REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

MANILA GENESIS ENTERTAINMENT & MANAGEMENT, INC., *Petitioner,*	**CTA Case No. 9259**
	Members:
	CASTAÑEDA, JR., *Chairperson,* and **MANAHAN,** *JJ.*
- versus –	
HON. KIM JACINTO-HENARES, in her capacity as Commissioner of the Bureau of Internal Revenue, THE BUREAU OF INTERNAL REVENUE, *Respondent.*	Promulgated: FEB 21 2019 11:30 Am

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RESOLUTION

CASTAÑEDA, JR., *J.:*

Submitted for resolution are the following:

1. Respondent Commissioner of Internal Revenue's (CIR) *Motion for Partial Reconsideration (Re: Decision promulgated on 31 August 2018)* filed on September 18, 2018;[1] and

[1] Division Docket, Vol. III, pp. 1319-1325.

2. Petitioner Manila Genesis Entertainment & Management, Inc.'s *Motion for Reconsideration and/or New Trial* filed via registered mail on September 18, 2018.[2]

The aforementioned *Motions* seek reconsideration of the Decision dated August 31, 2018,[3] (the "Assailed Decision") of this Court partially granting petitioner's Petition for Review.

Respondent moves for partial reconsideration of the Assailed Decision mainly alleging that petitioner is liable to pay deficiency income tax in the amount of ₱5,007,874.98 for taxable year 2008.[4] According to respondent, aside from petitioner's allegations that the donations were all made to SLFI which was alleged to be an accredited NGO under Section 34(H)(2) of the National Internal Revenue Code of 1997, as amended (1997 NIRC), the claim was never backed up by any proof.[5] Respondent further contends that assuming the donations and contributions were made to SLFI, it was not proved that SLFI falls within the enumerations of the institutions or entities under Section 34(H)(2) of the 1997 NIRC.[6]

Respondent also avers that there is no reason to allow the depreciation expense in the amount of ₱140,651.00 as petitioner failed to prove that the claimed depreciation expense was a valid deduction from gross income.[7] Respondent also maintains that the oil and gas expenses worth ₱174,389.00 were properly disallowed as these were not related to the operation and/or conduct of business.[8] Respondent likewise claims that petitioner failed to substantiate the creditable withholding tax in the amount of ₱1,589,551.00.[9]

Petitioner, in its *Motion*, moves for reconsideration and/or new trial on the basis of the following grounds: [10]

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[2] *Id.*, pp. 1332-1352.
[3] *Id.*, pp. 1290- 1318.
[4] *Id.*, p. 1320.
[5] *Id.*
[6] *Id.*, p. 1321.
[7] *Id.*, p. 1323.
[8] *Id.*
[9] *Id.*
[10] *Id.*, p. 1335.

1. Secondary evidence formally offered be allowed to be admitted in support of its claims;

2. Judicial notice be exercised to take cognizance of the BIR records formally transmitted to this Court pursuant to a subpoena issued by this Court; and

3. To allow petitioner to submit newly discovered evidence which, with reasonable diligence, particularly the original copy of the Audited Financial Statements and Income Tax Return for the taxable year 2008 and original copies of other relevant documents, could not have been presented during the trial proper, on the ground of excusable negligence which ordinary prudence could not have guarded against, and by reason of which the rights of the petitioner has been impaired, and if presented would probably alter the result thereof.

After incisive examination of the case records and the arguments raised by the parties, this Court resolves to deny both *Motions* for lack of merit. Both *Motions* failed to raise any new or substantial matter or any compelling reason that will justify modification much less reversal of this Court's findings.

Respondent's Motion for Partial Reconsideration

The respondent's *Motion for Partial Reconsideration* shall be denied for being *pro forma*.

A *pro forma* motion for reconsideration is one which is either: (1) a second motion for reconsideration; or (2) 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 evidence; or (3) failed to substantiate the alleged errors; or (4) merely alleged that the decision in question was contrary to law; or (5) the adverse party was not given notice thereof.[11] A motion for reconsideration is also considered *pro forma* when it does not contain a notice of hearing.[12] A *pro forma* motion for reconsideration has no other purpose than to gain time and

[11] *Coquilla v. The Hon. Commission on Elections*, G.R. No. 151914, July 31, 2002, 385 SCRA 614.
[12] *Preysler, Jr. v. Manila Southcoast Development Corporation*, G.R. No. 171872, June 28, 2010, 621 SCRA 643.

as such, tends to delay or impede the progress of proceedings.[13] Accordingly, a *pro forma* motion for reconsideration is deemed a worthless piece of paper which does not toll the reglementary period to appeal.[14]

