REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

TAGANITO MINING CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9369

Members:

CASTAÑEDA, JR.,
Chairperson
MANAHAN, *JJ.*

Promulgated:

APR 12 2019 3:30 pm

x- x

RESOLUTION

MANAHAN, J.:

For resolution are the following:

1. Petitioner's *Motion for Partial Reconsideration with Manifestation and Comment to Respondent's Motion for Partial Reconsideration* posted on December 28, 2019 with respondent's *Opposition* filed on March 11, 2019.

2. Respondent's *Motion for Partial Reconsideration (Re: Decision promulgated 6 December 2018)* filed on December 20, 2018.

The parties move for the reconsideration of the Court's Decision dated December 6, 2018 (assailed Decision), the dispositive portion of which reads:

> **"WHEREFORE,** in view of the foregoing, the instant Petition for Review is **PARTIALLY GRANTED.** Accordingly, respondent is **ORDERED** to refund or issue a tax credit certificate in favor of

petitioner in the reduced amount of Php25,946,279.40 representing its unutilized excess input VAT for the four quarters of CY 2014."

Petitioner's Motion for Partial Reconsideration

In its Motion for Partial Reconsideration, petitioner manifests that the Bureau of Customs (BOC), pursuant to an endorsement letter issued by respondent Commissioner of Internal Revenue has refunded in its favor the total amount of Php20,789,920.49 corresponding to the BOC portion of its claim for VAT refund for taxable year 2014. According to petitioner, the BOC's grant of refund was due to respondent's approval of the refund in the total amount of Php21,330,738.32. Thus, the amount refunded by the BOC forms part of the net refundable amount of Php20,817,854.93 approved by respondent with additional disallowance by the BOC. Petitioner illustrated its point by the following particulars:

Particulars	**BIR**	**BOC**	**Total**
Total applied for TCC	Php654,430.00	Php28,926,837.00	Php29,581,267
Less: BIR Disallowance	Php141,546.61	Php8,108,982.07	Php8,250,528.68
Less: BOC Disallowance	0.00	Php27,934.44	
TCCs issued	Php512,883.39	Php20,789,920.49	Php21,330,738.32

Petitioner further avers that petitioner's claim for refund with the Court in the amount of Php28,926,837.00 compared to the amount that respondent should have endorsed to the BOC less disallowances should have resulted to a balance (of the claim that should have been lodged with the Court is only Php8,108,982.07 illustrated by the following figures:

Total CTA Claim	Php 28,926,837.00
Less: Refund by BOC	Php 20,789,920.49
Less: BOC Additional Disallowance	Php 27,934.44
Balance of CTA Claim	**Php8,108,982.07**

a

Based on petitioner's presentation of arguments, the grant of its refund claim in the administrative levels (both in the BIR and the BOC) if considered by the Court in its entirety will lead to the conclusion that the entire amount claimed in the judicial level will likewise be granted instead of just being partially granted in the assailed decision.

The gist of petitioner's motion is to request the Court to reconsider the disallowances made in the assailed decision by allowing the presentation of additional evidence via a new trial to rectify the alleged mistakes or inadvertence committed by the court commissioned independent certified public accountant (ICPA). Petitioner claims that due to the limited time given to the ICPA to conduct the special audit, compile the supporting documents and submit its report to the Court, there was no sufficient time for them (petitioner's team) to go through the documents one by one to validate the findings of the said ICPA.

In his *Opposition to the Motion for Partial Reconsideration and/or New Trial* filed by petitioner, respondent argues that petitioner was given ample opportunity to ventilate its case and present its evidence during the trial proper hence it is no longer entitled to a new trial. He avers that petitioner cannot attribute the lapses in presenting evidence to the ICPA because (petitioner) was in control of the flow of the proceedings during the entire trial in so far as substantiating its claim for refund was concerned. Neither can petitioner blame its counsel because respondent maintains that mistakes committed during the conduct of the proceedings due to negligence, incompetence and inexperience of counsel do not qualify as a ground for new trial. Negligence of counsel, after all, binds the client.

We find petitioner's *Motion for Partial Reconsideration* bereft of merit.

The Court in ascertaining the veracity of petitioner's claim for refund of alleged unutilized excess input VAT for taxable year 2014 analyzed the evidence (both documentary and testimonial) presented by both parties and assessed these in the light of the relevant laws, rules and regulations and applicable jurisprudence. In claims for refund of this nature, the Court not only takes a careful look at the legal basis of the claim but on its factual aspect as this will be determinative of whether the taxpayer supported the amount of its claim with substantial evidence. In its assessment, the Court in the assailed decision, partially granted the claim in the amount of Php 25,946,279.40 and disallowed a small portion based on the reasons clearly outlined and discussed therein and we quote below portions, to wit:

> "However, as stated earlier, petitioner was able to properly substantiate only the amount of Php8,675,805,090.45 out of its total declared zero-rated sales/receipts of Php8,800,661,932.71. Thus, the excess input VAT attributable to petitioner's valid zero-rated sales/receipts of Php8,675,805,090.45 amounts only to Php25,946,279.40 xxx"

To come now to the Court and request for a new trial to present additional evidence that may possibly result to the grant of the entire amount claimed is without legal basis as the petitioner was already given ample opportunity to present evidence to support its cause of action. It is well-settled that a Motion for New Trial may be granted only upon specific, well-defined grounds set forth in the Rules.[1] We quote Sections 1 and 2 of Rule 37 of the Revised Rules of Court, thus:

> Section 1. *Grounds of and period for filing a 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:
>
> (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.
>
> xxx xxx xxx
>
> Section 2. *Contents of motion for new trial or reconsideration and notice thereof.* - xxx xxx
>
> 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 witnesses by whom such evidence is expected to be given, or by duly

[1] Agulto vs. CA, et.al., G.R. No. L-52728, January 17, 1990.

> authenticated documents which are proposed to be introduced in evidence."

xxx xxx xxx

An examination of the instant motion reveals quite clearly that the same was neither based on fraud, accident, mistake or excusable negligence that would justify a new trial. Although an Affidavit of Merit accompanied the motion filed by petitioner, the reasons provided therein do not fall under any of the aforequoted grounds under Section 1 of Rule 37 of the Revised Rules of Court. The affiant in the Affidavit of Merit, Ms. Lennie A. Terre, sought to present additional evidence due to "mere oversight", as certain documents were "inadvertently not included in the supporting documents submitted by the ICPA" to the Court.[2]

This Court finds that this would constitute "forgotten evidence" which petitioner would like to present only after obtaining a partial grant of its claim for refund.

Forgotten evidence is not a valid ground for a new trial as held by the Supreme Court in the case of *Office of the Ombudsman represented by Hon. Simeon V. Marcelo vs. Carmencita D. Coronel*[3], and we quote:

> "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 for a new trial, in the guise of newly discovered evidence". (emphasis supplied)

Thus the motion for new trial embodied in petitioner's Motion for Partial Reconsideration must fail.

---

[2] Affidavit of Merit of Lennie Terre submitted as Annex "B" of the Motion for Partial Reconsideration filed by petitioner.

[3] G.R. No. 164460, June 27, 2006.

Respondent's Motion for Partial Reconsideration

In his Motion, respondent asserts that the Court erred in partially granting the claim for refund of input VAT filed by petitioner because Section 112 of the 1997 National Internal Revenue Code (1997 NIRC) clearly requires that the alleged excess or unutilized input VAT must be directly attributable to the zero-rated or effectively zero-rated sales and these must be creditable as defined under Section 110 of the same Code. Respondent reminds the Court that not all input taxes of a VAT-registered person whose sales are zero-rated or effectively zero-rated are refundable because the law only limits these to those which are "attributable" and "creditable". Respondent then argues that to be creditable, the input tax must come from purchases of goods that form part of the finished products of the taxpayer or it must be directly used in the chain of production. He further states that after determining which input taxes are creditable then the next step would be to determine which of these are attributable. He cites several cases where the Supreme Court strictly used the said parameters to determine the entitlement of a taxpayer to its claim for refund of alleged excessive and unutilized input VAT.

In its *Comment* to respondent's Partial for Motion for Reconsideration, petitioner belittles its contents and avers that the arguments embodied therein are mere rehashes of the statements already mentioned in his Answer to the Petition for Review and Memorandum during trial proper and which the Court already disposed of in the assailed Decision. Petitioner then ascribes little or no importance to the motion filed by respondent and asks the Court to give it little or scant consideration.

A perusal of the statements contained in respondent's *Motion for Partial Reconsideration* is akin to reading a discussion or a lecture on the requirements inherent in claiming a refund of excessive or unutilized input VAT under Section 112 (A) of the 1997 NIRC. Apart from stating that the Court erred in granting the claim for refund of petitioner, respondent neither specified the alleged errors in the assailed decision nor did it clarify (at the very least) his points of opposition to the Court's conclusion. A lecture is very different from a motion for reconsideration. The Supreme Court, in the case of *Coquilla vs.*

Commission on Elections,[4] specified the essence and contents of a motion for reconsideration and we quote:

> "Among the ends to which a motion for reconsideration is addressed, one is precisely to convince the court that its ruling is erroneous and improper, contrary to the law or evidence; **and in doing so, the movant has to dwell on the necessity upon the issues passed upon by the court."** (emphasis supplied)

The scant contents of respondent's *Motion for Partial Reconsideration* which did not provide the details of his plea for reconsideration nor pointed out the specific errors allegedly made by the Court, fails to pass the above test, hence it is considered *pro forma* and deserves little or no consideration by this Court.

WHEREFORE, finding no cogent reason to reverse the ruling in the assailed Decision, petitioner's *Motion for Partial Reconsideration with Manifestation and Comment to Respondent's Motion for Partial Reconsideration* posted on December 28, 2019 and respondent's *Motion for Partial Reconsideration (Re: Decision promulgated 6 December 2018)* filed on December 20, 2018 are **DENIED** for lack of merit.

SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

I CONCUR:

Juanito C. Castañeda, Jr.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

---

[4] G.R. No. 151914, July 31, 2002.