through registered mail and received by the Court in Division on December 4, 2020. Said Motion for Reconsideration prayed, in the alternative, for leave to allow petitioner to present supplemental evidence, recall witness, and set a commissioner's hearing for the marking of supplemental documentary evidence. Respondent filed his Opposition (Re: Motion for Reconsideration of the Decision dated 29 October 2020) on January 5, 2021.

The Court in Division denied petitioner's Motion for Reconsideration finding no new substantial matter or compelling reason to reverse or modify its Decision.[15]

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12 Decision, Docket – Vol. I, p. 75.
13 *Id.*
14 *Id.* at p. 71.
15 Resolution, Docket – Vol. I, p. 123.

On March 26, 2021, petitioner filed a Motion for Extension of Time to File the Petition for Review,[16] praying for fifteen (15) days from March 26, 2021, or until April 10, 2021, within which to file its Petition for Review.

On May 18, 2021, petitioner filed the present Petition for Review before the Court En Banc (the "Court") appealing both the assailed Decision and Resolution, and praying, in the alternative, the remand of the case to the Court in Division for presentation of supplemental evidence, recall of witnesses, order the court-commissioned ICPA to present supplemental reports, and set commissioner's hearing for the marking of its supplemental documentary evidence.[17]

On May 19, 2021, the Court, through a Minute Resolution on even date, granted the Motion for Extension noting that the Petition for Review had already been filed on May 18, 2021.[18]

On July 12, 2021, respondent filed a Comment (Re: Petition for Review).[19] On September 15, 2021, the Court submitted the case for decision.[20]

On October 4, 2021, petitioner filed its Reply (With Manifestation and Motion) dated September 27, 2021.[21] In the Motion, petitioner reiterated its alternative prayer to remand the case to the Court in Division for the reception of its supplemental evidence.[22] With the filing of said Reply, the Court granted respondent a period of five (5) days from notice within which to file a comment/opposition thereto. The period granted having lapsed without any comment/opposition, the incident was deemed submitted for resolution.

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16 Docket – Vol. I, p. 1.
17 Docket – Vol. I, p. 63.
18 Docket – Vol. II, p. 574.
19 Docket – Vol. II, p. 584.
20 Docket – Vol. II, p. 593.
21 Docket – Vol. II, p. 596.
22 Docket – Vol. II, p. 605.

THE ISSUES

The issues are as follows:

I. Whether or not the Court in Division's Decision and Resolution denying petitioner's claim for refund should be set aside on the ground of reversible errors; and

II. Whether or not the case should be remanded to the Court in Division for reception of supplemental evidence.

Petitioner's Arguments:

Petitioner contends that it proved by preponderance of evidence that it should be refunded the amount of ₱15,950,720.98, representing excess and unutilized input VAT for the four (4) quarters of CY 2016, all attributable to zero-rated sales. Petitioner argues that the following are allegedly erroneous findings of the Court in Division in its assailed Decision and Resolution:

1. Petitioner's failure to show that respondent erred in denying its administrative claim for refund;

2. Petitioner's sales for the period January 1, 2016 to February 29, 2016 are not zero-rated;

3. Disallowance of petitioner's input VAT supported by official receipts and/or invoices which failed to strictly comply with the invoicing requirements;

4. Petitioner has no excess input VAT available for refund; and

5. Not allowing petitioner to present supplemental evidence to further prove its case.

Respondent's Arguments:

Respondent maintains that petitioner's contentions are without merit.

THE COURT'S RULING

The Petition for Review should be dismissed.

The arguments raised in the Petition for Review are mere reiterations of the arguments it previously pleaded in both its Petition for Review dated July 26, 2018 and its Motion for Reconsideration dated November 18, 2020. The same arguments have already been extensively discussed, submitted to, and resolved by the Court in Division in its Decision, as well as in its Resolution; thus, are unsubstantial to warrant reconsideration or modification of the Decision.[23] Consequently, the Court adopts the findings of the Court in Division and expounds on matters below.

Petitioner failed to show that respondent should not have denied its administrative claim for refund.

