REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

PRIME INVESTMENT KOREA, INC., Petitioner,	**CTA CASE NO. 9573**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson,* and **MANAHAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: OCT 15 2019 9:11 am

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RESOLUTION

CASTAÑEDA, JR., *J.*:

For resolution of this Court is petitioner's **Motion to Set for Hearing and/or Oral Arguments [Re: Omnibus Motion I. For Reconsideration of the Decision dated May 31, 2019; and II. For Leave of Court to Present and Admit Additional Clarificatory Testimony]**, filed on August 30, 2019, with respondent's **Comment/Opposition on Motion to Set for Hearing and/or Oral Arguments (Re: Omnibus Motion I. For Reconsideration of the Decision dated May 31, 2019; and II. For Leave of Court to Present and Admit Additional Clarificatory Testimony) dated August 30, 2019**, filed through registered mail on September 23, 2019 and received by this Court on October 1, 2019.

On May 31, 2019, this Court rendered a Decision, which denied petitioner's claim for refund or issuance of tax credit certificate for lack of merit.

On June 18, 2019, petitioner filed an Omnibus Motion I. For Reconsideration of the Decision dated May 31, 2019; and II. For Leave of Court to Present and Admit Additional Clarificatory Testimony, praying that the Court allow petitioner to present additional evidence in support of its Motion for Reconsider; and to reconsider its Decision dated May 31, 2019 and declare petitioner entitled to a refund of, or issuance of a tax credit certificate for, the aggregate amount of ₱24,365,980.30 representing corporate income tax erroneously paid by petitioner on junket gaming operations for taxable year 2014.

In the Resolution dated August 20, 2019, this Court denied petitioner's Omnibus Motion I. For Reconsideration of the Decision dated May 31, 2019; and II. For Leave of Court to Present and Admit Additional Clarificatory Testimony for lack of merit.

In the present motion, petitioner requests that it be allowed to present the additional clarificatory testimony of Miguel Tolentino, Jr., admit his Judicial Affidavit dated June 18, 2019, and/or allow petitioner to present oral arguments on the matter to aid the Court in the proper appreciation of evidence already presented during trial. Petitioner avers that the testimony of Mr. Tolentino will further expound on the nature of petitioner's gaming operations and will clarify that petitioner generated revenues from gaming operations as a PAGCOR contractee/licensee.

Invoking the interest of substantial justice, petitioner requests for an opportunity to present Mr. Tolentino in the form of testimonial evidence to clarify the nature of petitioner's operations under its agreement with PAGCOR for a better understanding of petitioner's junket gaming operations and/or allow petitioner to present oral arguments in support of its motion for reconsideration of the Decision of the Court promulgated on May 31, 2019, which denied petitioner's claim for refund or issuance of tax credit certificate for lack of merit.

In view of the foregoing, petitioner prays that the Court set a hearing to allow petitioner to present and to admit the additional clarificatory testimony of Mr. Tolentino and/or present oral arguments of petitioner.

On the other hand, respondent in his comment argues that petitioner's request for oral argument was made after the parties were already heard and after the promulgation of the resolution on petitioner's motion for reconsideration. Thus, respondent avers that petitioner's request for oral argument must be denied for being belated and contrary to Section 3 of Rule 15 of the Revised Rules of the Court of Tax Appeals ("RRCTA"). According to respondent, petitioner's motion for reconsideration was already heard considering that "to be heard" does not only mean verbal arguments in court; one may be heard also through pleadings.

Respondent also contends that petitioner's claim for tax refund was denied by this Court for being without legal basis and thus, it no longer involves issues of facts. Respondent argues that the proper remedy of the party is to appeal its case before the CTA *En Banc*. Further, respondent argues that petitioner's motion is a mere reiteration of the arguments sufficiently passed upon and decided by this Court in the assailed Decision. Hence, respondent avers that the same is merely a *pro forma* motion.

Finally, respondent argues that petitioner's motion is not just a simple motion for reconsideration, but is in reality a motion for new trial considering it will require a new trial or presentation of witness for the presentation of additional clarificatory testimony. Thus, respondent alleges that the applicable rule in this case is Rule 15 of the RRCTA, which petitioner allegedly failed to comply.

According to respondent, petitioner failed to comply with Sec. 5, Rule 15 of the RRCTA. Respondent avers that in this case, petitioner was allowed numerous times to present additional evidence (e.g., on April 11, 2018, petitioner recalled witness Celina Lim to testify on additional direct by way of 2nd supplemental judicial affidavit; on March 7, 2018, petitioner recalled witness Ms. Lim to testify on additional direct by way of supplemental judicial affidavit) in the interest of substantial justice and yet it failed to prove its case. Respondent alleges that this time around, again, petitioner prays to present additional evidence or additional clarificatory testimony, after the trial ended. However, petitioner failed to mention other convincing reasons to grant its prayer other than in the interest of substantial justice. Respondent also alleges that petitioner failed to attach the additional evidence or the Judicial Affidavit that petitioner intended to be admitted.

Petitioner's motion is bereft of merit.

The Court notes that on October 3, 2019, petitioner filed its Petition for Review dated September 30, 2019 with the Court of Tax Appeals *En Banc.*

Accordingly, we cannot discount the fact that the issues in the present motion and the Petition for Review *En Banc* are explicitly intertwined. A favorable judgment in any one is a ground for consideration of the other. Hence, the present case should not be ruled piecemeal.

Further, it is clear that the instant motion is already considered as a second motion for reconsideration filed by petitioner in relation to the May 31, 2019 Decision promulgated by this Court.

Section 2, Rule 52 of the Rules of Court provides that "no second motion for reconsideration of a judgment or final resolution by the same party shall be entertained." Similarly, Section 7, Rule 15 of the RRCTA states that "no party shall be allowed to file a second motion for reconsideration or for new trial of a decision, final resolution or order". It should be noted that the instant motion raises issues entirely the same as those already raised by petitioner in its Omnibus Motion I. For Reconsideration of the Decision dated May 31, 2019; and II. For Leave of Court to Present and Admit Additional Clarificatory Testimony.

In the Omnibus Motion I. For Reconsideration of the Decision dated May 31, 2019; and II. For Leave of Court to Present and Admit Additional Clarificatory Testimony, petitioner alleges that the Court quite extensively delved on the two categories in RMC No. 33-2013, which are clearly applicable only to PAGCOR's income. According to petitioner, the Court mistakenly applied these same categories to the income of petitioner, who is definitely not PAGCOR and is clearly rather a PAGCOR contractee. Petitioner also requests for an opportunity to present further evidence in the form of testimonial evidence to clarify the nature of petitioner's operations under its agreement with PAGCOR for a better understanding of petitioner's junket operations. Thus, petitioner requests for the setting of a hearing for its Motion for Reconsideration for the presentation of evidence in support of its Motion for Reconsideration.

Likewise, in the present motion, the issue pertains to the request for the setting of a hearing to allow petitioner to present and to admit additional clarificatory testimony and/or present oral arguments of petitioner.

Clearly, the instant motion is a second motion for reconsideration filed by petitioner in relation to the May 31, 2019 Decision promulgated by this Court, which is prohibited under the rules.

Even assuming that the instant motion is not a second motion for reconsideration, still, the same should not be given due course for new trial.

The subject additional clarificatory testimony is neither newly discovered evidence nor omitted due to fraud, accident, mistake or excusable negligence to warrant consideration and reopening of the proceedings. The additional testimonial evidence (the clarificatory testimony of Miguel Tolentino, Jr.) constitutes forgotten evidence, which petitioner intends to present only after obtaining an unfavorable decision. As held in the case of *Office of the Ombudsman, Represented by Hon. Simeon V. Marcelo vs. Carmencita D. Coronel:*[1]

> 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.

We must stress that the bare invocation of "the interest of substantial justice" is not a magic wand that will automatically compel this Court to suspend procedural rules. Procedural rules 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

[1] G.R. No. 164460, June 27, 2006.

rules, they are required to be followed except only for the most persuasive of reasons when they may be relaxed to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed.[2]

Based on the foregoing, this Court finds no compelling reason to grant the present motion.

WHEREFORE, premises considered, petitioner's **Motion to Set for Hearing and/or Oral Arguments [Re: Omnibus Motion I. For Reconsideration of the Decision dated May 31, 2019; and II. For Leave of Court to Present and Admit Additional Clarificatory Testimony]** is **DENIED** for lack of merit.

SO ORDERED.

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

I CONCUR:

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

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[2] *Lazaro, et al., vs. Court of Appeals, et al.,* G.R. No. 137761, April 6, 2000.