REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

TULLET PREBON (PHILIPPINES) INC.,	**CTA CASE NO. 9320**
Petitioner,	Members:
- versus -	**FABON-VICTORINO,** *and* **RINGPIS-LIBAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE,	Promulgated:
Respondent.	SEP 04 2019 3:06p.m.

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RESOLUTION

RINGPIS-LIBAN, *J.*:

For resolution is petitioner's **Motion for Reconsideration with Motion for Leave of Court to Present Additional Evidence**, filed on May 17, 2019, with respondent's **Opposition (Re: Motion for Reconsideration with Motion for Leave of Court to Present Additional Evidence)**, filed on June 7, 2019.

Petitioner moves for the reconsideration of the Court's Decision promulgated on April 12, 2019 (assailed Decision), the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is **DENIED**.
>
> **SO ORDERED**."

Petitioner raises the following grounds for reconsideration:

1. It was able to prove that the income from which the creditable withholding taxes (CWTs) being claimed for refund

were withheld was reported as part of petitioner's gross income. Contrary to the Court's findings, the evidence submitted by petitioner clearly shows that the income payments related to the claimed CWTs were traced to petitioner's general ledger.

2. Contrary to the Court's findings, the duly substantiated prior year's excess credits from calendar years (CYs) 2011 and 2012 amounting to ₱26,949,543.25 are more than sufficient to cover petitioner's income tax liability for CY 2013 in the amount of ₱7,676,632.00. Applying the first-in, first-out method in the application of income tax credits, the Court-commissioned Independent Certified Public Accountant (ICPA) was able to verify that petitioner applied its CWTs from CY 2010 and prior years as payment for its income tax liabilities for CYs 2011 and 2012. Consequently, the full amount of substantiated CWTs from CYs 2011 and 2012 amounting to ₱26,949,543.25 may be applied as payment for petitioner's income tax liability for CY 2013.

3. The Supreme Court has already ruled that claims for refund of erroneously paid taxes are civil in nature. As such, petitioner, as claimant, though having a heavy burden of showing entitlement, need only prove preponderance of evidence in order to recover its excess tax credits.

Petitioner maintains that there is no law, rule, regulations, or financial reporting standard which requires reporting entities to indicate the corresponding "invoice number" in its general ledger. Moreover, it asserts that the tracing of the income payment in petitioner's general ledger and the corresponding invoice number is shown in in Annex 3 of the Amended ICPA Report, marked as Exhibit "P-2499".

Petitioner alleges that the Court erred in applying the duly-substantiated CWTs for CY 2011 and 2012 in the total amount of ₱26,949,543.25 as a credit against its income tax liabilities for the same CYs, as it is only required to keep its records including the CWT certificates, for only a period of three (3) years from the date of its filing. Consequently, petitioner assails the denial of the claim for refund on the basis of the non-presentation of CWT certificates pertaining to prior year's credits per 2011 Income Tax Return (ITR).

Petitioner maintains that since only preponderance of evidence is required in this case, it has sufficiently proved its entitlement to refund, considering that the CWTs are duly substantiated with evidence.

In this regard, petitioner moves that the Court reconsider the denial of its claim for refund, or, in the alternative, allow petitioner to present additional evidence, to satisfy the evidentiary requirements prescribed by the Court.

Petitioner attached in its motion a copy of its expanded general ledger as additional proof that the income payment related to the claimed CWTs may be traced to its general ledger. Moreover, petitioner manifests that it was able to collate additional CWT certificates for CYs 2011 and 2012, which it may submit to prove that petitioner has more than sufficient prior year's excess credits to cover its income tax liability for CY 2013. Lastly, petitioner requests that it be allowed to recall the Court-commissioned ICPA to verify and identify these documents.

In his opposition, respondent contends that petitioner was given more than ample opportunity to properly ventilate its case. Thus, respondent prays that the Court deny petitioner's motion.

As to petitioner's allegation on the sufficiency of its evidence to support its claim for tax refund, this has already been extensively addressed by the Court in the assailed Decision.

It must be stressed that the cases filed before this Court are litigated *de novo*, thus, party-litigants should prove every minute aspect of their cases.[1] Accordingly, there should be no room for inconsistencies, especially on the part of claimant, who has the burden of proof to establish the factual basis of its claim for tax refund.

Furthermore, actions for tax refund, as in this case, are in the nature of a claim for exemption and the law is not only construed in *strictissimi juris* against the taxpayer, but also the pieces of evidence presented entitling a taxpayer to an exemption is *strictissimi* scrutinized and must be duly proven.[2]

Since petitioner in this case failed to present sufficient evidence to prove it entitlement to the amount of tax refund claimed, the denial of the instant Petition for Review is proper.

With regard to petitioner's Motion for Leave of Court to Present Additional Evidence, the Court shall consider it as a motion for new trial, as petitioner requests for the presentation of additional evidence after judgment has been rendered in order to further prove its case.

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[1] *Dizon vs. Court of Tax Appeals, et al.*, G.R. No. 140944, April 30, 2008.

[2] *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 159490, February 18, 2008.

However, the Court likewise finds petitioner's arguments in the said motion bereft of merit, considering that a motion for new trial may be granted only upon specific, well-defined grounds, set forth in the Rules.[3]

Sections 1 and 2 of Rule 37 of the Rules of Court provide:

> "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.
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> 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."
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> "Section 2. *Contents of motion for new trial or reconsideration and notice thereof.* — The motion shall be made in writing stating the ground or grounds therefor, a written notice of which shall be served by the movant on the adverse party.
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> A motion for new trial shall be proved in the manner provided for proof of motions. A motion for the cause mentioned in paragraph (a) of the preceding section shall be supported by affidavits of merits which may be rebutted by affidavits. A motion for the cause mentioned in paragraph (b) shall be supported by affidavits of the witnesses by whom such evidence is expected to be given, or by duly authenticated documents which are proposed to be introduced in evidence.
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> A motion for reconsideration shall point out a specifically the findings or conclusions of the judgment or final order which are not supported by the evidence or which are contrary to law making express reference to the testimonial or documentary

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[3] *Alegre vs. Hon. Reyes, et. al.*, G.R. No. L-56923, May 9, 1988.

> evidence or to the provisions of law alleged to be contrary to such findings or conclusions.
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> A *pro forma* motion for new trial or reconsideration shall not toll the reglementary period of appeal."

Relative to these provisions are Sections 5 and 6 of Rule 15 of the 2005 Revised Rules of the Court of Tax Appeals, to wit:

> "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:
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> (a) Fraud, accident mistake or excusable negligence which ordinary prudence could not have guarded against and by reason of which the rights of such aggrieved party has probably been impaired in his rights; or
>
> (b) Newly discovered evidence, which the party could not, with reasonable diligence, have discovered and produced at the trial and, which, if presented, would probably alter the result.
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> A motion for new trial shall include all grounds then available and those not included shall be deemed waived."
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> "SEC. 6. *Content of motion for reconsideration or new trial and notice.* – The motion shall be in writing stating its grounds, a written notice of which shall be served by the movant on the adverse party.
>
> A motion for new trial shall be proved in the manner provided for proof of motions. A motion for the cause mentioned in subparagraph (a) of the preceding section shall be supported by affidavits or merits which may be rebutted by counter-affidavits. A motion for the cause mentioned in subparagraph (b) of the preceding section shall be supported by affidavits of the witnesses by whom such evidence is expected to be given, or by duly authenticated documents which are proposed to be introduced in evidence.
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> A motion for reconsideration or new trial that does not comply with the foregoing provisions shall be deemed *pro forma*, which shall not toll the reglementary period for appeal."

In the instant motion, there was no allegation of fraud, accident, mistake or excusable negligence relating to petitioner's failure to present the said expanded general ledger and CWT certificates for CYs 2011 and 2012 during trial. Neither was there an allegation that the same are newly discovered evidence.

Other than petitioner's mere insistence that the evidence it previously presented sufficiently proved its entitlement to refund, petitioner failed to provide any explanation to justify its failure to present the expanded general ledger and the other 2011 and 2012 CWT certificates during trial.

Also, it is worthy to note that the documents which petitioner intends to present are "forgotten evidence".

In this case, petitioner was able to present during trial a part of its general ledger pertaining to "AR 48127 Receivables 5949462" reflecting the billing invoice number corresponding to the revenue or income amount recorded therein, as well as some CWT certificates from CYs 2011 and 2012.

Thus, it cannot be said that the expanded general ledger, allegedly containing the corresponding billing invoice numbers per income amount recorded, and the additional 2011 and 2012 CWT certificates were not in existence or available before or during trial of the instant case. These documents are forgotten evidence and could have been presented and offered in a timely manner.

At this juncture, it must be pointed out that 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 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 new trial, in the guise of a newly discovered evidence. [4]

The parties must diligently and conscientiously present all arguments and available evidences in support of their respective positions to the court before the case is deemed submitted for judgment. Only under exceptional circumstances may the court receive new evidence after having rendered judgment; otherwise, its judgment may never attain finality since the parties may continually refute the findings therein with further evidence.[5]

Furthermore, procedural rules are tools designed to facilitate the adjudication of cases. Courts and litigants alike are thus enjoined to abide strictly by the rules. And while the Court, in some instances, allows a relaxation

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[4] *Office of Ombudsman vs. Coronel*, G.R. No. 164460, June 27, 2006.
[5] *Alamayri vs. Pable*, G.R. No. 151243, April 30, 2008.

in the application of the rules, this we stress, was never intended to forge a bastion for erring litigants to violate the rules with impunity. The liberality in the interpretation and application of the rules applies only in proper cases and under justifiable causes and circumstances. While it is true that litigation is not a game of technicalities, it is equally true that every case must be prosecuted in accordance with the prescribed procedure to insure an orderly and speedy administration of justice. The instant case is no exception to this rule.[6]

To allow the presentation of petitioner's additional evidence without having complied with the requisites for the grant of a motion for new trial will set a dangerous precedent of never-ending suits.[7]

Considering that the expanded general ledger and the additional 2011 and 2012 CWT certificates, which petitioner seeks to present, are neither newly discovered evidence nor omitted due to fraud, accident, mistake or excusable negligence, the Court finds petitioner's motion for leave to present additional evidence without merit.

WHEREFORE, finding no compelling reasons to allow the presentation of additional evidence and to reverse or modify the ruling of this Court in the assailed Decision, petitioner's **Motion for Reconsideration with Motion for Leave of Court to Present Additional Evidence** is **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

I CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

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[6] *Garbo vs. Court of Appeals*, G.R. No. 107698, July 5, 1996.
[7] *Maxima Machineries, Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 9210, April 5, 2019, Resolution.