REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

MINDANAO SANITARIUM AND HOSPITAL, INC., Petitioner,	**CTA CASE NO. 8700** Members:
- versus -	**CASTAÑEDA, JR.,**Chairperson, and **CASANOVA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: FEB 2 1 2017 9:20 Am

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RESOLUTION

CASTAÑEDA, JR., *J.*:

For resolution of this Court is respondent's **Motion for Reconsideration (Re: Decision dated 16 December 2016)** filed on January 12, 2017, with petitioner's **Comment (On Respondent's Motion for Reconsideration)** filed on January 30, 2017.

For easy reference, the dispositive portion of the assailed Amended Decision reads:

> **WHEREFORE**, in view thereof, petitioner's Motion for Reconsideration is **PARTIALLY GRANTED**. Accordingly, the dispositive portion of the assailed Decision dated August 8, 2016 is **AMENDED**, as follows:

'**WHEREFORE**, in view thereof, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, petitioner is liable for deficiency income tax and value-added tax amounting to ₱45,493.75, inclusive of the 25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, summarized as follows:

	Basic Tax Due	Surcharge (25%)	Total
Income Tax	₱ 16,543.18	₱ 4,135.80	₱ 20,678.98
VAT	19,851.82	4,962.96	24,814.78
Total	**₱ 36,395.00**	**₱ 9,098.75**	**₱ 45,493.75**

In addition, petitioner should be held liable to pay:

(a) Deficiency interest at the rate of 20% per annum pursuant to Section 249(B) of the NIRC of 1997, as amended, on the basic deficiency income tax and value-added tax, computed from April 15, 2010 and January 25, 2010, respectively, until full payment thereof; and

(b) Delinquency interest at the rate of 20% per annum on the total amount due of ₱45,493.75 and on the deficiency interest which have accrued as aforestated in (a), computed from December 5, 2012 until full payment thereof, pursuant to Section 249(C) of the NIRC of 1997, as amended.'

SO ORDERED."

Respondent argues in his motion that the subject Final Notice Before Seizure is admissible as evidence, because it is an original document which is a public record and which also forms part of the judicial records. Likewise, respondent prays that he be allowed to present witness to identify the same.

On the other hand, petitioner maintains that evidence not formally offered cannot be admitted as evidence. Likewise, petitioner asserts that respondent's counsel did not act when he was duly reminded to have the BIR Records identified.

After careful analysis of the parties' arguments, the Court finds for petitioner.

Evidence not identified cannot be admitted as evidence even if it forms part of the BIR Records

Respondent argues that since the Final Notice Before Seizure is part of the judicial records, it may be admitted without need of identification.

The Court disagrees with respondent.

The Court reiterates the ruling in *Rafael Arsenio S. Dizon vs. Court of Tax Appeals,*[1] where the Supreme Court ruled that:

> "Under Section 8 of RA 1125, the CTA is categorically described as a court of record. As cases filed before it are litigated *de novo*, party-litigants shall prove every minute aspect of their cases. Indubitably, no evidentiary value can be given the pieces of evidence submitted by the BIR, as the rules on documentary evidence require that these documents must be formally offered before the CTA. Pertinent is Section 34, Rule 132 of the Revised Rules on Evidence which reads:
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> **SEC. 34.** *Offer of evidence.* — The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified.
>
> The CTA and the CA rely solely on the case of *Vda. de Oñate*, which reiterated this Court's previous rulings in *People v. Napat-a* and *People v. Mate* on the admission and consideration of exhibits which were not formally offered during the trial. Although in a long line of cases many of which were decided after *Vda. de Oñate*, we

[1] G.R. No. 140944, April 30, 2008, 553 SCRA 126-128.

held that courts cannot consider evidence which has not been formally offered, nevertheless, petitioner cannot validly assume that the doctrine laid down in *Vda. de Oñate* has already been abandoned. Recently, in *Ramos v. Dizon*, this Court, applying the said doctrine, ruled that the trial court judge therein committed no error when he admitted and considered the respondents' exhibits in the resolution of the case, notwithstanding the fact that the same were not formally offered. Likewise, in *Far East Bank & Trust Company v. Commissioner of Internal Revenue*, the Court made reference to said doctrine in resolving the issues therein. Indubitably, the doctrine laid down in *Vda. De Oñate* still subsists in this jurisdiction. In *Vda. de Oñate*, we held that:

From the foregoing provision, it is clear that for evidence to be considered, the same must be formally offered. Corollarily, the mere fact that a particular document is identified and marked as an exhibit does not mean that it has already been offered as part of the evidence of a party. In *Interpacific Transit, Inc. v. Aviles* [186 SCRA 385], we had the occasion to make a distinction between identification of documentary evidence and its formal offer as an exhibit. We said that the first is done in the course of the trial and is accompanied by the marking of the evidence as an exhibit while the second is done only when the party rests its case and not before. 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* [179 SCRA 403] citing *People v. Mate* [103 SCRA 484], **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**.

From the foregoing declaration, however, it is clear that *Vda. de Oñate* is merely an exception to the general rule. Being an exception, it may be applied only when there is strict compliance with the requisites mentioned therein; otherwise, the general rule in Section 34 of Rule 132 of the Rules of Court should prevail."

Thus, the general rule is that the court shall consider no evidence which has not been formally offered. However, the Court may consider evidence not formally offered, provided that: (1) The evidence must have been duly identified by testimony duly recorded; and (2) The evidence must have been incorporated in the records of the case.

In this case, no effort was exerted by respondent to identify the Final Notice Before Seizure to be admissible as evidence. As such, although the Final Notice Before Seizure forms part of the BIR Records transmitted to this Court, the Court cannot consider it as evidence without contravening the *Dizon* ruling, for failure to identify the same.

Even if the Final Notice Before Seizure is considered as a public document, it must conform with the form and manner by which public documents may be offered as evidence under the Rules

Respondent argues that considering that the Final Notice Before Seizure is a public document, the same need not be identified.

Section 19, Rule 132 of the Rules on Evidence pertinently states:

"**SEC. 19**. *Classes of documents*. – For the purpose of their presentation in evidence, documents are either public or private.

Public documents are:

(a) The written official acts, or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines, or of a foreign country;"

The Final Notice Before Seizure may fall under Section 19(a) of Rule 132, being a written official act of the BIR. Thus, said document must be proved in accordance with Sections 24 and 25, Rule 132 of the Rules on Evidence, which pertinently provide:

> "**SEC. 24**. *Proof of official record.* – The record of public documents referred to in paragraph (a) of section 19, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy,xxx"

> "**SEC. 25**. *What attestation of copy must state.* – Whenever a copy of a document or record is attested for the purpose of evidence, the attestation must state, in substance, that the copy is a correct copy of the original, or a specific part thereof, as the case may be. The attestation must be under the official seal of the attesting officer, if there be any, or if he be the clerk of a court having a seal, under the seal of such court."

A public document falling under Section 19(a) of Rule 132 may be evidenced by a copy attested by the officer having the legal custody of the record, among others. Such attestation must state, in substance, that the copy is the correct copy of the original or a specific part thereof, as the case may be. It must also be under the official seal of the attesting officer.

In the instant case, aside from failing to offer the Final Notice Before Seizure as evidence, respondent failed to mark it as original or a correct copy of the original. Furthermore, there is no attestation as required under the above-quoted provisions of the Rules. Thus, the Court finds respondent's argument untenable.

The lackadaisical preparation of respondent's counsel does not constitute excusable neglect to warrant the presentation of witness with respect to the Final Notice Before Seizure

Finally, respondent prays for this Court to allow him to present witness with respect to the Final Notice Before Seizure. In effect, respondent moves either for the reopening or new trial of the instant case for the reception of evidence.

In *Ramon J. Alegre vs. Hon. Manuel T. Reyes, etc. and the People of the Philippines,*[2] the Supreme Court declared that:

> "xxx the reopening of a case for the reception of additional evidence after a case has been submitted for decision **but before judgment is actually rendered** is, it has been said, controlled by no other rule than that of the paramount interests of justice, resting entirely in the sound judicial discretion of a Trial Court; and its concession, or denial, by said Court in the exercise of that discretion will not be reviewed on appeal unless a clear abuse thereof is shown."[3] *(Emphasis supplied)*

Based on *Alegre,* a motion to reopen is proper where a judgment has not been actually rendered.

Further, in *Republic of the Philippines v. Sandiganbayan,*[4] 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:
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> xxx xxx xxx
>
> (f) The parties may then respectively adduce rebutting evidence only, **unless** the court, for **good** 9l

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[2] G.R. No. L-56923, May 9, 1988, 161 SCRA 231.
[3] Id., citing Moran, Comments on the Rules, 1979 ed., Vol. 2 pp. 212-213, citing cases; Francisco, The Revised Rules, 1966 ed., Vol. 2, p. 494, also citing cases.
[4] G.R. No. 152375, December 13, 2011, 662 SCRA 185-187.

reasons and in the furtherance of justice, permits them to **adduce evidence upon their original case.**

Under this rule, a party who has the burden of proof must introduce, at the first instance, all the evidence he relies upon and such evidence cannot be given piecemeal. The obvious rationale of the requirement is to avoid injurious surprises to the other party and the consequent delay in the administration of justice.

A party's declaration of the completion of the presentation of his evidence prevents him from introducing further evidence; but where the evidence is *rebuttal* in character, whose necessity, for instance, arose from the shifting of the burden of evidence from one party to the other; or where the evidence sought to be presented is in the nature of *newly discovered* evidence, the party's right to introduce further evidence must be recognized. Otherwise, the aggrieved party *may* avail of the remedy of *certiorari*.

Largely, the exercise of the court's discretion under the exception of Section 5(f), Rule 30 of the Rules of Court depends on the **attendant facts** – i.e., on whether the evidence would qualify as a 'good reason' and be in furtherance of 'the interest of justice.' For a reviewing court to properly interfere with the lower court's exercise of discretion, the petitioner must show that the lower court's action was attended by grave abuse of discretion. Settled jurisprudence has defined this term as the capricious and whimsical exercise of judgment, equivalent to lack of jurisdiction; or, the exercise of power in an arbitrary manner by reason of passion, prejudice, or personal hostility, so patent or so gross as to amount to an evasion of a positive duty, to a virtual refusal to perform the mandated duty, or to act at all in contemplation of the law. Grave abuse of discretion goes beyond the bare and unsupported imputation of caprice, whimsicality or arbitrariness, and beyond allegations that merely constitute errors of judgment or mere abuse of discretion.

In *Lopez v. Liboro*, we had occasion to make the following pronouncement:

> After the parties have produced their respective direct proofs, they are allowed to offer rebutting evidence only, but, it has been held, the court, for good reasons, in the furtherance of justice, may permit them to offer evidence upon their original case, and its ruling will not be disturbed in the appellate court where no abuse of discretion appears. **So, generally, additional evidence is allowed** when it is newly discovered, or **where it has been omitted through inadvertence or mistake**, or where the purpose of the evidence is to correct evidence previously offered. The omission to present evidence on the testator's knowledge of Spanish had not been deliberate. It was due to a misapprehension or oversight."

In the instant case, petitioner had the initial burden to prove that it was wrongfully or illegally assessed by the BIR. However, considering that the issuance of the Final Notice Before Seizure became an important issue in the resolution of the case, the burden to prove the same shifted to respondent. Hence, the Final Notice Before Seizure is in the nature of a rebuttal evidence.

Applying *Alegre* and *Sandiganbayan*, it is improper to reopen the instant case because judgment has already been rendered. Further, the Court observes that the omission to present said evidence was not due to inexcusable neglect, as asserted by respondent. Not only did the Court continuously remind respondent's counsel *vis-à-vis* the BIR Records, but it was respondent's counsel who altogether neglected to present the entire BIR Records as evidence, thus:

> "Upon revisiting the records of the instant case, the Court found that respondent, indeed, failed to identify Exhibit "R-8" which refers to the BIR Records, as follows:
>
> "JUSTICE CASTAÑEDA:
> All right. Do you have any other witnesses?
>
> ATTY. VELASCO:
> Probably, this is the last, your Honors. Although we had one to identify the BIR Records, but I guess it is not contentious, it is not an issue anymore, your Honors."[5]

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[5] Transcript of Stenographic Notes (TSN) dated October 15, 2014, p. 5.

reasons and in the furtherance of justice, permits them to **adduce evidence upon their original case.**

Under this rule, a party who has the burden of proof must introduce, at the first instance, all the evidence he relies upon and such evidence cannot be given piecemeal. The obvious rationale of the requirement is to avoid injurious surprises to the other party and the consequent delay in the administration of justice.

A party's declaration of the completion of the presentation of his evidence prevents him from introducing further evidence; but where the evidence is *rebuttal* in character, whose necessity, for instance, arose from the shifting of the burden of evidence from one party to the other; or where the evidence sought to be presented is in the nature of *newly discovered* evidence, the party's right to introduce further evidence must be recognized. Otherwise, the aggrieved party *may* avail of the remedy of *certiorari*.

Largely, the exercise of the court's discretion under the exception of Section 5(f), Rule 30 of the Rules of Court depends on the **attendant facts** – i.e., on whether the evidence would qualify as a 'good reason' and be in furtherance of 'the interest of justice.' For a reviewing court to properly interfere with the lower court's exercise of discretion, the petitioner must show that the lower court's action was attended by grave abuse of discretion. Settled jurisprudence has defined this term as the capricious and whimsical exercise of judgment, equivalent to lack of jurisdiction; or, the exercise of power in an arbitrary manner by reason of passion, prejudice, or personal hostility, so patent or so gross as to amount to an evasion of a positive duty, to a virtual refusal to perform the mandated duty, or to act at all in contemplation of the law. Grave abuse of discretion goes beyond the bare and unsupported imputation of caprice, whimsicality or arbitrariness, and beyond allegations that merely constitute errors of judgment or mere abuse of discretion.

In *Lopez v. Liboro*, we had occasion to make the following pronouncement:

Meanwhile, during the hearing dated August 18, 2014, respondent's witness identified several documents, which were then sub-marked by respondent's counsel as Exhibits "R-8-1" and "R-8-A" to "R-8-E".[6] However, none of these documents pertain to the Final Notice Before Seizure."[7]

Moreover, while respondent presented several pieces of evidence, it failed to present the subject Final Notice Before Seizure. In other words, it appears that respondent was completely in control of his case when he chose what documents to present before the Court, minus the Final Notice Before Seizure. Considering the foregoing, there is no cogent reason to reopen the case, where judgment has already been rendered and where the failure to present witness was not due to the excusable neglect of respondent.

Neither is there a ground to subject the instant case to new trial. Sections 1 and 2 of Rule 37, respectively, pertinently state:

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

xxx xxx xxx"

"**Section 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. *jc*

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[6] TSN dated August 18, 2014, pp. 12-17.
[7] Amended Decision, p. 4.

> A motion for new trial shall be proved in the manner provided for proof of motion. 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.
>
> xxx xxx xxx"

Based on the foregoing provisions of the Rules, a motion for new trial may be filed on the ground of excusable neglect, among others, which ordinary prudence could not have guarded against and by reason of which such aggrieved party has probably been impaired in his rights. Meanwhile, such motion shall be supported by affidavits of merits which may be rebutted by affidavits.

In the instant case, none of the requisites are present. As discussed earlier, respondent did not commit excusable neglect. Further, the instant motion is not supported by affidavits of merits as required by the Rules.

To conclude, respondent failed to advance arguments to merit the reversal of the assailed Amended Decision.

WHEREFORE, in view thereof, the instant Motion for Reconsideration (Re: Decision dated 16 December 2016) is **DENIED**, for lack of merit. Accordingly, the Amended Decision dated December 16, 2016 is **AFFIRMED**.

SO ORDERED.

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

I CONCUR:

CAESAR A. CASANOVA
Associate Justice