REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

ARROW FREIGHT CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10064

Members:

CASTAÑEDA, JR. *Chairperson,*
BACORRO-VILLENA, *and*
CUI-DAVID, *JJ*

Promulgated:

MAR 03 2022 4:11 pm

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RESOLUTION

CASTAÑEDA, JR., *J.:*

Submitted before this Court are the following:

1. petitioner's **Motion for Partial Reconsideration and/or New Trial** filed, through registered mail, on October 20, 2021 and received by the Court on November 4, 2021, with respondent's **Comment/Opposition (Re: Motion for Partial Reconsideration and/or New Trial)** filed, through registered mail, on December 23, 2021 and received by the Court on February 16, 2022; and,

2. petitioner's **Supplemental Motion for Partial Reconsideration and/or New Trial** filed on November 19, 2021.

On July 13, 2021, the Court promulgated a Decision denying petitioner's claim for refund of its unutilized creditable withholding taxes (CWTs) for the year 2016 in view of respondent's deficiency assessments against it, the dispositive portion of which reads as follows:

> "**WHEREFORE**, the *Petition for Review* is hereby **DENIED** for lack of merit.
>
> **SO ORDERED**."

To recapitulate, the Court held in the assailed Decision that although petitioner was able to prove that it indeed has an unutilized excess CWTs for taxable year 2016 in the amount of ₱8,250,300.42, it is still not entitled to the said excess CWTs, in view of the Final Assessment Notice with Formal Letter of Demand (FAN/FLD) No. 38191/22947 dated September 16, 2019 issued by respondent against petitioner. In the said FAN/FLD, respondent assessed petitioner with, *inter alia*, deficiency income tax amounting to ₱190,925,996.45, including surcharges and interests, to which petitioner did not refute or even objected when respondent formally offered the same as evidence. Hence, petitioner is deemed to have admitted the validity of the FAN/FLD and, as such, is required to pay its tax obligations by virtue thereof. And, since the deficiency income tax assessment amounts to ₱190,925,996.45, the same exceeds the determined unutilized excess CWTs for taxable year 2016 in the amount of ₱8,250,300.42. Correspondingly, petitioner is not entitled to the latter amount.

Undaunted, petitioner now moves for the partial reconsideration and/or new trial of the Court's Decision dated July 13, 2021 raising the following grounds in its Motion, *viz.*:

> *First*, excusable negligence on the part of the Firm's paralegal due to his inadvertent failure to provide the handling lawyer a copy of the respondent's Formal Offer of Evidence (FOE) upon receipt thereof which prevented petitioner from filing a Comment/Opposition to said FOE; and,
>
> *Second*, the FAN/FLD No. 38191/2247 dated September 16, 2019 issued against petitioner for Value Added Tax, Expanded Withholding Tax and Improperly Accumulated Earnings Tax for taxable year 2016, and as mentioned in the Decision, is, to date, not yet final, unappealable and executory.

As to the first ground, petitioner claims that one of the duties of their paralegal, Mr. Arnel D. Divinaflor, of Emmanuel C Alcantara &

Associates Law Offices, includes the handling and documenting of all papers, pleadings, and documents that goes in and out of the office. On March 13, 2020, Mr. Divinaflor received a copy of respondent's FOE but failed to make a soft copy thereof, to give to the handling lawyer, because their law office declared a shortened workday due to the looming lockdown caused by the 2019 Corona Virus Disease (Covid-19). Petitioner continues that it was only July 16, 2021, when Mr. Divinaflor remembered receiving the same despite reporting back to work in June 2020. To bolster its claim, petitioner also attached an Affidavit of Merit[1] of their paralegal Mr. Arnel D. Divinaflor in its Motion, attesting to the veracity of the foregoing events. Nonetheless, petitioner asserts that Mr. Divinaflor's failure to provide the handling lawyer a scanned soft copy of respondent's FOE is not deliberate, totally unintentional, and in no way intended to prejudice the rights of petitioner to claim for refund.

With regard to the second ground, petitioner insists that the subject FAN/FLD No. 38191/2247 dated September 16, 2019 is not yet final, unappealable, and executory. As such, petitioner seeks the kind indulgence of the Court that it be allowed to introduce new pieces of evidence to show that the said FAN/FLD No. 38191/2247 is still pending final determination by the Bureau of Internal Revenue (BIR) and the validity of which remains in question. For the said purpose, petitioner would like to present Mr. Max D. Arceño, its President and General Manager, who will testify and identify the protest letters filed by the petitioner against the assessment letters issued by the BIR; and also Mr. Arnel D. Divinaflor to testify on the on the circumstances that transpired which resulted to petitioner's failure to file a comment/opposition to respondent's FOE.

Lastly, petitioner argues that it should not be prejudiced by the lapses committed by its counsel from fully presenting its case and establishing its right. It cites the case of *Marlon Curammeng y Pablo v. People of the Philippines,*[2] wherein the Supreme Court held that "procedural rules may be relaxed for the most persuasive of reasons in order to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed. Corollarily, the rule, which states that the mistakes of counsel bind the client, may not be strictly followed where observance of it would result in the outright deprivation of the client's liberty or property, or where the interest of justice so requires."

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[1] Annex "B" of Petitioner's Motion for Partial Reconsideration.
[2] G.R. No. 219510, November 14, 2016.

Meanwhile, in its Supplemental Motion, petitioner avers that sometime in October 2021, it received an undated letter from BIR Revenue Region No. 5, Revenue District Office No. 24, informing that petitioner that its protest and request for investigation has been granted. Correspondingly, as per the said letter, the initial deficiency tax assessments have been reduced and, thus, a new Final Decision on Disputed Assessment (FDDA) will be issued on the revised assessment. However, as of the filing of the Supplemental Motion, petitioner has not yet received the *new* FDDA. Notwithstanding the non-receipt of the FDDA on the revised assessment, petitioner claims to have paid and fully settled with the BIR the revised deficiency taxes after reinvestigation covering income tax, value-added tax, and expanded withholding tax in the reduced amounts of ₱9,403,510.97, ₱5,075,707.90 and ₱3,538,447.84, respectively. Petitioner further attached copies of the said payment forms (BIR Form No. 0605) paid via Electronic Filing and Payment System (eFPS).

Petitioner therefore concludes that based on the foregoing chain of events, and considering it has already settled in full the revised deficiency assessments for taxable year 2016, there is no more basis for the Court to deny its claim for refund of unutilized excess CWTs in the amount of ₱8,250,300.42.

On the other hand, in his comment, respondent argues that petitioner's motion was filed out of time. In the Supreme Court Administrative Circular (AC) No. 32-2020 dated March 3, 2020, all litigants, lawyers, prosecutors, and the general public were advised to file with the courts their respective motions and/or pleadings thru electronic mail (Annex "A" of AC No. 32-2020) due to the physical closure of courts brought about by the Covid-19 pandemic. A scrutiny of the aforementioned Circular shows that filing of pleadings was suspended **except on urgent matters,** such as but not limited to, filing of criminal complaints, applications for bail, petitions for Writ of Habeas Corpus, etc. Respondent continues that applying the principle of *ejusdem generis,* the Decision of the Court denying the Petition for Review **is an urgent matter** which should have prompted petitioner to immediately file its motion within the reglementary period. Here, it took the petitioner eighty (80) days to file its motion which is way beyond the period allowed by Section 1, Rule 15 of the Revised Rules of the Court of Tax Appeals (RRCTA).

Respondent likewise maintains that the Court correctly ruled that the FAN/FLD No. 38191/22947 dated September 16, 2019 was deemed admitted by petitioner when it failed to comment or object when the said documents were formally offered as evidence before this Court. Respondent expounds that petitioner's failure to object to the offered evidence renders it admissible, and the Court, cannot, on its own disregard such evidence. He further points out that when the notice of Resolution was received by petitioner submitting the case for resolution, it still did not even bother to file any comment on the said notice. Respondent also maintains that negligence of the counsel binds the client.

As to petitioner's assertion that it already settled in full its 2016 tax liabilities with the BIR, respondent's counsel claims that he has no personal knowledge or information sufficient to form a belief as to the truth or falsity of the allegation of payment made by petitioner since such payments or settlements made were not coordinated with the respondent or with this Court. Be that as it may, respondent avers that any payments made by petitioner is still subject for further review and evaluation and cannot yet be considered closed and terminated unless and until an AUTHORITY TO CANCEL ASSESSMENT (ATCA) for taxable year 2016 has been issued by the BIR in favor of the petitioner. In any case, respondent also points out that if petitioner made payment for the Expanded Withholding Tax (EWT) in the amount of ₱3,538,477.84 for taxable year 2016, then it is an implied admission that petitioner indeed has an outstanding withholding tax liability for taxable year 2016, thereby making petitioner not entitled to claim refund for its alleged unutilized creditable withholding tax for the same taxable year.

Lastly, respondent insists that settled is the rule that the power of the court ends when a decision is rendered. And, that petitioner may only avail of the remedy of appeal when there is an error of judgment or when there is a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the Court in arriving at a decision – which in the present case there is none.

The Court finds petitioner's Motion for Partial Reconsideration and/or New Trial and Supplemental Motion for Partial Reconsideration and/or New Trial both bereft of merit.

