

Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

**COMMISSIONER OF INTERNAL
REVENUE**

Petitioner,

- versus -

JERRY OCIER,

Respondent.

EB Case No. 491
(CTA Case No. 6831)

Members:

ACOSTA, PJ,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
PALANCA-ENRIQUEZ,
FABON-VICTORINO,
MINDARO-GRULLA, and
COTANGCO-MANALASTAS, JJ.

Promulgated:

FEB 02 2010

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DECISION

CASANOVA, J.:

This is an appeal, by way of Petition for Review¹, filed by petitioner-Commissioner of Internal Revenue (CIR) from the Decision² (*Assailed Decision*) of the Court of Tax Appeals, Second Division (*CTA Second Division*) dated February 2, 2009 in the CTA Case No. 6831 entitled, "*Jerry Ocier vs. Commissioner of Internal Revenue*", ordering the cancellation of the Final Assessment Notice Nos. BW-99-CGT-0040-01 and BW-99-DST-0041-01, both dated September 10, 2001, assessing petitioner for deficiency CGT and DST in the amounts of P17,862,848.21 and P71,703.76, respectively, inclusive of *o*

¹ En Banc Rollo, pp. 7-24

² En Banc Rollo, pp. 28-50

interest, surcharge and compromise penalty for taxable year 1999 and from the Resolution³ (*Assailed Resolution*) dated April 21, 2009, denying respondent's Motion for Reconsideration.

The facts of the case, as found by the *CTA Second Division*⁴, are as follows:

"Petitioner is of legal age, Filipino, with address at No. 6 Wilson Street, Greenhills, San Juan, Metro Manila, where he may be served summons and other court processes.

Respondent is the duly-appointed Officer of the Bureau of Internal Revenue (BIR) with the power to decide disputed assessments, cancel, and abate tax liabilities, pursuant to the provisions of the National Internal Revenue Code (NIRC) of 1997, as amended, and other tax laws, rules and regulations.

On January 31, 2001, petitioner received a "Notice of Taxpayer" from the BIR which states that petitioner has incurred deficiencies in Capital Gains Tax (CGT) and Documentary Stamp Tax (DST) for the year 1999.

On April 19, 2001, petitioner sent a Letter-Reply to the BIR stating that the transfer of a total of 4.9 million shares of BW Resources from his account of Mr. Dante Tan, which is the basis of the alleged deficiency tax, was erroneously presumed by the BIR as a sale when it was actually a loan.

On September 26, 2001, petitioner received Assessment Notice No. BW-99-DST/CGT-0041-01 dated September 10, 2001 from respondent assessing petitioner for deficiency DST and GST, inclusive of increments in the amounts of P17, 862,848.21 and P71,703.76, respectively. These deficiency assessments arose from the alleged gains that petitions supposedly realized from the sale of shares of BW Resources through over-the-counter transaction.

On October 12, 2001, petitioner duly filed with the BIR a letter protesting the said assessment. In the Decision dated March *a*

³ En Banc Rollo, pp. 51-58

⁴ CTA Second Division Decision dated Feb. 2, 2009, En Banc Rollo, pp. 28-50

10, 2003, addresses to the law office of Fortun, Narvasa & Salazar, respondent denied petitioner's protest pertaining to the deficiency CGT and DST Assessments issued to him in the amounts of P17,862,848.21 and P71,703.76, respectively, relative to his BW Resources stock transaction in 1999.

On June 16, 2003, petitioner received a Preliminary Collection of the above-mentioned deficiency assessments. In reply thereto, petitioner filed a letter on July 30, 2003. Subsequently on November 6, 2003, petitioner received a Letter dated October 15, 2003 from Teresita M. Angeles, Chief of the BIR Collection Enforcement Division, wherein the Decision dated March 10, 2003 was attached.

Alleging that he learned of the Decision dated March 10, 2003 only on November 6, 2003, petitioner filed the instant Petition for Review on December 5, 2003.

On February 5, 2004, respondent filed his answer alleging the following Special and Affirmative Defenses:

'6. Petitioner seeks to set aside thru the instant Petition for Review the deficiency capital gains tax and documentary stamp tax assessments issued against him for the taxable year 1999 relative to the sale or transfer of BW shares owned by him on the following grounds to wit: (1) that he did not sell/dispose his BW shares but was only borrowed from him by Mr. Dante Tan hence, he did not realize any gain therefrom; and (2) that, even if, a transfer was actually made, petitioner cannot be held liable to pay the capital gains tax and documentary stamp tax relative to the said transfer because under the withholding tax system, it is the withholding agent who should be held liable.

7. On the first issue, petitioner argued that he did not dispose of or sell his BW shares, the same having been borrowed only by Mr. Dante Tan from him as evidenced by an alleged trust declaration in the form of a letter showing the alleged agreement between him and Mr. Dante Tan. We do not agree. Contrary to common sense and sound business practice, petitioner would like us to believe that he parted with his substantial holdings of BW shares for no reason at all. No person in his right mind would part with his substantial shares of BW shares without any reason. Be that as it may, the letter cannot be considered a stock loan agreement or a trust declaration since the terms of the agreement were not specified. If we are to consider said agreement as one of a loan, the terms thereof, the time as to when such shares are to be returned should have

been clearly indicated therein. However, no such term was indicated in the said agreement. This alone negates the position of petitioner. For this reason and for want of evidence, we seriously doubt the legitimacy of the efficacy of said letter purporting to be a stock loan. Obviously, the controversy here is not whether BW shares subject of this petition were actually transferred, in view of the fact that this was clearly established and not controverted. It is only how said BW shares were transferred or the mode of disposition that is the issue in this case.

8. Furthermore, petitioner can not argue that the transaction is or in the nature of a trust declaration and, therefore, not, a taxable transaction. In this regard, it is worthy to discuss in brief, the concept of *Securities Borrowing Lending* (SBL in brevity). SBL, which is the subject of BIR Ruling No. 168-98, is a product intended to be introduced, at the time, in the market by the Philippine Stock Exchange. In principle it has the following proposed features:

- There is an agreement prepared in accordance with the Guidelines of the BIR;
- While there is physical transfer of securities to the Borrower, the Lender retains most rights of ownership, such as dividend payments and the right to sell the loaned securities at any time;
- The Borrower puts up collateral, which is not necessarily cash but may not also be government securities or letters of credit, which collateral may be increased during the term of the securities lending to ensure full collateralization;
- Collateral is returned by the Lender to the Borrower returns the borrowed securities which need not be the same securities but may be merely identical; and
- The Lender has the right to terminate the agreement and require return of the securities upon giving proper notice.

In the said ruling, it is expressly stated that **'to qualify as a lending of securities, the transaction must strictly comply with all the forgoing requirements.'** So, if the transaction is outside the scope of the above-stated qualification, although described as a SBL, the same shall be considered as a

regular exchange transaction subject to the corresponding taxes under the Tax Code.

9. On the second issue, petitioner posited the view that even assuming for the sake of argument, that the transfer of the stock certificates should be considered as a taxable transaction, the remedy of collection should lie not against petitioner but against the withholding agent instead. Again, this position is without merit. Although, this issue was not raised by the petitioner in his protest, still, we intend to answer the same, in this wise. Let it be stressed that the liability of a withholding agent/payor (in this case, petitioner's broker) is entirely different from the liability of the payee being the recipient of the income (the proceeds from the sale/transfer of the BW shares) being subject of tax. Be it noted that under Tax Code as well as the prevailing Revenue Regulations implementing the 'withholding tax system', the liability of a withholding agent is entirely different from that of the payee. The payor or the withholding agent's liability arose from its failure to withhold the tax, a function that is incumbent upon it as such. So when said withholding agent fails to perform his duty by not withholding the proper or correct tax, the agent is penalized for such failure. Such penalty may include the amount of the tax to be withheld and a fine, as the case may be, but in no way would the payee (like petitioner herein) be exempted or exonerated from the payment of the tax, because he is still the person primarily liable for the payment of the same, he being the recipient of the income subject of tax. If we are to follow petitioner's position that he is already exonerated from the payment of the tax, even if the tax sought to be collected has not been paid due to non-withholding of the same by his agent, it will have the effect of granting or giving exemption to petitioner despite lack of positive law granting or providing the same. Evidently, this will run counter to the well-settled principle in the law that tax exemption is never presumed.

10. Petitioner was informed of the law and the facts on which the assessments are made in compliance with Section 228 of the Tax Code.

11. Finally, it is a well settled rule in taxation that assessments are **prima facie** presumed correct and made in good faith. The taxpayer has the duty of proving otherwise. In the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed.'

On July 22, 2004, the parties submitted their Joint Stipulation of Facts and Issues which was approved by the Court per Resolution dated August 3, 2004. *a*

During trial, petitioner presented three (3) witnesses, to wit: Jerry Ocier, who is the Vice-President of Eastern Securities Development Corporation; Lemuel S. Bitong, Associate Director of the Philippine Depository and Trust Corporation; and Jennifer Laurenio, Accounting Assistant of Eastern Securities from July 16, 1991 to December 31, 2002. Thereafter he rested his case and formally offered his documentary evidence consisting of Exhibits 'A' to 'Q', inclusive of their submarkings, which were all admitted with exception of Exhibits 'D', 'F', and 'H' in the Resolution dated January 24, 2006.

While respondent's counsel was able to present one (1) witness, Josephine D. Madera, Revenue Officer - National Investigation Division of the BIR, he however failed to make a formal offer of evidence despite several opportunities granted by the Court.

On February 6, 2008, this case was submitted for decision, taking into consideration petitioner's Memorandum filed on June 6, 2007, sans respondent's Formal Offer of Evidence and Memorandum.

The parties stipulated on the following issues to be resolved by the Court:

- '1. Whether or not petitioner's counsel of record with the Bureau of Internal Revenue (BIR) is the law firm of Tan Acut & Lopez Law Offices and not the law firm of Fortun Narvasa & Salazar?;
2. Whether or not the present petition for review was timely filed within the thirty (30) days reglementary period to appeal the assailed decision of respondent commissioner?;
3. Whether or not petitioner should be held liable to pay the deficiency capital gains tax and documentary stamp tax in connection with the alleged 

sale/transfer of his shares of stocks in the BW Resources Corporation through over-the-counter transaction?;

4. Whether or not petitioner filed a criminal complaint for estafa against Dante Tan and is now pending before the Regional Trial Court of Pasig City, Branch 68 entitled 'People of the Philippines vs. Dante Tan', docketed as Criminal Case No. 12572?"

After the trial on the merits, the *CTA Second Division* promulgated a Decision on September 7, 2007, the dispositive portion of which reads as follows:

"WHEREFORE, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, respondent's Decision dated March 10, 2003, is **REVERSED AND SET ASIDE**. The Final Assessment Notice Nos. BW-99-CGT-0040-01 and BW-99-DST-0041-01, both dated September 10, 2001 assessing petitioner for deficiency CGT and DST in the amounts of P17,862,848.21 and P71,703.76, respectively, inclusive of interest, surcharge and compromise penalty for taxable year 1999 is hereby ordered **CANCELLED**.

SO ORDERED."

Not satisfied with the above decision, respondent filed its Motion for Reconsideration⁵ on February 19, 2009. On March 9, 2009, respondent-Jerry Ocier, filed its "Comment/Opposition (To Respondent's Motion for Reconsideration).⁶

In a Resolution⁷ dated April 21, 2009, the *CTA Second Division* denied respondent's Motion for Reconsideration for lack of merit.

On May 13, 2009, CIR filed a Motion for Extension of Time to File Petition for Review⁸ with the *CTA En Banc* which was resolved by the Court on May 14,

⁵ Division Docket, pp. 345-358

⁶ Division Docket, pp. 362-372

⁷ Division Docket, pp. 375-382

⁸ En Banc Rollo, pp. 1-3

2009⁹ giving petitioner a final and non-extendible period of fifteen (15) days from May 13, 2009 until May 28, 2009 within which to file a Petition for Review.

