REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PHILSAGA MINING CORPORATION, Petitioner,	**CTA CASE NO. 9402**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson,* **MINDARO-GRULLA,** *and* **BACORRO-VILLENA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: MAR 06 2020 1:17 pm

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RESOLUTION

CASTAÑEDA, JR., J.:

Submitted before this Court is respondent's **Motion for Reconsideration (Re: Decision promulgated 17 December 2019)**, filed on January 8, 2020, with petitioner's **Comment/Opposition (To Respondent's Motion for Reconsideration dated 7 January 2020)**, filed on February 3, 2020.

On December 17, 2019, a Decision was promulgated by this Court, finding that respondent disregarded petitioner's right to due process of law by not allowing it to submit all relevant supporting documents within the 60-day period from the filing of petitioner's request for reinvestigation, as required under Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, and Section 3 of Revenue Regulations (RR) No. 12-99, as amended by RR No. 18-2013. The dispositive portion the said Decision reads as follows:

deprive petitioner of the mandatory sixty (60)-day period provided for by law. As such, petitioner argues that considering respondent did not wait for the submission of the relevant supporting documents which would have otherwise completed its Request for Reinvestigation, it is obvious that the FDDA subsequently issued by respondent—having been based only on a partially completed Protest and issued *without* a study of the taxpayer's relevant supporting documents— (i) very well lacks factual basis as it could only have been based on mere factual presumptions rather than concrete and actual facts; (ii) is not the re-evaluation contemplated under Section 228 of the NIRC and RR No. 12-99; and (iii) necessarily, could not possibly apprise, as it does fail to apprise, petitioner of respondent's grounds for his final assessment.

After carefully evaluating the arguments proffered in the present Motion for Reconsideration, this Court notes that the same are mere rehash or amplifications of the same facts and issues which have already been passed upon in the assailed Decision.

At the onset, this Court bears emphasis on Section 2[1], Rule 37 of the Rules of Court, which provides that 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. Perforce, in the case of *Shangri-La International Hotel Management, Ltd. et al. vs. Developers Group of Companies, Inc.,*[2] the Supreme Court held:

> "The bulk of the aforementioned grounds is a mere rehash of movant's previous arguments. **While** DGCI is correct in stating that **a motion for reconsideration, by its very nature, may tend to dwell on issues already resolved in the decision sought to be reconsidered and that this should not be an**

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[1] "**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.

x x x

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. (2a)

[2] G.R. No. 159938, January 22, 2007.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **GRANTED**. Accordingly, the FDDA dated June 28, 2016 issued against petitioner is **WITHDRAWN** and **SET ASIDE**. Moreover, the FLD and FAN, both dated April 13, 2016 issued by the BIR, assessing petitioner for deficiency income tax, EWT, and compromise penalty, for FY ending June 30, 2013 are **CANCELLED** and **SET ASIDE.**

SO ORDERED.

In his motion, respondent moves for the reconsideration of the above Decision, on the ground that petitioner's protest to the Formal Letter of Demand (FLD) was merely a rehash of its protest to the Preliminary Assessment Notice (PAN). Consequently, there was nothing new to consider for respondent when petitioner filed its protest to the Final Assessment Notice (FAN).

More so, respondent claims that although petitioner's letter is termed "Request for Reinvestigation", it was actually a motion for reconsideration as can be seen in the body of the letter itself. Respondent also asserts that no additional documents were submitted by petitioner and that after he has thoroughly considered petitioner's arguments and contentions, the same ultimately led to the issuance of the FLD and Final Decision on Disputed Assessment (FDDA).

Finally, respondent contends that petitioner is liable for deficiency income tax and deficiency expanded withholding tax (EWT), and that also the compromise penalties were merely included in the assessment notices as a suggestion for petitioner to avoid criminal prosecution.

On the other hand, in its comment, petitioner agrees that the FDDA and the deficiency assessments therein were correctly nullified and set aside by this Court for having been issued in violation of its right to procedural due process. Petitioner avers that respondent's allegations in the present Motion are patently misleading and do not conform to the proof borne by the records of this case.

Furthermore, petitioner also points out that even if the PAN and the FAN/FLD contain similar audit findings, this should not work to

> **obstacle for a reconsideration, the hard reality is that movant has failed to raise matters substantially plausible or compellingly persuasive to warrant the desired course of action.**
>
> Considering that the grounds presently raised have been sufficiently considered, if not squarely addressed, in the subject Decision, it behooves movant to convince the Court that certain findings or conclusions in the Decision are contrary to law. As it is, however, the instant motion does not raise any new or substantial legitimate ground or reason to justify the reconsideration sought." *(Emphasis supplied)*
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> Clearly,

In the present case, the grounds raised by respondent in his Motion were essentially copied *in verbatim* from his *Memorandum*, which has already been considered and extensively discussed in the Decision assailed. Respondent did not raise anything new to merit any reconsideration or modification of the Decision promulgated by this Court.

WHEREFORE, premises considered, respondent's **Motion for Reconsideration (Re: Decision promulgated 17 December 2019)**, is hereby **DENIED** for lack of merit.

SO ORDERED.

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

We Concur:

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice