REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

FCF MINERALS CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10447

Members:

RINGPIS-LIBAN, *P.J. Chairperson,*
MODESTO-SAN PEDRO, *and*
FERRER-FLORES, *JJ.*

Promulgated:

3:32 pm

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RESOLUTION

***FERRER-FLORES, J.*:**

Before this Court is petitioner's **Motion for Reconsideration** filed on September 15, 2025, with respondent's **Opposition (Re: Motion for Reconsideration)** filed on November 27, 2025.

On August 20, 2025, the Court promulgated a Decision denying the *Petition for Review* for lack of merit.

In its *Motion*, petitioner points out that the Court may have overlooked the testimony of Mr. Tommy Alfonso, who explained how its 2019 Audited Financial Statements (AFS) indeed proves that, at the time of erroneous payment of documentary stamp tax (DST) on February 28, 2019, its net cash flows from mining operations are not yet sufficient to reach a breakeven point wherein all of its pre-operating expenses have already been recovered. Petitioner highlights the testimony of Mr. Alfonso that, at that point, its current liabilities exceeded its current assets by $308,358,082.

Petitioner likewise emphasized that the 2019 AFS is considered a public document as these were submitted to the Securities and Exchange Commission (SEC) and the Bureau of Internal Revenue (BIR). Consequently, the 2019 AFS is sufficient proof that it has not yet recovered it pre-operating expense as of 2019. Petitioner further claims that the SEC and BIR never contested its 2019 AFS and thus, unchallenged and verified by the government.

Respondent, on the other hand, insists that petitioner failed to show that its pre-operating expenses were duly approved by the Secretary of the Department of Environment and Natural Resources (DENR), as recommended by the Director of the Mines and Geosciences Bureau (MGB) and verified by the designated representative or auditor of the government, which is required under DENR Administrative Order (DAO) No. 2007-12. Contrary to petitioner's claim, respondent assailed petitioner's AFS in his *Answer*, for lack of knowledge or information on the part of respondent sufficient to form a belief as to the truths thereof.

After due consideration, the Court finds petitioner's *Motion for Reconsideration* bereft of merit.

At the outset, the arguments raised by petitioner in its *Motion for Reconsideration* have been passed upon and extensively discussed by the Court in the assailed Decision.

As aptly discussed in the assailed Decision, petitioner is still within the five-year recovery period; however, it failed to prove the second scenario, provided under DAO No. 2007-12, when the aggregate of its net cash flows is equal to its pre-operating expenses.

The Court carefully evaluated the evidence presented by petitioner including its AFS; thus, its claim, that its net cash flows from mining operations are not yet sufficient to reach a breakeven point wherein all of its pre-operating expenses have already been recovered, and the testimony of petitioner's witness affirming that, at that point, its current liabilities exceeded its current assets by $308,358,082, are legally insufficient.

Aside from the fact that petitioner's 2019 AFS does not show its Pre-Operating Expenses, it did not present any evidence of its Pre-Operating Expenses duly approved by the Secretary of the DENR upon

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recommendation of the Director of MGB, pursuant to Section 7(b) of DAO No. 2007-12.[1]

As soundly held by the Court, there is no way for the Court to determine whether the Net Cash Flow equals the Pre-Operating Expenses based on petitioner's AFS and there is no showing that petitioner's Pre-Operating Expenses were duly approved by the Secretary of the DENR, as recommended by the Director of the MGB and verified by a designated representative or auditor of the Government. Absent such, the Court cannot compare the unapproved recoverable Pre-Operating Expenses with petitioner's Net Cash Flows. In sum, petitioner failed to show that it is still in the recovery period as provided for in DAO No. 2007-12.

In view of the foregoing disquisitions, there being no new matter or substantial issue raised by petitioner in its *Motion for Reconsideration*, the

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[1] b. Recoverable Pre-Operating Expenses. **All Pre-Operating Expenses allowed for recovery under this Order shall be approved by the Secretary upon recommendation of the Director**. It shall be limited to actual expenses and capital expenditures relating to the following:

(1) Acquisition, maintenance and administration of any mining tenements or agreements covered by the FTAA;
(2) Exploration, evaluation, feasibility and environmental studies, production, mining, milling, processing and rehabilitation;
(3) Stockpiling, handling, transport services, utilities and marketing of minerals and mineral products;
(4) Development within the Contract Area relating to the Mining Operations;
(5) Infrastructure contributions and payments made to local Governments except taxes, royalties and fees;
(6) Payments to landowners, surface rights holders, claim owners and to Indigenous Peoples or Indigenous Cultural Communities, if any;
(7) Expenses incurred in fulfilling the Contractor's obligations to contribute to national development and training of Philippine personnel;
(8) Consulting fees incurred inside and outside the Philippines for work related directly to the Mining Operations and consistent with the Contractor's approved work program;
(9) The establishment and administration of field and regional offices including administrative overheads incurred within the Philippines which are properly allocable to the Mining Operations and directly related to the performance of the Contractor's obligations and exercise of its rights under the FTAA;
(10) Costs incurred in financial development, including interest on loans payable within or outside the Philippines, subject to the financing requirements required in the FTAA and to a limit on debt-equity ratio of 5:1 for investments equivalent to US$200 Million or less, or for the first US$200 Million of investments in excess of US$200 Million; or 8:1 for that part of the investment which exceeds US$200 Million: Provided, That the interests shall not be more than the prevailing international rates charged for similar types of transaction at the time the financing was arranged;
(11) All costs of constructing and developing the mine incurred before the Date of Commencement of Commercial Production, including capital and property as hereinafter defined irrespective as to their means of financing, subject to the limitations defined by Clause b (10) of this Section, and inclusive of the principal obligation and the interests arising from any Contractor's leasing, hiring, purchasing or similar financing arrangements including all payments made to Government, both national and local; and,
(12) General and administrative expenses actually incurred by the Contractor for the benefit of the Contract Area.

All Pre-Operating Expenses reported for recovery shall be subject to verification by Government or its designated representative or auditor. All expenses to be incurred in the verification of Pre-Operating Expenses shall be chargeable against the Contractor. (Emphasis added)

Court finds no compelling reason to reverse or modify the Decision promulgated on August 20, 2025.

ACCORDINGLY, the instant **Motion for Reconsideration** is **DENIED** for lack of merit.

SO ORDERED.

CORAZON G. FERRER-FLORES
Associate Justice

We Concur:

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice