REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

VILLAGE-GREEN HOG FARM, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8375

Members:
CASTAÑEDA, JR., *Chairperson*
CASANOVA, and
COTANGCO-MANALASTAS, *JJ.*

Promulgated:
NOV 14 2014
1:08 p.m.

x- x

RESOLUTION

COTANGCO-MANALASTAS, J.:

The Court is confronted with a *Motion for Partial Reconsideration*[1] filed by petitioner, by counsel, on August 19, 2014. Petitioner prays of this Court to reverse and set aside the *Decision*[2] of this Court promulgated on August 1, 2014, the dispositive portion of which reads:

> "**WHEREFORE,** in view of the foregoing, the assessments issued by respondent against petitioner covering deficiency income tax and EWT for taxable year 2007 is hereby **AFFIRMED** with some modifications. Accordingly, petitioner **ORDERED TO PAY** respondent the amount of **P5,982,990.40** representing deficiency income tax and EWT for taxable year 2007, inclusive of the 25% surcharge imposed under Section 248(3) of the NIRC of 1997, computed as follows:

	Basic Tax	25% Surcharge	Total
Deficiency Income Tax	₱ 4,763,258.28	₱ 1,190,814.57	₱ 5,954,072.85
Deficiency EWT	23,134.04	5,783.51	28,917.55
Total	**₱4,786,392.32**	**₱1,196,598.08**	**₱5,982,990.40**

[1] *Rollo*, pp. 1109-1126.
[2] *Rollo*, pp. 913-962.

In addition, petitioner is **ORDERED TO PAY** the following:

a) Deficiency interest at the rate of 20% per annum on the basic deficiency income tax of ₱4,763,258.28 computed from April 15, 2008 and on the basic deficiency EWT of ₱23,134.04 computed from January 15, 2008 until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended;

b) Delinquency interest at the rate of 20% per annum on the total amount of ₱5,982,990.40 and on the 20% deficiency interest which have accrued as aforestated in (a), computed from June 21, 2010 until full payment thereof pursuant to Section 249 (C) of the NIRC of 1997, as amended."

In its *Motion* petitioner interposes the following grounds for reconsideration: [1] that there was no utter refusal on the part of petitioner to submit its records, thus, the use of the best evidence obtainable rule is inappropriate; and [2] that in the event petitioner is found liable for any deficiency tax, it should not be held liable for deficiency and delinquency interest; and [3] petitioner begs the indulgence of this Court to submit additional and adequate proof of legitimate farm inputs, as well as proof on actual remittances to SSS, PHILHEALTH, and PAG-IBIG.

Petitioner explains that: while there may be hesitation and wariness in submitting its records, there was no utter refusal on the part of petitioner to present its records; petitoner's wariness stemmed from an unfortunate experience in the hands of respondent wherein petitioner's records, pertaining to another taxable year, submitted to respondent were lost; and the acts of respondent's agents effectively made it impossible to comply with the *subpoena duces tecum*.

Included in the subject *Motion* is a request for leave to present additional documentary evidence on its direct farm inputs and payments to government agencies, *i.e., checks paid for direct farm inputs from suppliers (Annexes "A" to "A-67"); and payment receipts showing payment/remittance of employee's SSS, PAG-IBIG, and PHILHEALTH contributions (Annexes "B", "B-1" to "B-11", "C", "C-1" to "C-10", and "D", "D-1" to "D-3").*

On September 2, 2014, the Court ordered respondent to comment on petitioner's *Motion for Partial Reconsideration* within ten (10) days from notice.

Respondent timely filed her *Comment/Opposition to Petitioner's Motion for Partial Reconsideration (of the Decision dated August 1, 2014)* on September 18, 2014. Respondent counters that petitioner's hesitation and wariness because of the loss of the 2006 records does not justify its non-submission of its 2007 books of accounts as required by the legal process of *subpoena duces tecum* since the facts and circumstances in the 2006 tax investigation are not the same as in the 2007 tax investigation. Further, respondent maintains that the deficiency tax assessment based on the Best Evidence Obtainable is in compliance with Section 6(B) of the Tax Code as implemented by Revenue Memorandum Circular No. 23-00. Also, under Section 228 of the Tax Code, petitioner is required to file its protest within thirty (30) days from receipt of the formal offer of demand and thereafter submit documents in support of its protest within sixty (60) days; thus, petitioner is not allowed to compel that its books be inspected by the revenue officer in its premises.

Anent petitioner's request for leave to present additional documentary evidence, respondent argues that submission of documents in support of a motion for reconsideration after a decision of this Court has been issued renders such submission "stale" because petitioner slept on its rights for an unreasonable length of time; and no credence could be afforded petitioner's submission of checks since these only prove the fact of payment and do not necessarily prove that the payments were for legitimate business expenses.

The Court finds no compelling reason to deviate from the rulings in the challenged *Decision*[3] of this Court.

The Court maintains that respondent's resort to the Best Evidence Obtainable in assessing petitioner for deficiency income tax by disallowing 50% of petitioner's expenses is justified and in full accord with Section 6(B) of the NIRC of 1997, as amended, as implemented by RMC 23-2000, specifically Sections 2.3 and 2.4(c) thereof. The facts of the case undeniably disclose that during the administrative proceedings there was failure on the part of the petitioner to

[3] *Supra*, Note 2.

submit to respondent adequate records that could substantiate the amount of the expenses for taxable year 2007. To reiterate, the series of events and chain of communications by and between the parties reveal that the documents/records (*expense vouchers, purchase invoices and other adequate records*), that could substantiate the amount of the expenses that have been incurred for taxable year 2007 and the direct connection of the said expenses to petitioner's trade or business, **were not included among the submitted documents** during the entire administrative proceedings; either before or after the issuance of the PAN, FAN, and Final Decision on petitioner's protest.

As mentioned earlier in the discussion, the Court has observed that the instant *Motion for Partial Reconsideration* does not merely seek for the review/reconsideration of the dispositions in the assailed *Decision*[4] but also includes a request for leave to present additional documentary evidence; thus, considering that a decision had already been promulgated in this case, the instant *Motion* is essentially also a **motion for new trial**.

Section 1, Rule 15 of the Revised Rules of the Court of Tax Appeals (RRCTA) provides that '[a]ny 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.'

Under Section 5 of the above-cited rule, '[a] motion for new trial may be based on one or more of the following causes materially affecting the substantial rights of the movant:

> (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
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> (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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[4] *Supra*

> A motion for new trial shall include all grounds then available and those not included shall be deemed waived.'

Invoking the higher interest of justice, petitioner prays that the submission of adequate documentary proof on its direct farm inputs and payments to government agencies be allowed in order to further substantiate and prove that its claimed deductions are indeed business expenses (cost of sales, salaries and wages).

After a careful consideration of the contentions of both parties, nature of the claim of petitioner, the documents sought to be presented, and the surrounding circumstances in this case, the Court is not persuaded to indulge petitioner's request to allow the presentation of additional evidence.

In this instance, not a single explanation was offered by petitioner as to why these documents were not presented and offered during trial. There was no allegation/explanation that these documents were not available during trial, and petitioner neither claims the occurrence of fraud, mistake/inadvertence to its omission to present the documents subject herein, nor alleges the commission of excusable negligence which ordinary prudence could not have guarded against.

Further, the proffered documents consisting of mere photocopies of checks and receipts, cannot be categorized as in the nature of newly discovered evidence. The concurrence of the following requisites must be established in order that a newly discovered evidence may be appreciated as a ground for granting a motion for new trial: (1) the evidence was discovered after trial; (2) such evidence could not have been discovered and produced at the trial even with the exercise of reasonable diligence; (3) it is material, not merely cumulative, corroborative, or impeaching; and (4) the evidence is of such weight that it would probably change the judgment if admitted.[5]

'It should be emphasized that the applicant for new trial has the burden of showing that the new evidence he seeks to present has complied with the requisites to justify the holding of a new trial. The threshold question in resolving a motion for new trial based on newly discovered evidence is whether the proffered evidence is in fact a newly discovered evidence which

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[5] *Baylosis, Sr., v. People,* G.R. No. 152119, August 14, 2007 citing *Custodio v. Sandiganbayan,* G.R. Nos. 96027-28, March 8, 2005, 453 SCRA 24, 33.

could not have been discovered by due diligence. The question of whether evidence is newly discovered has two aspects: a temporal one, *i.e.*, when was the evidence discovered, and a predictive one, *i.e.*, when should or could it have been discovered.'[6]

Moreover, pursuant to Section 6, Rule 15 of the RRCTA, a motion for new trial based on newly discovered evidence requires that the same 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. There are no affidavits of witnesses attached to the *Motion for Partial Reconsideration*[7], and the attached proffered documents are not authenticated copies but mere photocopies.

On petitioner's call for liberality in the higher interest of justice, the reiteration of the following precept by the Supreme Court in *PLDT vs. Commissioner of Internal Revenue*[8] is instructive:

> "Perhaps realizing that under the Rules the said report cannot be admitted as newly discovered evidence, the petitioner invokes a liberal application of the Rules. He submits that Section 8 of the Rules of the Court of Tax Appeals declaring that the latter shall not be governed strictly by technical rules of evidence mandates a relaxation of the requirements of new trial on the basis of newly discovered evidence. This is a dangerous proposition and one which we refuse to countenance. We cannot agree more with the Court of Appeals when it stated thus,
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> > "To accept the contrary view of the petitioner would give rise to a dangerous precedent in that there would be no end to a hearing before respondent court because, every time a party is aggrieved by its decision, he can have it set aside by asking to be allowed to present additional evidence without having to comply with the requirements of a motion for new trial based on newly discovered evidence. Rule 13, Section 5 of the Rules of the Court of Tax Appeals should not be ignored at will and at random to the prejudice of the orderly presentation of issues and their resolution. To do so would affect, to

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[6] *Cabarlo vs. People*, G.R. No. 172274, November 16, 2006.
[7] *Supra*, Note 1.
[8] G.R. No. 157264, January 31, 2008.

a considerable extent, the stability of judicial decisions."

We are left with no recourse but to conclude that this is a simple case of negligence on the part of the petitioner. For this act of negligence, the petitioner cannot be allowed to seek refuge in a liberal application of the Rules. For it should not be forgotten that the first and fundamental concern of the rules of procedure is to secure a just determination of every action. In the case at bench, a liberal application of the rules of procedure to suit the petitioner's purpose would clearly pave the way for injustice as it would be rewarding an act of negligence with undeserved tolerance."

WHEREFORE, premises considered, petitioner's *Motion for Partial Reconsideration* is hereby **DENIED** for lack of merit.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

WE CONCUR:

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

CAESAR A. CASANOVA
Associate Justice