REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

MARILY DEVELOPMENT CORPORATION,	**CTA CASE NO. 9756**
Petitioner,	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson, and* **BACORRO-VILLENA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE,	Promulgated:
Respondent.	FEB 11 2021 11:20 am

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RESOLUTION

CASTAÑEDA, JR., J.:

Submitted before this Court is respondent's **Motion for Reconsideration and/or New Trial**, filed through registered mail on October 1, 2020 and received by the Court on October 12, 2020, without petitioner's comment as per Records Verification dated November 10, 2020.

On September 10, 2020, the Court promulgated a Decision, canceling respondent's deficiency tax assessments against petitioner for lack of a valid Letter of Authority (LOA) and being issued beyond the period prescribed by law, the dispositive portion of which reads as follows:

> "**WHEREFORE**, the instant *Petition for Review* is **GRANTED**. Accordingly, the assessment issued by respondent against petitioner for its alleged deficiency income tax, VAT, EWT and WTC for calendar year 2006 in the aggregate amount of ₱8,104,781.30 is **CANCELLED and SET ASIDE.**

SO ORDERED."

Meanwhile, on November 27, 2020, petitioner filed a **Comment (To Respondent's Motion for Reconsideration and/or New Trial)**. However, considering that petitioner's comment was belatedly filed and, also, no explanation for the said late filing was given, this Court deems petitioner's filing of comment as **MOOT**.

Now, in his Motion, respondent primarily claims that he relied in good faith that the issuance of the Letter of Authority (LOA) is not an issue in the present case; hence, he dispensed with its presentation. Respondent continues that had it been asked or raised by petitioner during trial or in any of its pleadings, he would definitely have presented the said LOA for stipulation or as his evidence. Thus, respondent asserts that the foregoing circumstances warrants the re-opening or new trial of the case in order to ascertain the truth that respondent issued an LOA on July 5, 2007 and was received by petitioner on July 12, 2007.

More so, respondent also argues that the running of the three-year statute of limitation provided under Section 203 of the National Internal Revenue Code (NIRC), as amended, is not applicable in the present case. He explains that since petitioner filed a false income tax return and failed to file a value-added tax (VAT) return in the present case, the ten (10) year prescriptive period pursuant to Section 222(a) of the same tax code shall therefore apply.

This Court finds respondent's Motion for Reconsideration and/or New Trial bereft of merit.

Verily, court litigation is a search for the truth. An adversarial system of litigating cases is in place as it allows for opposing parties to present their claims and adduce evidence. There is a recognized utility to this system as an adversarial system sharpens the presentation of issues before the courts. This, in turn, allows courts to ferret out the truth.[1] However, just like in the case of the right to cross-examine an opposing witness, the right to present evidence may also be waived expressly or impliedly. A party, therefore, may opt to formally offer his evidence if he believes that it will advance his cause or not to do so at all. In the event he chooses to do the

[1] *Dy Teban Trading, Inc. v. Peter C. Dy, et al.*, G.R. No. 185647, July 26, 2017.

latter, the trial court is not authorized by the Rules to consider the same.[2]

In the present case, it must be recalled that it was respondent himself who manifested that he will no longer be presenting any evidence/witness in the present case.[3] This, notwithstanding the fact, that cases filed before the Court are litigated *de novo*, wherein party-litigants must prove every minute aspect of their case.[4] Consequently, by manifesting so, respondent effectively waived his right to present evidence considering that the standard of waiver requires that it "not only must be voluntary, but must be knowing, intelligent, and done with sufficient awareness of the relevant circumstances and likely consequences."[5]

Furthermore, the LOA sought to be presented has evidently not been identified by a witness or has been incorporated in the records of the case. So even if the Court relaxed the rules of procedure, the same cannot still be considered by the Court, as explained by the Supreme Court in the case of *Elvira Mato Vda. De Oñate, et al. v. The Court of Appeals et al.*,[6] to wit:

> "x x x. A party, therefore, may opt to formally offer his evidence if he believes that it will advance his cause or not to do so at all. In the event he chooses to do the latter, the trial court is not authorized by the Rules to consider the same.
>
> However, in *People v. Napat-a* citing *People v. Mate*, we relaxed the foregoing rule and allowed evidence not formally offered to be admitted and considered by the trial court **provided the following requirements are present, viz.: first, the same must have been duly identified by testimony duly recorded and, second, the same must have been incorporated in the records of the case**." *(Emphasis supplied)* Ju

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[2] *Elvira Mato Vda. De Oñate, et al. v. The Court of Appeals et al.*, G.R. No. 116149 November 23, 1995.
[3] *Manifestation* filed on July 25, 2019, Docket, pp. 164 to 165.
[4] *Edison (Bataan) Cogeneration Corporation v. Commissioner of Internal Revenue*, G.R. Nos. 201665 & 201668, August 30, 2017.
[5] *Bayani M. Alonte v. Hon. Maximo A. Savellano Jr., et al.*, G.R. Nos. 131652 & 131728, March 9, 1998.
[6] G.R. No. 116149 November 23, 1995

As to respondent's alternative prayer to reopen the proceedings, the Court finds no compelling or persuasive reason to grant the same.

In *Republic of the Philippines v. Sandiganbayan (Fourth Division), et al.,*[7] the Supreme Court explained the nature of a motion to reopen a case to introduce further evidence as follows:

> "The basis for a motion to reopen a case to introduce further evidence is Section 5, Rule 30 of the Rules of Court, which reads:
>
> > *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:
> >
> > x x x
> >
> > (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**."

Again, in the present case, the LOA sought to be presented is neither newly discovered evidence nor omitted due to fraud, accident, mistake, or excusable negligence. As it is, the Court finds that the LOA proposed to be presented on new trial is merely "forgotten evidence," as such, the belated uncovering of which would not have justified a reconsideration of the case.

In the case of *Office of the Ombudsman, et al. vs. Carmencita D. Coronel,*[8] the Supreme Court held that the additional evidence offered to be presented amount to no more than "forgotten evidence", the belated uncovering of which would not have justified a reconsideration of the case, to wit:

[7] G.R. No. 152375, December 13, 2011.
[8] G.R. No. 164460, June 27, 2006.

> "x x x. 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."

Although Section 8 of RA No. 1125, as amended, creating the Court of Tax Appeals, expressly provides that proceedings before this Court shall not be governed strictly by technical rules of evidence and there are instances where the Court allows the reopening of trial even though judgment has already been rendered, the Court finds that respondent has not demonstrated any convincing reason for the Court to apply the technical rules liberally. Simply stated, respondent failed to demonstrate any cogent reason for the consideration of the subject LOA in this case.

With regard to the issue regarding the applicability of the ten (10)-year prescriptive period under Section 222 of the NIRC of 1997 in the present case, the same was already settled by the Court in the assailed Decision. Nonetheless, the Court reiterates that respondent failed to present any evidence of fraud on the part of petitioner to warrant the application of Section 222(a)[9] of the NIRC of 1997, as amended. Consequently, the subject assessments are deemed to have already prescribed.

Accordingly, in view of the foregoing disquisitions, this Court finds no cogent reason to reverse or modify the conclusion reached in the Decision assailed by respondent. *ye*

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[9] "SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* -

(a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission: Provided, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof."

WHEREFORE, premises considered, respondent's Motion for Reconsideration and/or New Trial is **DENIED** for lack of merit.

SO ORDERED.

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

I Concur:

JEAN MARIE A. BACÒRRO-VILLENA
Associate Justice