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

## SECOND DIVISION

**CARMEN COPPER CORPORATION,**
Petitioner,

- versus -

**COMMISSIONER OF INTERNAL REVENUE,**
Respondent.

**CTA CASE NO. 9726**

Members:

**CASTAÑEDA, JR.,** *Chairperson,*
**MANAHAN,** *(Special member)* and
**BACORRO-VILLENA,** *JJ.*

Promulgated:

JUN 08 2021 2:30 PM

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## RESOLUTION

**CASTANEDA, JR., *J.*:**

For resolution is respondent's **Motion for Reconsideration**, filed on January 29, 2021, with petitioner's **Comment (To Respondent's Motion for Reconsideration)**, filed through a courier and received by the Court on March 3, 2021.

Respondent seeks reconsideration of this Court's Resolution dated January 11, 2021, granting petitioner's motion for leave of court to reopen the case for the recall of a witness, the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, petitioner's **Motion For Leave of Court to Reopen the Case for the Recall of a Witness** is **GRANTED**.
>
> Accordingly, set the case for hearing on February 17, 2021 at 9 a.m., for the recall of Mr. Ericson D. Tadeja for the presentation and identification of his Judicial

Affidavit dated July 21, 2020; and for the presentation and identification of the Reconciliation of Export Sales and Dollar Remittances.

Meanwhile, the resolution of petitioner's **Motion for Reconsideration** is **HELD IN ABEYANCE** pending the presentation, identification and formal offer of the aforesaid evidence.

**SO ORDERED.**"

To recall, the Court promulgated a Decision on June 5, 2020, denying the Petition for Review filed by petitioner. In the said Decision, the Court dismissed petitioner's claim for refund of its alleged excess and unutilized Input Value Added Tax (VAT) attributable to zero-rated or effectively zero-rated sales for the 2$^{nd}$ to 4$^{th}$ quarters of taxable (TY) 2015, for failure to meet the requirements for entitlement thereto.

Aggrieved, petitioner filed a a motion for reconsideration with motion for leave of court to reopen the case for the recall of the ICPA, Mr Ericson D. Tadeja on the ground, among others, that petitioner had submitted reconciliations to the BIR as evidenced by Exhibit "P-20" so that respondent is presumed to have reviewed the same and found it to be in order.

Accordingly, in the Resolution dated January 11, 2021, the Court granted petitioner's motion for leave of court to reopen, and set the case on February 17, 2021 for the recall of the said witness and the presentation and identification of his Judicial Affidavit as well as the Reconciliation of Export Sales and Dollar Remittances.

Thus, respondent filed the instant Motion for Reconsideration of the January 11, 2021 Resolution, to which petitioner filed its comment theron on March 3, 2021.

In its motion, respondent prays for the Court to reverse the January 11, 2021 Resolution and render a new one denying petitioner's motion to reopen the case for the recall of witness.

Citing several rulings of this Court on the matter,[1] respondent argues that the additional evidence sought to be presented by petitioner is not newly discovered or omitted through inadvertence or mistake much less will it be presented to correct evidence previously offered, rather, these are merely forgotten evidence.

Meanwhile, petitioner, in its Comment, belies the arguments presented by respondent in the instant motion and alleges that the same were already passed upon by this Court when it granted petitioner's motion for reconsideration and recall of the ICPA.

Petitioner avers that the motion for reconsideration and recall of ICPA is anchored on the possibility of misappreciation of the ICPA Report and the findings stated therein.

Lastly, petitioner reiterates that issue of traceability of the sales invoices to the inward remittances was never in dispute considering that respondent himself have audited the said documents and found the same to be fully substantiated.

After a careful consideration of the foregoing allegations, the Court rules to deny the motion.

At the outset, let it be stressed that the Court is well aware of the settled rule that forgotten evidence or one which intentionally or thru oversight was not offered at the trial of a case cannot be presented as newly discovered evidence to support a motion for reopening of the case or motion for new trial.

However, this is not the situation in the present case considering that the Reconciliation of Export Sales and Dollar Remittances sought to be presented by petitioner already formed part of the records of this case as the same is attached to the BIR records submitted to this Court, hence, we are likewise convinced that the said documentary evidence do not constitute "newly discovered evidence".