On May 27, 2009, CIR filed the instant Petition for Review¹⁰ with the *CTA En Banc*, praying that, "the Decision promulgated February 2, 2009 and Resolution promulgated April 21, 2009 be set aside and another one be rendered holding that:

(1) The following documentary evidence be deemed admitted for being identified in open court and forming part of the BIR Records that were transmitted to the Records Division of the Honorable Court:

- Memorandum for the Commissioner dated 21 November 2000
- Memorandum for the Deputy Commissioner, Legal and Inspection Group dated 15 November 2001
- Security Movement Report
- Letter of Instruction signed by Jerry Go

(2) The In and Out Receipts be admitted as documentary evidence of petitioner due to implied admission by respondent when he failed to reply to a Request for Admission filed by petitioner.

(2) petitioner be allowed to adopt the following documentary evidence that form part of the Formal Offer of Evidence by Jerry Ocier due to judicial admission pursuant to Section 4 of Rule 129 of the Revised Rules of Court:

- Decision dated 10 March 2003 (Exhibit 'A' of Jerry Ocier's FOE)
- Assessment Notice No. BW-99-CGT-0040-01 (Exhibit 'F' of Jerry Ocier's FOE) 

⁹ Resolution, En Banc Rollo, p. 6

¹⁰ En Banc Rollo, pp. 7-24

- Notice to Taxpayer addresser to Jerry Ocier (Exhibit 'B' of Jerry Ocier's FOE)

(2) or on the alternative:

- (a) that the case be remanded and petitioner be allowed to present the said pieces of evidence; and
- (b) petitioner be allowed to file his Formal Offer of Evidence thereafter;

(3) the Decision promulgated 02 February 2009 and Resolution promulgated 21 April 2009 be reversed and set aside and a new be rendered ordering respondent to pay the amounts of P17,862,848.21 and 71,703.76 as deficiency capital gains tax and documentary stamp tax for taxable year 1999, plus 25% surcharge and 20% annual interest for late payment from 26 June 2003 (10 days from receipt of the Preliminary Collection Letter) until fully paid pursuant to section 248 and 249 of the NIRC of 1997.

Other reliefs, just and equitable under the premises, are likewise prayed for."

On June 3, 2009, the *CTA En Banc* promulgated a Resolution¹¹ ordering respondent to file his comment to petitioner's Petition for Review. Respondent filed its Comment¹² on June 9, 2009, praying that instant Petition for Review be ordered dismissed for utter lack of merit and that assailed Decision and Resolution of Honorable Court's Second Division be affirmed.

On June 15, 2009, *CTA En Banc* promulgated a Resolution¹³ which resolves to give due course to the Petition for Review and required the parties to submit their respective memoranda within a non-extendible period of thirty (30) days. In compliance with the said Resolution, respondent filed his Memorandum *a*

¹¹ En Banc Rollo, pp. 63-64

¹² En Banc Rollo, pp. 65-81

¹³ En Banc Rollo, pp. 83-84

on July 7, 2009¹⁴ while petitioner filed on July 20, 2009¹⁵ his Memorandum. The *CTA En Banc* considering both parties memoranda in a Resolution¹⁶ dated July 29, 2009, submitted the case for decision.

The petitioner, in the instant Petition for Review, raised the following issues¹⁷:

- I. Whether failure to file a formal offer of evidence is an incurable defect in the case at bar;
- II. Whether respondent is liable for deficiency CGT and DST for taxable year 1999.

After a careful and thorough evaluation and consideration of the records of the case, the Court *En Banc* finds no new matters which have not yet been considered and passed upon by the *CTA Second Division* in its *Assailed Decision and Assailed Resolution*. The arguments raised by the petitioner in the instant Petition for Review are the same as those stated in its Motion for Reconsideration¹⁸. The CTA Second Division thoroughly discussed the above-mentioned issues in the *Assailed Resolution*, and We quote:

"As emphatically ruled by the Supreme Court in the case of **Rafael Arsenio S. Dizon, in his capacity as the Judicial Administrator of the Estate of the deceased Jose P. Fernandez vs. Court of Tax Appeals and Commissioner of Internal Revenue**,¹⁹ the BIR's failure to formally offer its pieces of evidence, despite CTA's directives, is fatal to its cause, thus:

'xxx. The BIR's failure to formally offer these pieces of evidence, despite CTA's directives, is fatal to its cause. Such failure is aggravated by the fact that not even

¹⁴ En Banc Rollo, pp. 103-119

¹⁵ En Banc Rollo, pp. 120-134

¹⁶ En Banc Rollo, p. 138

¹⁷ En Banc Rollo, pp. 10-11

¹⁸ Division Docket, pp. 345-358.

¹⁹ G.R. No. 140944, April 30, 2008

a single reason was advanced by the BIR to justify such fatal omission. This, we take against the BIR.'

In Our assailed Decision, We thoroughly discussed this matter wherein We found that respondent failed to comply with the directives of this Court, despite having been given more than three (3) opportunities to file his required Formal Offer of Evidence. It must be remembered that it was respondent's counsel, upon termination of the presentation of evidence, who moved to be given thirty (30) days to file his Formal Offer of Evidence, to wit:

'The Court takes special note that during the presentation of respondent's evidence, his counsel failed to make a formal offer of evidence as mandated under our procedural rules.

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Based on the records of the instant case, respondent presented one (1) witness to establish petitioner's supposed tax liability, and as early as January 24, 2007, respondent's counsel rested his case and was directed by the Court to file a Formal Offer of Evidence within thirty (30) days from said date. For failure of respondent to file said Formal Offer of Evidence, this Court declared respondent to have waived his right to file the same in the Resolution dated March 29, 2007 and both parties were granted thirty (30) days to file their respective memorandum.

This Resolution was however cancelled and set aside in the Resolution dated July 16, 2007 upon a Motion for Reconsideration filed by respondent's counsel on April 18, 2007, with Opposition from petitioner's counsel filed on May 23, 2007, in view of the pending request of respondent's counsel for stipulation with petitioner's counsel that Exhibits '11' and '14' are faithful reproductions of the originals thereof. A commissioner's hearing was set for that purpose before Atty. Jesus P. Inocando on July 30, 2007 at 1:30 p.m. Meanwhile, petitioner filed his Memorandum on June 6, 2007.

Thereafter, respondent's counsel failed to appear during the scheduled commissioner's hearing on July 30, 2007 and respondent was again declared to have waived his right to file his Formal Offer of Evidence in the 

Resolution dated August 7, 2007. Again, the Court granted respondent's motion for reconsideration in the Resolution dated October 18, 2007 for the same purpose of allowing both parties' counsel to stipulate as regards Exhibits '11' and '14' during a commissioner's hearing scheduled on October 24, 2007. On said date, petitioner's counsel, Atty. Allene Anigan, failed to appear and respondent's counsel filed a Request for Admission on November 6, 2007. Petitioner's counsel did not respond to said request.

Subsequently, in the Resolution dated February 6, 2008, this case was considered submitted for decision without formal offer of evidence or memorandum having been filed by respondent.

The foregoing circumstances evidently manifest leniency accorded to respondent's counsel, and it is readily apparent that he allowed almost a year to pass without filing his Formal Offer of Evidence. As can be gleaned from the discussions in Our assailed Decision, despite respondent's failure to formally offer his evidence, and very much contrary to his assertion in the instant Motion for Reconsideration, this Court not only relaxed the application of our procedural rules, specially that pertaining to the formal offer of evidence, but in fact, took into consideration and carefully examined the pieces of evidence duly marked and identified in the testimony of respondent's witness, Josephine D. Madera. Sadly for respondent however, the Court found the pieces of evidence presented by respondent and attached to the records of this case, still insufficient to establish petitioner's supposed tax liability. Our assailed Decision provides:

'Thus, We look into the evidence presented by respondent, the oral testimony of Josephine D. Madera, Revenue Officer-National Investigation Division of the BIR, who testified by way of Judicial Affidavits dated October 5 and March 25, 2006, and specific documents which she identified therein that are attached to the docket of this case.

In her affidavits, she identified the following attached documents, to wit: Memorandum for the Commissioner dated November 21, 2000, Memorandum for the Deputy Commissioner dated November 15, 2001, various In and Out Receipts, Security Movement Report, and Letter of Instruction signed by a certain Jerry Go.

A perusal of the identified 'In and Out Receipts' shows that these were issued to a certain Jerry with the surnames of Ong, Ng, Go, with the exception of 'Out' Receipt No. 0060154 issued by Eastern Securities Development Corporation showing delivery of BW Resources Corporation shares to Jerry Ocier on September 3, 1999. Nevertheless, the latter receipt is a mere photocopy and therefore without evidentiary value.

In the Memorandum for the Commissioner dated November 21, 2000 and Memorandum for the Deputy Commissioner of the Legal and Inspection Group of the Bureau of Internal Revenue dated November 15, 2001, it was mentioned therein that the subject over-the-counter transfers involve Jerry Ocier, Jerry O. Ng and Jerry Go, who are allegedly one and the same as evidenced by the attached client's information form and an officer (Vice-President) of Eastern Securities. Notably however, this client information was never presented and the Court cannot make a proper determination of the veracity of such conclusion.

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Gleaned from the foregoing, proper identification of the shares admittedly could not be applied, and therefore, the revenue examiners of respondent had to resort to the provisions of Section 6(a)(2) of Revenue Regulations No. 2-82, in computing the costs of supposed transferred shares, which is the 'highest closing price at the time of transfer'.

Thus, to be able to apply the aforequoted accounting principles invoked by respondent, We must be able to determine, using the documentary evidence identified by respondent's witness, what was the highest closing price of BW shares at the time of the supposed transfers, as well as the supposed sales transactions that led to the imposition of the subject assessments.

A careful and thorough evaluation of the testimony of respondent's witness and the documents she identified readily yields a negative answer.

Although in the Memorandum dated November 15, 2001, it was stated therein that the requisites under

Section 228 of Republic Act no. 8424 as implemented by Revenue Regulations No. 12-99, that assessment state the factual and legal bases were fully satisfied with, whereby annexes and details of discrepancies attached to the assessment received furnished all the necessary information in compliance with the said regulations, presenting the important points of the taxable over-the-counter transactions, the said annexes were never presented nor formally offered in evidence by respondent.

Thus, We cannot determine with reasonable certainty the legal and factual basis of respondent's assessment, as there was neither a clear showing of an actual sale of shares of stock, nor evidence to support its basis for computing the subject assessment.'

Respondent further alleges that he duly forwarded the BIR Records to the Court Records Division, showing his intention to present the documents as evidence.

Contrary to his claim, the forwarding of the BIR Records is primarily mandated by Section 5(b) Rule 6 of the Rules of the Court of Tax Appeals, wherein it is provided that, 'The respondent Commissioner of Internal Revenue, xxx within ten days from receipt of notice shall certify and forward to the Court all the records of the case in their possession xxx. Failure to transmit the records within the time prescribed herein or within the time allowed by the Court may constitute indirect contempt of court'. Hence, the submission of BIR Records is a mandatory requirement which may not be favorably invoked by respondent as a voluntary act on his part. This is a procedural matter that must be complied with under pain of punishment.

Moreover, if it was really indeed respondent's intention to use the documents contained in the BIR Records to bolster his case, particularly the attached client information, he could have presented them in Court for proper marking and identification, just as what he did with his other pieces of evidence, such as the Memoranda dated November 15, 2001 and November 21, 2001. The arguments posited by respondent in his Motion for Reconsideration is belied, not only by law, but by his actions during the trial of this case.

On another point, respondent relies on the exception to the Rules on Formal Offer of Evidence as set forth in **Vda. de Oñate** case in seeking a reconsideration of Our assailed Decision. To put respondent's mind at rest, the Court looked into the possibility of applying the Oñate ruling in this case. 

