REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	CTA EB No. 1386 (CTA CASE No. 8554)
-versus-	*Present*: DEL ROSARIO, P.J., CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, and MANAHAN, *JJ.*
LINGKOD BAYAN PAWNSHOP CO. INC., *Respondent.*	Promulgated: JUN 28 2017 4:06 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 March 21, 2017,[2] the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **DENIED**. Accordingly, the Decision dated July 29, 2015 and the Resolution dated October 28, 2015 respectively are hereby **AFFIRMED**.

[1] Filed on April 6, 2017.
[2] *En Banc* Docket, pp. 116-133.

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SO ORDERED."

In his motion, the CIR reiterates that this Court erred as to the basis of the amount of salaries and wages to be disallowed and that the non-taxable amount as ruled by the Division should also be included therein. CIR also asserts that the disallowance of excess tax credit and MCIT over NIT is proper as Lingkod Bayan failed to prove that it suffered legitimate business reverses. CIR also contends that the full amount for deficiency DST must be included and not just the amount of advances for the taxable year 2008. Lastly, it contends that the assessment of compromise penalty is proper.

In its Comment,[3] Lingkod Bayan Pawnshop Co., Inc. (Lingkod Bayan) insists that the CIR's Motion for Reconsideration merely reiterates its argument in his Petition for Review, hence, no reason to reverse the assailed Decision.

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] Filed on April 17, 2017.
[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 his Petition for Review. 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 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:

(see Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

(On Leave)
CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Ma. Belen S. L.
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB NO. 1386** *(CTA Case No. 8554)*
	Present:
- versus -	Del Rosario, *P.J.,* Castañeda, Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, Ringpis-Liban, and Manahan, *JJ.*
LINGKOD BAYAN PAWNSHOP CO. INC., *Respondent.*	Promulgated: JUN 28 2017 4:06 p.m.

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CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur with the *ponencia* in denying petitioner's Motion for Reconsideration of the Court *En Banc's* Decision promulgated on March 21, 2017 which affirmed the assailed Decision and Resolution of the Court in Division.

I maintain, however, my position regarding the imposition of deficiency interest at the rate of twenty percent (20%) on the basic deficiency Documentary Stamp Tax (DST) and Expanded Withholding Tax (EWT), as extensively discussed in my Concurring and Dissenting Opinion in the March 21, 2017 Decision. Nonetheless, in view of respondent's failure to appeal the assailed Decision and Resolution of the Court in Division, specifically the imposition of the 20% deficiency interest on the basic deficiency DST and EWT assessed against respondent, no affirmative relief can be granted to respondent other than the relief granted in the Court in Division's assailed Decision. On this point, *Estrellita G. Salazar vs. Philippine Duplicators, Inc.*[1] is instructive:

> "As a general rule, a party who has not appealed cannot obtain from the appellate court any affirmative relief other than the ones granted in the appealed decision.
>
> **The reason for this rule is that since parties did not appeal from the decision or resolution, they are presumed to be satisfied with the adjudication**. Furthermore, Rule 141 on Legal Fees provides that if the fee is not paid, then the court may refuse to proceed with the action until they are paid and may dismiss the appeal or the action or proceeding. The case or appeal is deemed filed only upon payment of the docket or appeal fee considering that jurisdiction is acquired by the court over the case or the appeal only upon full payment of the prescribed fee. **Thus, the court has no jurisdiction or authority to grant affirmative relief to the party who did not appeal as there is no obligation to pay any fee. Furthermore, in the interest of fairness, it would not be proper and just to award affirmative relief to the appellees since they did not comply with the requirements of appeal**. xxx xxx xxx (Boldfacing supplied)

All told, I vote to **DENY** the Motion for Reconsideration filed by the Commissioner of Internal Revenue and **AFFIRM** the assailed Decision and Resolution of the Court in Division.

ROMAN G. DEL ROSARIO
Presiding Justice

[1] G.R. No. 154628, December 6, 2006.