REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

GRID SOLUTIONS (U.S.) LLC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. **10146**

Members:

BACORRO-VILLENA, *Acting Chairperson,* *and*
CUI-DAVID, *JJ.*

Promulgated:
OCT 09 2023 2:02 pm

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RESOLUTION

BACORRO-VILLENA, J.:

For the Court's resolution is the "Motion for Reconsideration"[1] (**MR**) filed by respondent Commissioner of Internal Revenue (**respondent/CIR**) on 20 March 2023 *via* registered mail, with "Comment/Opposition (to Respondent's Motion for Reconsideration dated 17 March 2023)"[2] (**Comment/Opposition**) filed by petitioner Grid Solutions (U.S.) LLC. (**petitioner/Grid**) on 27 April 2023 pursuant to Section 1[3], Rule 15 of the Revised Rules of the Court of Tax Appeals (**RRCTA**).

The MR seeks to set aside the Decision[4] promulgated on 28 February 2023 (**assailed Decision**). The dispositive portion reads:

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1 Division Docket, pp. 550-554.
2 Id., pp. 561-566.
3 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 by filing a motion for reconsideration or new trial within fifteen days from the date of receipt of notice of the decision, resolution or order of the Court in question.
4 Division Docket, pp. 523-549.

> ...
>
> **WHEREFORE**, the foregoing premises considered, the instant Petition for Review filed on 31 July 2019 by petitioner Grid Solutions (U.S.) LLC. is hereby **GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is **ORDERED TO REFUND** to petitioner the total amount of **₱8,683,100.00**, representing petitioner's erroneously paid capital gain tax on its sale of Aclara PH shares to Aclara US, by virtue of its exemption pursuant to the RP-US Tax Treaty.
>
> **SO ORDERED.**
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> ...

In his or her MR, respondent avers that this Court erred in ruling that petitioner substantially complied with the requirements of Verification and Certification against Forum Shopping instead of dismissing the petition. In stating so, respondent claims that petitioner failed to attach the required documents in the Petition for Review. Also, respondent insists that the Special Power of Attorney (**SPA**) signed by Thomas Marby in favor of Cabrera and Company (petitioner's counsel), absent a Board Resolution or Secretary's Certificate, could not suffice as proof of authority for the law firm to institute and file this case.

As for the substantive aspect, respondent alleges that the Court has no basis to grant the refund since petitioner's Audited Financial Statements (**AFS**) are self-serving and reliance thereon is countenanced. Moreover, respondent asserts that it is Aclara Meters, LLC., and not petitioner, who is the proper claimant of the refund since the former is the indicated taxpayer in the deposit slips.

In its Comment, petitioner counters that it duly filed the apostilled documents of Verification and Certification of Non-Forum Shopping, together with the Director's Certificate, as compliance with its undertaking in the petition that it will submit the said documents once they became available. Thus, petitioner reiterates that it substantially complied with the above-mentioned requirements.

Moreover, petitioner argues that despite having the opportunity to do so, respondent never questioned nor presented any evidence to discredit the AFS in any stage of the proceedings. As for the indicated taxpayer (which is Aclara Meters, LLC.), petitioner maintains it is a simple mistake which the Bureau of Internal Revenue's (**BIR's**)

Certification had clarified. In the Certification, the BIR reflected petitioner as the taxpayer of the erroneously paid capital gains tax (CGT).

We resolve.

After considering the parties' arguments, We do not find any new and compelling evidence that would warrant a deviation from Our earlier ruling. Nonetheless, to further clarify, We shall discuss and reiterate the reasons for the denial of respondent's MR as essayed below.

PETITIONER SUBSTANTIALLY COMPLIED WITH THE REQUIREMENTS OF VERIFICATION AND CERTIFICATION AGAINST FORUM SHOPPING.

Contrary to respondent's claim that there is no Verification and Certification against Forum Shopping in the Petition for Review, We find otherwise.

As held in the assailed Decision, petitioner submitted the apostilled documents (including the Director's Certificate) through a Manifestation with Submission[5] filed on 08 October 2019. In treating petitioner's subsequent submission of the apostilled documents as substantial compliance with the requirements of Verification and Certification against Forum Shopping, We cited the case of *SM Land, Inc. (Formerly Shoemart, Inc.), et al. v. City of Manila, et al.*[6] in the assailed Decision, to wit:

> ...
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> Further, in the case of *SM Land, Inc[.] (Formerly Shoemart, Inc.), et al. v. City of Manila, et al.*, the Supreme Court held that substantial justice and the apparent merits of the substantive aspect of the case are deemed special circumstances or compelling reasons to relax the said rule, to wit:
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> ...
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> > Time and again, this Court has held that rules of procedure are established to secure substantial justice. Being instruments for the speedy and efficient administration of

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5 Id., pp. 138-148.
6 G.R. No. 197151, 22 October 2012.

> justice, they must be used to achieve such end, not to derail it. In particular, when a strict and literal application of the rules on non-forum shopping and verification will result in a patent denial of substantial justice, these may be liberally construed.
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> In the instant case, petitioner Watsons' procedural lapse was its belated submission of a Secretary's Certificate authorizing Atty. Cruz as its representative. On the other hand, **petitioner SM Land, Inc.'s infraction was not only its late submission of its Secretary's Certificate but also its failure to timely submit its verification and certification of non-forum shopping.**
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> In a number of cases, **this Court has excused the belated filing of the required verification and certification of non-forum shopping, citing that special circumstances or compelling reasons make the strict application of the rule clearly unjustified. This Court ruled that substantial justice and the apparent merits of the substantive aspect of the case are deemed special circumstances or compelling reasons to relax the said rule.**
>
> **In fact, this Court has held that even if there was complete non-compliance with the rule on certification against forum shopping, the Court may still proceed to decide the case on the merits, pursuant to its inherent power to suspend its own rules on grounds, as stated above, of substantial justice and apparent merit of the case.**
>
> ...

With the foregoing, the Court finds that the subsequent or belated filing of petitioner's Verification and Certification of Non-Forum Shopping should not warrant the dismissal of its petition as respondent so insists.[7]

...

RESPONDENT FAILED TO PRESENT ANY CONTRARY EVIDENCE TO OVERTURN THE AUDITED FINANCIAL STATEMENTS (AFS).

We are also not persuaded with respondent's argument that the AFS are self-serving documents. If respondent had so strongly believe them to be so, he or she should have presented countervailing evidence to dispute them or negate their probative value. Unfortunately though,

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7 Citation omitted and emphasis supplied in the original text.

the case records bear that respondent did not even tackle the credibility of the said AFS during the trial. Neither did his or her memorandum[8] controvert the offered evidence. Basic is the rule that mere allegation is not evidence and is not equivalent to proof.[9]

PETITONER IS THE PROPER CLAIMANT OF THE REFUND.

We likewise find no merit in respondent's insistence that it is Aclara Meters, LLC., not respondent, who is the proper party to file the claim for tax refund (since it is the indicated taxpayer in the PNB-BTR BIR Payment Slip). As discussed in the assailed Decision, this seeming minor error could not invalidate petitioner's claim for refund, *viz*:

> ...
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> Further, the Court finds no merit in respondent's argument that Aclara [Meters, LLC.] is indicated as the taxpayer in the deposit slip and not petitioner who is claiming the refund.
>
> The records of the case reveal that the BIR issued documents to prove that it is petitioner who paid the CGT, specifically the Certification dated 04 November 2019 and CAR with No. eCP2013001492 59/eCAR No: C-2018-039-037821-M. The fact that Aclara [Meters, LLC.] is the taxpayer in the deposit slip appears to be a minor error that could not wholly invalidate petitioner's claim for refund.[10]
>
> ...

In fine, respondent failed to present sufficient basis to modify much more, reverse the assailed Decision.

WHEREFORE, with the foregoing, the "Motion for Reconsideration" filed by respondent Commissioner of Internal Revenue on 20 March 2023 is **DENIED** for lack of merit.

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8 See Records Verification dated 04 March 2022.
9 *Pastor Abaracoso Macaventa v. Atty. Anthony C. Nuyda*, A.C. No. 11087, 12 October 2020.
10 Supra at note 4, p. 547; Citations omitted.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

LANEE S. CUI-DAVID
Associate Justice