In every appeal or petition for review, a petitioner has to convince the appellate court that the quasi-judicial agency a quo did not have any reason to deny its claim; hence, it is crucial for a taxpayer, in a judicial claim for refund or tax credit, to show that its administrative claim should have been granted in the first place. The Supreme Court discussed in *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue*,[24] as follows:

> A distinction must, thus, be made between administrative cases appealed due to inaction and those dismissed at the administrative level due to the failure of the taxpayer to submit supporting documents. If an administrative claim was dismissed

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[23] *Rosario v. Commission on Audit*, G.R. No. 253686, June 29, 2021; *Caranto v. Caranto*, G.R. No. 202889, March 2, 2020; *Castillo y Fernandez v. People*, G.R. No. 232735, November 22, 2017; *Cojuangco, Jr. v. Republic*, G.R. No. 180705, July 9, 2013.

[24] G.R. No. 207112, December 8, 2015.

> by the CIR due to the taxpayer's failure to submit complete documents despite notice/request, then the judicial claim before the CTA would be dismissible, not for lack of jurisdiction, but for the taxpayer's failure to substantiate the claim at the administrative level. **When a judicial claim for refund or tax credit in the CTA is an appeal of an unsuccessful administrative claim, the taxpayer has to convince the CTA that the CIR had no reason to deny its claim. It, thus, becomes imperative for the taxpayer to show the CTA that not only is he entitled under substantive law to his claim for refund or tax credit, but also that he satisfied all the documentary and evidentiary requirements for an administrative claim. It is, thus, crucial for a taxpayer in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place.** Consequently, a taxpayer cannot cure its failure to submit a document requested by the BIR at the administrative level by filing the said document before the CTA.[25]

The Court in Division correctly observed that petitioner presented its case before the Court in Division as if it was an original action – as if its administrative claim before the BIR was never acted upon or that there was no decision for the Court in Division to review on appeal – despite respondent's denial of its administrative claim.

The VAT Refund/Notice dated June 26, 2018 categorically stated that "*no refundable amount has been recommended*" and showed the computation supporting said conclusion, as follows:

A. Local Purchases	Amount
VAT Refund Claimed	**₱15,917,690.98**
Less: CY Output Tax Per VAT Returns filed – UNAPPLIED TO CURRENT INPUT TAX	36,523,207.61
Output Tax Per Audit (TPI/AITEID data vs. VATR/SLS)	4,095.58
	36,527,303.19
ADD: Disallowances, NET OF RATABLE ALLOCATION OF INPUT TAX	7,353,407.34
TOTAL DEDUCTIONS/DISALLOWANCES to VAT Refund Claim	**₱(43,880,710.53)**

[25] Emphasis supplied.

Net Allowable VAT Refund/Credit/(Excess of Output Tax	
Deduction & Input Tax Disallowances over VAT Refund)	**₱(27,963,019.55)**
ALLOWABLE INPUT TAX FOR REFUND	**₱0.00**

B. Importations	Amount
VAT Refund Claimed	**₱33,030.00**
Less: CY Output Tax Per VAT Returns filed – UNAPPLIED TO CURRENT INPUT TAX	77,128.52
Output Tax Per Audit (TPI/AITEID data vs. VATR/SLS)	14.24
	77,142.76
ADD: Disallowances, NET OF RATABLE ALLOCATION OF INPUT TAX	3,244.00
TOTAL DEDUCTIONS/DISALLOWANCES to VAT Refund Claim	**₱(80,386.76)**
Net Allowable VAT Refund/Credit/(Excess of Output Tax Deduction & Input Tax Disallowances over VAT Refund)	**₱(47,356.76)**
ALLOWABLE INPUT TAX FOR REFUND	**₱0.00**
Total Excess of Output Tax Deduction & Input Tax Disallowances over VAT Refund Claim (sum of A & B)	**₱(28,010,376.31)**
Total Amount Allowable for VAT Refund/Credit (sum of A & B)	**₱0.00**

Petitioner should have argued and proved before the Court in Division that the foregoing determination by respondent does not stand. Petitioner not only failed to offer proof to debunk respondent's findings, it also failed to pinpoint which of respondent's findings were not supported by factual or legal bases.[26]

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26 Resolution, Docket – Vol. I, p. 129.

The Court in Division correctly found that petitioner's sales for the period January 1, 2016 to February 29, 2016 are not zero-rated.

The Court in Division ruled that petitioner's sales for the period covering January 1, 2016 to February 29, 2016, totaling ₱528,385,486.88, cannot qualify for VAT zero-rating because the same were made prior to the issuance of the Certificate of Compliance (COC) from the Energy Regulatory Commission (ERC) on March 1, 2016. Thus, the Court in Division only considered petitioner's sales as zero-rated for the period covering March 1, 2016 to December 31, 2016 in resolving the case.

Petitioner posited that under prevailing jurisprudence, VAT zero-rating on the sale of power or fuel generated through renewable sources of energy are granted even without the issuance and presentation of the COC issued by ERC.[27] Petitioner cited the cases of *Team Energy Corporation v. Commissioner of Internal Revenue*[28] and *Commissioner of Internal Revenue v. Team Energy Corporation*[29] to support its position that where the claim for tax refund is premised on the NIRC of 1997, as amended, and not Republic Act No. 9136 (RA 9136), otherwise known as the Electric Power Industry Reform Act of 2001 (EPIRA), the requirement of the COC issued by the ERC is inapplicable.

The Court does not agree.

Both *Team Energy Corporation v. Commissioner of Internal Revenue*[30] and *Commissioner of Internal Revenue v. Team Energy Corporation*[31] cited the earlier case of *Commissioner of Internal Revenue v. Toledo Power Company*[32] where the Supreme Court clarified that for sales of electricity and generation services to the National Power Corporation (NPC) to qualify for VAT zero-rating, the VAT-

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27 Petition for Review, Docket – Vol. I, p. 36.
28 G.R. Nos. 197663 & 197770, March 14, 2018.
29 G.R. No. 230412, March 27, 2019.
30 G.R. Nos. 197663 & 197770, March 14, 2018.
31 G.R. No. 230412, March 27, 2019.
32 G.R. Nos. 196415 & 196451, December 2, 2015.

registered taxpayer needs only show that it is a VAT-registered entity and that it has complied with the invoicing requirements under the NIRC of 1997, as amended, in conjunction with Section 4.108-1 of Revenue Regulations No. 7-95.[33] On the other hand, **for sales of electricity and generation services to entities other than NPC to qualify for VAT zero-rating,** the VAT-registered taxpayer must comply with invoicing requirements under Sections, 108(B)(3), 113, and 237 of the NIRC of 1997, as amended, and **must submit its COC issued by the ERC as required under EPIRA.**[34]

In dismissing Toledo Power Company (TPC)'s claim for refund for sales of electricity to a taxpayer other than NPC for failure to present a COC from the ERC, the Supreme Court held:[35]

> Now, as to the validity of TPC's claim, there is no question that TPC is entitled to a refund or credit of its unutilized input VAT attributable to its zero-rated sales of electricity to NPC for the taxable year 2002 pursuant to Section 108 (B)(3) of the NIRC, as amended, in relation to Section 13 of the Revised Charter of the NPC, as amended. Hence, the only issue to be resolved is whether TPC is entitled to a refund of its unutilized input VAT attributable to its sales of electricity to CEBECO, ACMDC, and AFC.
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> ...
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> Section 6 of the EPIRA provides that the sale of generated power by generation companies shall be zero-rated. Section 4 (x) of the same law states that a generation company "refers to any person or entity authorized by the ERC to operate facilities used in the generation of electricity." Corollarily, to be entitled to a refund or credit of unutilized input VAT attributable to the sale of electricity under the EPIRA, a taxpayer must establish: (1) that it is a generation company, and (2) that it derived sales from power generation.
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> In this case, **TPC failed to present a COC from the ERC during the trial.**
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> ...
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> **Consequently, TPC's sales of electricity to CEBECO, ACMDC, and AFC cannot qualify for VAT zero-rating under the EPIRA.**
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> ...

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33 *Kepco Philippines Corp. v. Commissioner of Internal Revenue*, G.R. No. 179961, January 31, 2011; and *Team Energy Corp. v. Commissioner of Internal Revenue*, G.R. Nos. 197663 & 197770, March 14, 2018.

34 *Id.*

35 *Commissioner of Internal Revenue v. Toledo Power Company*, G.R. Nos. 196415 & 196451, December 2, 2015.

> **All told, we find no error on the part of the CTA En Banc in considering TPC's sales of electricity to CEBECO, ACMDC, and AFC for taxable year 2002 as invalid zero-rated sales, and in consequently denying TPC's claim for refund or credit of unutilized input VAT attributable to the said sales of electricity.** [36]

As aptly discussed by the Supreme Court in *Commissioner of Internal Revenue vs. Team Energy Corporation,*[37] the sale of electricity to NPC is effectively zero-rated for VAT purposes pursuant to Section 108(B)(3) of the NIRC of 1997, as amended, in relation to Section 13 of Republic Act No. 6395,[38] as amended by Section 10 of Presidential Decree No. 938 ("NPC Charter"), to wit:[39]

> Given that respondent in this case likewise anchors its claim for tax refund or tax credit under Section 108 (B) (3) of the Tax Code, it cannot be required to comply with the requirements under the EPIRA before its sale of generated power to NPC should qualify for VAT zero-rating. **Section 108 (B) (3) of the Tax Code in relation to Section 13 of the NPC Charter, clearly provide that sale of electricity to NPC is effectively zero-rated for VAT purposes.**
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> The said provisions read:
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> **Section 108(B)(3) of the Tax Code –**
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> Sec. 108. Value-Added Tax on Sale of Services and Use or Lease of Properties. –
>
> xxx xxx xxx
>
> (B) Transactions Subject to Zero Percent (0%) Rate. – The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:
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> xxx xxx xxx
>
> (3) **Services rendered to persons or entities whose exemption under special laws** or international agreements to which the Philippines is a signatory **effectively subjects the supply of such services to zero percent (0%) rate.**

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36 Emphasis supplied.

37 G.R. No. 230412, March 27, 2019.

38 AN ACT REVISING THE CHARTER OF THE NATIONAL POWER CORPORATION.

39 *Commissioner of Internal Revenue v. Team Energy Corporation*, G.R. No. 230412, March 27, 2019.

> **Section 13 of the NPC Charter, as amended by Section 10 of P.D. No. 938 –**
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> Sec. 13. Non-profit Character of the Corporation; Exemption from All Taxes, Duties, Fees, Imposts and Other Charges by the Government and Government Instrumentalities. – The Government shall be non-profit and shall devote all its return from its capital investment, as well as excess revenues from its operation, for expansion. To enable the Corporation to pay its indebtedness and obligations and in furtherance and effective implementation of the policy enunciated in Section One of this Act, **the Corporation, including its subsidiaries, is hereby declared exempt from the payment of all forms of taxes, duties, fees, imposts as well as costs and service fees including filing fees, appeal bonds, supersedeas bonds, in any court or administrative proceedings.**[40]

These jurisprudential pronouncement settled the interpretation of Section 108(B)(3) of the NIRC of 1997, as amended, in relation to Section 13 of the NPC Charter, which provides that the sale of electricity to NPC is effectively zero-rated for VAT purposes; and Section 6 of EPIRA, in relation to Section 4, Rule 5 of its Implementing Rules and Regulations which requires the issuance of a COC by the ERC before a generation company may commence its commercial operation.

Therefore, the Court finds no reversible error in the Court in Division's finding that petitioner's sales is disqualified for VAT zero-rating for the period covering January 1, 2016 to February 29, 2016, when it has yet to be issued a COC by the ERC. Said sales cannot qualify for VAT zero-rating without the submission of a COC issued by the ERC as these sales were made to entities other than NPC, as shown in the table[41] below under the column "Customer Name":

Exhibit No.	Customer Name	OR NO.	OR DATE	Amount
"P-30-A"	**Philippine Electric Market Corporation**	0405	4-Jan-2016	₱(96,651.00)
"P-30-B"	**Nueva Ecija II Electric Cooperative-Area 2**	0406	8-Jan-2016	60,854,114.92

40 Emphasis supplied.
41 Decision, Docket – Vol. I, p. 71.

"P-30-C"	**Nueva Ecija II Electric Cooperative-Area 1**	0407	8-Jan-2016	61,144,637.35
"P-30-D"	**Philippine Electric Market Corporation**	0408	8-Jan-2016	567,039.12
"P-30-E"	**Philippine Electric Market Corporation**	0409	18-Jan-2016	1,003.09
"P-30-F"	**National Grid Corporation of the Philippines**	0410	21-Jan-2016	7,744.66
"P-30-G"	**Edong Cold Storage and Ice Plant**	0411	22-Jan-2016	1,367,393.45
"P-30-H"	**Philippine Electric Market Corporation**	0412	26-Jan-2016	41,214,442.39
"P-30-I"	**Philippine Electric Market Corporation**	0413	27-Jan-2016	2,725,415.76
"P-30-J"	**Philippine Electric Market Corporation**	0414	29-Jan-2016	3,450.02
"P-30-K"	**National Grid Corporation of the Philippines**	0415	29-Jan-2016	37,190,132.91
"P-30-L"	**National Irrigation Administration-UPRIIS**	0416	29-Jan-2016	78,779.55
"P-30-M"	**Philippine Electric Market Corporation**	0417	3-Feb-2016	567,037.20
"P-30-N"	**Nueva Ecija II Electric Cooperative-Area 2**	0418	4-Feb-2016	57,077,163.09
"P-30-O"	**Philippine Electric Market Corporation**	0419	4-Feb-2016	3,953.92
"P-30-P"	**Nueva Ecija II Electric Cooperative-Area 1**	0420	5-Feb-2016	56,713,654.02
"P-30-Q"	**National Grid Corporation of the Philippines**	0421	29-Feb-2016	8,714.55
"P-30-R"	**Edong Cold Storage and Ice Plant**	0422	23-Feb-2016	1,576,764.48
"P-30-S"	**National Irrigation Administration-UPRIIS**	0423	23-Feb-2016	88,127.42
"P-30-T"	**National Grid Corporation of the Philippines**	0424	29-Feb-2016	140,951,846.80
"P-30-U"	**Philippine Electric Market Corporation**	0425	29-Feb-2016	66,340,723.18
	TOTAL			**₱528,385,486.88**

There is no compelling reason to allow presentation of supplemental evidence.

In this case, petitioner's Motion to allow presentation of supplemental evidence, which was first raised in the Motion for

Reconsideration in the Court in Division and reiterated in the present Petition for Review and in the Reply (With Manifestation and Motion); and petitioner's alternative prayer to remand the case to the Court in Division for the reception of supplemental evidence, is properly a motion for new trial having been filed *after* the promulgation of judgment of the Court in Division but within the period of perfecting an appeal.

Petitioner seeks to present evidence that respondent CIR issued or should have considered in the evaluation of petitioner's administrative claim for refund; and those that the ICPA examined in the conduct of his verification process, [42] including: (a) the applications for refund for CYs 2014 and 2015 and the corresponding Tax Credit Certificates (TCCs) (with cover letters) granted by respondent for CYs 2014 and 2015; (b) schedules and supporting computations in the BIR records; (c) COCs issued in 2010; and (d) application for renewal of COCs, among others.[43]

In moving for leave for the presentation of supplemental evidence, petitioner is calling upon the Court to exercise judicious benevolence[44] and, in the interest of considerate justice,[45] to allow petitioner to elaborate on matters presented in evidence and/or the working papers contained in the BIR records to clarify, as may be necessary to address the Court in Division's alleged misgivings in its rulings.

The Court is not persuaded.

At this point, a distinction should be made between a motion for new trial and a motion to reopen trial.[46] A motion for new trial may be filed *after* judgment but within the period of perfecting an appeal. [47] On the other hand, a motion to reopen trial may be

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42 Petition for Review, Docket – Volume 1, p.60.
43 *Id.* at p.57-58.
44 *Id.* at p.58.
45 *Id.* at p.62.
46 *Agulto v. Court of Appeals*, G.R. No. 52728, January 17, 1990, as cited in *Halliburton Worldwide Limited-Philippine Branch v. Commissioner of Internal Revenue*, CTA EB Case Nos. 2022 & 2042 (CTA Case No. 9449), October 29, 2020.
47 RULES OF COURT, Rule 37, Sec. 1.

presented only *after* either or both parties have formally offered and closed their evidence, but *before* judgment.[48]

A motion for new trial in civil cases may be applied for and granted only upon specific, well-defined grounds set forth in Section 1, Rule 37 of the Rules of Court, to wit:

> Section 1. Grounds of and period for filing motion for new trial or reconsideration. — Within the period for taking an appeal, the aggrieved party may move the trial court to set aside the judgment or final order and grant a new trial for one or more of the following causes materially affecting the substantial rights of said party:
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> (a) Fraud, accident, mistake or excusable negligence which ordinary prudence could not have guarded against and by reason of which such aggrieved party has probably been impaired in his rights; or
>
> (b) Newly discovered evidence, which he could not, with reasonable diligence, have discovered and produced at the trial, and which if presented would probably alter the result.
>
> Within the same period, the aggrieved party may also move for reconsideration upon the grounds that the damages awarded are excessive, that the evidence is insufficient to justify the decision or final order, or that the decision or final order is contrary to law.

