**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

***EN BANC***

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| COMMISSIONER OF INTERNAL REVENUE, *Petitioner,* | CTA EB No. 1353 (CTA CASE No. 8759) |
| | *Present*: DEL ROSARIO, P.J., CASTAÑEDA, JR., BAUTISTA, |
| -versus- | UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, and |
| RAEKEN MARKETING CO., INC., | MANAHAN, *JJ.* |
| *Respondent.* | Promulgated: MAR 17 2017 3:58 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 October 21, 2016,[2] the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **DENIED**. Accordingly, the Decision and Resolution dated June 24, 2015 and August 18, 2015 respectively are hereby **AFFIRMED**.
>
> **SO ORDERED.**"

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[1] Filed on November 9, 2016.
[2] *En Banc* Docket, pp. 74-84.

In his motion, the CIR reiterates that he was able to show proof that the Final Assessment Notice (FAN) and Assessment Notices of value-added tax (VAT) and income tax were duly received through registered mail by presenting the registry return receipt signed by the authorized representative of Raeken Marketing Co., Inc., (Raeken).

In its Comment,[3] Raeken insists that the CIR's Motion for Reconsideration is *pro forma* and that the CIR did not assail the Decision with respect to the ruling that the assessment period was already prescribed.

The motion is bereft of merit.

All the arguments presented by 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:
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>> Among the ends to which a motion for reconsideration is addressed, <u>one is precisely to convince the court that its ruling is erroneous and improper, contrary to the law or the evidence</u>; xxx" (Underlining Supplied.)

Upon review of the Motion for Reconsideration, there is no provision of law contrary to such findings or conclusions

[3] Filed on December 1, 2016.
[4] 434 Phil. 861 (2002), cited in the case of *Philippine National Bank vs. Pineda,* G.R. No. 149236, February 14, 2007.

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 the Petition for Review and Memorandum. The motion is a mere slashed adaptation of his arguments already considered and exhaustively discussed by the Court *En Banc* in its assailed Decision.

But more importantly, even granting that there is merit on the proper delivery of the FAN as alleged by the CIR, the same is of no moment as what has been ruled in the assailed Decision, the period to assess has already prescribed. To reiterate the ruling of this Court:

> "Moreover, as correctly raised by Raeken in its Comment to the Petition for Review, the alleged FAN dated June 15, 2012 had already prescribed, having been issued beyond the three (3) year prescriptive period under Section 203 of the NIRC. The FAN was to address Raeken's supposedly deficiency income tax and value-added tax (VAT) for year 2007, however, the FAN is dated on June 15, 2012. As pointed out by Raeken, CIR only had until April 15, 2011 to assess the alleged income tax deficiency. For the alleged VAT deficiency, respondent only had until January 28, 2011 to assess, based on the Quarterly VAT returns. Counting the three-year period to assess from the

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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.

date of filing of returns of income tax and VAT, obviously, the FAN was issued beyond the said period." (Citations omitted.)

Having a FAN issued beyond the prescriptive period, the Warrant of Distraint and Levy thereafter issued has no basis.

**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

WE CONCUR:

**ROMAN G. DEL ROSARIO**
Presiding Justice

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

**LOVELL R. BAUTISTA**
Associate Justice

**ERLINDA P. UY**
Associate Justice

**CAESAR A. CASANOVA**
Associate Justice

**ESPERANZA R. FABON-VICTORINO**
Associate Justice

Ma. Belen M. R. Li
**MA. BELEN M. RINGPIS-LIBAN**
Associate Justice

**CATHERINE T. MANAHAN**
Associate Justice