Petitioner's Motion for Partial Reconsideration and/or New Trial was timely filed.

Section 1, Rule 15 of the RRCTA provides that:

> "SEC. 1. *Who may and when to file motion.-* Any aggrieved party may seek a reconsideration or new trial of any decision, resolution or order of the Court. He shall file a **motion for reconsideration or new trial within fifteen days from the date he received notice of the decision**, resolution or order of the Court in question."

From the above, the general rule is that a motion for reconsideration or new trial must be filed within fifteen (15) days from receipt of the Court's decision. In the present case, petitioner claims that it has filed a timely motion for partial reconsideration or new trial on August 2, 2021,[3] which falls within the period of fifteen (15) days from the time a copy of the Decision was received on July 16, 2021. However, perusal of the records show that the filing via registered mail of the present motion for partial reconsideration or new trial was only made on October 20, 2021.

Considering the physical closure of courts affected by the surging cases of the Covid-19 pandemic d, the Supreme Court further issued AC Nos. 56-2021, 72-2021, and 75-2021, which resulted in the suspension of filing of pleadings and motions from August 2, 2021 to October 19, 2021. Clearly then, the filing of the present motion on October 20, 2021 is considered aptly filed.

Petitioner's Motion for Partial Reconsideration and/or Motion for New Trial has no basis in fact and in law.

Verily, Section 8 of Republic Act (RA) No. 1125, as amended, creating the Court of Tax Appeals, expressly provides that proceedings before this Court shall not be governed strictly by technical rules of evidence. In fact, there are numerous instances where the Court allows the reopening of trial even though judgment has already been rendered.

However, in the present case, the Court finds that petitioner has not demonstrated any cogent reason for the Court to apply the

[3] Since July 31, 2021 falls on a Saturday.

technical rules liberally. In the case of *Ma. Rosario Suarez v. Judge Martin S. Villarama, Jr., et al.,*[4] the Supreme Court had the occasion to rule that:

> "It is an accepted tenet that rules of procedure must be faithfully followed **except only when, for persuasive and weighting reasons**, they may be relaxed to relieve a litigant of an injustice commensurate with his failure to comply with the prescribed procedure. Concomitant to a liberal interpretation of the rules of procedure, **however, should be an effort on the part of the party invoking liberality to adequately explain his failure to abide by the rules.**" (Emphasis Supplied)

In the present case, petitioner explains that its failure to object to respondent's FOE is due to excusable negligence on the part of petitioner's paralegal for his failure to provide the handling lawyer a copy of the said FOE upon receipt his thereof. For this reason, petitioner seeks to introduce new pieces of evidence and to present its President and General Manager, Mr. Max D. Arceño, and its counsels' paralegal, Mr. Arnel D. Divinaflor, to testify on the on the circumstances that transpired.

This Court is not persuaded.

Notably, the additional evidence petitioner seeks to present are neither newly discovered evidence nor omitted due to fraud, accident, mistake or excusable negligence, so as to merit new trial. In *Prospero Balgami, et al. v. Court of Appeals, et al.,*[5] the Supreme Court instructed that that law offices are mandated to adopt, arrange, and device a system to ensure that official or judicial communications would be promptly received by the lawyer assigned to the case, lest, they will be chargeable with negligence, to wit:

> "x x x **the negligence of the clerks, which adversely affect the cases handled by lawyers, is binding upon the latter**. The doctrinal rule is that **negligence of the counsel binds the client because, otherwise,**

[4] G.R. No. 124512, June 27, 2006.
[5] G.R. No. 131287, December 9, 2004.

> **there would never be an end to a suit** x x x." *(Emphasis supplied)*

In fact, jurisprudence is replete with pronouncements that a client is bound by the acts, even mistakes, of his counsel in the realm of procedural techniques. The only exception to the general rule is when the counsel's actuations are gross or palpable, resulting in serious injustice to client, that courts should accord relief to the party. However, if the error or negligence of the counsel did not result in the deprivation of due process to the client, the general rule applies.

Going back to the present case, it cannot be said that the failure to object to respondent's FOE is due to sheer inadvertence or excusable negligence. To recall, during the hearing on February 26, 2020,[6] the parties were informed that respondent was granted a period of five (5) days from March 9, 2020 within which to file his Formal Offer of Evidence, and petitioner was granted the same period of time from receipt of the said FOE within which to file its comment/opposition. Thereafter, it was stated that respondent's FOE shall be deemed submitted for resolution by the Court. Clearly then, petitioner was informed beforehand as to the period within which respondent will file his FOE, as well as the period within which to file its comment/opposition thereto.

In the same vein, this Court also finds it hard to believe Mr. Divinaflor's statement in his Affidavit of Merit that it was only on **July 16, 2021** when they received a copy of the assailed Decision that he remembered receiving a copy of respondent's FOE on March 13, 2020. Perusal of the records of the case show that on **June 22, 2020**[7] petitioner received the Court's Resolution dated June 16, 2020[8] of respondent's FOE, whereby it was categorically stated therein that the same was **without petitioner's Comment/Opposition**. It was also uncanny that that petitioner was able to file its Memorandum[9] on July 16, 2020, or within the thirty (30)-day period granted to the parties in the said Resolution within which to submit their respective memoranda, without alleging non-receipt of respondent's FOE. *jr*

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[6] *Minutes of the Hearing* dated February 26, 2020, Docket (Vol. II), p. 553; and *Order* dated February 26, 2020, Docket (Vol. II), pp. 606-607.
[7] Notice of Resolution, Docket (Vol. II), p. 609.
[8] Docket (Vol. II), pp. 610 to 611.
[9] Docket (Vol. II), pp. 612-630.

Indeed, the allegation of non-receipt of respondent's FOE was a mere afterthought. In actuality, the alleged negligence of the paralegal could have been prevented through ordinary diligence on the part of petitioner's counsel or their staff by monitoring judicial communications pertaining to the case. Thus, such negligence cannot be considered excusable so as to merit new trial.

Petitioner's Supplemental Motion for Partial Reconsideration and/or New Trial has lacks supporting evidence.

As for petitioner's Supplemental Motion for Partial Reconsideration, wherein it argues that since it has already fully settled the revised deficiency assessments for taxable year 2016 there is no more basis to deny its claim fro refund, the Court does not also agree.

As correctly pointed out by respondent, any payments made by petitioner is still subject for further review and evaluation, and the case is not yet considered closed and terminated unless and until an Authority to Cancel Assessment (ATCA) for taxable year 2016 has been issued in favor of petitioner. In Revenue Memorandum Order (RMO) No. 33-2018,[10] paragraph III.1.a provides for the guidelines in issuing ATCA pertaining to modified/amended FAN/FLD, *viz.*:

> "III. POLICIES AND GUIDELINES – In the issuance of ATCA, the following policies and guidelines shall be strictly observed:
>
> 1. The **<u>Authority to Cancel Assessment (ATCA) shall be issued as proof of cancellation of assessments with issued Final Assessment Notice (FAN)/Formal Letter of Demand (FLD)</u>** which were recorded in Form 40.00 (Protested)/AR/DA case/s of concerned delinquent taxpayers due to any of the following instances:

[10] "SUBJECT: Consolidation, Clarification and Reiteration of the Existing Policies and Procedures in the Issuance of Authority to Cancel Assessment (ATCA)," dated April 16, 2018.

a. The difference between the amounts of the original tax assessment and the reduced tax assessment after the originally issued Final Assessment Notice (FAN)/Formal Letter of Demand has been modified, amended, or **declared 'null and void'** covered by a final administrative decision by the Commissioner or his duly authorized revenue official as shown in the Final Decision on Disputed Assessment (FDDA) duly numbered for monitoring and tracking purposes, after the conduct of review/evaluation/reconsideration of the factual and/or legal bases raised in its protest/appeal/motion for reconsideration, therefor, as defined under Revenue Regulations (RR) No. 12-99 as amended by RR Nos. 18-2013 and 7-2018;" *(Emphasis with underscoring supplied)*

From the above provision, an ATCA should be issued as proof of cancellation of assessments after the originally issued Final Assessment Notice/Formal Letter of Demand (FAN/FLD) has been modified, amended, or declared "null and void" covered by a final administrative decision by respondent or his duly authorized revenue official as shown in the FDDA.

In the present case, by having no FDDA and/or ATCA issued to petitioner to prove cancellation of the 2016 deficiency assessments, the Court cannot ascertain and verify whether the determined unutilized excess CWTs for taxable year 2016 in the assailed Decision amounting to ₱8,250,300.42 has been considered in the modified/amended deficiency income tax assessments of petitioner. Accordingly, for lack of sufficient concrete evidence to support its allegations, the Court has no choice but to disregard petitioner's claim.

In view of the foregoing disquisitions, there being no new matter or substantial issue raised by petitioner in its Motions, the Court finds no compelling reason to reverse, amend, or modify the Decision promulgated on July 13, 2021.

WHEREFORE, premises considered, petitioner's Motion for Partial Reconsideration and/or New Trial and Supplemental Motion for Partial Reconsideration and/or New Trial are both **DENIED** for lack of merit.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

We Concur:

(On Leave)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

LANEE S. CUI-DAVID
Associate Justice