REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

SPECIAL SECOND DIVISION

RICKY TAN TANGAN,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. **10150**

Members:

BACORRO-VILLENA, *Acting Chairperson, and*
CUI-DAVID, *JJ.*

Promulgated:
MAY 07 2024 4:20 pm

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RESOLUTION

***BACORRO-VILLENA, J.*:**

For the Court's resolution is respondent Commissioner of Internal Revenue's (**respondent**'s/**CIR**'s) "Motion for Reconsideration with Motion to Admit"[1] (**MR**), filed on 05 December 2023, with petitioner Ricky Tan Tangan's (**petitioner**'s) "Comment (to the Motion for Reconsideration with Motion to Admit dated December 5, 2023)"[2] (**Comment**) thereto, filed on 16 January 2024.

Respondent seeks the reversal of this Court's Decision[3] promulgated on 19 October 2023 (**assailed Decision**) in the above-captioned case, which granted the instant Petition for Review. This Court found that respondent's right to assess petitioner for alleged deficiency taxes for the calendar year (**CY**) 2012 has already prescribed,

[1] Division Docket, Volume II, pp. 486-490.
[2] Id., pp. 493-498.
[3] Id., pp. 451-485.

and that the assessments are void as they are based solely on presumptions and unverified data.

In the assailed Decision, this Court determined that respondent issued the subject Final Assessment Notice (**FAN**) dated 29 December 2017 (received by petitioner on 07 February 2018) beyond the three (3)-year prescriptive period under Section 203[4] of the National Internal Revenue Code (**NIRC**) of 1997, as amended. The dispositive portion thereof states:

> ...
>
> **WHEREFORE**, the foregoing premises considered, the present Petition for Review filed by petitioner Ricky Tan Tangan on 08 August 2019 is hereby **GRANTED**. Accordingly, respondent Commissioner of Internal Revenue's notices and assessments are declared **VOID** and henceforth **CANCELLED**. Consequently, the Warrant of Distraint and/or Levy dated 24 July 2019, covering the assessed deficiency tax liabilities against petitioner for the calendar year 2012, in the aggregate amount of ₱3,310,639.41, inclusive of surcharge, interest and compromise penalty, is also **CANCELLED** and **SET ASIDE**.
>
> Respondent Commissioner of Internal Revenue or any person duly acting on his or her behalf is hereby **ENJOINED** from pursuing any action against petitioner Ricky Tan Tangan relative to the above-mentioned void assessments.
>
> **SO ORDERED.**
>
> ...

In the instant MR, respondent insists that this Court failed to consider the fact that the assessment against petitioner became final, executory, and demandable due to petitioner's failure to file a valid protest against the FAN. Respondent notes that although petitioner acknowledged receiving the FAN and subsequently filed a request for reinvestigation, the same was denied for failure to submit the required supporting documents.

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4 **SEC. 203.** *Period of Limitation Upon Assessment and Collection.* — Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided,* That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.

In its Comment, petitioner asserts that respondent's MR was filed out of time or beyond the fifteen (15)-day reglementary period, thereby rendering the assailed Decision final and executory by operation of law, citing the Supreme Court's ruling in *Barrio Fiesta Restaurant, et al. v. Helen C. Beronia*[5] (**Barrio Fiesta**).

Furthermore, petitioner argues that even if respondent's MR were to be admitted, it should nonetheless be denied as it is *pro forma*. Petitioner points out that respondent merely alleged that the subject FAN has become final and executory without providing any supporting reasons. Additionally, respondent proceeded to cite Section 228[6] of the NIRC of 1997, as amended, and Section 3.1.5 (now Section 3.1.4)[7] of

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5 G.R. No. 206690, 11 July 2016.

6 **SEC. 228.** *Protesting of Assessment.* —

7 3.1.4 *Disputed Assessment.* — The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof. The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation defined as follows:

(i) *Request for reconsideration* — refers to a plea of re-evaluation of an assessment on the basis of existing records without need of additional evidence. It may involve both a question of fact or of law or both.
(ii) *Request for reinvestigation* — refers to a plea of re-evaluation of an assessment on the basis of newly discovered or additional evidence that a taxpayer intends to present in the reinvestigation. It may also involve a question of fact or of law or both.

