REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

NORKIS TRADING COMPANY, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8862

Members:

CASTAÑEDA, JR., *Chairperson,*
CASANOVA, *and*
MANAHAN, *JJ.*

Promulgated:
APR 04 2018 4:00 pm

x -x

RESOLUTION

CASTAÑEDA, JR., *J.*:

For resolution of this Court are the following:

1. respondent's **Motion for Reconsideration** filed on January 19, 2018, with petitioner's **Comment (on the Motion for Reconsideration dated January 19, 2018)**, filed on February 19, 2018;

2. respondent's **Motion for Leave of Court to Admit Attached Reply**, and the **Reply Re: Petitioner's Comment (on Motion for Reconsideration dated January 19, 2018)**, filed on March 5, 2018; and

3. petitioner's **Motion for Leave to File and Admit Attached Rejoinder To Respondent's Reply** and the **Rejoinder To: Respondent's Reply Re: Petitioner's Comment (on Motion for Reconsideration dated January 19, 2018)**, filed on March 16, 2018.

In the interest of substantial justice, the Court finds merit in respondent's **Motion for Leave of Court to Admit Attached Reply** and petitioner's **Motion for Leave to File and Admit Attached Rejoinder To Respondent's Reply**.

Moving on to the instant motion for reconsideration, respondent seeks reconsideration of this Court's Resolution dated December 12, 2017, the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, respondent's **Motion for Reconsideration** and **Motion for Leave of Court to Admit Attached Supplemental Motion for Reconsideration (with Alternative Motion to Re-open Proceedings)** are hereby **DENIED** for lack of merit.
>
> **SO ORDERED**."

In the assailed Resolution, the Court held that although Section 8 of No. 1125, as amended, creating the Court of Tax Appeals, expressly provides that proceedings before this Court shall not be governed strictly by technical rules of evidence and there are instances where the Court allows the reopening of trial even though judgment has already been rendered, still, the Court finds that respondent has not demonstrated any convincing reason for the Court to apply the technical rules liberally.

Respondent moves for reconsideration of the Resolution dated December 12, 2017 as regards the denial of his Motion for Leave of Court to Admit Attached Supplemental Motion for Reconsideration (with Alternative Motion to Reopen Proceedings).

Allegedly, in his Supplemental Motion for Reconsideration (with Alternative Motion to Reopen Proceedings), respondent submitted the copy of the Agreement (between Yamaha and Norkis) and the copy of the Letter from the National Tax Agency of Japan, for consideration of the Court.

Respondent alleged that the subject Agreement as contained in the Bureau of Internal Revenue (BIR) Records of this case forms an integral part of the records considering that the BIR records in the custody of the Court is a public document. And the said Agreement was transmitted to the BIR by way of a Letter from the National Tax Agency of Japan which is considered as written official act of public officials of a foreign country. Such letter is likewise contained in the BIR Records.

Respondent contends that in consonance with Section 19, Rule 131 of the Rules of Court, the Letter from the National Tax Agency of Japan and its attached Agreement are considered public documents.

As regards his alternative prayer to reopen proceedings, respondent intends to present a witness who may identify the aforesaid documents in the event the Court would deem proper to identify the same. Respondent also cited several cases wherein the Court allowed the reopening of the case in furtherance of substantial justice.

In view of the foregoing, respondent prays that the reopening of the case for further presentation of the subject documents be granted.

On the other hand, petitioner in its comment argues that respondent's motion for reconsideration is moot and academic in view of the fact that respondent has already perfected its appeal by filing a Petition for Review to the Court *En Banc*. More so, petitioner contends that respondent's motion for reconsideration is prohibited under the Revised Rules of the Court of Tax Appeals for being a second motion for reconsideration.

Respondent, in his Reply to petitioner's comment, claims that he has separate causes of action in filing the MR dated January 19, 2018 before this Division and the Petition for Review *Ad Cautelam* before the Court *En Banc*.

Allegedly, the present motion is an MR only of the denial of respondent's Motion to Reopen Proceedings and for not considering the documents attached in his Supplemental MR while his Petition for Review *Ad Cautelam* before the Court *En Banc* is only appealing on the denial of his motion for reconsideration and for declaring that the assessment is void for the same was made beyond the three (3) year period prescribed by law.

In the Rejoinder, petitioner states that even assuming that the subject motion is not a prohibited second motion for reconsideration, the January 19 MR filed by respondent is certainly a second motion for new trial which is equally prohibited under Section 7, Rule 15 of the Revised Rules of Court of Tax Appeals.

The Court finds the motion for reconsideration bereft of merit.

It is noted that on February 15, 2018, respondent filed his Petition for Review *Ad Cautelam* dated February 7, 2018 before the Court of Tax Appeals *En Banc.*

Although respondent claims that he has separate causes of action, 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 respondent in relation to the December 12, 2017 Resolution issued 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 Revised Rules of the Court of Tax Appeals 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 respondent in his Motion for Reconsideration (Re: Decision dated August 16, 2017) and Supplemental Motion for Reconsideration (with Alternative Motion to Re-open Proceedings).

In the Motion for Reconsideration (Re: Decision dated August 16, 2017), respondent alleged that he has sufficiently showed the Indemnity Agreement between petitioner and Yamaha and the indemnity fee received by petitioner. In his Supplemental Motion for Reconsideration (with Alternative Motion to Re-open Proceedings), aside from reiterating his previous argument in his Motion for Reconsideration, he further contends that the Letter from the National Tax Agency of Japan and the attached Agreement are considered public documents. Likewise, in the present motion, the issue pertains to the request for admission of the same Indemnity Agreement (between Yamaha and Norkis) and the Letter from the National Tax Agency of Japan.

Clearly, the instant motion is a second motion for reconsideration filed by respondent in relation to the December 12, 2017 Resolution issued 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 documents are neither newly discovered evidence nor omitted due to fraud, accident, mistake or excusable negligence to warrant consideration and reopening of the proceedings. In fact, the additional documentary evidence (the Letter from the National Tax Agency of Japan) constitutes forgotten evidence as extensively discussed in the assailed Resolution dated December 12, 2017.

Based on the foregoing, this Court finds no compelling reason to reverse or modify the assailed Resolution.

WHEREFORE, premises considered, respondent's **Motion for Leave of Court to Admit Attached Reply** and petitioner's **Motion for Leave to File and Admit Attached Rejoinder To Respondent's Reply** are **GRANTED**, and the respective **Reply** and **Rejoinder** are **ADMITTED**, while respondent's **Motion for Reconsideration** is hereby **DENIED** for lack of merit.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

CATHERINE T. MANAHAN
Associate Justice