**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

## SECOND DIVISION

**CORAL BAY NICKEL CORPORATION,**
Petitioner,

- versus -

**COMMISSIONER OF INTERNAL REVENUE,**
Respondent.

**CTA CASE NO. 8641**

Members:

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

Promulgated:

JAN 0 4 2016
8:40 a.m.

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# RESOLUTION

**CASTAÑEDA, JR., *J.*:**

For resolution of this Court are the following:

1. Petitioner's **Motion for Reconsideration** filed on September 10, 2015, with respondent's **Comment/Opposition (To Respondent's Motion for Reconsideration Re: Decision dated August 25, 2015)** filed on September 28, 2015;

2. Respondent's **Motion for Partial Reconsideration (Re: Decision Promulgated on 25 August 2015)** filed on September 10, 2015, with Petitioner's **Comment/Opposition (To Respondent's Motion for Reconsideration Re: Decision dated August 25, 2015) filed on September 28, 2015**; and

3. Petitioner's **Supplemental Motion for Reconsideration** filed on October 9, 2015, with respondent's **Opposition and/or Comment (Re: Supplemental Motion for Reconsideration)** filed through registered mail on October 30, 2015 and received by this Court on November 4, 2015.

For easy reference, the dispositive portion of the assailed Decision[1] subject of the foregoing motions reads as follows:

> "**WHEREFORE**, in view thereof, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, let a tax refund be issued in favor of petitioner Coral Bay Nickel Corporation in the reduced amount of P23,298,024.25, representing unutilized input taxes attributable to zero-rated sale of goods for the four taxable quarters of year 2011."

**Respondent's Motion for Partial Reconsideration**

The Court shall first resolve respondent's motion for partial reconsideration.

Respondent contends that petitioner failed to substantiate its claim for failure to submit complete supporting documents. On the other hand, petitioner avers that it submitted sufficient and complete documents to support its claim.

Time and again, this Court has held that non-submission of complete documents in the administrative level is not fatal to a taxpayer's claim for refund. Thus, in the case of *Commissioner of Internal Revenue v. Philex Mining Corporation*, [2] the Court *En Banc* held that:

> "xxx this Court has consistently upheld the longstanding rule that in claims for VAT refund, the alleged non-submission of complete supporting documents in the administrative level is not fatal to petitioner's judicial claim. Once the claim for refund has been elevated to the Court, the admissibility, materiality,

[1] Decision, Docket, Vol. II, pp. 689-708.
[2] CTA EB No. 1138, July 29, 2015, penned by Associate Justice Amelia R. Cotangco-Manalastas.

> relevance, probative value and weight of evidence presented therein become subject to the Rules of Court. The question of whether or not the evidence submitted by a party is sufficient to warrant the granting of a claim for refund lies within the sound discretion and judgment of the Court."[3]

Considering the foregoing, this Court finds respondent's arguments untenable.

**Procedural Rules governing petitioner's supplemental motion for reconsideration**

The Court shall proceed to examine the procedural aspect surrounding the filing of petitioner's Supplemental Motion for Reconsideration.

Prefatorily, respondent asserts that the subject supplemental motion was filed beyond the reglementary period. Hence, she prays that all the arguments raised therein be considered as waived.

However, it bears stressing that petitioner's motion for reconsideration was filed within the permissible period[4] to file the same, while the Rules are silent as to the period for filing supplemental pleadings. Considering that the main or principal motion for reconsideration was filed within the reglementary period, the Court finds respondent's argument unmeritorious.

The rule governing supplemental pleadings is provided for under Section 6, Rule 10 of the Revised Rules of Court, *viz:*

> "**SEC. 6**. *Supplemental pleadings.* – **Upon motion** of a party the court may, upon reasonable notice and upon such terms as are just, permit him to serve a supplemental pleading setting forth transactions,

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[3] Id., citing *Commissioner of Internal Revenue v. CE Luzon Geothermal Power Company, Inc.,* CTA EB Case No. 474, September 1, 2009; *Commissioner of Internal Revenue v. ToledoPower Company,* CTA EB Case No. 589, September 15, 2010; *Commissioner of InternalRevenue v. Philippine Airlines, Inc.,* CTA EB Case No. 775, November 13, 2012.

[4] 2005 Revised Rules of the CTA, as amended, RULE 15, SECTION 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.

occurrences or events **which have happened since the date of the pleading sought to be supplemented**. The adverse party may plead thereto within ten (10) days from notice of the order admitting the supplemental pleading."*(Emphasis supplied)*

In the case of *Spouses Lambino v. Hon. Presiding Judge,*[5] the Supreme Court explained the nature of a supplemental pleading which, in that case, is a supplemental complaint, in this wise:

"The rule is a useful device which enables the court to award complete relief in one action and to avoid the cost delay and waste of separate action. Thus, a supplemental pleading is meant to supply deficiencies in aid of the original pleading and not to dispense with or substitute the latter.

A supplemental complaint must be consistent with, and in aid of, the cause of action set forth in the original complaint. A new and independent cause of action cannot be set up by such complaint. The supplemental complaint must be based on matters arising subsequent to the original complaint related to the claim or defense presented therein, and founded on the same cause of action. However, although the facts occur before the commencement of the suit if a party does not learn of their existence until after he has filed his pleading, he may file a supplemental pleading.

As a general rule, leave will be granted to file a supplemental complaint which alleges any material fact which happened or came within plaintiffs knowledge since the original complaint was filed, such being the office of a supplemental complaint. The purpose of the rule is that the entire controversy might be settled in one action; to avoid unnecessary litigation; prevent delay, unnecessary repetition of effort; unwarranted expense of litigants; to broaden the scope of the issues in an action owing to the light thrown on it by facts, events and occurrences which have accrued after the filing of the original pleading; to bring into record the facts enlarging or charging the kind of relief to which plaintiff is entitled. It is the policy of the

[5] G.R. No. 169551, January 24, 2007, 512 SCRA 539-540.

law to grant relief as far as possible for wrongs complained of growing out of the same transaction and thus put an end to litigation.

The admission or non-admission of a supplemental pleading is not a matter of right but is discretionary on the court. Among the factors that the court will consider are: **(1) resulting prejudice to the parties; and (2) whether the movant would be prejudiced if the supplemental pleading were to be denied**. What constitutes prejudice to the opposing party depends upon the particular circumstance of each case. An opposing party who has had notice of the general nature of the claim or matter asserted in the supplemental pleading from the beginning of the action will not be prejudiced by the granting of leave to file a supplemental pleading. A motion for leave to file a supplemental pleading may be denied if he is guilty of undue delay or laches which causes substantial prejudice to the opposing party."[6] *(Emphasis supplied)*

Based from the foregoing, a supplemental pleading may be filed: (1) upon motion; and (2) must set forth transactions, occurrences or events which have happened since the date of the pleading sought to be supplemented. In *Spouses Lambino case*, the Supreme Court explained that although the facts occur before the commencement of the suit, if a party does not learn of their existence until after he has filed his pleading, he may file a supplemental pleading.

Moreover, the Supreme Court explained that the admission or non-admission of a supplemental pleading is discretionary upon the Court. Thus, it is incumbent upon the Court to determine: (1) if prejudice will result to either or both parties; and (2) if the movant would be prejudiced should the supplemental pleading be denied.

With respect to the first requisite, it appears that petitioner's Supplemental Motion for Reconsideration is suffering from a procedural defect, *i.e.*, it was filed without motion for leave to file the

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[6] Id., citing *New Amsterdam Cas. v. Waller,* 323 F.2d 20 (1963); *Shoemart, Inc. v. Court of Appeals,* G.R. No. 86956, October 1, 1990, 190 SCRA 189, 196, cited in *Asset Privatization Trust v. Court of Appeals,* 381 Phil. 530, 545 (2000); *Pasay City Government v. CFI of Manila, Branch X,* 217 Phil. 153, 165 (1984); 71 C.J.S. Pleading 327, p. 724; *Bush v. Pioner Mining Co. Aloha,* 179 F. 78 (1910); *Rio Grande Dam & Irrigation Co. v. United States,* 54 L.ed. 190 (1909); *British Traders Insurance Co., Ltd. v. Commissioner of Internal Revenue,* 121 Phil. 696, 705 (1965); and 61 Am.Jur. Pleading, 20, pp. 625-626.

