REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- *versus* -

MCKINSEY & CO. (PHILS.),
Respondent.

CTA EB NO. 2809
(CTA Case No. 10281)

Present:

Del Rosario, *P.J.*,
Ringpis-Liban,
Manahan,
Bacorro-Villena,
Modesto-San Pedro,
Reyes-Fajardo,
Cui-David,
Ferrer-Flores, and
Angeles, *JJ.*

Promulgated:

NOV 18 2024 3:32 pm

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RESOLUTION

RINGPIS-LIBAN, *J.*:

For resolution of the Court are the following:

1. Commissioner of Internal Revenue (CIR)'s *Motion for Reconsideration* filed via registered mail on June 13, 2024; and

2. Mckinsey & Co. (Phils.)("Mckinsey")'s *Motion with Leave of Court to Reopen Trial* filed via private courier on June 14, 2024.

On July 17, 2024, this Court issued a Minute Resolution requiring Mckinsey to comment on the CIR's *Motion for Reconsideration* within five (5) days from notice. In the same Minute Resolution this Court also required the CIR to comment on the Mckinsey's *Motion with Leave of Court to Reopen Trial* likewise within five (5) days from notice.

On July 24, 2024, this Court received via private courier Mckinsey's Comment/Opposition to Petitioner's *Motion for Reconsideration.*

The CIR, however, failed to file the required comment on Mckinsey's *Motion with Leave of Court to Reopen Trial*, as per the Records Verification Report dated August 22, 2024 submitted by this Court's Judicial Records Division.

The CIR seeks reconsideration of the Decision of this Court promulgated on May 28, 2024, (the "Assailed Decision") which denied the Petition for Review for lack of merit. In seeking reconsideration of the Assailed Decision, the CIR argues that: (1) Mckinsey's application for refund for taxable years 2017 and 2018 was filed out of time; (2) assuming that the claim was timely filed, Mckinsey is not entitled to a refund of its creditable withholding tax (CWT) for 2017 as the rules require that before a CWT refund claim may be given due course, it is necessary that the applicant shows that the income received was declared as part of its gross income.

With respect to the *Motion for Leave of Court to Reopen Trial*, Mckinsey implore this Court to reopen trial with respect to the disallowed excess and unutilized CWT for CY 2017 in the amount of ₱29,692,032.90 representing the difference between (1) the total excess and unutilized CWT claimed for CY 2017 amounting to ₱39,613,320.00 and (2) the refund granted in both the Division's Decision and the Assailed Decision amounting to ₱9,921,287.10; and with respect to the disallowed excess and unutilized CWT for CY 2018 in the amount of ₱6,707,748.00 representing the difference between (1) the total excess and unutilized CWT claimed for CY 2018 amounting to ₱62,813,748.00 and (2) the refund granted in both the Court in Division's Decision and the Assailed Decision amounting to ₱56,106,000.00. In support thereto, Mckinsey asserts that:

1. Its motion to reopen trial is timely filed and cited cases purportedly holding that a motion to reopen trial may be filed even after promulgation of but before finality of judgment and the only controlling guideline governing such motion is the paramount interest of justice and to prevent miscarriage of justice.

2. For good reasons and in the interest of justice, this Court may allow respondent to substitute its exhibit to correct its previously offered evidence.

3. Mistake prevented it from establishing the correct amount of its 2017 total revenues.

4. This Court may allow the submission or substitution of the correct 2017 GLTD in the exercise of liberality.

5. Motion to Reopen Trial is the proper recourse to prove Mckinsey's entitlement to refund.

After careful evaluation of the arguments raised by petitioner vis-à-vis the case records as well as the relevant statutory rules and jurisprudence, this Court resolves to deny both the *Motion for Reconsideration* filed by the CIR and the *Motion for Leave of Court to Reopen Trial* filed by Mckinsey for lack of merit.

Motion for Reconsideration

This Court stands by its ruling that both the administrative and judicial claims were timely filed. The Court *En Banc* also maintains that there is no compelling reason to modify much less reverse the Court in Division's Decision. To repeat, in the absence of proof of gross error, abuse or improvident exercise of authority, conclusions reached by this Court supported by substantial evidence shall not be disturbed on appeal.[1] Accordingly, the denial of the *Motion for Reconsideration* is in order.

Motion for Leave of Court to Reopen Trial

In *Republic of the Philippines v. Sandiganbayan, et. al.*,[2] the Supreme Court held that a party who has the burden of proof must introduce, at the first instance, all the evidence he relies upon and such **evidence may not be presented on a piecemeal basis.** This is to avoid injurious surprises to the other party and the consequent delay in the administration of justice. However, when the **attendant facts** warrant the introduction of further evidence that would qualify as **good reason** for reopening the case and the same would serve the interest of justice, the Court may allow the reception of additional evidence. Note that the Supreme Court, in holding that the Sandiganbayan gravely abused its discretion in refusing to reopen the case, based its ruling on the fact that "at the time the petitioner moved to re-open its case, the respondents had not yet even presented their evidence in chief." Accordingly, the Supreme Court held that the respondents would not have been prejudiced by allowing the introduction of additional

[1] *Fortune Tobacco Corporation v. Commissioner of Internal Revenue*, G.R. No. 192024, July 1, 2015; *Commissioner of Internal Revenue v. Philippine Daily Inquirer, Inc.*, G.R. No. 213943, March 22, 2017; *Commissioner of Internal Revenue v. T Shuttle Services, Inc.*, G.R. No. 240729, August 24, 2020.

[2] G.R. No. 152375. December 13, 2011.

evidence. In other words, the motion to reopen was filed *before judgment* was rendered by the trial court. This is precisely the reason why the Supreme Court had invoked Section 5, Rule 30 of the Rules of Court (Trial)[3] as the primary basis for allowing the reopening of the case. As the motion to reopen in the present case was filed *after judgment* was rendered, it is thus wise to consider the Supreme Court's pronouncement in *Alamayri v. Pabale, et. al*,[4] to wit:

> "**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 <u>exceptional circumstances</u> 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.** Alamayri failed to provide any explanation why she did not present her evidence earlier. Merely invoking that the ends of justice would have been best served if she was allowed to present additional evidence is not sufficient to justify deviation from the general rules of procedure. Obedience to the requirements of procedural rules is needed if the parties are to expect fair results therefrom, and utter disregard of the rules cannot justly be rationalized by harking on the policy of liberal construction. 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 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 to 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.** *(Emphasis and underscoring supplied; citations omitted)*

Guided by the foregoing considerations and after an examination of the attendant facts of the case, the Court *En Banc* finds no good reason to grant the

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[3] The relevant port of Section 5, Rule 30 of the Rules of Court, as cited in the case, provides:

> Sec. 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:
>
> xxx xxx xxx
>
> (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**[.]

[4] G.R. No. 151243. April 30, 2008.

relief prayed for. The factual grounds cited by Mckinsey do not constitute *exceptional circumstance* to warrant the relaxation of the procedural rules. Far from serving the ends of justice, allowing the reopening of the case for presentation of additional evidence at this stage would only delay the final resolution of the present case. This is especially true when there is no showing that the admission of additional evidence which Mckinsey intends to present would probably alter the outcome of this case.

WHEREFORE, the *Motion for Reconsideration* filed on June 13, 2024 by the Commissioner of Internal Revenue and the *Motion for Leave of Court to Reopen Trial* filed on June 14, 2024 by Mckinsey & Co. (Phils.) are both **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
Associate Justice