Based on the foregoing provisions, a motion for new trial may only be granted if the case falls under any of the following circumstances: (a) if there is fraud, accident, mistake or excusable negligence impairing the rights of the aggrieved party; or (b) on account of newly discovered evidence.[49]

On the other hand, the reopening of a case for the reception of additional evidence after a case has been submitted for decision but before judgment is actually rendered is controlled by no other rule than that of the paramount interests of justice, resting entirely in the sound judicial discretion of the court; and the concession or denial of

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48 *Agulto v. Court of Appeals*, G.R. No. 52728, January 17, 1990, as cited in *Halliburton Worldwide Limited-Philippine Branch v. Commissioner of Internal Revenue*, CTA EB Case Nos. 2022 & 2042 (CTA Case No. 9449), October 29, 2020.

49 *Halliburton Worldwide Limited-Philippine Branch v. Commissioner of Internal Revenue*, CTA EB Case Nos. 2022 & 2042 (CTA Case No. 9449), October 29, 2020.

the court in the exercise of its discretion will not be renewed on appeal unless a clear abuse thereof is shown.[50]

In *Cumigad vs. People*, [51] the Supreme Court categorically pronounced, to wit:

> Finally, **petitioner's prayer to remand the case to the trial court for reception of additional evidence is akin to a petition for new trial**. Petitioner, however, has not cited any "newly discovered evidence" to justify the grant of a new trial here. The supposed "contrasting findings" of the trial court are definitely not newly discovered evidence.[52]

Ordinarily, in litigations in which a litigant seeks a new trial on the basis of newly discovered, it must be fairly shown that: (a) the evidence is discovered after the trial; (b) such evidence could not have been discovered and produced at the trial even with the exercise of reasonable diligence; (c) such evidence is material, not merely cumulative, corroborative, or impeaching; and (d) such evidence is of such weight that it would probably change the judgment if admitted.[53]

Following *Cumigad*,[54] petitioner's prayer to remand the case to the Court in Division for reception of additional evidence is akin to a motion for new trial. Petitioner, however, is not proposing to present newly discovered evidence. The pieces of evidence sought to be presented are either evidence and/or working papers contained in the BIR records or those which the ICPA had already looked into in the conduct of his examination. Petitioner, thus, had the opportunity to present these documentary evidence during trial before the Court in Division. Its failure to present said evidence is its own negligent act, which the Court will not reward by remanding the case. Every litigation must come to an end. Parties cannot be given unbridled

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50 *Agulto v. Court of Appeals*, G.R. No. 52728, January 17, 1990, as cited in *Halliburton Worldwide Limited-Philippine Branch v. Commissioner of Internal Revenue*, CTA EB Case Nos. 2022 & 2042 (CTA Case No. 9449), October 29, 2020.

51 G.R. No. 245238, August 27, 2020.

52 Emphasis supplied.

53 *Luzon Hydro Corp. v. Commissioner of Internal Revenue*, G.R. No. 188260, November 13, 2013.

54 G.R. No. 245238, August 27, 2020.

license to prove its case anew when its failure to do so was a product of its own negligence.[55]

The Court agrees with the Court in Division's pronouncement that petitioner's attempt to recall its witness to elaborate on matters presented in evidence or working papers contained in the BIR Records and to offer additional documentary evidence to refute the findings thereto constitutes "*forgotten evidence*". Forgotten evidence are evidence already in existence or available before or during a trial; known to and obtainable by the party offering it; and could have been presented and offered in a seasonable manner, were it not for the sheer oversight or forgetfulness of the party or the counsel.[56]

Presentation of forgotten evidence is disallowed, because it results in a piecemeal presentation of evidence, a procedure that is not in accord with orderly justice and serves only to delay the proceedings. A contrary ruling may open the floodgates to an endless review of decisions, whether through a motion for reconsideration or for a new trial, in the guise of newly discovered evidence.[57]

WHEREFORE, in light of the foregoing considerations, the Petition for Review and the Motion for Admission of Supplemental Evidence are **DENIED** for lack of merit. Accordingly, the Decision dated October 29, 2020 and Resolution dated March 5, 2021 of the Second Division of this Court in CTA Case No. 9889 are **AFFIRMED**.

