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THIRD DIVISION

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

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. A.SORIANO CORPORATION, COURT OF TAX APPEALS AND COURT OF APPEALS, RESPONDENTS.

R E S O L U T I O N

FRANCISCO, J.:

The facts of this case are undisputed.

On November 27, 1987, private respondent, A. Soriano Corporation (hereinafter referred to as ANSCOR for brevity), filed with the respondent, Court of Tax Appeals, a petition for refund of excess tax payments it made to the Bureau of Internal Revenue (BIR) in the amount of P273,876.05 for the year 1985 and P1,126,065.40 for the year 1986 or a total amount of P1,399,941.45, arriving at the foregoing amount as follows:

1985		
Prior year's excess Income tax payments (Exh. A)		P 3,016,841.00
Plus:		
Taxes withheld on Interest	P 255,864.00	1,068,244.00 (Exh. A)
Rentals, etc.	812,380.00	P 4,085,085.00
Less:		
Income Tax	P 2,620,347. 00	
1981 tax credit Claimed in CTA Case No. 3964	1,190,861.95	3,811,208.95
		P 237,876.05 (Exh. D)

Excess tax payments	
1986	
Taxes Withheld by	
withholding agents	1,126,065.40 (Exh. C)
Total excess tay payments	P 1,399,941.45"[1]

During trial before the Court of Tax Appeals, ANSCOR presented evidence to substantiate its claim, to which no objection was interposed by the petitioner, Commissioner of Internal Revenue, except for the purposes for which they were offered. When ANSCOR rested its case, the petitioner, instead of presenting evidence, submitted the case for decision solely upon the evidence adduced by ANSCOR and the pleadings on record.[2]

On August 7, 1991, the Court of Tax Appeals rendered a decision, the pertinent portion of which reads:

> "In the light of the course respondent has chosen to prove his case, the approach turns out short. In a very recent case (Citytrust Banking Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4099, May 28, 1991) we concluded under similar circumstances:

'Respondent did not object to the existence of statements and certificates which were offered by petitioner as proof of the withholding taxes but took exception to their contents and purposes. Despite said reservation, up until the submission of this case for decision, respondent was not heard to complain about the veracity of the contents of these documents or exhibits nor has it shown any irregularity in the same which will taint their reliability or sufficiency as proofs of the taxes withheld despite the fact that it is well within their competence to do so. Respondent is thereby considered to have admitted the truth of the contents of these exhibits. Hence, those amounts of withheld taxes which are supported by corresponding statements or certificates of withholding taxes admitted in evidence shall be allowed as tax credits.'

> "Nor does the failure of respondent affect only the subject of 1985 taxes. Against the claimed deductions by petitioner for 1986, which it supported with tax returns as evidence, respondent could only give out the perfunctory resistance such as that 'mere allegation of net loss does not ipso facto merit a refund.' But respondent for his part, did not present any evidence that would have disputed the correctness of the tax returns and other material facts therein (Citytrust Banking Corporation vs. Commissioner of Internal Revenue, supra).
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> "WHEREFORE, the petition is hereby GRANTED. Respondent is ordered to

issue a tax credit memorandum to petitioner in the sum of P1,399,941.45 to be used as payment for its internal revenue tax liabilities."[3]

On September 17, 1991, the petitioner filed a motion for reconsideration of the aforegoing decision. Seeking the admission in evidence of a report[4] submitted only on September 18, 1991 by the BIR Official who investigated ANSCOR's claim for refund, a supplemental motion for reconsideration was filed by the petitioner on September 27, 1991. The Court of Tax Appeals, however, denied the petitioner's motion for reconsideration and supplemental motion for reconsideration. In a resolution dated December 9, 1992, it held, among others, that the petitioner cannot be allowed to present the BIR report of September 18, 1991 because such report was in the personal physical possession of a subordinate of the petitioner during the trial and is therefore not in the nature of a newly discovered evidence but is merely "forgotten evidence."[5] The petitioner appealed to the Court of Appeals which affirmed the assailed decision and resolution of the Court of Tax Appeals. Hence, this Petition for Review on Certiorari raising the singular issue of: "whether C.T.A. Case No. 4201 should be reopened in order to allow petitioner to present in evidence the report of investigation of the BIR officer on private respondent's claim for refund."[6]

It is evident that what the petitioner sought before the Court of Tax Appeals was actually a new trial on the ground of newly discovered evidence. Thus, as correctly put by ANSCOR in its Comment to the Petition, the resolution of the abovestated issue hinges on the determination of the nature of the BIR report either as newly discovered evidence, warranting a trial de novo, or "forgotten evidence" which can no longer be considered on appeal.[7]

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 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.[8] All three requisites must characterize the evidence sought to be introduced at the new trial.

We agree with the ruling of the respondent Courts that the BIR report of September 18, 1991 does not qualify as newly discovered evidence. Aside from petitioner's bare assertion that the said report was not yet in existence at the time of the trial, he miserably failed to offer any evidence to prove that the same could not have been discovered and produced at the trial despite reasonable diligence. Why such a report of vital significance could not have been prepared and presented during the four (4) long years that the case was pending before the Court of Tax Appeals is simply beyond our comprehension. Worse, petitioner did not even endeavor to explain this circumstance.

Perhaps realizing that under the Rules the said report cannot be correctly admitted as newly

discovered evidence, the petitioner invokes a liberal application of the Rules. He submits that Section 8 of the Rules of the Court of Tax Appeals declaring that the latter shall not be governed strictly by technical rules of evidence mandates a relaxation of the requirements of new trial on the basis of newly discovered evidence. This is a dangerous proposition and one which we refuse to countenance. We cannot agree more with the Court of Appeals when it stated thus,

> "To accept the contrary view of the petitioner would give rise to a dangerous precedent in that there would be no end to a hearing before respondent court because, every time a party is aggrieved by its decision, he can have it set aside by asking to be allowed to present additional evidence without having to comply with the requirements of a motion for new trial based on newly discovered evidence. Rule 13 Section 5 of the Rules of the Court of Tax Appeals should not be ignored at will and at random to the prejudice of the orderly presentation of issues and their resolution. To do so would affect, to a considerable extent, the principle of stability of judicial decisions."[9]

We are left with no recourse but to conclude that this is a simple case of negligence on the part of the petitioner. For this act of negligence, the petitioner cannot be allowed to seek refuge in a liberal application of the Rules. For it should not be forgotten that the first and fundamental concern of the rules of procedure is to secure a just determination of every action. In the case at bench, a liberal application of the rules of procedure to suit the petitioner's purpose would clearly pave the way for injustice as it would be rewarding an act of negligence with undeserved tolerance.

WHEREFORE, the petition is hereby **DENIED** and the assailed decision of the Court of Appeals dated January 31, 1994 is **AFFIRMED** in toto.
SO ORDERED.

Narvasa, C.J.,(Chairman), Davide, Jr., Melo and Panganiban, JJ., concur.

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[1] DECISION in CA-G.R No. 29967 promulgated on January 31, 1994, pp. 1-2; Rollo, pp. 37-38.

[2] Ibid.

[3] DECISION in CTA Case No. 4201 promulgated on August 7, 1991, pp. 3-4; Rollo, pp. 29-30.

[4] The said report reads as follows:

"Barring and assuming presentation of the requested documents and taking into consideration the certification of creditable income taxes withheld issued by the Chief, Withholding Tax Division (See Annex "B" and B-1 and B-2) that only the total amount of P414,292.06, and P414,772.99 creditable income taxes withheld from A. Soriano Corporation (ANSCOR) for the taxable year 1985 and 1986, respectively, the maximum amount that can be favorably subjected to a tax credit memo for the two (2) taxable year will only be P34,697.10, computed as follows

Balance of the accumulatedtax credit as of 1985 after credit under CTA Case No. 3694	P1,825,979.05
Add: 1985 Creditable Tax Withheld per Certificate by the Withholding Tax Division	414,292.06
Total	2,240,271.1
Less:Tax Due perreturn -1985	2,620,347.00
Difference	380,075.89
Less:Creditable Taxes Withheld for 1986 per Certification by Withholding Tax Division	414,772.99
Excess Tax Credit which may be subjected to a Tax Credit Memo	P 34,697.10

[5] Supra, p. 6; Rollo, p. 42.

[6] PETITION in G.R No. 113703 dated March 16, 1994, p. 10; Rollo, p. 17.

[7] COMMENT in G.R No. 113703 dated August 10, 1994, p. 14; Rollo, p. 66.

[8] Dapin vs. Dionaldo, 209 SCRA 38, 44 [1992]; Bernardo vs. Court of Appeals, 216 SCRA 224 [1992]; Pantig vs. Baltazar, 191 SCRA 830 [1990]; Velasco vs. Ortiz, 184 SCRA 303 [1990]; Tumang vs. Court of Appeals, 172 SCRA 328 [1989].

[9] Supra, p. 8; Rollo, p. 44.

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