It should also be noted that when the motion for reconsideration and the recall of ICPA was granted by this Court, it is

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[1] *Philippine Gold Processing & Refining Corp. vs. Commissioner of Internal Revenue,* CTA Case Nos. 8327 & 8328; *Air Philippines Corporation vs. Commissioner of Customs,* CTA Case Nos. 8039, 8069, 8104 and 8113, December 19, 2014.

not based on the ground that the document is of such nature as newly discovered evidence, rather, the Court took into consideration of the undisputed fact that petitioner provided both ICPA and respondent with the said reconciliations and that after examination thereof along with other pieces of evidence, found petitioner to be entitled to a refund of certain amount. Thus, this Court deemed it proper to allow petitioner to resubmit and/or present the said evidence, which may pave the way to a full and final determination of petitioner's claim. In so doing, the ends of justice would be better served.

At the risk of being redundant, the Court reiterates its previous ruling that a motion to reopen trial may be properly presented after either or both parties had formally offered and closed their evidence but before judgment is rendered, and even after promulgation but before finality of judgment and the only controlling guideline governing a motion to reopen is the paramount interest of justice as held by the Supreme Court in the case of *Rene Cabarles vs. Hon. Judge Bonifacio Sanz Maceda, et. al.*[2]

Further, 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.[3]

Once again, We cite the case of *BPI-Family Savings Bank vs. Court of Appeals, et al.,*[4] wherein the Supreme Court recognized the rule that the proceedings before the CTA shall not be governed strictly by the technical rules of evidence,[5] and thus, it allowed the appreciation of a copy of the Final Adjustment Return for 1990 attached to BPI's motion for reconsideration, thus:

> "True, strict procedural rules generally frown upon the submission of th Return after the trial. **The law creating the Court of Tax Appeals, however,**

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[2] G.R. No. 161330, February 20, 2007.

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

[4] G.R. No. 122480, April 12, 2000.

[5] *Calamba Steel Center, Inc. (formerly JS Steel Corporation), vs. Commissioner of Internal Revenue*, G.R. No. 151857, April 28, 2005; *Commissioner of Internal Revenue vs. De La Salle University, Inc., etseq.,* G.R. Nos. 196596, 198841 & 198941, November 9, 2016.

> **specifically provides that proceedings before it shall not be governed strictly by the technical rules of evidence. The paramount consideration remains the ascertainment of truth. Verily, the quest for orderly presentation of issues is not absolute. It should not bar courts from considering undisputed facts to arrive at a just determination of a controversy.**
>
> **In the present case, the Return attached to the Motion for Reconsideration clearly showed that petitioner suffered a net loss in 1990. Contrary to the holding of the CA and the CTA, petitioner could not have applied the amount as a tax credit. In failing to consider the said Return, as well as the other documentary evidence presented during the trial, the appellate court committed a reversible error.**
>
> It should be stressed that the rationale of the rules of procedure is to secure a just determination of every action. They are tools designed to facilitate the attainment of justice. But there can be no just determination of the present action if we ignore, on grounds of technicality, the Return submitted before the CTA and even before this Court. To repeat, the undisputed facts is that petitioner suffered a net loss in 1990; accordingly, it incurred no tax liability to which the tax credit could be applied. Consequently, there is no reason for the BIR and this Court to withhold the tax refund which rightfully belongs to the petitioner."

In view of the foregoing, and considering that the instant motion contained a mere rehash of the arguments raised in the earlier comment/opposition which had already been passed upon in the January 11, 2021 Resolution, the Court finds the instant motion bereft of merit.

**WHEREFORE,** premises considered, respondent's **Motion for Reconsideration** is **DENIED** for lack of merit.

Accordingly, set the case for hearing on **July 5, 2021** at **9:00 a.m.**, for the recall of Mr. Ericson D. Tadeja for the presentation and identification of his Judicial Affidavit dated July 21, 2020; and for the presentation, identification and formal offer of the Reconciliation of Export Sales and Dollar Remittances.

Meanwhile, the resolution of petitioner's **Motion for Reconsideration** is further **HELD IN ABEYANCE** pending the presentation, identification and formal offer of the aforesaid evidence.

**SO ORDERED.**

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

WE CONCUR:

**CATHERINE T. MANAHAN**
Associate Justice
(Special member)

*With due respect, I reiterate my Dissenting Opinion*
*and thus vote to grant respondent's Motion for Reconsideration*
**JEAN MARIE A. BACORRO-VILLENA**
Associate Justice