REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

COSMOS BOTTLING CORPORATION, Petitioner,	**CTA CASE NO. 9405**
	Members:
- versus -	**DEL ROSARIO**, *P.J.*, *Chairperson*, **FABON-VICTORINO,** and **MANAHAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: MAY 14 2019 2:25 pm

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RESOLUTION

For this Court's consideration is petitioner's **Motion for Reconsideration of the Resolution dated February 7, 2019** filed on March 5, 2019, without respondent's Comment despite due notice as per Records Verification dated April 29, 2019.

The assailed Resolution dated February 7, 2019 pertinently reads:

> "**WHEREFORE**, premises considered, the Petition for Review and Supplemental Petition for Review are hereby **DISMISSED**. Petitioner is hereby declared to have engaged in forum shopping and is adjudged **GUILTY OF DIRECT CONTEMPT**; petitioner is hereby **ORDERED** to pay a **FINE** of Two Thousand Pesos (Php2,000.00), within five days from notice."

Petitioner moves for the reversal of the assailed Resolution and reinstatement of its Petition for Review and prays that the parties be allowed to file their respective memoranda as previously granted by the Court in the November 27, 2018 Hearing, on the following grounds:

1. Petitioner's Letter dated July 11, 2016 is a not a motion for reconsideration of an action or claim pending before any court, tribunal or quasi-judicial agency;

2. The Commissioner of Internal Revenue (CIR), with respect to aforesaid Letter, is not a "forum" within the contemplation of the rules on forum shopping because the CIR, who is a counter-party to the case is not any other court, or quasi-judicial agency with whom petitioner is seeking resolution of the assessment;

3. Petitioner was acting in good faith all throughout the proceedings inclusive of the period prior to the filing of the Petition for Review;

4. Assuming, but without admitting, that the CIR is a forum, still the elements of forum shopping are not present in this case;

5. The Letters dated July 11 and 21, 2016 need not be disclosed in the certification against forum shopping because they are mere "informal" or "unofficial" requests which do not constitute an action or claim commenced or filed in any court, tribunal or quasi-judicial agency and such requests do not require a response or decision and hence, the element of forum shopping is not present;

6. The amended Final Decision on Disputed Assessment (FDDA) does not amount to *res judicata* in the Petition for Review;

7. Assuming the Court concludes that petitioner engaged in forum shopping, the Court should necessarily and categorically state that the amended FDDA is *res judicata* in the Petition for Review; and,

8. The magnitude and merit of the case should be considered as a special circumstance or compelling reason to relax the rule on non-forum shopping.

Scrutiny of petitioner's arguments reveals that, except for its argument that the magnitude and merit of the case should be considered as a special circumstance or compelling reason warranting the relaxation of the rule on forum shopping, they are reiterations and amplifications of its previous arguments already considered in the assailed Resolution. Thus, the Court shall no longer belabor, in this Resolution, to reiterate the disquisitions made therein.

The Court will just emphasize that, at its most basic, prohibited forum shopping refers to "actions involving the same issues."[1] Further, the concept of forum shopping applies not only to suits filed in the courts but also in connection with litigation commenced in the courts while an administrative proceeding is pending in order to defeat administrative processes and in anticipation of an unfavorable administrative ruling.[2] It also refers "to any other action involving the same issues in the [courts], or any other tribunal or agency."

Petitioner submits that it deserves the opportunity to be heard and for rendition of judgment on the merits of its Petition for Review and Supplement Petition for Review so that there will be no miscarriage of justice on mere technicality and deprivation of property without due process of law, considering that at stake is a collection of a tax assessment amounting to ₱3,760,908,104.47 which may not only result in the closure of its business but also the confiscation or wiping out of the total stockholder's equity of the petitioner that amounts only to ₱1,146,048,313, as shown in its audited financial statement as of December 31, 2018. Further, petitioner argues that it has completed presentation of its evidence and has formally offered its evidence and respondent did not file comment or objection thereto despite the period granted to do so. In support of petitioner's plea, it cites the cases of *Marcopper Mining Corporation vs. Solidbank Corporation, et al.*[3] *(Marcopper)* and *Iglesia ni Cristo vs. Thelma A. Ponferrada, in her capacity as Presiding Judge, Regional Trial Court, Br. 104, Quezon City, et al.*[4] *(Iglesia ni Cristo).*

The Court finds the Motion bereft of merit.

In *Marcopper,* the Supreme Court ruled that while Marcopper Mining Corporation (MMC) was not guilty of forum shopping, it failed to comply with Section 5, Rule 7 of the Rules of Court (ROC) as its counsel who signed the Certification of Non-Forum Shopping was not authorized by MMC. Despite such non-compliance, the Supreme Court suspended the application of its own rules and held that the

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[1] *Lawrence B. Wacnang vs. Commission on Elections and Floydelia R. Diasen,* G.R. No. 178024, October 17, 2008.
[2] *Antonio M. Villanueva and Fulgencio B. Alvarez vs. Hon. Abednego O. Adre. Presiding Judge, Regional Trial Court, Branch 22, 11th Judicial Region, and Lucio Velayo,* G.R. No. 80863, April 27, 1989.
[3] G.R. No. 134049, June 17, 2004.
[4] G.R. No. 168943, October 27, 2006.

apparent merits of MMC's case should be deemed as a special circumstance or compelling reason to exempt MMC from the sanction of the denial of its petition for non-compliance with Section 5, Rule 7 of the ROC. On the other hand, in *Iglesia ni Cristo*, the Supreme Court affirmed the finding that Section 5, Rule 7 of the ROC was substantially complied with by respondents therein with the submission of the Certification Against Non-Forum Shopping signed by one of the heirs, who are considered co-owners pro-indiviso of the subject property. The Supreme Court then considered the fact that at stake was the ownership and possession over a prime property in Quezon City when it decided to allow the relaxation of the rule on forum shopping.

In both *Marcopper* and *Iglesia ni Cristo*, there was no finding that the parties engaged in forum shopping when the Supreme Court allowed the relaxation of the application of Section 5, Rule 7 of the ROC unlike in the present case where petitioner has been found to be guilty of engaging in forum shopping. Evidently, petitioner's reliance on *Marcopper* and *Iglesia ni Cristo* is misplaced.

In fine, petitioner fails to convince the Court that it should be exempted from the application of the sanction provided under Section 5, Rule 7 of the ROC.

Anent its argument that the sheer magnitude of the amount involved justifies the relaxation of the rule on forum shopping, the exclusive power to suspend the rules of procedure or to exempt a particular case from its operation lies within the Supreme Court, as a necessary complement of its power to promulgate the same. Said the Supreme Court:

> "xxx [the Supreme Court] **unlike courts below** has the power not only to liberally construe the rules but also to suspend them, in favor of substantive law or substantial rights. Such power inherently belongs to this Court, which is expressly vested with the rule-making power by no less than the Constitution."[5]

WHEREFORE, premises considered, petitioner's **Motion for Reconsideration of the Resolution dated February 7, 2019** filed on March 5, 2019 is **DENIED** for lack of merit.

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[5] *Tancredo Redeña vs. Hon. Court of Appeals and Leocadia Redeña*, G.R. No. 146611, February 6, 2007.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

ON LEAVE
CATHERINE T. MANAHAN
Associate Justice