REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

HARD ROCK CAFÉ (MAKATI CITY) INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. **9945**

Members:

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

Promulgated: AUG 17 2022 1:32 pm

x - x

RESOLUTION

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

For the Court's resolution is respondent Commissioner of Internal Revenue's (**respondent**'s) "Motion for Reconsideration"[1] (**MR**), filed *via* registered mail on 02 February 2022[2], with petitioner Hard Rock Café (Makati City) Inc.'s (**petitioner**'s) "Comment/Opposition (Re: Motion for Reconsideration dated February 2, 2022)"[3] (**Comment**), filed on 21 March 2022.

The MR assails this Court's Decision promulgated on 10 December 2021[4] (**assailed Decision**) in the above-captioned case. The dispositive portion thereof reads:

---

1 Division Docket, Volume III, pp. 1232-1242.
2 Received by the Court on 28 February 2022.
3 Division Docket, Volume III, pp. 1246-1267.
4 Id., pp. 1204-1231.

> ...
>
> **WHEREFORE**, premises considered, the present Petition for Review filed on 09 October 2018 by petitioner Hard Rock Café (Makati City) Inc. is hereby **GRANTED**. Accordingly, the assailed Final Assessment Notice (FAN) dated 28 November 2017, holding petitioner liable for deficiency income tax (IT), percentage tax (PT) and expanded withholding tax (EWT) in the aggregate amount of ₱53,148,347.05, for calendar year (CY) 2014, is hereby **CANCELLED** and **SET ASIDE**. Consequently, respondent Commissioner of Internal Revenue or any person duly acting on his behalf is hereby **ENJOINED** and **PROHIBITED** from collecting the said amount against petitioner.
>
> **SO ORDERED.**
>
> ...

In his MR, respondent claims that Revenue Officer (**RO**) Junaid Domaub (**Domaub**) and Group Supervisor (**GS**) Kadami Manarondong (**Manarondong**), who were reassigned to continue the audit investigation of petitioner's books of accounts for all internal revenue taxes for calendar year (**CY**) 2014, were duly authorized to do so.

Respondent avers that Section 13[5] of the National Internal Revenue Code (**NIRC**) of 1997, as amended, mandates that an audit shall be undertaken "pursuant to" an issued Letter of Authority (**LOA**). However, it does not mean that each assigned or reassigned RO shall be given their own LOA. Respondent adds that there is no statutory requirement for the RO to be named in the LOA.

Respondent further contends that the absence of a new LOA in case the previously assigned RO was transferred does not affect any substantial rights of the taxpayer nor their right to due process. The issuance of a Memorandum of Assignment (**MOA**) is sufficient in cases of reassignment, resignation or transfer of the original RO. Here, the issued MOA did not amend nor modify the originally issued LOA, rather it only assigned a new RO to continue the audit investigation of

---

[5] SEC. 13. ***Authority of a Revenue Officer.*** — Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, a Revenue Officer assigned to perform assessment functions in any district may, pursuant to a Letter of Authority issued by the Revenue Regional Director, examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due in the same manner that the said acts could have been performed by the Revenue Regional Director himself.

petitioner's books of accounts for CY 2014. Thus, the issuance of a new LOA to the new RO is not mandatory.

Lastly, respondent alleges that even if the MOA did not authorize the new RO to conduct the audit, petitioner failed to raise the lack of authority of the said RO to continue the investigation of its books of accounts for CY 2014. Instead, it actively participated in the proceedings in the administrative level without questioning the authority of the said RO conducting the examination. Hence, petitioner cannot belatedly raise the issue of lack of authority for the first time on appeal.

On the other hand, petitioner claims that the explicit language of Section 13[6] of the NIRC of 1997, as amended, requires the RO to possess a valid LOA from the Commissioner of Internal Revenue (**CIR**) or his duly authorized representative to enable him or her to examine the books of accounts and other accounting records of the taxpayer for the purpose of collecting the correct tax assessment. Otherwise, lack of a valid LOA violates the taxpayer's right to due process.

Moreover, petitioner alleges that a new LOA must be issued when a case is reassigned or transferred from one RO to another. Thus, absent a new LOA, an MOA is insufficient to confer authority to RO Domaub and GS Manarondong to examine petitioner's books of accounts for CY 2014. Petitioner cited the Supreme Court's ruling in *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*[7] to bolster its claim that the absence of a new LOA would result in the nullity of the assessment and/or examination made by the reassigned RO.

Lastly, petitioner maintains that it is not estopped from questioning the authority of RO Domaub and GS Manarondong to audit its books of account for CY 2014. Petitioner avers that it never misled the reassigned RO and GS to make them believe that they had the requisite authority to examine petitioner's books of accounts. On the contrary, it was the reassigned RO and GS who made representations to petitioner that they were duly authorized to

---

6 Supra at note 5.
7 G.R. No. 242670, 10 May 2021.

continue the investigation. Thus, petitioner cannot be faulted for actively participating in all stages of the audit investigation.

We resolve.

After a careful consideration of the parties' arguments, this Court finds respondent's MR bereft 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 will reveal that it rests solely on the authority of reassigned RO Domaub and GS Manarondong to continue the examination and investigation of petitioner's books of account for CY 2014 absent a new LOA. This issue has already been considered and discussed exhaustively by the Court in the assailed Decision.

More importantly, it must be stressed that respondent's arguments and discussion in the present MR are the exact duplicate or a word for word reiteration of his arguments and discussion in his Memorandum[8] which, as mentioned, have already been considered, weighed and resolved in the assailed Decision. 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[9] provides the grounds of and period for filing an MR, and Section 2 thereof elaborates on the contents of an MR, *viz*:

...

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:

---

8 Division Docket, Volume III, pp. 1188-1199, with annex.
9 A.M. No. 19-10-20-SC.

(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.

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.

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.[10]

...

Relative to the foregoing, Section 6, Rule 15 of the Revised Rules of the Court of Tax Appeals[11] (**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

10 Emphasis supplied.

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

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.

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.[12]

...

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.*[13] (**Philippine National Bank**), the Supreme Court had the opportunity to discuss what makes a motion *pro forma*, to wit:

...

The Court is guided by the rulings in *Coquilla v. Commission on Elections*, 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 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:

Among the ends to which a motion for reconsideration is addressed, one is precisely to

[12] Emphasis supplied.

[13] 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.

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 the evidence, 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. ...[14]

...

Even prior to *Philippine National Bank*, the Supreme Court already expounded on the subject in *Marina Properties Corporation v. Court of Appeals, et al.*[15], 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. ...

...

---

14 Citation omitted, emphasis and italics in the original text and underscoring supplied.
15 G.R. No. 125447, 14 August 1998.

> **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.[16]
>
> ...

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 is an exact duplicate of respondent's Memorandum[17] and based on the foregoing guidelines, the Court is constrained to 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*.

WHEREFORE, in view of the foregoing, respondent's Motion for Reconsideration, filed on 02 February 2022, is hereby **DENIED** for lack of merit and for being *pro forma*.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

---

16 Citations omitted, emphasis and underscoring supplied.
17 Supra at note 8.

I CONCUR:

LANEE S. CUI-DAVID
Associate Justice