REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner, - versus - **PHILIPPINE AEROSPACE DEVELOPMENT CORPORATION,** Respondent.	**CTA EB NO. 1516** (CTA Case No. 8346) Present: **DEL ROSARIO,** *P.J.,* **CASTAÑEDA, JR.,** **BAUTISTA,** **UY,** **CASANOVA,** **FABON-VICTORINO,** **MINDARO-GRULLA,** **RINGPIS-LIBAN,** *and* **MANAHAN,** *JJ.* Promulgated: AUG 23 2017 3:16 p.m.

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DECISION

RINGPIS-LIBAN, *J.*:

The Case

Before the Court is a Petition for Review seeking the nullification of the Decision[1] dated April 05, 2016 (assailed Decision) and Resolution[2] dated August 12, 2016 (assailed Resolution) of the Court of Tax Appeals Second Division (Second Division), cancelling the assessments Petitioner issued against Respondent for deficiency taxes amounting to ₱13,242,616.24 for the period covering January 01 to December 31, 2004 (taxable year 2004).

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1 Penned by Associate Justice Caesar A. Casanova, with Associate Justice Juanito C. Castañeda, Jr. concurring. Docket, pp. 585-597.

2 Penned by Associate Justice Caesar A. Casanova, with Associate Justice Juanito C. Castañeda, Jr. and Amelia R. Cotangco-Manalastas concurring. Docket, pp. 624-631.

The Facts

The facts as found by the Second Division are as follows:

[Respondent] is a government owned and controlled corporation (GOCC) created and existing under the laws of the Philippines, specifically, Presidential Decree (PD) No. 286, as amended, with principal address at PADC Hangar 2, General Aviation Area, Domestic Airport Road, Pasay City.

On the other hand, [petitioner] is the duly appointed head of the Bureau of Internal Revenue (BIR) and is empowered to perform the duties of his office, including, among others, the power to decide, cancel, and abate tax liabilities pursuant to Section 204 (B) of the National Internal Revenue Code, Republic Act (RA) 8424, as amended, otherwise known as the Tax Reform Act of 1997 (Tax Code).

On January 9, 2008, the CIR, through Revenue Region No. 8, issued Assessment Notices for income tax, VAT, withholding of creditable VAT, EWT, and compromise penalty for the period January 2004 to December 2004 in the total amount of ₱9,813,403.28 xxx.

On the same date, [petitioner] issued a Formal Assessment Notice (FAN) with attached Details of Discrepancies assessing [respondent] in the same amount stated above.

On August 21, 2008, Revenue District Officer (RDO) of Revenue Region No. 8, Revenue District Office No. 51, Ricardo B. Espiritu, issued a Preliminary Collection Letter (PCL) whereby the [petitioner] demanded the payment of ₱9,813,403.28 as the aggregate amount of tax liabilities of [respondent].

On April 21, 2009, [respondent] sent a letter to the Regional Director, Revenue Region No. 8, Mr. Alfredo V. Misajon, reiterating its request for re-investigation of the assessment for the year 2004. Pertinent documents were submitted by [respondent] pursuant to the letter request.

On July 28, 2009, [respondent] sent another letter to Mr. Misajon reitereating its request for the re-investigation of the assessment for the year 2004.

On August 16, 2011, the CIR issued a Final Decision on Disputed Assessment (FDDA), with attached Details of Discrepancies, acknowledging therein that the request for re-investigation was granted. However, except for the amended value-added tax portion, the rest of the tax deficiencies were affirmed on the ground that [respondent] failed to submit supporting documents to substantiate the cancellation of the assessments. xxx

In view of [petitioner's] Decision, [respondent] filed the instant Petition for Review, through registered mail on September 19, 2011, which was received by the Court on October 5, 2011, praying for the suspension of any impending levy, distraint, and/or sale of any property of the [respondent] during the pendency of the instant Petition and for the cancellation of all deficiency tax assessments for the year 2004.

xxx xxx xxx

The lone issue submitted by the parties for this Court's resolution is whether or not [respondent] is liable for the subject deficiency tax assessments for taxable year 2004.[3]

The Ruling of the Second Division

On April 05, 2016, the Second Division promulgated the assailed Decision granting the Petition for Review, 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 year 2004 in the total amount of ₱13,242,616.24 are hereby **CANCELLED** and **SET ASIDE**.

SO ORDERED.[4]

The assailed Decision declared as void the deficiency tax assessments for taxable year 2004 for failure by Petitioner to issue a Preliminary Assessment Notice (PAN) to Respondent, stating the facts and the law on which the assessments was made, as required by Section 228 of the 1997 NIRC. For such failure, the Second Division ruled that Respondent was effectively denied of its right to due process.

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[3] *Id.*, pp. 585-590.
[4] *Id.*, p. 596.

Aggrieved, Petitioner filed a Motion for Reconsideration and/or New Trial[5] on April 27, 2016 *via* registered mail, which the Second Division denied in the assailed Resolution on August 12, 2016, thus:

> **WHEREFORE**, in view of the foregoing, [petitioner]'s Motion for Reconsideration and/or New Trial is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**[6]

In denying Petitioner's Motion for Reconsideration and/or New Trial, the Second Division ruled that a motion to reopen may only be permitted after either or both of the parties have formally offered and closed their evidence, but before judgment. In the case at bar, the reopening of the trial cannot be sustained considering that the Motion was filed after the Second Division had already rendered its judgment. Additionally, the only allowable grounds to grant a new trial are on the basis of fraud, accident, mistake, excusable negligence or newly-discovered evidence. Petitioner's motion was not based on any of these, and what Petitioner intends to present as additional documentary evidence merely constitutes forgotten evidence.

On September 06, 2016, Petitioner filed a Motion for Extension of Time to File Petition for Review[7] *via* registered mail, which the Court granted in a Resolution dated September 19, 2016.[8]

On September 23, 2016, Petitioner filed the present Petition for Review[9] *via* registered mail.

On October 19, 2016, the Court issued a Resolution[10] which ordered Respondent to comment on the Petition for Review. Respondent filed on November 14, 2016 a Motion for Extension[11] of time to file comment, which the Court granted on November 16, 2016,[12] giving Respondent until November 18, 2016 within which to file his comment. On November 18, 2016, Respondent filed its Comment/Opposition[13] *via* registered mail.

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[5] *Id.*, pp. 598-605.
[6] *Id.*, p. 631.
[7] Rollo, pp. 1-3. Record shows that petitioner received the assailed Resolution on August 24, 2016; Docket, p. 623.
[8] *Id.*, p. 5-A.
[9] *Id.*, pp. 6-17.
[10] *Id.*, pp. 56-57.
[11] *Id.*, pp. 58-60.
[12] *Id.*, p. 61.
[13] *Id.*, pp. 62-68.

On December 06, 2016, the Court issued a Resolution[14] submitting the case for decision.

The Issues

Petitioner raises the following grounds in support of its petition:

1. The Second Division of the Honorable Court erred in holding that Respondent's right to due process was violated for failure to issue the PAN.

2. The Second Division of the Honorable Court erred in not granting the re-opening and/or new trial for the reception of the PAN.[15]

The Ruling of the Court

Petitioner insists that there was no violation of Respondent's right to due process. Petitioner hinges its claim on the supposed existence of a PAN it allegedly issued to Respondent. This was attached by Petitioner in the Motion for Reconsideration and/or New Trial it filed with the Second Division on April 27, 2016 *via* registered mail. Petitioner then argues that the non-issuance of a PAN was never made an issue in the Court *a quo*. And that in the interest of substantial justice, the Second Division should have allowed the-reopening of the case for the presentation of the alleged PAN.

Petitioner's arguments must perforce fail.

The Second Division did not err in its refusal to reopen the case for the reception of the alleged PAN.