SO ORDERED.

Marian Ivy F. Reyes-Fajardo

MARIAN IVY F. REYES-FAJARDO
Associate Justice

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55 *Takenaka Corporation Philippine Branch v. Commissioner of Internal Revenue*, G.R. No. 211589, March 12, 2018.

56 Resolution, Docket – p.127.

57 *Office of the Ombudsman v. Carmencita D. Coronel*, G.R. No. 164460, June 27, 2006.

WE CONCUR:

(With due respect, see Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ERLINDA P. UY
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 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.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

FIRST GEN HYDRO POWER CORPORATION,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 2456
(CTA Case No. 9889)

Present:

DEL ROSARIO, *P.J.*,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO, *and*
CUI-DAVID, *JJ.*

PROMULGATED: AUG 18 2022 2:42pm

x- x

DISSENTING OPINION

DEL ROSARIO, P.J.:

With due respect, I dissent on the denial of the Petition for Review and the Motion for Admission of Supplemental Evidence.

After much introspection and careful perusal of the additional evidence that petitioner prays to present, I take the position that petitioner should be granted an opportunity to present additional evidence, in the paramount interest of substantial justice.

Jurisprudence is replete with cases that champion the principle that every party-litigant must be given the amplest opportunity for a just determination of his case, free from the severities of technicalities.[1]

[1] Martin Peñoso and Elizabeth Peñoso vs. Macrosman Dona, G.R. No. 154018, April 3, 2007.

Truth to tell, **Section 6 of the Rules of Court, as amended, explicitly provides that the Rules shall be liberally construed in order to promote their objective of securing a <u>just</u>, speedy and inexpensive disposition of every action and proceeding.**

The presentation of additional evidence, even after a judgment has been rendered, may be allowed, in situations wherein a plain perusal of the additional documents sought to be admitted in evidence (attached to the motions for reconsideration of the decision rendered), would reveal that they - - if considered - - would materially alter the conclusions reached by the Court in the assailed Decision.

On this point, the doctrine laid down in *BPI-Family Savings Bank vs. Court of Appeals, et al.,*[2] which was reiterated in *Commissioner of Internal Revenue vs. De La Salle University, Inc.,*[3] is applicable.

In *BPI-Family Savings Bank*, the Supreme Court ruled that certain tax returns submitted and attached to a Motion for Reconsideration, which clearly showed that the taxpayer incurred no tax liability, should have been taken into consideration in the interest of truth and justice. In this case, the CTA dismissed the petition on the ground that BPI-Family failed to present in evidence its Annual Income Tax Return (ITR) for 1990 to establish the fact that it had not yet credited the amount being claimed for refund to its 1990 tax liability. **BPI Family filed a motion for reconsideration attaching thereto a copy of its ITR for 1990 but the same was ignored by the CTA. The Court of Appeals (CA) affirmed** the decision of the CTA. **The Supreme Court, however, reversed the CA** and held the following:

> "**More important, a copy of the Final Adjustment Return for 1990 was attached to petitioner's Motion for Reconsideration filed before the CTA**. A final adjustment return shows whether a corporation incurred a loss or gained a profit during the taxable year. In this case, that Return clearly showed that petitioner incurred P52,480,173 as net loss in 1990. Xxx xxx xxx. **In denying the Motion for Reconsideration, however, the CTA ignored the said Return. In the same vein, the CA did not pass upon that significant document.**
>
> **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 *[rule]*. It should not bar

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[2] G.R. No. 122480, April 12, 2000.
[3] G.R. Nos. 196596, 198841, 198941, November 9, 2016.

> courts from considering undisputed facts to arrive at a just determination of a controversy." *(Boldfacing supplied)*

In *De La Salle University, Inc.*, the Supreme Court upheld the CTA's admission of the supplemental evidence made upon the filing of petitioner's motion for reconsideration. It must be emphasized that the Supreme Court, while noting the absence of objection on the part of the BIR to the admission of DLSU's supplemental offer of evidence, actually stressed the basic doctrine that strict application of the technical rules of evidence would defeat the intent of the Constitution. The Supreme Court stated:

> "[W]e sustain the CTA's admission of DLSU's supplemental offer of evidence not only because the Commissioner failed to promptly object, **but more so because the strict application of the technical rules of evidence may defeat the intent of the Constitution**." *(Boldfacing & underscoring supplied)*

In the present case, a perusal of respondent's Comment on petitioner's Motion for Reconsideration of the Court in Division's Decision shows that **respondent did not interpose any objection on petitioner's prayer to present as additional evidence the documents attached to its Motion for Reconsideration.**

Notably, in a number of cases,[4] the CTA disregarded technicalities in procedure and instead exercised liberality in allowing the presentation of evidence after decisions were rendered, upon attachment of the documents sought to be presented to the litigants' motions for reconsideration. In said cases, the CTA considered the additional documents presented and offered in evidence in resolving the motions for reconsideration. Indeed, prudence and fairness dictate that the same standards should be observed in settling similar controversies if only to maintain stability and consistency in the judicial system. I submit that petitioner should be given the same opportunity or **equal treatment** as the Court has extended to other litigants in these other cases. Parenthetically, Section 8 of Republic Act No. 1125, as amended, explicitly highlights that the rules adopted by the Court of Tax Appeals must maintain

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[4] Sumisetsu Philippines, Inc. vs. Commissioner of Internal Revenue, October 6, 2015; Jardine Lloyd Thompson Insurance Brokers, Inc. vs. Commissioner of Internal Revenue, September 28, 2015; Filminera Resources Corporation vs. Commissioner of Internal Revenue, CTA Case No. 8610, August 27, 2015; Total (Philippines) Corporation vs. Commissioner of Internal Revenue, CTA Case Nos. 8056 & 8163, December 19, 2014; Crescent Park 6-24 Property Holdings, Inc. vs. Commissioner of Internal Revenue, June 18, 2014; CTA Case No. 8202, October 24, 2013; PRHC Property Managers, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 8071, October 9, 2012; San Roque Power Corporation vs. Commissioner of Internal Revenue, CTA Case No. 8007, December 6, 2012; Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 7550, September 20, 2011; Technopeak Corporation vs. Commissioner of Internal Revenue, CTA Case No. 7751, June 28, 2011.

uniformity of decisions within its jurisdiction as conferred by law and proceedings before it shall not be governed strictly by technical rules of evidence.

Denying petitioner's plea to present its additional evidence is patently in the nature of technicality in procedure that only impairs the proper administration of justice. Courts should not be so strict about procedural lapses that do not really impair the proper administration of justice. After all, the higher objective of procedural rule is to insure that the substantive rights of the parties are protected. Litigations should, as much as possible, be decided on the merits and not on technicalities. Every party-litigant must be afforded ample opportunity for the proper and just determination of his case, free from the unacceptable plea of technicalities.[5]

Petitioner should not be precluded from substantiating the fact that it is a generation company with a duly issued Certificate of Compliance (COC)/ application for COC in accordance with the EPIRA Law by strict application of the technical rules of evidence. No prejudice to the government would ensue if the presentation of the COC/ application for COC is allowed. **After all, in the event that the assailed Decision is altered, as when it is found that petitioner is indeed entitled to the refund sought, the government shall refund said amount to it without corresponding interest. The government simply returns the money that it is not entitled to retain in the first place.** Stated otherwise, I submit that justice is better served by allowing any party-litigant to submit additional evidence, more so when the contending party would not be prejudiced by further proceedings.

All told, I VOTE to PARTIALLY GRANT the Petition for Review and REMAND the case to the Court in Division to allow petitioner to present the supplemental evidence attached to its Motion for Reconsideration (Re: Decision dated October 29, 2020) filed on November 18, 2020 in CTA Case No. 9889.

ROMAN G. DEL ROSARIO
Presiding Justice

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[5] Alfredo Jaca Montajes vs. People of the Philippines, G.R. No. 183449, March, 12, 2012