

## SECOND DIVISION

[ G.R. NO. 149589, September 15, 2006 ]

**FAR EAST BANK & TRUST COMPANY, PETITIONER, VS.  
COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.**

### RESOLUTION

**CORONA, J.:**

Before this Court is a petition for review on certiorari of the decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 49597 dated January 31, 2001 and the resolution dated August 23, 2001 denying the motion for reconsideration.<sup>[2]</sup>

Petitioner Far East Bank & Trust Company (FEBTC)<sup>[3]</sup> filed with the Bureau of Internal Revenue an application for a tax credit/tax refund of alleged excess payments of its gross receipts tax (GRT). FEBTC claimed it

had overpaid its GRT for the 3rd and 4th quarters of 1994 and the entire 1995 amounting to P14,816,373.

Since no action was taken by the Commissioner of Internal Revenue (CIR) on its claim, petitioner filed a case in the Court of Tax Appeals (CTA) on October 18, 1996 to comply with the two-year reglementary period and avoid the prescription of its action.<sup>[4]</sup> On July 30, 1998, the CTA rendered a decision denying the claim for lack of evidence.<sup>[5]</sup>

It appears that petitioner failed to file its formal offer of evidence in the CTA, constraining the tax court to rule in favor of the CIR. As explained by the CTA:

...Its repeated non-appearance and failure to comply with court procedures such as the filing of a formal offer of evidence and memorandum only serve to weaken, if not put a death knell, to its claim for refund.

The Rules of Court is strict in considering no evidence which has not been formally offered (Section 24, Rule 132). Without any formal offer of evidence, thus, we could only blame the petitioner for its lost cause. Simply put, it has not proven anything.<sup>[6]</sup>

On August 26, 1998, 22 days after its receipt of the decision, petitioner filed a motion for reconsideration. The CTA denied the motion for being filed out of time and for lack of merit.

Aggrieved, petitioner elevated the case to the CA.<sup>[7]</sup> The appellate court found the petition devoid of merit. Eventually, it dismissed the petition and affirmed the CTA decision in toto. Petitioner's motion for reconsideration was also denied. Thus, this petition.

Petitioner urges this Court to reverse and set aside the ruling of the appellate court. It contends that it appended its formal offer of evidence to its motion for reconsideration in the CTA. It now asks us to relax procedural rules in the interest of justice.

We deny the petition and rule against petitioner FEBTC on two points.

First, it is well-settled that the courts cannot consider evidence which has not been formally offered.<sup>[8]</sup> Parties are required to inform the courts of the purpose of introducing their respective exhibits to assist the latter in ruling on their admissibility in case an objection thereto is made.<sup>[9]</sup> Without a formal offer of evidence, courts are constrained to take no notice of the evidence even if it has been marked and identified.<sup>[10]</sup> Needless to say, the failure of petitioner to make a formal offer of evidence was detrimental to its cause.

This case does not fall within the exception in *Oñate v. Court of Appeals*<sup>[11]</sup> where the Court relaxed the foregoing rule and allowed evidence, not formally offered, to be considered on condition that: (1) evidence must have been identified by testimony duly recorded and (2) it must have been incorporated in the records of the case. In this case, "... [petitioner's] duly marked and identified exhibits [were] not incorporated in the records... They are nowhere to be found."<sup>[12]</sup>

A tax refund is in the nature of a tax exemption which must be construed *strictissimi juris* against the taxpayer.<sup>[13]</sup> To stress, the taxpayer must present convincing evidence to substantiate a claim for refund. Without any documentary evidence on record, petitioner failed to discharge the burden of proving its right to a tax credit/tax refund. Therefore, the CTA and CA correctly denied its claim.

Second, if no appeal or motion for reconsideration is filed on time, the judgment or final order of the court becomes final and executory.<sup>[14]</sup> Here, the records of the case confirm that petitioner's motion for reconsideration in the CTA was filed out of time. Petitioner received its notice and a copy of the CTA decision on August 4, 1998.<sup>[15]</sup> Under the rules, it had fifteen days (or until August 19, 1998) to move for reconsideration. By the time it filed its motion for reconsideration on August 26, 1998,<sup>[16]</sup> the decision of the CTA had already attained finality. As a final judgment, it had by then already laid the issues to rest and the appellate courts could no longer review it.

Courts are charged with putting an end to controversies. In keeping with this function, judgments must become final at some definite time fixed by law. <sup>[17]</sup>

**WHEREFORE**, the petition is hereby **DENIED**. The January 31, 2001 decision and August 23, 2001 resolution of the Court of Appeals are **AFFIRMED**.

Costs against petitioner.

**SO ORDERED.**

*Puno, (Chairperson), Sandoval-Gutierrez, Azcuna, and Garcia, JJ., concur.*

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<sup>[1]</sup> Penned by Associate Justice B.A. Adefuin-de la Cruz (retired) and concurred in by Associate Justices Andres B. Reyes, Jr. and Rebecca de Guia- Salvador of the Sixteenth Division of the Court of Appeals; *rollo*, p. 24.

<sup>[2]</sup> Penned by Associate Justice B.A. Adefuin-de la Cruz (retired) and concurred in by Associate Justices Andres B. Reyes, Jr. and Rebecca de Guia- Salvador of the Sixteenth Division of the Court of Appeals; *id.*, p. 33.

<sup>[3]</sup> Now merged with the Bank of the Philippine Islands.

<sup>[4]</sup> Docketed as CTA Case No. 5439.

<sup>[5]</sup> *Rollo*, p. 93.

<sup>[6]</sup> *Supra* note 1, at 27.

<sup>[7]</sup> Docketed as CA-G.R. SP No. 49597. Under RA 9282, the CTA was elevated to the same level as the CA. Its decisions are now appealable directly to the Supreme Court.

<sup>[8]</sup> Rules of Court, Rule 132, Sec. 34.

<sup>[9]</sup> *Veran v. Court of Appeals*, G.R. No. L-41154, 29 January 1988, 157 SCRA 438.

<sup>[10]</sup> Francisco, *The Revised Rules of Court in the Philippines* 392 (1998), Vol. VII, *citing* 5 Ency. Of Evidence 469.

<sup>[11]</sup> 320 Phil. 344 (1995).

[12] *Supra* note 1, at 28.

[13] *Insular Lumber Co. v. CTA*, 192 Phil. 221 (1981); *CIR v. Rio Tuba Nickel Mining Corp.*, G.R. Nos. 83583-84, 25 March 1992, 207 SCRA 710.

[14] *Feria and Noche*, Civil Procedure Annotated 618 (2001), Vol. I.

[15] Notice of Decision, CA records, p. 20.

[16] Motion for Reconsideration of Petitioner, *id.*, p. 21.

[17] *Ilasco, Jr. v. Court of Appeals*, G.R. No. 88983, 14 December 1993, 228 SCRA 413.