REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

CHEVRON HOLDINGS, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8621

Members:

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

Promulgated:
AUG 12 2016 1:09 pm

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RESOLUTION

CASANOVA, *J.*:

This addresses the following:

1. petitioner's **Omnibus Motion (For Partial Reconsideration and To Reopen Trial)**, filed on April 22, 2016, with respondent's **Comment/Opposition (Re: Omnibus Motion for Partial Reconsideration And To Reopen Trial)**, filed on May 24, 2016; and

2. respondent's **Motion for Partial Reconsideration**, filed on April 25, 2016, with petitioner's **Comment (Re: Respondent's Motion for Partial Reconsideration dated April 22, 2016)**, filed on June 6, 2016.

Both petitioner and respondent seek partial reconsideration of the Court's Decision dated April 5, 2016 (assailed Decision)[1], the dispositive portion of which reads as follows:

> "**WHEREFORE**, premises considered, the instant Petition for Review is **PARTIALLY GRANTED** and respondent is **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of **₱9,188,216.85**, representing its unutilized excess input VAT for the four quarters of taxable year 2011 which is attributable to its valid zero-rated receipts for the same period.
>
> **SO ORDERED.**"[2]

The Court shall first address the propriety of petitioner's Motion to Reopen Trial.

Petitioner seeks the reopening of trial to present its supplemental evidence in support of its claim for refund of excess and unutilized input VAT for the calendar year (CY) 2011, specifically to prove that all its clients are doing business outside the Philippines.

On the other hand, respondent contends that the documents sought to be presented as evidence are neither newly discovered nor inadvertently omitted due to fraud, accident, mistake or excusable negligence which would merit a reopening of the case.

A motion to reopen may properly be presented only after either or both parties have formally offered, and closed their evidence, but before judgment.[3] Here, petitioner cannot avail of the said remedy in view of the fact that it seeks to reopen the trial of this case only after the Court has already rendered its judgment. The ruling of the Supreme Court in *Alegre vs. Reyes, et al.*[4] is clear:

> "xxx the reopening of a case for the reception of additional evidence *after a case has been submitted for decision <u>but before judgment</u> is actually rendered* is, it

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[1] Docket (Vol. V), pp. 2156-2199.
[2] Docket (Vol. V), p. 2198.
[3] *Alegre vs. Reyes, et al.,* G.R. No. L-56923, May 9, 1988.
[4] *Ibid.*

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 and underscoring supplied)*

The assailed Decision was promulgated on April 5, 2016,[5] while petitioner filed its Motion to Reopen Trial only on April 22, 2016.[6] Clearly, at the time petitioner filed the said motion, the Court already rendered a judgment in this case, thus, the motion cannot be sustained.

Even if the Court treats the said motion as a Motion for New Trial, the same would still fail. 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 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.

[5] Docket (Vol. V), pp. 2156-2199.
[6] Docket (Vol. V), pp. 2210-2237.

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 the above-granted provisions are Sections 5 and 6, Rule 15 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.
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> A motion for new trial shall include all grounds then available and those not included shall be deemed waived.
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> 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.
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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 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.
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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."

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.

In *Commissioner of Internal Revenue vs. A. Soriano Corporation, et al.,*[7] 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:

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

> "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."

Applying the foregoing principles, the records show that the motion 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.

In this case, no affidavits were submitted in order to justify any of the grounds for new trial. Thus, "Where, therefore, a motion for new trial on the ground of fraud, etc., is unaccompanied by either or both affidavits, the motion is *pro forma* a scrap of paper xxx."[8] Consequently, it is for this reason that the Court cannot grant the motion.

Also, the additional pieces of evidence sought to be introduced by petitioner do not come within the purview of newly discovered evidence. Petitioner tried to procure the said pieces of evidence as early as March 2012,[9] thus, as of the said date, the existence of the said documents is already known to petitioner.

Finally, while litigation is not a game of technicalities, it is equally true, however, that every case must be presented in accordance with the prescribed procedure to ensure an orderly and speedy administration of justice.[10] Thus, compliance with the procedural rules is the general rule, and abandonment thereof should

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[8] *Pangasinan Five Star Bus Co., Inc. vs. Spouses Leon and Luisa Barredo,* G.R. 152714, August 10, 2006.

[9] Paragraph 41, Petitioner's Omnibus Motion (For Partial Reconsideration and To Reopen Trial), docket, p. 2230.

[10] *Mindanao Savings and Loan Association, Inc. vs. Vicenta Vda. De Flores, et al.,* G.R. No. 142022, September 7, 2005.

only be done in the most exceptional circumstances.[11] Finally, it has been ruled that invocation of substantial justice is not a magical incantation that will automatically compel this Court to suspend procedural rules. Rules of procedure are not to be belittled or dismissed simply because their non-observance may have resulted in prejudice to a party's substantive rights. Like all rules, they are required to be followed.[12]

We now go into the parties' Motion for Partial Reconsideration.

In petitioner's Motion for Partial Reconsideration, petitioner avers that its clientele[13] are non-resident foreign corporations doing business outside the Philippines. Petitioner specifically alleges that Chevron Products Company (CPC), Chevron Services Company (CSC) and Chevron Information Technology Company (CITC) are divisions of Chevron U.S.A. Inc. However, the records are devoid of any evidence that will support its allegations. While it was mentioned in the Printed Screenshot of Corporate Profile that these corporations are divisions of Chevron U.S.A Inc., nothing was mentioned in the Securities and Exchange Commission (SEC) Certification of Non-Registration. As a result of the apparent discrepancies, the Court cannot ascertain whether these corporations are one and the same.

Likewise, petitioner failed to establish that Chevron Australia Pty Ltd, Chevron Canada Limited, Chevron International Gas Inc., Chevron Pakistan Limited and Saudi Arabian Chevron Inc. were foreign entities doing business outside the Philippines. Even the petitioner recognized the discrepancies between the company name as reflected in the proof of doing business outside the Philippines; and the name indicated in the SEC Certification of Non-Registration.[14]

Actions for tax refund, as in the instant case, are in the nature of a claim for exemption and the law is not only construed in *strictissimi juris* against the taxpayer, but also the pieces of evidence presented entitling a taxpayer to an exemption is *strictissimi* scrutinized and must be duly proven.[15] When exemption

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[11] *Erlinda Pilapil, et al. vs. Heirs of Maximino R. Briones,* G.R. No. 150175, February 5, 2007.

[12] *Charles Cu-Unjieng vs. Hon. Court of Appeals and Union Bank of the Philippines,* G.R. No. 139596, January 24, 2006.

[13] The list of petitioner's clients is found on its Omnibus Motion, pp. 7-8, Docket (Vol V), pp. 2216-2217.

[14] Omnibus Motion, p. 12, Docket (Vol V), p. 2221.

[15] *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue,* G.R. No. 159490, February 18, 2008.

is claimed, it must be shown indubitably to exist. At the outset, every presumption is against it. A well-founded doubt is fatal to the claim.[16]

Next, petitioner maintains that the sale of services to Chevron Corporation in the amount of ₱8,677,924.55 (USD203,584.11) is subject to VAT at 0%.

This issue has been settled in the assailed Decision and the Court finds no reason to deviate from its previous ruling. Quoted hereunder is the pertinent portion thereof, thus:

> "xxx In addition, petitioner's reported zero-rated receipts from Chevron Corporation in the amount of ₱8,677,924.55 (US$203,584.11), although supported by VAT zero-rated OR No. 3308, does not have corresponding foreign currency inward remittances."[17]

Lastly, petitioner asserts that it has an input VAT carry-over from the previous year, amounting to ₱157,160,605.18, relying mainly on its Quarterly VAT Return for the 4th Quarter of Calendar year (CY) 2010 and the findings of the Independent certified Public Accountant (ICPA) Report.

In the assailed Decision,[18] We ruled that petitioner did not submit VAT invoices/receipts that would prove its reported input VAT carry-over in the amount of ₱157,160,605.18. The basic rule is that mere allegation is not evidence and is not equivalent to proof.[19] In *Commissioner of Internal Revenue vs. Manila Mining Corporation,*[20] the Supreme Court ruled:

> "For a judicial claim for refund to prosper, however, respondent must not only prove that it is a VAT registered entity and that it filed its claims within the prescriptive period. <u>It must **substantiate** the input VAT paid by</u>

[16] *Philippine Long Distance Telephone Company, Inc. vs. Province of Laguna, et al.,* G.R. No. 151899, August 16, 2005.
[17] Decision, p. 29, Docket (Vol V), p. 2184.
[18] Decision, p. 44, Docket (Vol V), p. 2197.
[19] *ECE Realty and Development, Inc. vs. Rachel G. Mandap,* G.R. No. 196182, September 1, 2014.
[20] G.R. 153204, August 31, 2005.

> purchase **invoices** or **official receipts**." (emphasis and underlining in the original)

Going into the respondent's Motion for Partial Reconsideration, respondent asserts that it is incumbent upon the petitioner to prove that it is entitled to the refund sought because a claim for refund is not *ipso facto* granted upon filing of the claim.

In the assailed Decision, petitioner has proven its entitlement to the refund sought, albeit in a reduced amount, after the Court considered the pieces of evidence presented. The petitioner sufficiently established its entitlement to a refund or tax credit in the amount of ₱9,188,216.85.

Finally, on the second argument, respondent claims that the refund in the amount of ₱9,188,216.85 should not be granted once an option to carry-over has been chosen, as the law precludes the petitioner from claiming a refund or tax credit. Respondent's second argument is anchored on Section 110(B) of the National Internal Revenue Code (NIRC) of 1997, as amended.

We reproduce herein Section 110(B) of the NIRC of 1997, as amended, to wit:

> "**(B) Excess Output or Input Tax.** - If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the Vat-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters: *Provided, however,* That any input tax attributable to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112."

As gleaned in the above provision, the rule is that if there are excess input taxes, the same shall be carried-over to the succeeding quarter/s, however, a VAT-registered person with zero-rated sales is given an option to either refund or credit the excess input taxes, subject to Section 112 of the NIRC, as amended. The afore-cited provision does not provide an irrevocability clause. Thus, when the law is clear, plain, and unequivocal, it should be applied exactly as worded.[21]

WHEREFORE, finding no cogent reason to deviate from the ruling in the assailed Decision, petitioner's **Omnibus Motion (For Partial Reconsideration and To Reopen Trial)**, and respondent's **Motion for Partial Reconsideration** are hereby **DENIED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

[21] *Commissioner of Internal Revenue vs. San Roque Power Corporation,* G.R. No. 187485, February 12, 2013.