The taxpayer shall state in his protest (i) the nature of protest whether reconsideration or reinvestigation, specifying newly discovered or additional evidence he intends to present if it is a request for reinvestigation, (ii) date of the assessment notice, and (iii) the applicable law, rules and regulations, or jurisprudence on which his protest is based, otherwise, his protest shall be considered *void and without force and effect.*

If there are several issues involved in the FLD/FAN but the taxpayer only disputes or protests against the validity of some of the issues raised, the assessment attributable to the undisputed issue or issues shall become final, executory and demandable; and the taxpayer shall be required to pay the deficiency tax or taxes attributable thereto, in which case, a collection letter shall be issued to the taxpayer calling for payment of the said deficiency tax or taxes, inclusive of the applicable surcharge and/or interest.

If there are several issues involved in the disputed assessment and the taxpayer fails to state the facts, the applicable law, rules and regulations, or jurisprudence in support of his protest against some of the several issues on which the assessment is based, the same shall be considered undisputed issue or issues, in which case, the assessment attributable thereto shall become final, executory and demandable; and the taxpayer shall be required to pay the deficiency tax or taxes attributable thereto and a collection letter shall be issued to the taxpayer calling for payment of the said deficiency tax, inclusive of the applicable surcharge and/or interest.

For requests for reinvestigation, the taxpayer shall submit all relevant supporting documents in support of his protest within sixty (60) days from date of filing of his letter of protest, otherwise, the assessment shall become final. The term "*relevant supporting documents*" refer to those documents necessary to support the legal and factual bases in disputing a tax assessment as determined by the taxpayer. The sixty (60)-day period for the submission of all relevant supporting documents shall not apply to requests for reconsideration. Furthermore, the term "the assessment shall become final" shall

Revenue Regulations (**RR**) No. 12-99[8], as amended by RR No. 18-13[9], without discussing the relevance of these provisions to the case at hand.

Petitioner also highlights that this Court, in the assailed Decision, has already settled that this case centers on an appeal from respondent's Warrant of Distraint and Levy (**WDL**), which was treated as respondent's Final Decision on Disputed Assessment (**FDDA**). It is the WDL, not the FDDA, that is appealable to this Court. This is because petitioner categorically denied receiving the FDDA, and respondent failed to provide competent evidence that petitioner actually received it.

Accordingly, petitioner claims that it is incumbent upon respondent to demonstrate why the aforementioned ruling was erroneous, rather than merely reiterating unsupported allegations. Having failed to do so, the instant MR must be deemed *pro forma*, and it has not tolled the reglementary period.

Lastly, petitioner asserts that even assuming that the instant MR cannot be declared *pro forma*, it must still be denied for lack of merit since the FAN's receipt is not the issue in this case. Put differently, the timeliness of the judicial appeal in question does not depend on the FAN's receipt; rather, it hinges on whether respondent established the FDDA's receipt. On this note, petitioner maintains that this Court correctly ruled that respondent failed to present competent evidence to prove FDDA's receipt as a matter of fact.

We rule below.

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mean the taxpayer is barred from disputing the correctness of the issued assessment by introduction of newly discovered or additional evidence, and the FDDA shall consequently be denied.

If the taxpayer fails to file a valid protest against the FLD/FAN within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable. No request for reconsideration or reinvestigation shall be granted on tax assessments that have already become final, executory and demandable.

8 *Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty.*

9 *Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.*

Before addressing the merits of the instant MR, We shall first determine the timeliness of its filing.

Under Section 1[10], Rule 15 of the Revised Rules of the Court of Tax Appeals (**RRCTA**), an MR must be filed within fifteen (15) days from the date of receipt of the notice of the decision.

Per Notice of Decision dated 19 October 2023, the Legal Division of the Bureau of Internal Revenue (**BIR**) Revenue Region No. 5 received a copy of the assailed Decision on **13 November 2022**, while the Office of the Solicitor General (**OSG**) received the same on 22 November 2023. Counting 15 days from 13 November 2022 (the earlier date), the 15-day reglementary period to file an MR lapsed on **28 November 2023**. Thus, respondent's MR was filed out of time on **05 December 2023**.

It bears noting that the OSG is not yet involved in this case as it is not mentioned in all of the pleadings filed by respondent before this Court, including the instant MR.

Nevertheless, even granting that the reglementary period for filing an MR may be reckoned from the OSG's receipt of the assailed Decision on 22 November 2023 (the later date), thereby extending the deadline to 07 December 2023 and considering the instant MR as timely filed, or even if this Court were to excuse the late filing due to the alleged numerous tasks of respondent's handling counsel, the instant MR would still be denied for lack of merit.

At the outset, the Court finds no new matters or arguments which were not considered in the assailed Decision. A review of respondent's main assignment of error reveals that it is based solely on the assertion that the subject assessment against petitioner became final, executory, and demandable due to petitioner's failure to file a valid protest against the FAN. However, it should be noted that this argument does not merit further consideration, given this Court's findings that: (1) the FAN in question was issued beyond the ordinary three (3)-year prescriptive period under Section 203 of the NIRC of 1997, as amended; and, (2) even

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10 SEC. 1. *Who May and When to File Motion.* — Any aggrieved party may seek a reconsideration or new trial of any decision; resolution or order of the Court. He shall file a motion for reconsideration or new trial **within fifteen days from the date he received notice of the decision**, resolution or order of the Court in question. (Emphasis supplied)

assuming that the period to assess had been validly extended, the subject assessment for deficiency taxes would still be invalid as it is based on mere presumptions and unverified data.

More importantly, it must be stressed that respondent's argument in the present MR is a substantial reiteration of an argument in his or her Memorandum[11] (on the supposed finality of the assessment for lack of a valid protest) which, as mentioned, is irrelevant and thus, does not merit further consideration in the resolution of this case. Besides, respondent did not even bother to specify which supporting documents petitioner failed to submit at the administrative level or any other reason that might explain why the protest against the FAN is considered invalid. Hence, the present MR should be dismissed outright for being *pro forma*.

Section 1, Rule 37 of the 2019 Amendments to the 1997 Rules of Civil Procedure[12] provides the grounds of and period for filing an MR, and Section 2 thereof elaborates on the contents of an MR, *viz*:

> ...
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> RULE 37
> New Trial or Reconsideration
>
> **Sec. 1.** *Grounds of and Period for Filing Motion for New Trial or Reconsideration.* — **Within the period for taking an appeal**, the aggrieved party may move the trial court to set aside the judgment or final order and grant a new trial for one or more of the following causes materially affecting the substantial rights of said party:
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> (a) Fraud, accident, mistake or excusable negligence which ordinary prudence could not have guarded against and by reason of which such aggrieved party has probably been impaired in his rights; or
>
> (b) Newly discovered evidence, which he could not, with reasonable diligence, have discovered and produced at the trial, and which if presented would probably alter the result.
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> **Within the same period, the aggrieved party may also move for reconsideration upon the grounds that the damages awarded are excessive, that the evidence is insufficient to justify the decision or final order, or that the decision or final order is contrary to law.**

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11 Division Docket, Volume I, pp. 423-432.
12 A.M. No. 19-10-20-SC.

> **Sec. 2.** *Contents of Motion for New Trial or Reconsideration and Notice Thereof.* — The motion shall be made **in writing stating the ground or grounds therefor**, a written notice of which shall be served by the movant on the adverse party.
>
> A motion for new trial shall be proved in the manner provided for proof of motions. A motion for the cause mentioned in paragraph (a) of the preceding section shall be supported by affidavits of merits which may be rebutted by affidavits. A motion for the cause mentioned in paragraph (b) shall be supported by affidavits of the witnesses by whom such evidence is expected to be given, or by duly authenticated documents which are proposed to be introduced in evidence.
>
> **A motion for reconsideration shall point out specifically the findings or conclusions of the judgment or final order which are not supported by the evidence or which are contrary to law, making express reference to the testimonial or documentary evidence or to the provisions of law alleged to be contrary to such findings or conclusions.**
>
> **A *pro forma* motion for new trial or reconsideration shall not toll the reglementary period of appeal.**[13]
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> ...

Relative to the foregoing, Section 6, Rule 15 of the Revised Rules of the Court of Tax Appeals[14] (**RRCTA**), likewise provides:

> ...
> **SEC. 6.** *Contents of Motion for Reconsideration or New Trial and Notice.* — The motion shall be **in writing stating its grounds**, a written notice of which shall be served by the movant on the adverse party.
>
> A motion for new trial shall be proved in the manner provided for proof of motions. A motion for the cause mentioned in subparagraph (a) of the preceding section shall be supported by affidavits of merits which may be rebutted by counter-affidavits. A motion for the cause mentioned in subparagraph (b) of the preceding section shall be supported by affidavits of the witnesses by whom such evidence is expected to be given, or by duly authenticated documents which are proposed to be introduced in evidence.

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13 Emphasis supplied and italics in the original text.

14 A.M. No. 05-11-07-CTA.

> **A motion for reconsideration or new trial that does not comply with the foregoing provisions shall be deemed *pro forma*, which shall not toll the reglementary period for appeal.**[15]
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> ...

From the foregoing, a party adversely affected by a decision of the Court may, within the period for taking an appeal, move for reconsideration thereof on the following grounds: (1) the damages awarded are excessive; (2) the evidence is insufficient to justify the decision; or, (3) the decision is contrary to law. Perforce, an MR interrupts the running of the period to appeal, unless the motion is deemed *pro forma*.

In the case of *Philippine National Bank v. Hon. Jose G. Paneda, et al.*[16] (**Philippine National Bank**), the Supreme Court had the opportunity to discuss what makes a motion *pro forma*, to wit:

> ...
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> The Court is guided by the rulings in *Coquilla v. Commission on Elections*, to wit:
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> ... **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 movant's 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, one is precisely to convince the court that its ruling is erroneous and improper, contrary to the law or the evidence; and in doing so, the movant has to dwell of necessity upon the issues passed upon by the court.** If a motion for reconsideration may not discuss these issues, the consequence would be that after a decision is rendered, the losing party would be confined to filing only motions for reopening and new trial.
>
> **Indeed, in the cases where a motion for reconsideration was held to be *pro forma*, the motion was so held because (1) it was a second motion for reconsideration, or (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**

[15] Emphasis supplied and italics in the original text.
[16] G.R. No. 149236, 14 February 2007; citing *Teodulo M. Coquilla v. The Hon. Commission on Elections, et al.*, G.R. No. 151914, 31 July 2002.

> **<u>the evidence</u>, or (3) it failed to substantiate the alleged errors, or (4) it merely alleged that the decision in question was contrary to law, or (5) the adverse party was not given notice thereof.** ...[17]
>
> ...

Even prior to *Philippine National Bank*, the Supreme Court already expounded on the subject in *Marina Properties Corporation v. Court of Appeals, et al.*[18], thus:

> ...
>
> Under our rules of procedure, a party adversely affected by a decision of a trial court may move for reconsideration thereof on the following grounds: (a) the damages awarded are excessive; (b) the evidence is insufficient to justify the decision; or (c) the decision is contrary to law. A motion for reconsideration interrupts the running of the period to appeal, unless the motion is *pro forma*. This is now expressly set forth in the last paragraph of Section 2, Rule 37, 1997 Rules of Civil Procedure.
>
> A motion for reconsideration based on the foregoing grounds is deemed *pro forma* if the same does not specify the findings or conclusions in the judgment which are not supported by the evidence or contrary to law, making express reference to the pertinent evidence or legal provisions. It is settled that although a motion for reconsideration may merely reiterate issues already passed upon by the court, that by itself does not make it *pro forma* and is immaterial because what is essential is compliance with the requisites of the Rules. ...
>
> ...
>
> **Where the circumstances of a case do not show an intent on the part of the pleader to merely delay the proceedings, and <u>his motion reveals a *bona fide* effort to present additional matters or to reiterate his arguments in a different light</u>, the courts should be slow to declare the same outright as *pro forma*.** The doctrine relating to *pro forma* motions has a direct bearing upon the movant's valuable right to appeal. It would be in the interest of justice to accord the appellate court the opportunity to review the decision of the trial court on the merits than to abort the appeal by declaring the motion *pro forma*, such that the period to appeal was not interrupted and had consequently lapsed.[19]
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> ...

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[17] Citation omitted, emphasis and italics in the original text and underscoring supplied.

[18] G.R. No. 125447, 14 August 1998.

[19] Citations omitted, emphasis and underscoring supplied.

On the contrary, as earlier noted, the Court finds that the present MR did not reveal a "*bona fide* effort to present additional matters", neither did it reiterate respondent's arguments in a different light. Instead, there is nothing new that serves to persuade a reasonable judicial mind to change its decision.

Since the present MR substantially reiterates an argument from respondent's Memorandum[20] (on the supposed finality of the assessment for lack of a valid protest) without providing any relevant explanation of its merits in relation to the assailed Decision, and in accordance with the foregoing guidelines, the Court must conclude that it miserably failed to point out specifically the findings or conclusions in the assailed Decision which are not supported by the evidence or which are contrary to law, nor does it state additional specific reasons for those grounds. Thus, respondent's MR is indeed *pro forma*.

Accordingly, the Court finds no cogent reason to disturb the assailed Decision.

WHEREFORE, in view of the foregoing, respondent's Motion for Reconsideration, filed on 05 December 2023, is hereby **DENIED** for lack of merit and for being *pro forma*.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

LANEE S. CUI-DAVID
Associate Justice

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20 Supra at note 11.