REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

FINANCIAL TIMES ELECTRONIC PUBLISHING PHILIPPINES, INC., Petitioner,	CTA Case No. 9434 Members: FABON-VICTORINO, *and* RINGPIS-LIBAN, *JJ.*
- versus -	
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUL 21 2020 2:22 p.m.

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RESOLUTION

Fabon-Victorino, J.:

On February 4, 2019, the Court rendered a Decision,[1] disposing the case as follows:

> **WHEREFORE**, the instant Petition for Review is hereby **DENIED,** for insufficiency of evidence.
>
> **SO ORDERED**.

The Court ruled that for zero-rating of services under Section 108(B)(2) of the National Internal Revenue Code (NIRC), as amended, to apply, the entity to whom the taxpayer claimant rendered services be a foreign entity doing business *outside* the Philippines. To prove this requisite, the taxpayer-claimant must, at the very least present *both* the pertinent Securities and Exchange Commission (SEC) Certificate of Non-Registration of

[1] Docket, pp. 824-839.

Corporation or Partnership *and* Foreign Certificate or Articles of Incorporation/Association/Registration of the client foreign entity.

In the present case however, the SEC Certification of Non-Registration of petitioner's alleged client Financial Times Limited (FTL)[2] marked as Exhibit P-35 was denied admission as evidence for being a mere photocopy, thus the conclusion that petitioner failed to duly demonstrate that FTL was indeed a foreign entity *not* doing business in the Philippines. And even if Exhibit P-35 was admitted as evidence, the name appearing in the said SEC Certification was *not* FTL, but Financial Times Group, Ltd. Precisely, petitioner's claim for refund of input value-added tax (VAT) attributable to zero-rated sales for third quarter of calendar year (CY) 2014 was entirely rejected.

In its Motion for Reconsideration and/or New Trial[3] dated February 26, 2019, petitioner maintains that the testimony of its witness Paulito B. De Pano that petitioner rendered services to FTL, together with FTL's Certificate of Incorporation indubitably show that during the pertinent period FTL was a foreign corporation doing business outside the Philippines.

Further, several factors suggest that FTL was not in active pursuit of commerce in the Philippines, particularly: a) it does not solicit, perform service contracts or maintain office in the Philippines; and b) it does not participate in the management, supervision, or control of any domestic business, entity or corporation.

To cure the observed infirmity in its document, petitioner claims that it was able to secure a SEC Certificate of Non-Registration dated February 26, 2019 bearing the name of Financial Times Limited[4] for which reason it prays that a new trial be allowed for the reception of the said Certification.

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2 Exhibit P-35.
3 Docket, pp. 840-847.
4 Docket, p. 849.

By way of Comment/Opposition dated March 11, 2019, respondent counters that: 1) petitioner's Motion lacks the required notice of hearing in violation of Section 5, Rule 15 of the Rules of Court, hence, a mere scrap of paper; and 2) the proposed Certification is not a newly-discovered evidence, thus, petitioner's plea for new trial must be rejected.

In its subsequent Manifestation and Motion dated February 21, 2020, petitioner states that it was able to secure duly authenticated Certifications[5] showing that its client FTL during the pertinent period was a non-resident foreign corporation doing business outside the Philippines. Petitioner prays that the belatedly secured documents be admitted as part of its evidence.

THE RULING OF THE COURT

Petitioner's Motion for Reconsideration and/or New Trial, as well as its Manifestation and Motion must be denied.

To be sure, the testimony of its witness Paulito B. Pano and the alleged FTL's Certificate of Incorporation were not sufficient to prove that petitioner's client FTL was a foreign corporation not doing business in the Philippines.

It has been consistently ruled[6] that presentation of ***both*** Foreign Articles/Certificate of Incorporation ***and*** SEC Certificate of Non-Registration will ordinarily prove that an entity is foreign corporation not doing business in the Philippines. Let it be stressed that the SEC Certificate of Non-Registration is the document that will establish that the foreign entity is not doing business in the Philippines.

Contrary to petitioner's claim, the testimony of Paulito B. Pano that petitioner rendered services to FTL, and the

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5 The Certifications were appended in petitioner's Manifestation and Motion dated February 21, 2020.

6 See *Amadeus Marketing Philippines, Inc. vs. Commissioner of Internal Revenue,* CTA EB No. 1838, November 26, 2019; *Nokia (Philippines), Inc. vs. Commissioner of Internal Revenue,* CTA EB No. 1313, September 22, 2016; *Deutsche Knowledge Service Pte. Ltd. vs. Commissioner of Internal Revenue,* CTA EB No. 1290, August 16, 2016; and *Chevron Holdings, Inc. vs. Commissioner of Internal Revenue,* CTA EB No. 940, October 28, 2014.

latter's Certificate of Incorporation were not sufficient to prove that FTL was not doing business in the Philippines justifying the grant of the relief prayed for. The alleged testimony and FTL's Certificate of Incorporation merely established FTL's status as foreign corporation, no more, no less. And since FTL's purported SEC Certificate of Non-Registration marked as Exhibit P-35 was denied[7] admission for being a mere photocopy, petitioner failed to prove that its client FTL was, at least during the period of the alleged transactions was doing business outside the Philippines, warranting rejection of its claim for refund of input VAT attributable to zero-rated sales authorized under Section 108(B)(2) of the NIRC, as amended.

Further, petitioner's claim that its client FTL was not in active pursuit of commerce in the Philippines there being no showing that it solicited, performed service contracts, or had an office in the Philippines; nor participated in the management, supervision, or control any domestic business, entity or corporation could not be taken hook line and sinker as no evidence was adduced in support thereof. Basic is the rule that bare allegations, unsubstantiated by evidence, are not equivalent to proof, *i.e.,* mere allegations are not evidence.[8]

Neither may petitioner's plea for new trial on the ground that it was able to belatedly secure a document that will reverse the Court's ruling be permitted. Per Section 5, Rule 30[9] of the Rules of Court, it is during the trial stage of the case that the parties may be legally permitted to present evidence to establish their respective causes of action or defense. By way of exception, Section 1, Rule 37 of the Rules of Court allows the grant of new trial and consequent presentation of evidence after a final judgment or order was

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7 Resolution dated September 11, 2017, docket, pp. 762-763.

8 *Republic of the Philippines vs. Tobora-Tionglico,* G.R. No. 218630, July 11, 2018; *LNS International Manpower Services vs. Padua, Jr.,* G.R. No. 179792, March 5, 2010; *Dr. De Jesus vs. Guerrero III,* G.R. No. 171491, September 4, 2009; and *Domingo vs. Robles,* G.R. No. 153743, March 18, 2005.

9 **Section 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:
(a) The plaintiff shall adduce evidence in support of his complaint;
(b) The defendant shall then adduce evidence in support of his defense, counterclaim, cross-claim and third-party complaints; xxx

rendered but it must be predicated on the following grounds, thus:

> **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:
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> (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
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> (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.
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> xxx xxx xxx

Obviously, petitioner was negligent as it failed to put in extra hours and attention to examine or scrutinize the evidence on hand, something that should have been done before the filing of the present case or at the very least before the presentation of its evidence. Diligence was indeed short in supply. Thus, a liberal application of the rules of procedure to suit petitioner's purpose would clearly pave the way for injustice as it would be rewarding an act of negligence with undeserved tolerance.[10]

Under Section 1, Rule 37 of the Revised Rules of Court, the "negligence" must be excusable[11] which is certainly not obtaining in the present case. Further, *mistakes of attorneys as to the competency of a witness, the sufficiency, relevancy, materiality, or immateriality of certain evidence, the proper defense, or the burden of proof are not proper grounds for a new trial.* In general the client is bound by the action of his counsel in the conduct of his case, and cannot be heard to complain that the result of the litigation

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[10] See *Commissioner of Internal Revenue vs. A Soriano Corporation,* G.R. No. 113703, January 31, 1997.

[11] *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue,* G.R. Nos. 141104 & 148763, June 8, 2007.

might have been different had counsel proceeded differently.[12]

Significantly, petitioner failed to cure the lapses observed by the Court on the first opportunity, - i.e., immediately upon receipt of the Resolution dated September 11, 2017, denying the admission of its Exhibit P-35, the purported SEC Certificate of Non-Registration of FTL, for being a mere photocopy.[13] The Rules are pregnant with remedies available under such circumstances. However, petitioner lackadaisically allowed the period to lapse without taking any action to protect its interest. It was only after notice of the adverse decision that petitioner secured the alleged SEC Certificate Non-Registration of FTL,[14] and Certifications from Foreign Authority that The Financial Times (1928), Limited and FTL are one and same entity.

Worse, petitioner, in its Manifestation and Motion dated February 21, 2020, prays that the belatedly secured documents be admitted as part of its evidence unmindful of the proper procedure for their admission as part of its evidence.

WHEREFORE, petitioner's Motion for Reconsideration and/or New Trial dated February 26, 2019 and its Manifestation and Motion dated February 21, 2020 are **DENIED**, for lack of merit. The impugned Decision dated February 4, 2019 is **AFFIRMED**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

I concur:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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12 *Abubakar vs. People,* G.R. No. 202408, June 27, 2018.
13 See Note 7.
14 Docket, p. 849.