same. Nevertheless, well recognized is the principle that "technical rules of procedure are not ends in themselves but are primarily designed to aid in the administration of justice. And in cases before tax courts, Rules of Court applies only by analogy or in a suppletory character and whenever practicable and convenient shall be liberally construed in order to promote its objective of securing a just, speedy and inexpensive disposition of every action and proceeding."[7] Pursuant thereto, the Court rules that the requisite motion for leave to file the subject supplemental motion for reconsideration may be dispensed with.

With respect to the second requisite, a reading of the supplemental motion shows that petitioner failed to explain or set forth the circumstances why it belatedly presented before the Court the attached documents, i.e., certification and invoices, which is the *crux* of petitioner's supplemental motion for reconsideration. Thus, there is a need to determine the true nature of the subject motion to ascertain whether petitioner did not learn of its existence at the time it filed its motion for reconsideration, and if the same would prejudice either or both parties.

**Petitioner's motion for reconsideration and supplemental motion for reconsideration are partially in the nature of a motion for new trial**

A close examination of the subject motion and supplemental motion reveal that, except for the issues involving Exhibits "P-116.639", "P-116.672 to 677" and "P-116.1279", "P-116.522 to 525", "P-116-818 to 819" and "P-116.702" and "P-116.936a to P-1086b", petitioner partially seeks to present pieces of evidence, *i.e.*, involving the amortization of petitioner's capital goods, which were not presented during trial.

Sections 1 and 2, Rule 37 of the Revised Rules of Court respectively provide:

> "**SEC. 1.** *Grounds of and period for filing motion for new trial or reconsideration.* — Within the period for

[7] *Philippine Phosphate Fertilizer Corporation v. Commissioner of Internal Revenue*, G.R. No. 141973, June 28, 2005, 416 SCRA 389.

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.

Within the same period, the aggrieved party may also move for reconsideration upon the grounds that the damages awarded are excessive, that the evidence is insufficient to justify the decision or final order, or that the decision or final order is contrary to law."

"**SEC. 2.** *Contents of motion for new trial or reconsideration and notice thereof.* — The motion shall be made in writing stating the ground or grounds therefor, a written notice of which shall be served by the movant on the adverse party.

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 the witnesses by whom such evidence is expected to be given, or by duly authenticated documents which are proposed to be introduced in evidence.

A motion for reconsideration shall point out specifically the findings or conclusions of the judgment or final order which are not supported by the evidence or which are contrary to law, making express reference to the testimonial or documentary evidence or to the provisions of law alleged to be contrary to such findings or conclusions.

A *pro forma* motion for new trial or reconsideration shall not toll the reglementary period of appeal."

In the case of *Philippine Phosphate Fertilizer Corporation v. Commissioner of Internal Revenue*,[8] petitioner therein sought for an opportunity to present evidence, *i.e.*, invoices, to support its claim *via* motion for reconsideration. This Court, in that case, denied petitioner's motion by reasoning that failure to present evidence already existing at the time of trial does not warrant the grant of a new trial because such evidence is not newly discovered but is more in the nature of forgotten evidence which is not excusable. In reversing this Court, the Supreme Court agreed with the dissenting opinion of former CTA Presiding Justice Ernesto D. Acosta, who opined that:

> "**The reason advanced by the Petitioner**...that they thought the presentation by the Manager of Petron Corporation of a duly notarized certification (supporting the schedules of invoices), **coupled with testimonies of witness**, Mrs. Sylvia Osorio of Petron Corporation, are enough to prove their case... **could easily fall under the phrase "mistake or excusable negligence" as a ground for new trial under Sec. 1(a) of Rule 37 and <u>not</u> under the phrase "newly discovered evidence" as stated in our said resolution**. The denial of this motion is too harsh considering that this case is only civil in nature, govern (sic) merely by the rule on preponderance of evidence."*(Emphasis supplied)*

As mentioned earlier, petitioner partially seeks to introduce evidence which were not offered or presented during trial. Thus, the subject pleadings are both in the nature of reconsideration of the assailed Decision and grant of new trial with respect to the aforesaid pieces of evidence, *i.e.*, certification and invoices relating to the amortization of its capital goods.

However, petitioner failed to advance any reason for its failure to present during trial the subject pieces of documentary evidence attached to the supplemental motion. This is equally true with petitioner's motion for reconsideration. Consequently, petitioner's introduction of the pertinent attached documents in its motion and supplemental motion does not fall under the requirements of Section

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[8] Id.

1(a), in relation to Section 2, Rule 37 of the Revised Rules of Court. In other words, petitioner failed to establish circumstances of fraud, accident, mistake or excusable neglect and it likewise failed to explain the belated introduction of the said documents. Hence, the *Philippine Phosphate case* does not apply in this case.

Accordingly, what is left to be ascertained is whether the pertinent attached documents fall within the purview of newly discovered evidence. As defined under Section 1(b), Rule 37 of the Revised Rules of Court, newly discovered evidence is that evidence which a movant could not, with reasonable diligence, have discovered and produced at the trial, and which if presented would probably alter the result.

A careful review of the pertinent attached documents reveals that these documents are readily available and could have been produced during trial, had petitioner exercised reasonable diligence in locating the same. In fact, most of these documents, *i.e.*, invoices, pertain to purchases of vehicles under petitioner's name. Thus, it behoves upon petitioner to produce these documents at the earliest opportune time considering that it is presenting a case for tax refund which, as a hornbook principle, is construed *strictissimi juris* against the taxpayer.[9]

Considering the foregoing, the Court is constrained to disallow the admission of the subject documents pertaining to the amortization of petitioner's capital goods.

The Court shall now rule on the other issues presented by petitioner.

**Petitioner's Exhibit "P-116.639", and Exhibits "P-116.936a" to "P-1086b"**

Petitioner argues that Exhibit "P-116.639" contains CAS Permit No. IIR PN 050-CAS-100803-00093 dated 10-08-2003 duly printed in the Value Added Tax (VAT) Official Receipt (OR). Hence, the Authority to Print (ATP) is no longer necessary as it is only applicable to manual receipts. Nonetheless, petitioner maintains that ATP is not

[9] *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 159490, February 18, 2008, 564 SCRA 163.

one of the items required by law to be indicated in invoices or receipts.

The Court rules as follows.

Settled is the rule that the ATP need not be reflected in invoices or receipts because there is no law or regulation requiring it. However, it is incumbent upon petitioner to show proof that it has secured ATP from the BIR. In the case of *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) v. Commissioner of Internal Revenue,*[10] the Supreme Court emphasized the foregoing in this wise:

> "It has been settled in *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue* that the ATP need not be reflected or indicated in the invoices or receipts because there is no law or regulation requiring it. Thus, in the absence of such law or regulation, failure to print the ATP on the invoices or receipts should not result in the outright denial of a claim or the invalidation of the invoices or receipts for purposes of claiming a refund.
>
> xxx xxx xxx
>
> But while there is no law requiring the ATP to be printed on the invoices or receipts, Section 238 of the NIRC expressly requires persons engaged in business to secure an ATP from the BIR prior to printing invoices or receipts. Failure to do so makes the person liable under Section 264 of the NIRC.
>
> This brings us to the question of whether a claimant for unutilized input VAT on zero-rated sales is required to present proof that it has secured an ATP from the BIR prior to the printing of its invoices or receipts.
>
> We rule in the affirmative.
>
> Under Section 112 (A) of the NIRC, a claimant must be engaged in sales which are zero-rated or effectively zero-rated. To prove this, duly registered invoices or receipts evidencing zero-rated sales must be presented. However, since the ATP is not indicated in the invoices or receipts, the

[10] G.R. No. 172378, January 17, 2011, 639 SCRA 536-538.

only way to verify whether the invoices or receipts are duly registered is by requiring the claimant to present its ATP from the BIR. Without this proof, the invoices or receipts would have no probative value for the purpose of refund. In the case of *Intel,* we emphasized that:

> It bears reiterating that while the pertinent provisions of the Tax Code and the rules and regulations implementing them require entities engaged in business to secure a BIR authority to print invoices or receipts and to issue duly registered invoices or receipts, it is not specifically required that the BIR authority to print be reflected or indicated therein. **Indeed, what is important with respect to the BIR authority to print is that it has been secured or obtained by the taxpayer, and that invoices or receipts are duly registered.**"*(Citations omitted)*

In this case, petitioner failed to present evidence that the ATP was secured for the subject evidence. Moreover, petitioner's argument that since it has a CAS permit, it is exempted from presenting proof that it has ATP, is erroneous. This is due to the fact that at the time of the issuance of the receipt, Revenue Memorandum Order No. 12-2013 does not yet exist. The same holds true for Exhibits "P-116.936a" to "P-1086b".

Considering the foregoing, the Court finds petitioner's argument devoid of merit.

**Petitioner's Exhibits "P-116.672 to 677" and "P-116.1279"**

On this score, petitioner manifests that there was a simple clerical error in the printing of the supplier's OR which caused the incomplete printing of its supplier's TIN and that it has complied with VAT invoicing requirements. Nevertheless, petitioner attached to its motion for reconsideration the clear copies of the subject exhibits.

In the interest of justice and it appearing that the subject exhibits were already presented for the appreciation of this Court during trial, albeit containing printing errors, the Court shall allow the presentation of petitioner's pieces of evidence attached as Annexes "A-1" to "A-6" to its motion for reconsideration.

**Petitioner's Exhibits "P-116.522 to 525" and "P-116-818 to 819"**

Petitioner avers that the handwritten notes appearing on the exhibits: "collected in behalf of CEN Holdings, Inc." that caused the disallowance, are mere internal notes of Century Properties Management, Inc. (Century) which should not prejudice the petitioner. In this regard, petitioner attached to the instant motion certified true copies of the relevant billing invoices.

Considering the explanation of petitioner that said handwritten notes are mere internal notes of Century, the Court shall likewise allow petitioner to prove the same.

**Petitioner's Exhibit "P-116.702"**

Lastly, petitioner contends that the subject exhibit can be found in the records, although the Court-Commissioned Independent Certified Public Accountant incorrectly named the supplier as "Adways Philippines, Inc." instead of "I-Merge Online, Inc.". In order to ascertain the veracity of this claim, the Court deems it proper to allow petitioner to present the said documentary evidence.

To conclude, it is evident that the subject pleadings are, by their nature, both motions for reconsideration and for new trial. Thus, the Court finds it proper to allow petitioner to present evidence with respect to the issues concerning Exhibits "P-116.672 to 677" and "P-116.1279", "P-116.522 to 525", "P-116-818 to 819" and "P-116.702" considering that these involve mistakes or errors which petitioner sufficiently explained in its motion. However, the Court is constrained to deny the instant motion with respect to Exhibits "P-116.639" and Exhibits "P-116.936a" to "P-1086b" for failure to show sufficient proof of ATP. Likewise, the Court cannot allow petitioner to present proof with respect to the amortization of its capital goods for failure to satisfy the requirements of newly discovered evidence.

**WHEREFORE**, in view thereof, respondent's Motion for Partial Reconsideration (Re: Decision Promulgated on 25 August 2015) is hereby **DENIED**, for lack of merit. On the other hand, petitioner's Motion for Reconsideration with Supplemental Motion for Reconsideration is hereby **PARTIALLY GRANTED**. Accordingly, set this case for petitioner's presentation of evidence with respect only to Exhibits "P-116.672 to 677" and "P-116.1279", "P-116.522 to 525", "P-116-818 to 819" and "P-116.702" on February 24, 2016 at 9:00 a.m.

**SO ORDERED.**

J. C. Castañeda, Jr.
**JUANITO C. CASTAÑEDA, JR.**
Associate Justice

**WE CONCUR:**

**CAESAR A. CASANOVA**
Associate Justice

**AMELIA R. COTANGCO-MANALASTAS**
Associate Justice