In the present case, this Court notes that the discussion in respondent's *Motion* is a mere verbatim reproduction of the discussion of the arguments in his Memorandum that was already passed upon by this Court in the Assailed Decision. While it is true that a motion for reconsideration does not necessarily become *pro forma* just because it reiterated the arguments earlier passed upon and rejected by the appellate court,[15] the surrounding circumstances of the filing of respondent's *Motion* unquestionably evinces a clear intent on the part of its pleader to merely gain time and/or delay the proceedings in this case. The *Motion* evidently lacks any genuine effort to specify what finding and/or conclusion in the Assailed Decision alleged to be contrary to law or not supported by evidence. For these reasons, the respondent's *Motion* shall be deemed *pro forma* and as such, shall not toll the reglementary period of appeal.[16]

Petitioner's Motion for Reconsideration and/or New Trial

While petitioner's *Motion* is purportedly titled as *"Motion for Reconsideration and/or New Trial"*, a careful reading of the contents thereof reveals that the same failed to allege let alone discuss any of the proper grounds for filing a motion for reconsideration. Sections 1 and 2 of Rule 37 of the Rules of Court, in relevant part, provides:

> "Rule 37
> NEW TRIAL OR RECONSIDERATION
>
> SEC. 1. *Grounds of and period for filing motion for new trial or reconsideration.* — x x x

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[13] *Marikina Valley Development Corporation et. al. v. Hon. Napoleon R. Flojo*, G.R. No. 110801, December 8, 1995, 251 SCRA 96.

[14] *Anama v. Court of Appeals*, G.R. No. 187021, January 25, 2012, 664 SCRA 301; *Cabrera v. Ng*, G.R. No. 201601, March 12, 2014, 719 SCRA 307; *Solar Resources, Inc. v. Inland Railways, Inc.*, G.R. No. 173566, July 4, 2008 557 SCRA 290.

[15] *Republic v. International Communications Corporation (ICC)*, G.R. No. 141667, July 17, 2006, 495 SCRA 198; *Security Bank and Trust Company, Inc. v. Cuenca*, G.R. No. 138544, October 3, 2000, 341 SCRA 794.

[16] Section 6, Rule 15, Revised Rules of the Court of Tax Appeals (RRCTA); Section 2, Rule 37 of Rules of Court.

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.

x x x x x x x x x

A motion for reconsideration shall point out a 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.

x x x x x x x x x"[17]

Given the failure of petitioner's *Motion* to state any of the proper grounds for filing a motion for reconsideration, the same shall be treated as a motion for new trial only.

In its *Motion*, petitioner seeks permission of this Court to allow it to present secondary evidence in support of its claims. In this regard, petitioner cited as basis Section 5, Rule 130 of the Rules of Court which reads as follows:

"SEC. 5. *When original document is unavailable.* — When the original document has been lost or destroyed, or cannot be produced in court, the offeror, upon proof of its execution or existence and the cause of its unavailability without bad faith on his part, may prove its contents by a

[17] Emphasis supplied.

copy, or by a recital of its contents in some authentic document, or by the testimony of witnesses in the order stated."

Petitioner claims that it was able to establish the (1) existence; (2) execution; (3) loss; and (4) contents of the Audited Financial Statements.[18] As to the proof of its existence, petitioner contends that the said documents were submitted to the BIR as evidenced by the Formal Letter of Demand[19] wherein it was stated that the said document was used as basis for coming up with the assessments. Petitioner also cited the testimony of respondent's witness who allegedly admitted during cross-examination that the documents were in the BIR's custody.[20]

This Court is not convinced.

The pieces of evidence cited by petitioner do not clearly prove that the **original** of petitioner's Audited Financial Statements for taxable years 2007 and 2008 were in the custody of the BIR. It bears stressing that what the petitioner needs to establish is **the existence of the original documents** the contents of which is the subject of the inquiry. At the most, the pieces of evidence cited by petitioner only proved that the BIR has the custody of the **copies** of the documents as may be found in the BIR records. As the petitioner failed to establish the said requisite, resort to secondary evidence pursuant to Section 5, Rule 130 of the Rules of Court may not be allowed.

Petitioner cannot also invoke Section 3(b), Rule 130 of the Rules of Court to justify the use of secondary evidence because this rule requires the original document to be in the custody of the adverse party which was not established in the present case. Similarly, Section 3(d), Rule 130 of the Rules of Court is likewise unavailable as this rule presupposes that the public officer should have the custody of the original document.

As regards petitioner's prayer of this Court to take judicial notice of the documents in question, this Court so holds that the same cannot be granted. It bears reiterating that the documents in question were

[18] Division Docket, Vol. III, p. 1336.
[19] *Id.*, pp. 1336-1337.
[20] *Id.*, pp. 1337-1338.

not admitted by this Court for failure of petitioner to present the originals thereof. Petitioner cannot hide behind the veil of judicial notice so as to evade its responsibility of properly complying with the rules of evidence.[21] Along the same lines, petitioner's prayer for the relaxation of the rules on formal offer of evidence cannot be allowed. Rules of procedure are in place to ensure the orderly, just, and speedy dispensation of case.[22] The relaxation or suspension of procedural rules or the exemption of a case from their operation is warranted only by compelling reasons or when the purpose of justice requires it.[23] In the present case, however, this Court finds no reason to do so.

Lastly, this Court cannot grant petitioner's prayer for new trial either on account of newly-discovered evidence or based on excusable negligence.

In order that newly discovered evidence may be a ground for allowing a new trial, it must be fairly shown that: (a) the evidence is discovered after the trial; (b) such evidence could not have been discovered and produced at the trial even with the exercise of reasonable diligence; (c) such evidence is material, not merely cumulative, corroborative, or impeaching; and (d) such evidence is of such weight that it would probably change the judgment if admitted.[24]

In *Custodio et. al. v. Sandiganbayan*,[25] the Supreme Court clarified that:

> "It should be emphasized that the applicant for new trial has the *burden* of showing that the new evidence he seeks to present has complied with the requisites to justify the holding of a new trial.
>
> The *threshold question* in resolving a motion for new trial based on newly discovered evidence is whether the proffered evidence is in fact a 'newly discovered evidence which could not have been discovered by due diligence.'

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[21] *Silkair (Singapore) Pte. Ltd. v. Commissioner of Internal Revenue*, G.R. No. 184398, February 25, 2010, 613 SCRA 651.
[22] *Asia United Bank v. Goodland Company, Inc.*, G.R. No. 188051, November 22, 2010, 635 SCRA 643, 644.
[23] *Id.*
[24] *Luzon Hydro Corporation v. Commissioner of Internal Revenue*, G.R. No. 188260, November 13, 2013, 709 SCRA 477.
[25] G.R. Nos. 96027-28, March 8, 2005, 453 SCRA 24, 34-35.

> *The question of whether evidence is newly discovered has two aspects: a temporal one, i.e.,* when was the evidence discovered, and a *predictive one, i.e.*, when should or could it have been discovered. It is to the latter that the requirement of due diligence has relevance. We have held that in order that a particular piece of evidence may be properly regarded as newly discovered to justify new trial, what is essential is not so much the time when the evidence offered first sprang into existence nor the time when it first came to the knowledge of the party now submitting it; what is essential is that the offering party had exercised *reasonable diligence* in seeking to locate such evidence before or during trial but had nonetheless failed to secure it.
>
> The Rules do not give an exact definition of due diligence, and whether the movant has exercised due diligence depends upon the particular circumstances of each case. Nonetheless, it has been observed that the phrase is often equated with 'reasonable promptness to avoid prejudice to the defendant.' In other words, the concept of due diligence has both a *time component* and a *good faith component*. The movant for a new trial must not only act in a timely fashion in gathering evidence in support of the motion; he must act reasonably and in good faith as well. Due diligence contemplates that the defendant acts reasonably and in good faith to obtain the evidence, in light of the totality of the circumstances and the facts known to him."

In light of the foregoing, this Court is of the view that the documents sought to be presented by petitioner cannot be considered as newly discovered evidence but merely forgotten evidence. It is clear that petitioner intends to present the same only after obtaining an unfavorable decision of this Court.

Forgotten evidence refers to evidence already in existence or available before or during a trial; known to and obtainable by the party offering it; and could have been presented and offered in a seasonable manner, were it not for the sheer oversight or forgetfulness of the party or the counsel.[26] Presentation of forgotten evidence is disallowed, because it results in a piecemeal presentation of evidence, a procedure that is not in accord with orderly justice and serves only to delay the proceedings.[27] A contrary ruling may open the floodgates to an endless review of decisions, whether through a motion for reconsideration or for a new trial, in the guise of newly discovered evidence.[28]

Neither can petitioner's plea for new trial on the basis of excusable negligence be granted.

Under Section 5, Rule 15 of the RRCTA as well as Section 1, Rule 37 of the Rules of Court, a party who moves for a new trial on the ground of excusable negligence must show that ordinary prudence could not have guarded against it and because of such excusable negligence, such party has been impaired of his rights.

There is nothing in petitioner's *Motion* that would show why this Court should grant a new trial on the basis of excusable negligence. It does not even mention what act or circumstance it was referring to as constituting excusable negligence.

WHEREFORE, respondent's *Motion for Partial Reconsideration* and petitioner's *Motion for Reconsideration and/or New Trial* are both **DENIED** for lack of merit.

SO ORDERED.

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

I CONCUR:

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

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[26] *Office of the Ombudsman v. Coronel*, G.R. No. 164460, June 27, 2006, 493 SCRA 404.
[27] *Id.*
[28] *Id.*