REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

ACTUATE BUILDERS, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9129

Members:

CASTAÑEDA, JR., *Chairperson,*
MINDARO-GRULLA, *and*
BACORRO-VILLENA, *JJ.*

Promulgated:

DEC 1 6 2019 3:35 pm

x - x

RESOLUTION

CASTAÑEDA, JR., J.:

Before this Court is respondent's **Motion for Partial Reconsideration** filed, via registered mail, on October 23, 2019 with petitioner's **Comment (Re: Motion for Partial Reconsideration, dated 03 October 2019)** filed on November 15, 2019.

On October 3, 2019, a Decision was promulgated by this Court, partially granting petitioner's claim for refund of its excess and unutilized input value-added tax (VAT), the dispositive portion of which reads as follows:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND OR TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner the amount of **₱1,059,249.06**, representing its excess and unutilized input VAT attributable to its zero-rated sales for the first quarter of CY 2013.

SO ORDERED."

Undaunted, respondent filed the present Motion, partially assailing the above decision. In his Motion, respondent argues that petitioner's exhibits should not be given any probative value for being hearsay evidence. He claims that testimony of petitioner's witness, Ma. Corazon C. Ramos, should be limited only to those facts which she has personal knowledge. As such, considering that petitioner's claim for refund covers the first quarter of calendar year 2013, its witness is incompetent to testify on the present claim since she was employed only on December 2014. Respondent asserts that petitioner should have instead presented the signatories of the Returns, Summary of Sales and PEZA Registration to testify on such relevant and material matters. Thus, any other attempt on the part of petitioner to pass as absolute truth the contents of the said Returns, Summary of Sales and PEZA Registration shall be considered as hearsay evidence.

On the other hand, in its comment, petitioner primarily claims that respondent's Motion is a mere rehash of arguments already presented by respondent in its Memorandum. It continues that respondent's Motion generally argues that the "[e]xhibits of the Petitioner should not be given probative value for being hearsay evidence", without making no effort to clearly specify the documents which he is assailing as hearsay. Clearly, respondent's method of pleading is inadequate.

As to its witness, Ma. Corazon C. Ramos, petitioner asserts that included in her testimony is her position and responsibilities in the company. Thus, by virtue of her position, Ms. Ramos could perceive the tax return, which was in her custody, and the genuineness of the signature affixed upon it, which she recognized. Petitioner maintains that respondent's notion of hearsay is flawed by insisting that only the makers of the mentioned documents can testify upon them. Such is not supported by the text or logic of the rules of evidence. Nonetheless, petitioner submits that respondent had the opportunity to contest the documents mentioned when they were offered into evidence but, however, did not object to them at that time.

After consideration, the Court finds no merit in respondent's Motion for Partial Reconsideration.

As correctly pointed out by petitioner, a simple peruse of respondent's Motion would easily reveal that it is a mere rehash and reiteration of the arguments already presented in his Memorandum for Respondent[1] filed, via registered mail, on September 21, 2018.

Perforce, considering that Section 3, Rule 1 of the Revised Rules of the Court of Tax Appeals[2] (RRCTA) states that the Rules of Court shall apply suppletorily to these rules, reference to Section 2, Rule 37 of the Rules of Court is fitting, thus:

> "**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)*

In the case *Marikina Valley Development Corporation, et al. v. Hon. Napoleon R. Flojo, et al.,*[3] the Supreme Court had the occasion to explain the above-quoted provision in this wise:

[1] Docket (vol. I), pp. 513-516.
[2] A.M. No. 05-11-07-CTA, November 22, 2005.
[3] G.R. No. 110801, December 8, 1995.

> "The rule in our jurisdiction is that a party aggrieved by a decision of a trial court may move to set aside the decision and reconsideration thereof may be granted when (a) the judgment had awarded 'excessive damages;' (b) there was 'insufficiency of the evidence to justify the decision;' or (c) 'the decision was against the law.'
>
> **A motion for reconsideration based on ground (b) or (c) above must point out specifically the findings and conclusions of the judgment 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 and conclusions.**
>
> A motion for reconsideration, when sufficient in form and substance — that is, when it satisfies the requirements of Rule 37 of the Rules of Court — interrupts the cunning of the period to perfect an appeal. A motion for reconsideration that does not comply with those requirements will, upon the other hand, be treated as pro forma intended merely to delay the proceedings and as such, the motion will not stay or suspend the reglementary period. The net result will be dismissal of the appeal for having been unseasonably filed." *(Emphasis supplied)*

Again, respondent only made a general assertion in his Motion. He failed to specify, and make express reference to, the pieces of evidence which allegedly should not have been given probative value.

By merely reiterating the arguments in his Memorandum, this Court finds no cogent reason to reverse or modify the conclusions reached in the assailed decision since it already had considered respondent's arguments and had scrutinized and weighed the documentary evidence presented by petitioner.

Accordingly, no new matter was raised in the present Motion and to discuss them again would be mere superfluity which will result in appalling misuse of judicial time and resources.

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

SO ORDERED.

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

We Concur:

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice