REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PHILIPPINE AEROSPACE DEVELOPMENT CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8346

Members:

CASTAÑEDA, JR., *Chairperson,*
CASANOVA, *and*
COTANGCO-MANALASTAS, *JJ.*

Promulgated:

AUG 12 2016 1:07 pm

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RESOLUTION

CASANOVA, *J.*:

For this Court's resolution is respondent's **Motion for Reconsideration and/or New Trial**, filed through registered mail on April 27, 2016, with petitioner's **Opposition to the Motion for Reconsideration and/or New Trial**, filed through registered mail on June 7, 2016.

Respondent seeks reconsideration of the Court's Decision promulgated on April 5, 2016 (assailed Decision)[1], the dispositive portion of which reads:

> "**WHEREFORE**, in view of the foregoing, the instant Petition for Review is hereby **GRANTED**. Accordingly, the tax deficiency assessments for taxable

[1] Docket (Vol. II), pp. 585-597.

year 2004 in the total amount of ₱13,242,616.24 are hereby **CANCELLED** and **SET ASIDE**.

SO ORDERED."[2]

Respondent maintains that petitioner failed to timely plead its objection on the issuance of the Preliminary Assessment Notice (PAN), and thus, petitioner is deemed to have waived the same. He cites Section 1, Rule 9 of the Rules of Court[3], and argues that petitioner's Petition for Review and Pre-Trial Brief are bereft of any statement alleging that respondent failed to issue the PAN or that petitioner did not receive the PAN prior to the issuance of the Final Assessment Notice (FAN). Moreover, he avers that petitioner cannot raise the issue on the non-issuance of PAN for the first time on appeal. Respondent insists that petitioner's reliance in good faith that the issuance of PAN is not an issue warrants the re-opening or new trial of the case.

On the other hand, petitioner avers that the instant Petition for Review was filed as an original judicial action, and thus, Section 1, Rule 9 of the Rules of Court does not apply. Moreover, it argues that respondent cannot claim surprise and lack of opportunity to refute its claim because the issue of lack of PAN was extensively discussed by its witness, Mr. Mark Timothy G. Linsag, and was contained in its Memorandum filed on April 29, 2015.

The Motion for Reconsideration and/or New Trial lacks merit.

Respondent prays for the reconsideration of the assailed Decision and the re-opening of the case in order to present the alleged PAN dated December 12, 2007.

A motion to reopen may properly be presented only after either or both parties have formally offered, and closed their evidence, but before judgment.[4] Here, respondent cannot avail the said remedy in view of the fact that he seeks to reopen the trial of this case only

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[2] Docket (Vol. II), p. 596.

[3] **Section 1.** *Defenses and objections not pleaded.* — Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or that the action is barred by a prior judgment or by statute of limitations, the court shall dismiss the claim.

[4] *Alegre vs. Reyes, et al.,* G.R. No. L-56923, May 9, 1988.

after the Court rendered its judgment. The ruling of the Supreme Court in *Alegre vs. Reyes, et al.*[5] is clear:

> "xxx the reopening of a case for the reception of additional evidence *after a case has been submitted for decision but before judgment is actually rendered* is, it has been said, controlled by no other rule than that of the paramount interests of justice, resting entirely in the sound judicial discretion of a Trial Court; and its concession, or denial, by said Court in the exercise of that discretion will not be reviewed on appeal unless a clear abuse thereof is shown." *(italics supplied)*

While a party may believe that it has a meritorious legal defense, this must be weighed against the need to halt an abuse of the flexibility of procedural rules. It is well established that faithful compliance with the Rules of Court is essential for the prevention and avoidance of unnecessary delays and for the organized and efficient dispatch of judicial business.[6] Moreover, fundamental considerations of public policy and sound practice necessitate that, at the risk of occasional errors, the judgment or orders of courts should attain finality at some definite time fixed by law. Otherwise, there would be no end to litigation.[7]

The Court promulgated the assailed Decision on April 5, 2016, while respondent filed her motion with a prayer to re-open trial only on April 27, 2016. At the time respondent filed the said motion, the Court already rendered a judgment on this case, thus, the motion cannot be sustained.

Even respondent's Motion for New Trial is bereft of merit. It may be granted only upon specific, well-defined grounds, set forth in the Rules.[8] We find applicable 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

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[5] *Ibid.*
[6] *Philippine National Bank vs. Commissioner of Internal Revenue*, G.R. No. 172458, December 14, 2011.
[7] *Reynante Tadeja, Ricky Tadeja, Ricardo Tadeja and Ferdinand Tadeja vs. People of the Philippines*, G.R. No. 145336, February 20, 2013.
[8] *Ibid.*

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.

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."

Relative to these provisions are Sections 5 and 6, Rule 15 of the 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.

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."

In *Commissioner of Internal Revenue vs. A. Soriano Corporation, et al.,*[9] the High Court laid down the requisites for the grant of a motion for new trial on the ground of newly discovered evidence in this wise:

> "Section 5, Rule 13 of the Rules of the Court of Tax Appeals provides that the provisions of Rule 37 of the Rules of Court shall be applicable to motions for new trial before the Court of Tax Appeals. Under Section 1, Rule 37 of the Rules of Court, the requisites for newly discovered evidence as a ground for a new trial are: (a) the evidence was discovered after the trial; (b) such evidence could not have been discovered and produced at the trial with reasonable diligence; and (c) that it is material, not merely cumulative, corroborative or impeaching, and is of such weight that, if admitted, will probably change the judgment. All three requisites must characterize the evidence sought to be introduced at the new trial."

From the foregoing, it can be seen that the rules allow the filing of 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.

An examination of the instant motion, however, shows that the same was neither based on fraud, accident, mistake or excusable negligence that would need affidavits of merit, nor based on newly discovered evidence which would require affidavits of witnesses. Notably, no affidavits were filed in support of the motion for new trial.

Respondent filed the instant motion seeking to present additional evidence which she failed to present during the hearing. As found by the Court in the assailed Decision, respondent waived her right to present any evidence in this case, and likewise opted not to file a Memorandum. Hence, the Court finds that the additional

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[9] G.R. No. 113703, January 31, 1997.

documentary evidence constitutes "forgotten" evidence which respondent intends to present only after obtaining an unfavorable decision. As held in the case of *Office of the Ombudsman, Represented by Hon. Simeon V. Marcelo vs. Carmencita D. Coronel*:[10]

> "Forgotten evidence refers to evidence already in existence or available before or during a trial; known to and obtainable by the party offering it; and could have been presented and offered in a seasonable manner, were it not for the sheer oversight or forgetfulness of the party or the counsel. Presentation of forgotten evidence is disallowed, because it results in a piecemeal presentation of evidence, a procedure that is not in accord with orderly justice and serves only to delay the proceedings. A contrary ruling may open the floodgates to an endless review of decisions, whether through a motion for reconsideration or for a new trial, in the guise of newly discovered evidence."

Meanwhile, the Court disagrees on respondent's argument that petitioner failed to timely plead the defense or objection on the issuance of PAN.

Petitioner's witness, Mr. Mark Timothy G. Linsag, testified by way of Judicial Affidavit,[11] that petitioner did not receive any PAN from respondent prior to the issuance of FAN, to wit:

> "Q7: Mr. Witness, did the Commissioner of Internal Revenue (CIR) issue a Preliminary Assessment Notice (PAN) to PADC containing the factual and legal bases therefor?
>
> A7: Based on records, the CIR did not issue a PAN to PADC regarding its alleged tax deficiencies for 2004. In fact, it was not among the facts agreed by PADC and the CIR, as submitted to the Court of Tax Appeals."

With this testimony, respondent opted not to present any controverting evidence. Respondent, therefore, had all the

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[10] G.R. No. 164460, June 27, 2006.
[11] Docket (Vol. I), pp. 485-506.

opportunity to rebut petitioner's allegation that no PAN was issued, but he chose to waive his right to present evidence. Consequently, the Court still finds that the assessments for taxable year 2004 in the total amount of ₱13,242,616.24 must be cancelled and set aside.

WHEREFORE, in view of the foregoing, respondent's **Motion for Reconsideration and/or New Trial** is hereby **DENIED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice