REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

<u>SECOND DIVISION</u>

MITSUI & CO., LTD. (MANILA BRANCH), Petitioner,	**CTA CASE NO. 9536**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson*, and **BACORRO-VILLENA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: NOV 06 2020 9:45 AM

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RESOLUTION

CASTAÑEDA, JR., *J.*:

Submitted before this Court for resolution are petitioner's **Motion for Reconsideration and/or New Trial**, filed on February 7, 2020, and petitioner's **Manifestation and Motion**, filed on March 13, 2020. Both motions are without respondent's comment as per Records Verification dated September 2, 2020.

On January 22, 2020, a Decision was promulgated by this Court denying petitioner's claim for refund, in the amount of ₱40,645,507.21, on the sole ground that petitioner failed to prove that it has no internal revenue tax liabilities. The dispositive portion of the said Decision reads:

> "**WHEREFORE**, the present Petition for Review is **DENIED** for lack of merit.
>
> **SO ORDERED.**"

Motion for Reconsideration and/or New Trial

In the subject motion, petitioner prays for the Court: (1) to reconsider its Decision dated January 22, 2020; (2) to order a new trial for the reception of the new evidence which, accordingly, can prove that petitioner has no outstanding internal revenue tax liabilities; and (3) to rule that petitioner is entitled for refund of the excess and unused input VAT due to the cancellation of its VAT registration, as a result of the closure or cessation of its business operation in the Philippines for the period from April 1, 2008 to March 31, 2015, in the amount of ₱40,645,507.21.

In assailing the above-stated Decision, petitioner claims that it has sufficiently complied with all the documentary requirements for the filing of a claim for refund of unused input taxes due to dissolution or retirement of business under Section 112 (B) of the National Internal Revenue Code (NIRC). Petitioner likewise argues that the submission of Certificate of Tax Clearance is not part of the documentary requirements laid down in the case of *Associated Swedish Steel Phils., Inc. vs. Commissioner of Internal Revenue.*[1]

Petitioner also avers that Regional Director (RD) Jonas DP. Amora of Revenue Region No. 8, issued a Letter of Authority (LOA) No. eLA201200035889 dated July 21, 2016, authorizing Revenue Officer Moises Besol and Group Supervisor Praxedio Tulio to examine petitioner's books of accounts and other accounting records for all internal revenue taxes, including VAT, for the period from April 1, 2013 to February 20, 2015, pursuant to Section 6 (A) and Section 10 (C) of the NIRC of 1997, as amended. Consequently, another LOA was issued by the Bureau of Internal Revenue (BIR) relative to the filing of its administrative claim for refund.

In addition, petitioner avers that during the pendency of the instant case, RD Glen A. Geraldino issued a letter dated June 28, 2019, stating that the petitioner's case is considered closed and terminated, as the deficiency taxes mentioned therein have already been paid, and the report of investigation thereon has already been approved. *gr*

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[1] CTA Case No. 7850, September 16, 2011.

Petitioner also claims that it was only on February 6, 2020 that it was able to secure the Delinquency Verification, issued by Ms. Gladys L. Almerido, OIC Assistant Chief, Collection Division, stating, among others, that petitioner has no listed tax liability based on available records of the Collection Division of Revenue Region No. 8-Makati as of February 6, 2020. And, to prove the foregoing matter, petitioner attached the photocopy of the said Delinquency Verification as Annex "E" of the subject motion.

Lastly, invoking the ruling of the Supreme Court in *Cabarles vs. Maceda*[2] and *BPI-Family Saving Bank, Inc. vs. Court of Appeals*,[3] petitioner seeks the application of Section 1, Rule 37 of the Rules of Court which, accordingly, allows the grant of new trial and the consequent presentation of evidence after a final judgment or order has been rendered by the Court.

Manifestation and Motion

On the other hand, in the subject Manifestation and Motion, petitioner reiterates its stance in the above-stated Motion for Reconsideration, and further manifests that a Certificate of No Outstanding Liability, signed by Revenue District Officer Thelma D. Mangio, has been issued in favor of petitioner stating that, as of March 6, 2020, petitioner has no outstanding internal revenue tax liability with the BIR; and that such Certificate is valid for dissolution of non-individual taxpayer. Petitioner even attached to the subject Manifestation and Motion, the certified true copy of the said Certificate as Annex "A" thereof.

As such, petitioner prays for the following: (1) to allow the recall of Ms. Alona Galang to identify the foregoing documents in the scheduled hearing to be set by the Court; (2) to vacate the Decision dated January 22, 2020; and (3) to rule that petitioner is entitled for refund of the excess and unused input VAT due to the cancellation of its VAT registration, as a result of the closure or cessation of its business operation in the Philippines for the period from April 1, 2008 to March 31, 2015, in the amount of ₱40,645,507.21.

The Court finds merit in the instant motion. *ge*

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[2] G.R. No. 161330, February 20, 2007.
[3] G.R. No. 122480, April 12, 2000.

Sections 1 and 2, Rule 37 of the Rules of Court 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.**
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> 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."
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> "Section 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.
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> 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.** ǂ

A motion for reconsideration shall point out a 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." *(Emphases supplied)*

Corollary thereto, Sections 5 and 6 of Rule 15 of the 2005 Revised Rules of the Court of Tax Appeals (CTA) state:

"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. ***Content 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 or 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.**
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> 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." *(Emphases supplied)*

Based therefrom, it is clear that a motion for new trial may be filed on the ground of newly discovered evidence, among others, and such motion is required to be supported by the 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.

In this case, the claim of petitioner that the Delinquency Verification dated February 6, 2020 and Certificate of No Outstanding Liability dated March 6, 2020, both issued after this Court had rendered its Decision in the instant case, clearly indicates that the basis of petitioner's Motion for New Trial is the second ground, which is "newly discovered evidence". Jurisprudence provides that before a new trial may be granted on the ground of newly discovered evidence, the following fact must be presented: (1) that the evidence was discovered after trial; (2) that such evidence could not have been discovered and produced at the trial even with the exercise of reasonable diligence; (3) that it is material, not merely cumulative, corroborative, or impeaching; and (4) the evidence is of such weight that it would probably change the judgment if admitted.[4]

Applying the foregoing, it is evident that the attached photocopy of Delinquency Verification dated February 6, 2020 and certified true copy of Certificate of No Outstanding Liability in the subject pleadings cannot, indeed, be presented by petitioner during trial, even with the exercise of reasonable diligence, as the same were obtained by petitioner after the promulgation of the Court's Decision on January 22, 2020. More so, said documents appear to be

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[4] *Brig. Gen. Custodio vs. Sandiganbayan*, G.R. Nos. 96027-28, March 8, 2005; *Commissioner of Internal Revenue, vs. A. Soriano Corporation, et al.*, G.R. No. 113703, January 31, 1997.

material and of such character that would probably change the Court's judgment in the instant case, if admitted, especially that the subject Petition for Review was denied on the sole ground that petitioner failed to prove that it has no outstanding tax liabilities. Thus, there is no doubt that the said documents qualify as newly discovered evidence. Consequently, the Court deems it proper to grant petitioner's Motion for New Trial, and allow petitioner to recall its witness, Ms. Alona Galang, to identify and present the Delinquency Verification dated February 6, 2020 and Certificate of No Outstanding Liability, attached to the instant motions, as petitioner's additional evidence, in line with the avowed policy of this Court to liberally apply its rules of procedure to promote its objective of securing a just, speedy, and inexpensive determination of every action and proceeding, pursuant to Section 2, Rule 1 of the Revised Rules of the Court of Tax Appeals, as amended.

At this juncture, it is bears noting that the foregoing ruling of the Court is congruent with the pronouncement of the Supreme Court in *BPI-Family Savings Bank vs. Court of Appeals, et al.* (BPI case).[5] In the said case, the High Court recognized the rule that the proceedings before the CTA shall not be governed strictly by the technical rules of evidence[6] and, thus, permitted the appreciation of a copy of the Final Adjustment Return for 1990 attached to BPI's Motion for Reconsideration in this wise:

> "True, strict procedural rules generally frown upon the submission of the Return after the trial. **The law creating the Court of Tax Appeals, however, 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.**
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> **In the present case, the Return attached to the Motion for Reconsideration clearly showed that petitioner suffered a net loss in 1990.**

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

[6] *Calamba Steel Center, Inc. (formerly JS Steel Corporation), vs. Commissioner of Internal Revenue*, G.R. No. 151857, April 28, 2005; *Dizon vs. Court of Tax Appeals & Commissioner of Internal Revenue*, G.R. No. 140944, April 30, 2008; *Commissioner of Internal Revenue vs. De La Salle University, Inc., etseq.*, G.R. Nos. 196596, 198841 & 198941, November 9, 2016.

> **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.**
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> 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 strict technicality, the Return submitted before the CTA and even before this Court. To repeat, the undisputed fact 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."

Furthermore, in *Dulos Realty and Development Corporation vs. Hon. Court of Appeals and Vicenta Peleas* (Dulos case)[7], the High Court ruled as follows:

> **"Did the appellate court err in treating petitioners motion as one for new trial? We note that petitioners motion was captioned alternatively, for reopening/clarification and reconsideration.** Under Section 1 (c) of Rule 37 of the Rules of Court, before it was amended on July 1, 1997, a motion for new trial was aimed to convince the court that its ruling was erroneous and improper for being contrary to the law or the evidence. However, apparent from petitioners motion and the subsequent hearing thereon was petitioners intention to make the trial court reconsider its decision to conform with the law and the evidence by reiterating the decision of the HLURB, the government agency which has the primary jurisdiction on the enforcement of PD 957 as amended, and by informing said trial court that private respondent already abandoned the premises, hence, making the Antipolo ruling cited by the court inapplicable.

[7] G.R. No. 128516, November 28, 2001.

> That private respondent had already abandoned the premises is not a newly found evidence for admittedly, petitioner knew of it before the trial court rendered its decision. Hence, it could not be introduced through a motion for new trial under Section 1 Rule 37 of the Rules of Court. Neither could said abandonment be introduced through a motion to reopen, because such motion could only be made after the case was submitted for decision but before judgment is actually rendered. **In this case, it was only introduced as evidence in the motion filed after judgment, which in our view is appropriately one for reconsideration. Had the trial court not allowed petitioner to present said proof of abandonment, said court would not have had the chance to correct its decision.** It would have effectively forced private respondent to continue with the contract to buy the house and lot on installment, even if she had lost interest in performing her obligations under that contract to the great prejudice of petitioner.
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> In *Lim vs. Court of Appeals,* 188 SCRA 23, 33 (1990), we held that **technicalities should not be resorted to in derogation of the intent of the rules which is the proper and just determination of controversies**. Every party-litigant should be afforded the amplest opportunity for the proper and just disposition of his cause free from undue constraints of technicalities. Worth noting is petitioner's allegation that private respondent is already dead and that her heirs did not seem to be interested in the matter nor were they capable of assuming private respondent's obligation under the contract, though her counsel continued to pursue the case. Nowhere in the records was this allegation denied by private respondent's counsel. Thus, we agree with the petitioner that evidence on abandonment of the premises by private respondent was properly received even only for purposes of reconsideration and clarification." *(Emphases supplied)*

Lastly, considering that this Court cannot consider evidence which has not been formally offered, following the pronouncement of the Supreme Court in *Dizon vs. Court of Tax Appeals and Commissioner of Internal Revenue,*[8] the Court allows petitioner to

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[8] G.R. No. 140944, April 30, 2008.

present and formally offer the above-mentioned additional evidence, which would still be subject to the Court's final evaluation and/or appreciation of its relevance, competence and probative value to the issues involved in the present case.

WHEREFORE, in light of the foregoing considerations, petitioner's **Manifestation** is hereby **NOTED**, while petitioner's **Motion for New Trial** is hereby **GRANTED**.

Accordingly, set the case for hearing for the recall of Ms. Alona Galang on December 2, 2020 at 9:00 a.m., to present and identify the originals or certified true copies of the Delinquency Verification dated February 6, 2020 and Certificate of No Outstanding Liability dated March 6, 2020. Also, petitioner is directed to submit Ms. Galang's Judicial Affidavit not later than five (5) days before the scheduled hearing.

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

SO ORDERED.

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

I CONCUR:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice