REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

BPI CAPITAL CORPORATION,
Respondent.

CTA EB No. 1614
(CTA CASE No. 8787)

Present:
DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, and
MANAHAN, *JJ.*

Promulgated:
DEC 04 2018
3:15 p.m.

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RESOLUTION

MINDARO-GRULLA, J.:

Before the Court *En Banc* is a Motion for Reconsideration[1] filed by the Commissioner of Internal Revenue (CIR) seeking to set aside this Court's Decision promulgated on July 31, 2018,[2] the dispositive portion of which reads:

> "**WHEREFORE,** premises considered, the instant Petition for Review is hereby **DENIED**. Accordingly, the Decision dated July 12, 2016 and the Resolution dated March 1, 2017, rendered by the Third Division of this Court are hereby **AFFIRMED.**
>
> **SO ORDERED.**"

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[1] *En Banc* Docket, pp. 118-124.
[2] *En Banc* Docket, pp. 99-117.

In his motion, the CIR insists that the discrepancy between the salaries and wages declared in BPI Capital Corporation (BCC)'s financial statements and its Alphalist is taxable as income and that the unrecorded gross receipts is subject to the regular income tax rate of thirty-five percent (35%).

In its Comment,[3] BCC upholds its same arguments that it incurred a net loss warranting the imposition of the two percent (2%) MCIT and not the regular income tax rate of thirty-five percent (35%), and that it incurred overpayment of tax credits against which the alleged MCIT can be charged. Also, the allegation that the Net Operating Loss Carry-Over (NOLCO) is unavailable to BCC because the same has been applied to 2009 income tax return is likewise unavailing since the taxable period involved in year 2008. Hence, any reference beyond this period is inconsequential and irrelevant.

The motion is bereft of merit.

All the arguments presented by the CIR readily reveal that they deal with the very same issue, which has been thoroughly passed upon by the Court in Division and clearly discussed in the assailed Decision.

The Court is guided by the rulings in the Supreme Court case of *Coquilla v. Commission on Elections*,[4] to wit:

> "The mere reiteration in a motion for reconsideration of the issues raised by the parties and passed upon by the court does not make a motion *pro forma*; otherwise, the movants remedy would not be a reconsideration of the decision but a new trial or some other remedy. But, as we have held in another case:
>
> > Among the ends to which a motion for reconsideration is addressed, <u>one is</u>

[3] *En Banc* Docket, pp. 128-130.
[4] 434 Phil. 861 (2002), cited in the case of *Philippine National Bank vs. Pineda,* G.R. No. 149236, February 14, 2007.

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> precisely to convince the court that its ruling is erroneous and improper, contrary to the law or the evidence; xxx" (Underlining Supplied.)

Upon review of the Motion for Reconsideration, there is no provision of law contrary to such findings or conclusions of the Court in Division. A motion for reconsideration is *pro forma* where:[5]

1. it was a second motion for reconsideration;
2. it did not comply with the rule that the motion must specify the findings and conclusions alleged to be contrary to law or not supported by the evidence;
3. it failed to substantiate the alleged errors;
4. it merely alleged that the decision in question was contrary to law; and
5. the adverse party was not given notice thereof.

It is apparent from the almost bare motion itself that the CIR made no genuine effort to explain why the Court erred in its Decision.[6] In fact, the CIR merely reiterated and restated his arguments in the Petition for Review and Memorandum. The motion is a mere slashed adaptation of his arguments already considered and exhaustively discussed by the Court *En Banc* in its assailed Decision.

WHEREFORE, premises considered, the instant Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.

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

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[5] *Ibid.*
[6] *Hon. Herbert M. Bautista and Mr. Edgar Villanueva, respectively in their official capacity as Mayor and Treasurer of Quezon City, vs. Philippine Amusement and Gaming Corporation (PAGCOR), represented By Atty. Carlos R. Bautista*, CTA EB No. 1159, July 07, 2016.

WE CONCUR:

I reiterate my Concurring Opinion

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice