REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

EAGLE II HOLDCO, INC., Petitioner,	**CTA CASE NO. 9637**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson,* **MINDARO-GRULLA,** *and* **BACORRO-VILLENA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUN 10 2020 4:07 pm

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RESOLUTION

MINDARO-GRULLA, *J.*:

Before this Court is respondent's **Motion for Reconsideration and/or New Trial**, filed through registered mail on January 20, 2020 and received by this Court on January 24, 2020, with petitioner's **Comment/Opposition *(to Respondent's Motion for Reconsideration and/or New Trial dated 20 January 2020)***, filed on February 28, 2020.

On January 2, 2020, this Court promulgated an Amended Decision modifying the Decision dated September 10, 2019 by granting petitioner's claim for refund due to respondent's violation of its right to due process of law, the dispositive portion of the Amended Decision reads as follows:

> "**WHEREFORE,** premises considered, the instant Petition for Review is **GRANTED**. Accordingly, respondent is **ORDERED TO REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of **₱108,025,207.31**, inclusive of fifty (50%) surcharge and

interest, representing erroneously or illegally collected deficiency documentary stamp tax.

SO ORDERED."

In his Motion, respondent primarily claims good faith on relying that the issuance of the Preliminary Assessment Notice (PAN) was never an issue. As such, he dispenses with the presentation of evidence inasmuch as all the factual and legal bases surrounding the issuance of the assessment against petitioner have already been admitted and stipulated by the parties. Respondent continues that had it been raised by petitioner in its *Petition for Review*, *Pre-Trial Brief*, and in the *Joint Stipulation of Facts and Issues* as one of the issues for consideration of this Court, respondent would have presented the copy of the PAN, duly received by petitioner's representative, as can readily be found in the Bureau of Internal Revenue (BIR) Records of the case.

Accordingly, respondent prays that the Amended Decision be reconsidered and set aside and another one be rendered denying petitioner's claim for refund in the total amount of ₱108,025,207.31. Or, in the alternative, considering that it was an honest mistake or excusable negligence on his part when he heavily relied that the issuance of PAN is no longer an issue, and that the Supreme Court enunciated that the paramount consideration remains to be the ascertainment of truth, the present case should therefore be re-opened for the presentation of the PAN dated November 25, 2014 in the interest of substantial justice.

On the other hand, in its comment/opposition, petitioner argues that the instant motion is *pro forma* since respondent failed to *(i)* attach affidavits of merit to support its Motion for New Trial; and *(ii)* cite the specific ground relied upon for its Motion for Reconsideration. More so, the instant Motion also failed to comply with the requirements laid down under Rule 37 of the Rules of Court. In any case, petitioner insists that the grounds set forth in respondent's Motion are without merit inasmuch as he voluntarily waived his right to present documentary and testimonial evidence when given the opportunity to do so. Lastly, petitioner asserts that respondent's claim that petitioner is liable for deficiency surcharge and interest is untenable considering that at the time of the Advances subject of this case, there was no duty to file a documentary stamp tax (DST) return and pay the DST due thereon.

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After due consideration, respondent's Motion for Reconsideration and/or New Trial is bereft of merit.

Perforce, while respondent 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.[1]

Indeed, a motion for new trial may be granted only upon specific, well-defined grounds, as set forth under Sections 1[2] and 2[3] of Rule 37 of the Rules of Court. Relative to these provisions are Sections 5 and 6, Rule 15 of the Revised Rules of the Court of Tax Appeals (RRCTA), which respectfully reads as follows:

> "**SEC. 5.** *Grounds of motion for new trial.* – A motion for new trial may be based on one or more of the following

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[1] See *Philippine National Bank vs. Commissioner of Internal Revenue*, G.R. No. 172458, December 14, 2011.

[2] "**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."

[3] "**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."

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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."

Based above, a Motion for New Trial founded on fraud, accident, mistake or excusable negligence requires that it must be accompanied by affidavits of merit, *i.e.*, affidavits showing the facts (not mere conclusions or opinions) constituting the valid cause of action or defense which the movant may prove in case a new trial is granted, because a new trial would serve no purpose and would just waste the

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time of the court as well as the parties if the complaint is after all groundless or the defense is nil or ineffective.[4] While, on the other hand, a Motion for Reconsideration shall be based on 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.

In the present case, an examination of the respondent's Motion reveals that it was neither based on fraud, accident, mistake or excusable negligence, nor based on newly discovered evidence. Equally important is that respondent also failed to comply with the required affidavits of merit, *i.e.*, affidavits showing the facts (not mere conclusions or opinions) constituting the valid cause of action or defense which the movant may prove in case a new trial is granted. Thus, that being the case, respondent failed to convince the Court that there is a valid ground for granting a new trial or to reconsider modification of the Amended Decision.

More so, the PAN dated November 25, 2014 which was attached to respondent's Motion does not also fall under the category of newly discovered evidence, but rather constitutes "forgotten" evidence. In fact, respondent could have presented and offered in a seasonable manner the said PAN were it not for the sheer oversight or forgetfulness of the party or the counsel. As enunciated in the case of *Office of the Ombudsman, Represented by Hon. Simeon V. Marcelo vs. Carmencita D. Coronel*[5], *viz.*:

> "x x x 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."

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[4] *Elpidio S. Uy vs. First Metro Integrated Steel Corp., et al.*, G.R. No. 167245, September 27, 2006.
[5] G.R. No. 164460, June 27, 2006.

Again, the PAN dated November 25, 2014, which respondent seeks to introduce in its motion for new trial, is neither newly discovered evidence nor omitted due to fraud, accident, mistake or excusable negligence which ordinary prudence could not have guarded against. The motion for new trial is merely an attempt to remedy the failure of respondent to disprove during trial that petitioner is not entitled to the refund of the deficiency DST, including the interest and fifty percent (50%) surcharge therein, paid on advances made from related companies during taxable years 2008, 2009, 2010, and 2011. Thus, respondent only has himself to blame for his failure considering that it was his own choice not to present any evidence/witness in this case.

In *Lolita R. Alamayri vs. Rommel Pabale, et al.*,[6] the Supreme Court held that "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."

All told, to allow the presentation of respondent's additional evidence without having complied with the requisites for the grant of a motion for new trial will set a dangerous precedent of never-ending suits. It is an accepted tenet that rules of procedure must be faithfully followed except only when, for persuasive and weighting reasons, they may be relaxed to relieve a litigant of an injustice commensurate with his failure to comply with the prescribed procedure.[7] In this case, respondent has not demonstrated any cogent reason for this Court to take exception.

As for respondent's arguments on the imposition of surcharge and interest, the Court finds that the same are a mere rehash of the same facts and issues which have already been passed upon extensively in the Decision dated September 10, 2019, to wit:

> "In *Commissioner of Internal Revenue vs. St. Luke's Medical Center Inc.*, the Supreme Court held that good faith and honest belief that one is not subject to tax on the basis of previous interpretation of government agencies

[6] G.R. No. 151243, April 30, 2008.
[7] *Ma. Rosario Suarez vs. Judge Martin S. Villarama, Jr., et al.*, G.R. No. 124512, June 27, 2006.

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> tasked to implement the tax law, are sufficient justification to delete the imposition of surcharges and interest.
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> An examination of petitioner's claim for refund shows that at the time the advances were made from 2008 to 2011, petitioner relied on prevailing court decisions to the effect that inter-company loans and advances covered by inter-office memoranda were not loan agreements subject to DST. Petitioner relied on the cases of *Filinvest Development Corporation, et al. vs. Commissioner of Internal Revenue* and *Commissioner of Internal Revenue vs. Filinvest Development Corporation, et al.* Although only the decisions of the Supreme Court establish jurisprudence or doctrines in this jurisdiction, nonetheless the decisions of subordinate courts have a persuasive effect and may serve as judicial guides.
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> Accordingly, petitioner's reliance on the said cases justifies the non-imposition of surcharge and interest."

Accordingly, in view of the foregoing, there is no cogent reason to disturb the assailed Amended Decision.

WHEREFORE, premises considered, respondent's Motion for Reconsideration and/or New Trial is **DENIED** for lack of merit.

SO ORDERED.

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

We Concur:

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

JEAN MARIE A. BACORRO-VILLENA
Associate Justice