We agree with the Second Division when it ruled that Petitioner's Motion for Reconsideration and/or New Trial praying for the reopening of the case cannot be sustained. This is owing to the fact that the motion was only filed after the Court *a quo* had already rendered judgment. A motion to reopen should be filed before judgment. As aptly discussed by the Second Division in the assailed resolution:

> "A motion to reopen may properly be presented only after either or both parties have formally offered, and closed their

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[14] *Id.*, pp. 71-72.
[15] *Id.*, pp. 9-10.

evidence, but before judgment. Here respondent cannot avail the said remedy in view of the fact that he seeks to reopen the trial of this case only after the court rendered its judgment. The ruling of the Supreme Court in *Alegre vs. Reyes, et al.* is clear:

> 'xxx the reopening of a case for the reception of additional evidence *after a case had 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)*"[16]

Additionally, even if Petitioner insists that its motion is not a motion to reopen trial but in the nature of a motion for new trial, the same must still be dismissed for lack of due merit. A motion for new trial under Section 1, Rule 37 of the Rules of Court[17] (ROC) and Section 5, Rule 15 of the Revised Rules of the Court of Tax Appeals[18] (RRCTA) may only be granted upon specific well-defined grounds, namely, fraud, accident, mistake, excusable negligence or newly discovered evidence.

Lamentably, Petitioner's motion does not fall under any of the grounds enumerated. Instead, Petitioner's motion is based on the presentation of the alleged PAN, already in its possession and custody during the trial. During the proceedings in the court *a quo*, Petitioner failed to present the PAN, and instead waived his right to present evidence. Hence, this Court has no option but to rule that said documentary evidence constitutes "forgotten evidence" which must be disallowed in a motion for new trial.

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[16] Docket, pp. 625-626.

[17] **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.

[18] **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 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.
A motion for new trial shall include all grounds then available and those not included shall be deemed waived.

A "forgotten evidence" is that which is already available during the conduct of the trial, but was not presented at that stage of the proceedings.[19] As observed by the Second Division, Petitioner's alleged PAN is a "forgotten evidence", to wit:

> "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.**
>
> **[Petitioner] filed the instant motion seeking to present additional evidence which [he] failed to present during the hearing**. As found by the Court in the assailed Decision, [petitioner] waived [his] right to present any evidence in this case, and likewise opted not to file a Memorandum. Hence, the Court finds that **the additional documentary evidence constitutes "forgotten" evidence** which [petitioner] 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:*
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>> '**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.'"[20]

Knowing that the alleged PAN cannot be correctly admitted under the grounds for a motion for new trial, Petitioner insists that a liberal application of the rules should be applied. Stated differently, Petitioner wants this Court to admit the PAN, without having complied the requisites for the grant of a motion for new trial.

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[19] Rodolfo M. Cuenca v. Hon. Alberto P. Atas, G.R. No. 146214, October 05, 2007.
[20] Docket, pp. 629-630; *Emphasis and underscoring supplied.*

This is a dangerous proposition and one which the Court refuses to countenance. Courts and litigants alike should abide by the rules to ensure an orderly administration of justice. The discussion of the Supreme Court on strict compliance with the prescribed procedure in the case of *Lolita R. Alamayri v. Rommel Pabale*[21] is instructive, thus:

> "The parties must diligently and conscientiously present all arguments and available evidences in support of their respective positions to the court before the case is deemed submitted for judgment. Only under exceptional circumstances may the court receive new evidence after having rendered judgment; otherwise, its judgment may never attain finality since the parties may continually refute the findings therein with further evidence. Alamayri failed to provide any explanation why she did not present her evidence earlier. **Merely invoking that the ends of justice would have been best served if she was allowed to present additional evidence is not sufficient to justify deviation from the general rules of procedure.** Obedience to the requirements of procedural rules is needed if the parties are to expect fair results therefrom, and utter disregard of the rules cannot justly be rationalized by harking on the policy of liberal construction."[22]

While the Court, in some instances, allows a relaxation in the application of the rules, this, we stress, was never intended to forge a bastion for erring litigants to violate the rules with impunity. The liberality in the interpretation and application of the rules applies only to proper cases and under justifiable causes and circumstances. While it is true that litigation is not a game of technicalities, it is equally true that every case must be prosecuted in accordance with the prescribed procedure to insure an orderly and speedy administration of justice.[23]

The Court is not precluded in taking cognizance of an issue which was not stipulated by the parties in the pleadings.

It is true that the absence of the PAN was not explicitly raised as an issue by Respondent at the administrative level, its Petition for Review filed before the Second Division, or in the Joint Stipulation of Facts and Issues dated July 12, 2012. Yet, this does not prevent the Court *a quo* for taking cognizance of such issue, and for ruling thereon.

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[21] G.R. No. 151243, April 30, 2008.

[22] *Emphasis supplied.*

[23] Gloria Z. Garbo v. Court of Appeals, G.R. No. 107698, July 05, 1996 *citing* Sps. Ilasco, Jr. v. Court of Appeals, GR No. 88983, December 14, 1993 and Dulos v. Court of Appeals, G.R. No. 87917, August 7, 1990.

First, Section 5, Rule 10 of the ROC allows issues not raised by the pleadings to be tried by express or implied consent of the parties as if they had been raised in the pleadings, and the court can validly resolve them.[24] Section 5, Rule 10 of the Rules of Court provides:

> "**Sec. 5.** *Amendment to conform to or authorize presentation of evidence.* - **When issues not raised by the pleadings are tried with the express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings.** Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so with liberality if the presentation of the merits of the action and the ends of substantial justice will be subserved thereby. The court may grant a continuance to enable the amendment to be made."[25]

There is express consent to the evidence on an issue not raised in the pleading when the adverse party agrees to its presentation by the other party.[26] There is implied consent when the adverse party fails to object thereto.[27]

Thus, the general rule is this - a judgment must conform to the pleading and the theory of the action under which the case is tried.[28] And yet, a court may rule and render judgment on the basis of the evidence before it even though the relevant pleading had not been previously amended, so long as no surprise or prejudice is thereby caused to the adverse party. [29] Put a little differently, so long as the basic requirements of fair play had been met, as where the litigants were given full opportunity to support their respective contentions and to object to or refute each other's evidence, the court may validly treat the pleadings as if they had been amended to conform to the evidence and proceed to adjudicate on the basis of all the evidence before it.[30]

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24 Agrifina Panganiban v. Sps. Roldan, G.R. No. 163053, November 25, 2009.

25 *Emphasis supplied.*

26 Supra note 24.

27 D.M. Wenceslao & Associates, Inc. v. Freyssinet Philippines, Inc., G.R. No. 166857, September 11, 2009 *citing* Bank of America v. American Realty Corporation, G.R. No. 133876, December 29, 1999.

28 Sps. Mercader v. Development Bank Of The Philippines (Cebu Branch), G.R. No. 130699, May 12, 2000 *citing* Bank of America v. American Realty Corporation, G.R. No. 133876, December 29, 1999 *citing* Talisay-Silay Milling Co., Inc. vs. Asociacion de Agricultures de Talisay-Silay, Inc., G.R. No. 91852, August 15, 1995.

29 Supra note 27.

30 *Id.*

Although the pleading may not have been amended to conform to the evidence submitted during trial, judgment may nonetheless be rendered, not simply on the basis of the issues alleged but also the basis of issues discussed and the assertions of fact proved in the course of trial. The court may treat the pleading as if it had been amended to conform to the evidence, although it had not been actually so amended.[31] This is as long as no surprise or prejudice to the adverse party is thereby caused and there is express or implied consent to the presentation of evidence.[32]

In *Royal Cargo Corporation v. DFS Sports Unlimited*[33], the Supreme Court admitted Respondent's defense of payment during the testimony of its first witness, this notwithstanding the fact that nowhere in its Answer or in its Pre-Trial Brief did Respondent raise the defense that it had already paid petitioner its obligations.

In the same way and in light of the pronouncements discussed above, the Second Division correctly took cognizance of the issue concerning the absence of the PAN, despite Respondent's failure to expressly raise such issue in its pleadings. The Court *a quo* merely applied Section 5, Rule 10 of the Rules of Court. A review of the facts reveals that there was implied consent of the part of Petitioner as to the trial of the issue regarding the absence of the PAN. In the Judicial Affidavit[34] of Mr. Mark Timothy G. Linsag, Respondent's witness testified that Respondent did not receive any PAN from the Petitioner prior to the issuance of FAN. When the same was formally offered, Petitioner did not manifest his objection to the introduction of the issue regarding the absence of the PAN. Moreover, Respondent opted not to present any evidence to the contrary, at the time the foregoing issue was already introduced.[35] Additionally, Respondent in its Memorandum[36] dated April 29, 2015 reiterated the issue of failure to issue the PAN; and yet, Petitioner did not bother to file a Memorandum and controvert Respondent's allegations.[37] From all of the foregoing, clearly Petitioner gave his implied consent.

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[31] Bank of America v. American Realty Corporation, G.R. No. 133876, December 29, 1999 *citing* Talisay-Silay Milling Co., Inc. vs. Asociacion de Agricultures de Talisay-Silay, Inc., G.R. No. 91852, August 15, 1995.

[32] Supra note 23.

[33] G.R. No. 158621, December 10, 2008 *citing* Co Tiamco v. Diaz, G.R. No. L-7, January 22, 1946; Ong v. Court of Appeals, G.R. No. 144581, July 5, 2002; Bank of America v. American Realty Corporation, G.R. No. 133876, December 29, 1999; and Sy v. Court of Appeals, G.R. No. 124518, December 27, 2007.

[34] Docket, p. 236.

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.

[35] Manifestation of Petitioner's counsel during the March 24, 2014 hearing that he has no witness to present; Docket, p. 349.

[36] Docket, p. 555.

[37] Records Verification Report dated April 30, 2015; Docket, p. 580.

Second, Section 1 of Rule 14 of the RRCTA states:

RULE 14
JUDGMENT, ITS ENTRY AND EXECUTION

SECTION 1. *Rendition of judgment.* – xxx

In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case. (2002 Internal Rules of the Court of Appeals, Rule VI, secs. 9 and 10a; and Rules of Court, Rule 51, sec. 2a) [38]

Evident from the foregoing provision that the Second Division is not precluded from considering other related issues, not otherwise stipulated by the parties, which may be necessary to achieve a just, complete and orderly disposition of the case. The issue on the absence of the PAN is intimately connected to the sole issue stipulated by the parties during pre-trial – "[w]hether or not petitioner PADC is liable to the subject deficiency tax assessments for taxable year 2004."[39] Without a doubt, the propriety of the issuance of the PAN is a related issue, the resolution of which is pertinent and necessary in determining the validity and correctness of the said assessments.

Section 228 of the NIRC of 1997 evidently requires that the taxpayer must first be informed that he is liable for deficiency taxes through the sending of a PAN. The sending of a PAN to taxpayer to inform him of the assessment made is but a part of the due process requirement in the issuance of a deficiency tax assessment, the absence of which renders nugatory any assessment made by tax authorities.[40] It is but natural to establish first that Respondent was able to receive a PAN, rather than proving that Respondent is liable for deficiency tax if due process for assessment was violated in the first place. Initially, the court is mandated to inquire whether there was a valid assessment, before it can proceed to rule on the merits of the assessment.

For failure to issue a PAN, Respondent's right to due process was violated.

As discussed above, Respondent's witness testified that Respondent did not receive any PAN from the Petitioner prior to the issuance of FAN. Therefore, applying the ruling laid down by the Supreme Court in *Commissioner of*

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[38] *Emphasis and underscoring supplied.*
[39] Joint Stipulation of Facts and Issues dated July 12, 2012; Docket, p. 114.
[40] Commissioner of Internal Revenue v. Metro Star Superama, Inc., G.R. No. 185371, December 08, 2010.

Internal Revenue v. GJM Philippine Manufacturing, Inc.[41], it then becomes incumbent upon Petitioner to prove by competent evidence that such notice was indeed received by Respondent. At this juncture, the *onus probandi* is shifted to Petitioner to show by contrary evidence that Respondent indeed received the assessment in the due course of mail. If Petitioner fails to prove Respondent's receipt of the assessment, then it leads to no other conclusion but that no assessment was issued.[42]

For failure of Petitioner to present controverting evidence to rebut Respondent's allegation that no PAN was issued prior to the issuance of the FAN and FDDA, the Second Division correctly declared as void the deficiency tax assessments issued by Petitioner against Respondent for taxable year 2004. A void assessment bears no valid fruit. This court cannot rule otherwise.

WHEREFORE, finding no cogent reason to disturb the findings and conclusions reached by the Second Division in the assailed Decision dated April 05, 2016 as well as in the assailed Resolution dated August 12, 2016, the same are hereby **AFFIRMED**. Accordingly, the Petition for Review filed with the Court *En Banc* on September 23, 2016 is hereby **DISMISSED** for lack of merit.

SO ORDERED.

Ma. Belen

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

(With Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

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41 G.R. No. 202695, February 29, 2016.
42 *Id.*

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
(With due respect, I join PJ's Dissenting Opinion)
CIELITO N. MINDARO-GRULLA
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB No. 1516** *(CTA Case No. 8346)*
	Present:
-versus-	Del Rosario, *P.J.*, Castañeda, Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, Ringpis-Liban, and Manahan, *JJ.*
PHILIPPINE AEROSPACE DEVELOPMENT CORPORATION, *Respondent.*	Promulgated: AUG 23 2017 3:16 p.m.

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DISSENTING OPINION

DEL ROSARIO, P.J.:

With all due respect, I dissent with the *ponencia* in dismissing the Petition for Review posted by petitioner on September 23, 2016.

The assailed Decision declared the disputed assessments as void on a finding that when petitioner opted to waive his right to present evidence, he effectively failed to rebut respondent's allegation that no Preliminary Assessment Notice ("PAN") was issued in this case. **While petitioner filed a Motion for Reconsideration and/or New Trial, attaching thereto a copy of the PAN, the Court in Division nonetheless denied the motion.**

In the present Petition for Review, petitioner claims that there was no violation of due process since a PAN was received by respondent; that respondent failed to timely plead the defense or objection that petitioner failed to issue the PAN, hence, respondent is deemed to have waived the same; that respondent cannot raise the issue on the non-issuance of PAN for the first time on appeal; and that he relied in good faith that the issuance of the PAN is not controverted. Petitioner, therefore, asks the Court that the case be remanded to the Court *a quo* and for him to be allowed to present the PAN.

In the interest of substantial justice, petitioner should be allowed to present the PAN which bears vital significance in determining if the collection of the alleged deficiency tax was valid.

This is not the first time such procedural issue has been brought before this Court. In this regard, I quote below the position I have taken in the case of *Air Liquide Philippines, Inc. vs. Commissioner of Internal Revenue,*[1] to wit:

> "...[R]e-opening of cases even after decisions have been rendered may be allowed. These cases, however, involve scenarios wherein a plain perusal of the additional documents sought to be admitted in evidence, which are attached to the motions for reconsideration, would reveal that they are vital documents, which if considered by the Court in resolving the motions would materially alter the conclusions reached by the Court in the assailed decisions.
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> The foregoing position is consistent with the pronouncement of the Supreme Court in **BPI-Family Savings Bank vs. Court of Appeals**[2] wherein the Court of Tax Appeals (CTA) dismissed the petition on the ground that petitioner failed to present as evidence its Annual Income Tax Return (ITR) for 1990 to establish the fact that petitioner had not yet credited the amount being claimed for refund to its 1990 tax liability. <u>**Petitioner filed a motion for reconsideration attaching thereto a copy of the ITR for 1990**</u> **but the same was ignored by the CTA.** The Court of Appeals (CA) affirmed the decision of the CTA. The Supreme Court, however, reversed the CA and held the following:
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>> "**More important, a copy of the Final Adjustment Return for 1990 was <u>attached</u> to petitioner's Motion for Reconsideration filed before the CTA.** A final adjustment return shows whether a corporation incurred a loss or gained a profit during the taxable year. In this case, that Return clearly showed that petitioner incurred P52,480,173 as net loss in

[1] CTA EB No. 1307 (CTA Case No. 8114), April 19, 2017.
[2] G.R. No. 122480, April 12, 2000.

> 1990. Clearly, it could not have applied the amount in dispute as a tax credit. Again, the BIR did not controvert the veracity of the said return. It did not even file an opposition to petitioner's Motion and the 1990 Final Adjustment Return attached thereto. In denying the Motion for Reconsideration, however, the CTA ignored the said Return. In the same vein, the CA did not pass upon that significant document.
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> xxx xxx xxx
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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.** 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."

Thus, in ***Chevron Holdings Inc. [formerly Caltex (Asia) Limited] vs. Commissioner of Internal Revenue***,[3] petitioner Chevron filed a Motion for Partial Reconsideration with Motion for New Trial attaching thereto copies of the Articles of Incorporation and company profiles of its foreign affiliate customers, thereby giving the Court basis in determining how the documents it intends to present as additional evidence may materially alter the result of the case. In view of the relevance of the attached documents and considering that the Commissioner of Internal Revenue (CIR) failed to dispute the facts which the documents attached to the Motion for Partial Reconsideration with Motion for New Trial sought to prove, the Court allowed the re-opening of the case for their presentation."

It is interesting to note that the *ponencia* cites Section 1, Rule 14 of the Revised Rules of the Court of Tax Appeals (RRCTA) which provides that the "Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case." It likewise made reference to Section 5, Rule 10 of the Rules of Court in its rationalization that judgment may be rendered on issues not raised in the pleadings if such issues were "discussed and the assertions of fact proved in the course of trial"[4] with the consent of the adverse party.

I submit, however, that the aforecited provisions may not in any way dilute the essence of procedural rules *vis-à-vis* the admonition in its construction as provided in Section 2, Rule 1 of the RRCTA, *viz.*:

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[3] CTA Case No. 8241, August 11, 2015.
[4] *En Banc* Decision, p. 10.

"RULE I
TITLE AND CONSTRUCTION

> Sec. 2. *Liberal construction.* – The Rules shall be **liberally construed in order to promote their objective of securing a just, speedy, and inexpensive determination** of every action and proceeding before the Court." (Boldfacing supplied)

More importantly, Section 8 of Republic Act No. 1125,[5] as amended, is categorical in stating that while the CTA is vested with *"the power to promulgate rules and regulations for the conduct of the business of the Court, and as may be needful for the uniformity of decisions within its jurisdiction as conferred by law," "**such proceedings shall not be governed strictly by technical rules of evidence**."*

Precluding petitioner's presentation of its intended evidence at this stage is patently in the nature of technicality in procedure that only impairs the proper administration of justice. In the language of ***Alfredo Jaca Montajes vs. People of the Philippines***:[6]

> "Courts should not be so strict about procedural lapses that do not really impair the proper administration of justice. After all, the higher objective of procedural rule is to insure that the substantive rights of the parties are protected. **Litigations should, as much as possible, be decided on the merits and not on technicalities. Every party-litigant must be afforded ample opportunity for the proper and just determination of his case, free from the unacceptable plea of technicalities**." (Boldfacing supplied)

All told, I vote to **GRANT** the Petition for Review, and to reverse and set aside the assailed Resolution and Decision. Accordingly, the case should be **REMANDED** to the Court in Division for further proceedings.

ROMAN G. DEL ROSARIO
Presiding Justice

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[5] An Act Creating the Court of Tax Appeals.
[6] G.R. No. 183449, March 12, 2012.