CTA Form No. 8 (For DCC)

21-000207-0062

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

CTA CASE NO. 10537

SAS INSTITUTE (PHILIPPINES.), INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

NOTICE OF RESOLUTION

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street, Legazpi Village
Makati City

ATTY. YVETTE C. TENEFRANCIA
Bureau of Internal Revenue -Revenue Region No. 8B - South NCR
BIR Legal Division, 2nd Floor, BIR Revenue Regional Office Building
No. 313 Gil Puyat Avenue, Makati City

QUISUMBING TORRES
16th Floor, One/Neo Center
26th Street corner 3rd Avenue, Crescent Park West
Bonifacio Global City, Taguig City

GREETINGS:

You are hereby notified by these presents that on **August 13, 2024,** a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **August 14, 2024.**

Atty. Maria Johoanna F. Chan-Te
Executive Clerk of Court II

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

SAS INSTITUTE (PHILIPPINES.), INC., *Petitioner,*	**CTA Case No. 10537**
	Members: **DEL ROSARIO**, *P.J., Chairperson,* **MANAHAN**, and **REYES-FAJARDO** *JJ.*
- versus -	
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: AUG 13 2024 10:10AM

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RESOLUTION

REYES-FAJARDO, *J*.:

For the Court's resolution are the following:

1. respondent's Motion for Partial Reconsideration posted on April 17, 2024, with petitioner's Opposition (To Respondent's Motion for Partial Reconsideration dated 16 April 2024) filed on May 3, 2024; and

2. petitioner's Motion for New Trial filed on April 22, 2024, *sans* respondent's comment per Records Verification Report dated May 24, 2024.

On March 22, 2024, the Court rendered a Decision (assailed Decision)[1] partially granting petitioner's claim for refund or tax credit to the extent of ₱1,561,610.61, representing its erroneously paid

1 Docket -Volume V, pp. 2137 to 2157.

income tax for calendar year (CY) 2018, the dispositive portion of which reads:

> **WHEREFORE,** the *Petition for Review* filed by SAS Institute (Philippines), Inc. is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner the amount of **₱1,561,610.61**, representing its erroneously paid income tax for CY 2018.
>
> **SO ORDERED.**

In so ruling, the Court held that petitioner's refund claim was pivoted on the alleged erroneous income tax payments stemming from its inclusion of the deferred subscription revenue in the amount of ₱269,085,320.31 as part of its revenue in its Annual Income Tax Return (AITR) for CY 2018, despite having been declared in its 2017 AITR, and the IT thereon was previously paid for said period. However, petitioner did not present evidence necessary for the Court to verify the correct deferred subscription revenue amount which was included in its AITR for both CYs 2017 and 2018, save for petitioner's two out of 160 clients, Marketing Convergence, Inc. and Land Bank of the Philippines.

Both unfazed, respondent and petitioner, respectively, moved for partial reconsideration of the assailed Decision and new trial.

Respondent's Motion for Partial Reconsideration:

Respondent again maintains: (1) petitioner's belated filing of its claim for refund; and (2) petitioner's supposed failure to substantiate its claim for refund or tax credit of the erroneous income tax payments.

Petitioner counters that the Court judiciously examined the records and correctly found that the inclusion of its deferred subscription revenue which was already reported in its AITR for CY 2017 and was included again as part of its revenue for CY 2018, resulted in overpayment of taxes.

Respondent's Motion is denied.

Indeed, the Court had already determined and passed upon petitioner's entitlement to a partial refund or tax credit. The Court finds no compelling reason to modify or reverse the assailed Decision. The pronouncement in *Social Justice Society (SJS) Officers, et al. v. Lim*[2] citing *Ortigas and Co. Ltd. Partnership v. Judge Velasco*[3] on the effect and disposition of a motion for reconsideration is instructive:

> The filing of a motion for reconsideration, authorized by Rule 52 of the Rules of Court, does not impose on the Court the obligation to deal individually and specifically with the grounds relied upon therefor, in much the same way that the Court does in its judgment or final order as regards the issues raised and submitted for decision. This would be a useless formality or ritual invariably involving merely a reiteration of the reasons already set forth in the judgment or final order for rejecting the arguments advanced by the movant; and it would be a needless act, too, with respect to issues raised for the first time, these being, as above stated, deemed waived because not asserted at the first opportunity. It suffices for the Court to deal generally and summarily with the motion for reconsideration, and merely state a legal ground for its denial (Sec. 14, Art. VIII, Constitution); *i.e.*, the motion contains merely a reiteration or rehash of arguments already submitted to and pronounced without merit by the Court in its judgment, or the basic issues have already been passed upon, or the motion discloses no substantial argument or cogent reason to warrant reconsideration or modification of the judgment or final order; or the arguments in the motion are too unsubstantial to require consideration, etc.

Petitioner's Motion for New Trial:

In its motion, petitioner seeks a new trial for the reception of additional evidence to establish its claim for refund, i.e., billing statements which would show the pertinent periods and amounts, necessary for the Court to verify the accurate deferred subscription amount for CY 2017, which it previously and allegedly paid.

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2 G.R. Nos. 187836 & 187916, March 10, 2015.

3 G. R. No. 109645, July 25, 1994.

According to petitioner, it submitted to, and Independent Certified Public Accountant Maricris U. See (ICPA See) examined and computed its deferred subscription revenue.[4]

Petitioner puts the blame on ICPA See for her failure to submit the relevant billing statements, which may be considered as excusable negligence, warranting allowance of new trial under Section 1, Rule 37 of the Rules of Court, as amended.

The Court is not convinced.

Section 5, Rule 30 of the Rules of Court, as amended, commands a party to present evidence during the trial.[5]

By way of exception, after judgment has been rendered, the aggrieved party may move for new trial where it will have the opportunity to present additional evidence under any of the following grounds set forth in Section 1 of Rule 37 of the same rules:

> **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

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4 See paragraph 14, Motion for New Trial, Docket--Volume II, p. 847; and paragraph 5, 6, 7 and 11 Affidavit of Merit, Docket—Volume II, p. 857-858.

5 **Section 5.** *Order of trial.* — Subject to the provisions of section 2 of Rule 31, and unless the court for special reasons otherwise directs, the trial shall be limited to the issues stated in the pre-trial order and shall proceed as follows:
(a) The plaintiff shall adduce evidence in support of his or her complaint;
(b) The defendant shall then adduce evidence in support of his or her defense, counterclaim, cross-claim and third-party complaints;
(c) The third-party defendant if any, shall adduce evidence of his or her defense, counterclaim, cross-claim and fourth-party complaint;
(d) The fourth-party, and so forth, if any, shall adduce evidence of the material facts pleaded by them;
(e) The parties against whom any counterclaim or cross-claim has been pleaded, shall adduce evidence in support of their defense, in the order to be prescribed by the court;
(f) The parties may then respectively adduce rebutting evidence only, unless the court, for good reasons and in the furtherance of justice, permits them to adduce evidence upon their original case; and
(g) Upon admission of the evidence, the case shall be deemed submitted for decision, unless the court directs the parties to argue or to submit their respective memoranda or any further pleadings.
If several defendants or third-party defendants, and so forth, having separate defenses appear by different counsel, the court shall determine the relative order of presentation of their evidence. (1a, R30)

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> grant a new trial for one or more of the following causes materially affecting the substantial rights of said party:
>
> > (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.
> >
> > ...[6]

None of these grounds exist in this case.

Petitioner wants the Court to believe that the pieces of evidence sought to be presented were submitted to and examined by ICPA See although not produced at the trial due to excusable negligence.

However, petitioner's assertions of its excusable negligence in its Motion and Affidavit of Merit are inconsistent with the testimony of its witness on direct examination by way of Sworn Statement. Consider:

First, as explained by ICPA See, her firm SGV & Co. in completing the ICPA report, reviewed and examined the supporting documentation and schedules that was provided by petitioner:[7]

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6 As provided also in Section 5, Rule 15 of the Revised Rules of the Court of Tax Appeals: SEC. 5. *Grounds of motion for new trial*. – A motion for new trial may be based on one or more of the following causes materially affecting the substantial rights of the movant:

(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.

A motion for new trial shall include all grounds then available and those not included shall be deemed waived.

7 Sworn Statement of Ms. Maricris U. See to Questions propounded by Atty. Roberto Romalio G. Reyes dated 7 October 2022, Docket- Volume II, pp. 654- 662.

8.

A: We have performed the following procedures:

...

iii. We have reviewed and examined the supporting documentation and schedules that petitioner provided to us in support of its factual allegations and claims;

v. We checked the details, basis and mathematical accuracy of the amount disclosed in the Application for refund against the Company's supporting schedules (e.g., Audited Financial Statements, Annual Income Tax Returns, A/R ledgers and other related documents for CY 2018 and CY 2017). Specifically, we performed the following procedures:

a. We reviewed the timing of revenue recognition of the deferred subscription revenue related to licenses and its supporting documents (i.e., official receipts, billing statements, and/or invoices).

...

vi. We checked the schedules and documents prepared by the Company to support its contention:

...

c. we obtained the supporting documents for the Deferred Subscription Revenue in 2017 (i.e., official receipts, billings, invoices, contracts) to ascertain the correct timing of recognition of revenue and that the computations of the amounts included in the Schedule/ Subscription template of Deferred revenue are correct.[8]

Here, petitioner admitted having submitted to ICPA See the billing statements for the preparation of the latter's report, still, it took no steps to formally offer it at trial as prescribed by Section 34, Rule 132 of the Revised Rules on Evidence.[9]

Neither did petitioner rectify such failure after the parties formally offered and closed their evidence, and before judgment by

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[8] Boldfacing supplied.

[9] Section 34. *Offer of evidence.* – The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified.

the subsequent filing of a motion to reopen trial for the reception of additional evidence.[10]

Clearly, petitioner have been afforded an opportunity to present the billing statements as evidence in support of its claim for the Court's consideration, yet it failed due to its own inexcusable negligence.

Jurisprudence is clear that excusable negligence is "one which ordinary diligence and prudence could not have guarded against," and these circumstances should be properly alleged and proved.[11] Here, the failure and omission of petitioner to present evidence save for its two clients, namely Marketing Convergence Inc. and Land Bank of the Philippines, despite its awareness that the same should have been adduced in support of its claim, constitutes inexcusable negligence. This could have been prevented by the exercise of ordinary diligence and prudence.

Second, ICPA See specified all the documents she examined to come up with the computation of petitioner's deferred subscription revenue amounts. Notably, the billing statements were not one of the documents identified and mentioned in her testimony. Witness ICPA See testified:[12]

> **12. Q: What are the documents you reviewed and/or prepared to support your computation?**
>
> **A: We have reviewed and/or prepared the following documents,** which we have also pre-marked as follows:[13]

Exhibit P-4	Filed Income Tax Return of CY 2017
Exhibit P-5	Filed Income Tax Return of CY 2018
Exhibit P-6	Application for Refund dated April 8, 2021

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10 See *Avelino C. Agulto v. Hon. Court of Appeals, Hon. Francisco Z. Consolacion,* G.R. No. L-52728, January 17, 1990.

11 *Far East Fuel Corporation v. Airtropolis Consolidators Philippines, Inc.,* G.R. No. 254267, February 1, 2023.

12 Sworn Statement of Ms. Maricris U. See to Questions propounded by Atty. Roberto Romalio G. Reyes dated 7 October 2022, Docket- Volume II, pp. 654- 662.

13 Boldfacing supplied.

Exhibit P-8	Audited Financial Statements for CY 2018
Exhibit P-9	Schedule/Subscription Template of Deferred revenue for CY 2017
Exhibit P-10	Supporting Documents for Market Convergence Inc. (Standard Contract Sample)
Exhibit P-11	Supporting Documents for Land Bank of the Philippines (MYD Contract Sample)
Exhibit P-12	Journal Entries of the Samples Selected for Standard and MYD Contract
Exhibit P-13	Trial Balance for CY 2018 and CY 2017
Exhibit P-14	BIR Form No. 2307 and 2306 of the Samples Selected
Exhibit P-15	Supporting Documents of Schedule/Subscription Template of Deferred revenue for CY 2017
Annex A	ICPA's Independent Computation
Annex B to C	ICPA's Revenue Analysis

Thus, the evidence on record clearly established that the billing statements that petitioner seeks to present as evidence were not among the documents examined or considered by ICPA See in the computation of the amounts earned by petitioner from its 158 clients, contrary to what petitioner tried to paint.

For this reason, the Court will not consider the billing statements being submitted by petitioners for the first time in its Motion. It is an important fundamental principle in the judicial system that every litigation must come to an end. Access to the courts is guaranteed. But there must be a limit thereto. Once a litigant's rights have been adjudicated in a valid and final judgment of a competent court, he should not be granted an unbridled license to come back for another try.[14]

Besides, petitioner's motion must be rejected because the billing statements are in the nature of forgotten evidence. Forgotten evidence refers to 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

14 *Marilyn B. Montehermoso, et al. v. Romeo Batuto and Arnel Batuto,* G.R. No. 246553, December 02, 2020.

counsel. 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.[15]

WHEREFORE, the Court **DENIES** for lack of merit:

1. respondent's Motion for Partial Reconsideration posted on April 17, 2024; and

2. petitioner's Motion for New Trial filed on April 22, 2024.

SO ORDERED.

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

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