It must be pointed out, however, that respondent failed to meet the two (2) requirements set forth therein which would have allowed application of the invoked exception, namely, *first*, the same (evidence) must have been duly identified by testimony duly recorded and, *second*, the same must have been incorporated in the records of the case.

In the instant case, although the BIR Records were duly incorporated as part of the records of this case by virtue of the mandatory transmittal of the BIR records to this Court, the documents contained in the BIR Records were not marked nor identified by respondent's lone witness, Josephine D. Madera.

With regard to respondent's 'In' and 'Out' documents, respondent's allegation that the same are admissible since they were impliedly admitted by petitioner is erroneous. Records bear that the request for admission by respondent, though not opposed by petitioner, was not favorably resolved by this Court. Consequently, the 'In' and 'Out' documents remained only as provisionally marked and without evidentiary value.

Peculiarly, respondent argues that since this Court acts as an appellate court to review the decision of the Commissioner of Internal Revenue, all the evidence of respondent which it forwarded to the Court Records Division must be considered since they are not new matters; hence, are only being subjected to review. Respondent's argument is clearly erroneous.

It must be pointed out that under Section 8 of Republic Act No. 1125, as amended by Republic Act No. 9282, this Court is categorically described as a court of record. As cases filed before it are litigated *de novo*, parties-litigants shall prove every minute aspect of their cases. Indubitably, 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.²⁰ In other words, it is incumbent upon respondent to present before this Court, every piece of evidence vital to his defense, but which he failed to do."

In sum, the Court *En Banc* finds no cogent justification to disturb the findings and conclusion spelled out in the assailed February 2, 2009 Decision and April 21, 2009 Resolution of the *CTA Second Division*. What the instant petition seeks is for the Court *En Banc* to view and appreciate the *e*

²⁰ *Dizon, et al. vs. Court of Tax Appeals, et al., supra.*

arguments/discussions raised by the petitioner in its own perspective of things, which unfortunately had already been considered and passed upon.

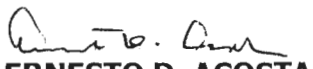
WHEREFORE, the instant Petition for Review is hereby **DISMISSED** for lack of merit. Accordingly, the February 2, 2009 Decision and April 21, 2009 Resolution of the *CTA Second Division* in CTA Case No. 6831 entitled, "*Jerry Ocier vs. Commissioner of Internal Revenue*" are hereby **AFFIRMED in toto**.

SO ORDERED.

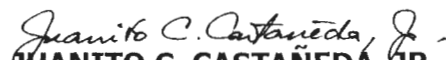


CAESAR A. CASANOVA
Associate Justice

WE CONCUR:



ERNESTO D. ACOSTA
Presiding Justice



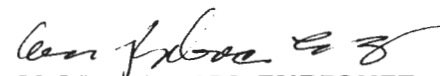
JUANITO C. CASTAÑEDA, JR.
Associate Justice



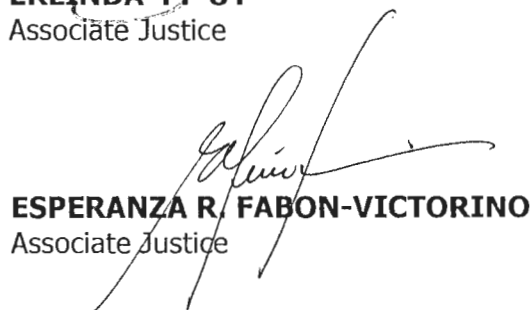
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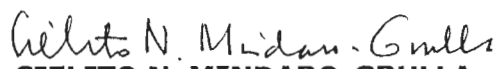
ERLINDA P. UY
Associate Justice



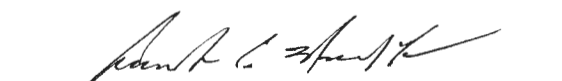
OLGA PALANCA-ENRIQUEZ
Associate Justice



ESPERANZA R. FABON-VICTORINO
Associate Justice



CIELITO N. MINDARO-GRULLA
Associate Justice



AMELIA R. COTANGCO-MANALASTAS
Associate Justice