REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

First Division

ARROW FREIGHT CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9809

Members:

DEL ROSARIO, *P.J.*, *Chairperson*
and
MANAHAN, *JJ.*

Promulgated:

JUL 19 2021 1:57pm

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RESOLUTION

MANAHAN, *J.:*

Submitted before this Court is petitioner's **Motion for Partial Reconsideration and/or New Trial** filed on December 28, 2020, without respondent's comment thereon as per Records Verification dated March 11, 2021.

On December 7, 2020, this Court promulgated a Decision partially granting petitioner's claim for refund of creditable withholding taxes (CWT) for failing to sufficiently prove its full entitlement thereto, the dispositive portion of which is quoted as follows:

> "**WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is **PARTIALLY GRANTED**. Accordingly, respondent is ordered to refund petitioner the reduced amount of **₱9,200,593.94**, representing excess and unutilized CWTs for taxable year 2015.
>
> **SO ORDERED**."

In its Motion, petitioner moves for the reconsideration and/or new trial of the above Decision on the ground of mistake or excusable negligence of its payor/withholding agent to the damage and prejudice of petitioner. Petitioner claims that its payor/withholding agent, Benguetcorp Nickel Mines, Inc., erred in the preparation of the Certificates of Creditable Withholding Tax Withheld at Source (BIR Form No. 2307) for the taxable year 2015, which resulted in the Court's disallowance of some of the claimed CWTs in the total amount of ₱8,099,849.71. For this reason, petitioner submits the judicial affidavit and affidavit of merit of its witness, Mr. Max D. Arceño, who is the vice-president for Accounting and Treasury of Benguetcorp Nickel Mines, Inc., to bolster its claim regarding the disallowed excess and unutilized CWTs.

Petitioner also asserts that since the identity and existence of the unsigned CWT certificates were never in question, the issue therefore lies only on the lack of signature by the payor/withholding agent thereon and not on whether the said certificates were indeed issued in relation to the income payment made to petitioner. In the same vein, petitioner likewise states that the incorrect Tax Identification Number (TIN) of its payor/withholding agent indicated in the CWTs is merely mechanical/typographical error.

As such, petitioner prays that it be allowed to again present its witness, Mr. Arceño, so as to be given the opportunity to correct the mistake or excusable negligence committed by its payor/withholding agent on the CWT certificates in relation to other pieces of evidence on record, such as Statement of Accounts (SOA) and Summary of Accounts Receivable (SARA). Nonetheless, petitioner avers that the purpose of the new trial is not to introduce newly discovered evidence but simply to correct mechanical/typographical errors that have been committed without fault on the part of the petitioner.

The Court finds petitioner's Motion for Partial Reconsideration and/or New Trial bereft of merit.

Verily, Section 1, Rule 37 of the Rules of Court provides as follows:

> "**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

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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."

Relative thereto are Sections 5 and 6, Rule 15 Revised Rules of the Court of Tax Appeals (RRCTA), to wit:

"**SEC. 5.** *Grounds of motion for new trial.* – 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 the rights of such aggrieved party has probably been impaired in his rights; or

(b) Newly discovered evidence, which the party could not, with reasonable diligence, have discovered and produced at the trial and, which, if presented, would probably alter the result.

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

From the foregoing, a party may file a motion for new trial on the grounds of fraud, accident, mistake or excusable negligence; or of newly discovered evidence, in the manner provided for proof of motions.

In the present case, petitioner seeks for a new trial to present evidence consisting of CWTs, which were already

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previously admitted but were not given probative value, as the same failed to provide the signature and/or the correct TIN of the payor due to the alleged mistake or excusable negligence of its payor/withholding agent. However, the reason advanced by petitioner does not fall under the definition of "mistake or excusable negligence" that will justify its request for new trial. Perforce, the "mistake" that is allowable in Rule 37 of the Rules of Civil Procedure is one which ordinary prudence could not have guarded against. Negligence to be "excusable" must also be one which ordinary diligence and prudence could not have guarded against and by reason of which the rights of an aggrieved party have probably been impaired. The test of excusable negligence is whether a party has acted with ordinary prudence while transacting important business.[1] Unfortunately, petitioner's claimed mistake or excusable negligence could have easily been prevented had petitioner been more cautious in preparing its pieces of evidence to support its claim for refund. The absence of signature by the issuing party in the CWT Certificate is very fundamental that should have been discovered by petitioner at the very beginning had it observed basic due diligence. Another critical data other than the signature is the TIN of the withholding tax agents that should also have been checked initially. These factual circumstances bespeak of inexcusable negligence on the part of petitioner

Again, the taxpayer-applicant in a claim for tax refund or tax credit must not only prove entitlement to the claim but also compliance with all the documentary and evidentiary requirements.[2] The burden is on the taxpayer-claimant to prove its entitlement to the refund.[3] Indeed, CWTs that are complete in relevant details may be regarded as *prima facie* true and correct, and may be taken at face value. However, by submitting incomplete or inaccurate data or information in the certificates of CWT, petitioner demonstrates its failure to exercise ordinary diligence and prudence in proving its claim. Conversely, the correct certificates of CWT (complete in form and details), which are indispensable in its claim for refund, should have been presented by petitioner during trial since it has the binding duty to prove every aspect of its claim for refund.

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[1] *Philippine Phosphate Fertilizer Corporation v. Commissioner of Internal Revenue,* G.R. No. 141973, June 28, 2005.
[2] *Eastern Telecommunications Philippines, Inc. v. Commissioner of Internal Revenue,* G.R. No. 183531, March 25, 2015.
[3] *Commissioner of Internal Revenue v. Far East Bank & Trust Company (now Bank of the Philippine Islands),* G.R. No. 173854, March 15, 2010.

With emphasis, a party who moves for a new trial on the ground of mistake must show that ordinary prudence could not have guarded against it. A new trial is not a refuge for the obstinate. Ordinary prudence in these cases would have dictated the presentation of all available evidence that would have supported the claims for refund/credit of excess and unutilized CWT.[4] Indeed, parties must diligently and conscientiously present all arguments and available evidences in support of their respective positions to the court before the case is deemed submitted for judgment. Only under exceptional circumstances may the court receive new evidence after having rendered judgment; otherwise, its judgment may never attain finality since the parties may continually refute the findings therein with further evidence.[5]

Given the foregoing, petitioner's request for new trial cannot be given due course since its failure does not qualify as a mistake or excusable negligence. Thus, the failure of petitioner to discharge the burden of proof to fully substantiate its claim for refund cannot be considered as a good reason to allow a new trial of the case. In the same vein, considering that its motion for partial reconsideration was anchored on the intended supplemental testimony of its witness – which was not given due course by this Court – petitioner's motion for partial reconsideration is likewise bereft of merit.

The Court reiterates that actions for tax refund or credit, as in the instant case, are in the nature of a claim for exemption and the law is not only construed in *strictissimi juris* against the taxpayer, but also the pieces of evidence presented entitling a taxpayer to an exemption is *strictissimi* scrutinized and must be duly proven. The burden is on the taxpayer to show that he has strictly complied with the conditions for the grant of the tax refund or credit. Since taxes are the lifeblood of the government, tax laws must be faithfully and strictly implemented as they are not intended to be liberally construed.[6]

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[4] *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, G.R. Nos. 141104 and 148763, June 8, 2007.
[5] *Lolita R. Alamayri v. Rommel Pabale, et al.*, G.R. No. 151243, April 30, 2008.
[6] *Coca-Cola Bottlers Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 222428, February 19, 2018.

In view of the foregoing disquisitions, the Court finds no cogent reason to reverse or, much less, modify the Decision assailed by petitioner.

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

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

I CONCUR:

(with Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

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CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur in the denial of petitioner's Motion for Partial Reconsideration and/or New Trial for lack of merit.

In its Motion for Partial Reconsideration and/or New Trial, petitioner attached the alleged corrected Certificates of Creditable Withholding Tax at Source (BIR Form No. 2307) which were previously disallowed by the Court **either for failure of payor Benguetcorp Nickel Mines Inc. to sign the same or for bearing the incorrect TIN No. of payor Benguetcorp Nickel Mines Inc**. Petitioner also attached thereto the Judicial Affidavit and Affidavit of Merit of Mr. Max D. Arceño, Vice-President – Treasury and Accounting Department of payor Benguetcorp Nickel Mines Inc. Petitioner prays that Mr. Arceño be allowed to testify in court for the purpose of identifying the corrected Certificates.

In several cases, I took the position that re-opening of cases even after decisions have been rendered may be allowed. These cases, however, involve scenarios wherein a plain perusal of the additional documents sought to be admitted in evidence, which are attached to the motions for reconsideration, would reveal that they are vital documents, which if considered by the Court in resolving the motions would **materially alter the conclusions reached by the Court** in the assailed decisions.

It is settled that a taxpayer claiming for a tax credit or refund of creditable withholding tax must establish, among others, the fact of withholding by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld.[1] On this point, the pronouncement of the Supreme Court in ***Commissioner of Internal Revenue vs. Philippine National Bank***[2] relative to the requisite information to establish the fact of withholding is enlightening:

> **"The certificate of creditable tax withheld at source is the competent proof to establish the fact that taxes are withheld.**
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> In Banco Filipino Savings and Mortgage Bank v. Court of Appeals, this Court declared that a certificate is complete in the relevant details that would aid the courts in the evaluation of any claim for refund of excess creditable withholding taxes:
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> > 'In fine, the document which may be accepted as evidence of the third condition, that is, the **fact of withholding, must emanate from the payor itself,** and not merely from the payee, and must indicate the name of the payor, the income payment basis of the tax withheld, the amount of the tax withheld and the nature of the tax paid.
>
> xxx.
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> Moreover, as correctly held by the Court of Tax Appeals *En Banc*, **the figures appearing in the withholding tax certificates can be taken at face value since these documents were executed under the penalties of perjury**, pursuant to Section 267 of the 1997 National Internal Revenue Code, as amended, which reads: xxx xxx xxx.
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> Thus, upon presentation of a withholding tax certificate complete in its relevant details and with a written statement that it was made under the penalties of perjury, the burden of evidence then shifts to the Commissioner of Internal Revenue to prove that (1) the certificate is not complete; (2) it is false; or (3) it was not issued regularly." *(Boldfacing supplied; citations omitted)*

The following are indispensable in proving the fact of withholding: (a) the document issued to the payee must emanate from the payor

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[1] *Commissioner of Internal Revenue vs. TeaM (Philippines) Operations Corporation*, G.R. No. 185728, October 16, 2013.
[2] G. R. No. 180290, September 29, 2014.

itself; (b) **it must indicate the name and TIN of the payor and it must be executed under the penalties of perjury**; (c) it must indicate the income payment which is the basis of the tax withheld; (d) it must reflect the amount of tax withheld; and (e) it must state the nature of the tax paid.

In the case at bar, the fact remains that the Certificates submitted by petitioner to the Court to prove its entitlement to the claim for refund (and earlier -- to respondent when it filed its Quarterly and Annual Income Tax Returns for taxable year 2015) are incomplete as to the relevant details enumerated above, or are false or irregularly issued. Thus, I submit that whatever testimony petitioner's witness intends to give may not alter the fact that there is no compliance with the documentary requirements as mandated by law and jurisprudence.

All told, I VOTE to DENY petitioner's Motion for Partial Reconsideration and/or New Trial for lack of merit.

ROMAN G. DEL ROSARIO
Presiding Justice