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

***EN BANC***

*******

**COMMISSIONER OF INTERNAL REVENUE,**
Petitioner,

**CTA EB No. 1918**
(CTA Case No. 9123)

***Present:***

**DEL ROSARIO,** P.J.,
**CASTAÑEDA, JR.,**
**UY,**
**RINGPIS-LIBAN,**
**MANAHAN,**
**BACORRO-VILLENA,** and
**MODESTO-SAN PEDRO,** JJ.

**- versus -**

**PHILIPPINE INTERNATIONAL AIR TERMINALS CO., INC.,**
Respondent.

***Promulgated:***
SEP 2 9 2020
2:57 p.m.

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# RESOLUTION

**UY,** J.:

For resolution is petitioner's **"MOTION FOR RECONSIDERATION"**[1] filed on June 23, 2020, with respondent's **"COMMENT/OPPOSITION (to Petitioner's Motion for Reconsideration dated 23 June 2020)"**[2] filed on July 17, 2020. In the said Motion, petitioner prays for the reconsideration and setting aside of the Court's Decision dated June 3, 2020, the dispositive portion of which reads:

> "**WHEREFORE,** in light of the foregoing considerations, the instant *Petition for Review* is hereby

[1] Docket, pp. 179 to 190.
[2] Docket, pp. 192 to 200.

**DENIED** for lack of merit. The Decision dated May 7, 2018 and the Resolution dated July 27, 2018, rendered by the Third Division of this Court, respectively, in CTA Case No. 9123 are hereby **AFFIRMED.**

**SO ORDERED.**"

In support of his Motion, petitioner argues that:

1. PEZA-registered enterprise's tax incentive or tax exemption is not absolute. It is subject to the rules and regulations of PEZA, and to the conditions set in its Registration Agreement. Because of the denial by PEZA of PIATCO's request for tax exemption and duty-free importation of its construction materials and equipment, the aforesaid importation is subject to VAT.

2. PIATCO's exemption from other taxes, including VAT, under the "in lieu thereof" provision shall apply only when the five percent (5%) tax on gross income is shown to have been paid.

3. Under the PEZA Rules and Regulations, tax and duty-free importation is granted only to Ecozone Export Enterprises and Ecozone Free Trade Enterprises, and not to Developers/Operators and Ecozone Facilities Enterprises, like PIATCO. Likewise, under PEZA Rules and Regulations, the PEZA is mandated to evaluate and approve the importations of registered enterprises.

4. When the Supreme Court declared *void ab initio* PIATCO's Concession Agreement for the construction of NAIA PT3 Project, it follows that PIATCO can no longer avail of the incentives under PEZA law.

In its Comment, respondent counters that:

1. The Court correctly ruled that PIATCO, as a PEZA-registered entity, is exempt from local and national taxes, including VAT, pursuant to R.A. No. 7916, as amended by R.A. No. 8748.

2. Petitioner's argument that the exemption from other taxes under R.A. No. 7916 shall only apply when the 5% preferential tax rate has been paid, was raised for the first time in his Motion for Reconsideration. Moreover, as held by

the Court in Division and the Court *En Banc,* by electing to waive the benefits under E.O. No. 226, PIATCO is already entitled to the benefits under R.A. No. 7916. This exemption is automatically given by law and there is no other operative act required to avail of the said benefits.

3. The Court correctly ruled that PIATCO, as a PEZA-registered enterprise, is a VAT-exempt entity pursuant to R.A. No. 7916, as amended by R.A. No. 8748.

## THE COURT *EN BANC'S* RULING

Petitioner's Motion lacks merit.

After a careful examination and consideration of the petitioner's Motion for Reconsideration, it is noted that the arguments raised in the said Motion, with regard to the following: 1) PIATCO's tax incentives being subject to the rules and regulations of PEZA, as well as the conditions set in its Registration Agreement; and 2) that PEZA is mandated to evaluate and approve the importations of registered enterprises; are mere reiterations of matters which have already been considered, weighed and resolved in the assailed Decision. Thus, We shall not belabor, in this Resolution, to repeat the disquisitions made therein.

This Court notes, however, that petitioner raises two (2) new arguments before Us in his *Motion for Reconsideration,* to wit:

1. PIATCO's exemption from other taxes shall apply only upon proof that it paid the 5% tax on gross income; and
2. When the Supreme Court declared *void ab initio* PIATCO's Concession Agreement for the construction of NAIA PT3 Project, it follows that PIATCO can no longer avail of the incentives under PEZA law.

Petitioner's arguments fail to persuade.

First, this Court notes that the foregoing contentions were never raised as an issue before this Court, nor was it raised before the Court in Division. On the contrary, it was raised for the first time in his *Motion for Reconsideration* before this Court.

This belated attempt to raise new issues and arguments cannot be countenanced. The rule is well-settled that points of law, theories, issues and arguments not adequately brought to the attention of the lower court need not be considered by the reviewing court as they cannot be raised for the first time on appeal,[3] much more in a motion for reconsideration as in this case, because this would be offensive to the basic rules of fair play, justice and due process.[4] This last ditch effort to shift to a new theory and raise a new matter in the hope of a favorable result is a pernicious practice that has been consistently rejected.[5]

Second, as held by this Court in the assailed Decision, PIATCO was able to prove that it was a PEZA-registered entity.

As such, PIATCO is considered a <u>VAT-exempt entity</u>, because of Section 8 of R.A. No. 7916, establishing the fiction that ecozones are foreign territory. In addition, PIATCO is accorded a <u>special tax rate of five percent (5%) on gross income, in lieu of all taxes</u>, pursuant to Section 24 of R.A. No. 7916.

It bears stressing that R.A. No. 7916, the Implementing Rules and Regulations, as well as the Registration Agreements, in no uncertain terms, state that a PEZA-registered entity, such as PIATCO is granted preferential tax treatment. Moreover, aside from stating that the registrant must first waive its incentives under E.O. No. 226 and BOT, there is <u>*no other qualification or condition*</u> placed upon the taxpayer to enjoy such preferential rate.

From the foregoing, it is clear that there is no basis to claim that PIATCO must first present proof that it paid the 5% tax on gross income to avail of tax incentives, or that the subject tax incentives arose from a Concession Agreement, rather than from its status as a PEZA-registered entity under R.A. No. 7916.

**WHEREFORE**, in light of the foregoing considerations, the instant Motion for Reconsideration is hereby **DENIED** for lack of merit.

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[3] *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue,* G.R. No. 168498, April 24, 2007, citing *Multi-Realty Development Corporation vs. Makati Tuscany Condominium Corporation,* G.R. No. 146726, June 16, 2006; see also *Ayala Land, Inc. vs. Simeona Castillo,* G.R. No. 178110, January 12, 2016, and *Angelina A. Bayan vs. Celia A. Bayan,* G.R. No. 220741, August 14, 2019.

[4] *Id.*, citing *Sta. Rosa Realty Development Corporation vs. Amante,* G.R. No. 112526, March 16, 2005.

[5] *Id.*

**SO ORDERED.**

**ERLINDA P. UY**
Associate Justice

WE CONCUR:

**ROMAN G. DEL ROSARIO**
Presiding Justice

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

**MA. BELEN M. RINGPIS-LIBAN**
Associate Justice

*Catherine T. Manahan*
**CATHERINE T. MANAHAN**
Associate Justice

**JEAN MARIE A. BACORRO-VILLENA**
Associate Justice

**MARIA ROWENA G. MODESTO-SAN PEDRO**
Associate Justice