REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 2218** (CTA Case No. 8648)
	Present:
- versus -	**DEL ROSARIO**, *P.J.*, **CASTAÑEDA, JR.**, **UY**, **RINGPIS-LIBAN**, **MANAHAN**, **BACORRO-VILLENA**, **MODESTO-SAN PEDRO**, **REYES-FAJARDO**, *and* **CUI-DAVID**, *JJ.*
CLARK WATER CORPORATION, Respondent.	Promulgated: JUN 22 2022 4:20 pm

x - x

RESOLUTION

BACORRO-VILLENA, J.:

For the Court *En Banc*'s resolution is petitioner Commissioner of Internal Revenue's (**petitioner**'s/**CIR**'s) "Motion for Reconsideration Re: Decision dated 12 October 2021"[1] (**MR**), filed on 03 November 2021, with respondent Clark Water Corporation's (**respondent**'s/**CWC**'s) "Comment (Re: Petitioner's Motion for Reconsideration)"[2] (**Comment**), filed on 20 December 2021.

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1 *Rollo*, pp. 89-103.
2 Id., pp. 108-120.

The present MR seeks the reversal of the Court *En Banc*'s Decision promulgated on 12 October 2021[3] (**assailed Decision**). The dispositive portion thereof reads:

> ...
>
> **WHEREFORE**, premises considered, the instant Petition for Review filed on 17 February 2020 by petitioner Commissioner of Internal Revenue, is hereby **DENIED** for lack of merit.
>
> Consequently, petitioner Commissioner of Internal Revenue or any person acting on his behalf is **ENJOINED** from enforcing collection with respect to the assessment for taxable year 2007 embodied in the Formal Letter of Demand and Warrant of Distraint and/or Levy dated 28 March 2011 and 19 March 2013, respectively, in the amount of ₱2,823,155.13.
>
> **SO ORDERED.**
>
> ...

Once again, petitioner reiterates his argument in his Petition for Review in his present MR, *i.e.*, that the Court *En Banc* erred when it held that the subject assessment for deficiency taxes against respondent is void for being violative of its right to due process.

In particular, petitioner replicates, word for word, the following grounds, including the discussion in his Petition for Review filed on 17 February 2020 that the Court *En Banc* had already thoroughly considered and discussed in the assailed Decision:

First, petitioner claims that no error or illegality can be ascribed to his assessment of respondent's deficiency taxes as he observed due process in undertaking such considering that: (1) he sent the Preliminary Assessment Notice (**PAN**) and the Final Assessment Notice (**FAN**) through registered mail as evidenced by registry receipts; (2) service through registered mail is a valid mode of serving the said notices; (3) respondent received the said notices in the regular course of delivery through registered mail since there was no "Return to Sender" card or any other indication otherwise; and, (4) respondent cannot invoke lack of knowledge about the deficiency assessment as it had been fully aware of the actions he had undertaken, both preceding and succeeding the issuance of the alleged unreceived PAN and FAN, in pursuit of the same.

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[3] Id., pp. 76-88.

Second, petitioner maintains that the Court's Special First Division has no jurisdiction over this case due to respondent's failure to: (1) interpose a timely protest upon the FAN issued against it; and, (2) submit the supporting documents necessary to refute the findings of the revenue examiners within the statutorily mandated sixty (60)-day period.

Third, petitioner adds that he had properly apprised respondent of its income tax (**IT**) deficiencies for the taxable year (**TY**) 2007.

Lastly, petitioner again invokes the presumption in favor of the propriety and exactness of the assessment against respondent. According to petitioner, the burden is upon respondent to present evidence and establish the inaccuracy or outright invalidity of the assessment made against it. And, since respondent failed to overcome such burden of proof, the deficiency taxes assessed against it should be upheld.

In its Comment, respondent similarly points out that petitioner's MR is a mere rehash of his Petition for Review. According to respondent, petitioner failed to cite any error in the Court *En Banc*'s assailed Decision that may serve as basis for the reconsideration thereof. As such, respondent contends that the present MR should be dismissed outright for being *pro forma* and for raising arguments that have already been thoroughly considered and passed upon by the Court *En Banc*.

The Court *En Banc* resolves below.

After a careful review of the grounds raised in the present MR and the corresponding Comment thereto, the Court *En Banc* finds no new matters or arguments which were not considered in the assailed Decision. Indeed, as respondent correctly pointed out, petitioner failed to raise any new or substantial matter, or any compelling reason to justify the reversal or modification of the Court *En Banc*'s findings in the assailed Decision. Consequently, the Court *En Banc* finds the present MR devoid of merit.

More importantly, it must be stressed that petitioner'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 Petition for Review before the Court *En Banc*, which, as mentioned, were already considered, weighed and resolved in the assailed Decision. Furthermore, petitioner interposed the very same arguments as special and affirmative defenses in his Answer[4] to respondent's Petition for Review before the Court's Special First Division.

Thus, as regards respondent's contention that the present MR should be dismissed outright for being *pro forma*, Section 1 of Rule 37 of the Revised Rules of Court 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:

(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.

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4 Division Docket, Volume I, pp. 435-449.

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.[5]

...

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

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.[7]

...

5 Emphasis supplied.
6 A.M. No. 05-11-07-CTA dated 22 November 2005.
7 Emphasis supplied.

From the foregoing, a party adversely affected by a decision of the Court *En Banc* 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.*[8] (**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 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) <u>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</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. ...**[9]
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> ...

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[8] 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.

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

Even prior to *Philippine National Bank,* the Supreme Court already expounded on the subject in *Marina Properties Corporation v. Court of Appeals, et al.*[10], 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. ...
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> ...
>
> **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.[11]
>
> ...

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

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

[11] Citations omitted, emphasis and underscoring supplied.

Since the present MR is an exact duplicate of petitioner's Petition for Review and based on the foregoing guidelines, the Court *En Banc* 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, petitioner's MR is indeed *pro forma*.

WHEREFORE, premises considered, the present Motion for Reconsideration, filed by petitioner Commissioner of Internal Revenue on 03 November 2021, is hereby **DENIED** for lack of merit and for being *pro forma*.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice