REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

RIO TUBA NICKEL MINING CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9127

Members:

CASTAÑEDA, JR., *Chairperson,*
CASANOVA, *and*
MANAHAN, *JJ.*

Promulgated:

JUL 04 2018 3:30 pm

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RESOLUTION

CASANOVA, *J.*:

For the Court's resolution are the following:

1. petitioner's **Motion for Partial Reconsideration and/or New Trial**, filed on February 15, 2018 with respondent's **Opposition (Re: Motion for Reconsideration)**, filed on March 16, 2018; and

2. respondent's **Motion for Partial Reconsideration (Re: Decision promulgated 30 January 2018)**, filed on February 15, 2018, without petitioner's comment as per Records Verification dated March 20, 2018.

Both parties move for reconsideration of the Decision promulgated on January 30, 2018, the dispositive portion of which is quoted as follows:

> "**WHEREFORE**, premises considered, the Petition for Review is **PARTIALLY GRANTED**. Accordingly, petitioner is entitled to a tax refund in the amount of **₱2,077,757.45** representing its unutilized input taxes attributable to zero-rated sales for the second to four quarters of CY 2013.
>
> **SO ORDERED**."

In its motion, petitioner moves, among others, for the reopening of the case for the admission of additional evidence to further support and render clarity to the issues of the case. Attached to the motion is an Affidavit of Merit executed by Ms. Mary Caroline B. Lagman. It asserts that the Independent Certified Public Accountant (ICPA) failed to include certain documents due to honest mistakes or excusable negligence which ordinary prudence could not have guarded against. On the other hand, respondent argues that the documents sought to be presented are neither newly discovered nor inadvertently omitted due to fraud, accident, mistake or excusable negligence which merit a reopening of the case.

In his motion, respondent, on the other hand, alleges that the Court erred in ruling that petitioner's input value added tax (VAT) in the amount of ₱2,077,757.45 is attributable to valid zero-rated sales.

The Court shall first resolve the propriety of petitioner's motion for new trial on the ground of honest mistakes or excusable negligence. Petitioner claims that the ICPA failed to include certain documents due to honest mistakes caused by either confusion, an impression, belief or opinion that the documents reviewed constitute sufficient basis to support the findings based on existing laws, rules and regulations, or by sheer inadvertence.

The relevant provisions are Sections 1 and 2, Rule 37 of the Rules of Court which provide:

> "**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

(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. (*Emphasis supplied*)

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." (*Emphasis supplied*)

Also, Sections 5 and 6, Rule 15 Revised Rules of the Court of Tax Appeals (RRCTA) provide:

"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. (*Emphasis supplied*)

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

SEC. 6. *Contents of motion for reconsideration or new trial and notice.* — The motion shall be in writing stating its grounds, 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 subparagraph (a) of the preceding section shall be supported by **affidavits of merits** which may be rebutted by counter-affidavits. A motion for the cause mentioned in subparagraph (b) of the preceding section 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 or new trial that does not comply with the foregoing provisions shall be deemed *pro forma*, which shall not toll the reglementary period for appeal." (*Emphasis supplied*)

Based on 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 case of *Philippine Phosphate Fertilizer Corporation vs. Commissioner of Internal Revenue*[1], the Supreme Court held 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.

Sec. 1, Rule 37 of the Rules of Court provides as follows:

xxx xxx xxx

It is true that petitioner could not move for new trial on the basis of newly discovered evidence because in order to have a new trial on the basis of newly discovered evidence, it must be proved that: (a) the evidence was discovered after the trial; (b) such evidence could not have been discovered and produced at the trial with reasonable diligence; (c) it is material,

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[1] G.R. No. 141973, June 28, 2005.

> not merely cumulative, corroborative or impeaching; and (d) it is of such weight that, if admitted, will probably change the judgment. This does not mean however, that petitioner is altogether barred from having a new trial. As pointed out by Judge Acosta, the reasons put forth by petitioner could fall under mistake or excusable negligence.
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> The 'mistake' that is allowable in Rule 37 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." (*Emphasis supplied*)

A reading of the motion shows that the reason advanced by petitioner falls under the phrase "mistake or excusable negligence" as a ground for new trial under Section 1(a) of Rule 37 of the Rules of Court in relation to Section 5(a), Rule 15 of the RRCTA. Hence, the Court resolves to grant the motion for new trial filed by petitioner.

We reiterate the fundamental 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. The quest for orderly presentation of issues is not an absolute. It should not bar the courts from considering undisputed facts to arrive at a just determination of a controversy. This is because, after all, the paramount consideration remains the ascertainment of truth. Section 8 of R.A. No. 1125 creating the CTA also expressly provides that it shall not be governed strictly by technical rules of evidence.[2]

To prevent a piecemeal resolution of petitioner's Motion for Partial Reconsideration, the Court shall resolve the same after petitioner presents its additional evidence.

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[2] *Philippine Phosphate Fertilizer Corporation vs. Commissioner of Internal Revenue,* G.R. No. 141973, June 28, 2005.

Moreover, to facilitate the orderly administration of justice, the Court deems it proper to likewise defer the resolution of respondent's Motion for Partial Reconsideration considering that petitioner's presentation of additional evidence may affect the resolution of the same.

WHEREFORE, premises considered, petitioner's **Motion for New Trial** is **GRANTED**. Accordingly, set the case for the presentation of petitioner's evidence on July 18, 2018 at 8:30 a.m.

In the meantime, the resolution of petitioner's **Motion for Partial Reconsideration** and respondent's **Motion for Partial Reconsideration (Re: Decision promulgated 30 January 2018)**, are **HELD IN ABEYANCE**.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

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

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice