REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

NORKIS TRADING COMPANY, INC., Petitioner,	**CTA CASE NO. 8862**
	Members:
-- versus -	**CASTAÑEDA, JR.,** *Chairperson,* **CASANOVA,** *and* **MANAHAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: DEC 1 2 2017 3:50 pm

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RESOLUTION

CASTAÑEDA, JR., *J.*:

For resolution are the following:

1. Respondent's **"Motion for Reconsideration Re: Decision dated 16 August 2017"**, filed on August 31, 2017 with petitioner's Comment filed on September 22, 2017; and

2. Respondent's **"Motion for Leave of Court to Admit Attached Supplemental Motion for Reconsideration (with Alternative Motion to Reopen Proceedings)"**, filed on October 2, 2017 with petitioner's Comment filed on October 27, 2017.

Respondent seeks reconsideration of this Court's Decision dated August 16, 2017, the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, respondent's Final Decision on Disputed Assessment dated July 9, 2014 is hereby **REVERSED** and **SET ASIDE**, and the assessment under FAN No. IT-123-LA0057-07-14-21 in the amount of P285,927,070.68, inclusive of interest and penalties, is hereby **CANCELLED** and **SET ASIDE**.
>
> SO ORDERED."

In the said Decision, the Court ruled that the assessment is void since it was made beyond the prescriptive period.

To recall, the assailed Decision states that respondent failed to prove that there was an Indemnity Agreement ("Agreement") and/or that petitioner received the amount of $6,000,000.00 as indemnity fee, there is no proof as to the alleged substantial under-declaration and/or omission of fraud in the present case. Thus, Section 203 of the NIRC of 1997, as amended, will apply and the prescriptive period of three years will govern.

In respondent's Motion for Reconsideration, he asserts that the three (3) year prescriptive period is inapplicable since there was substantial under declaration of petitioner's taxable income. Petitioner's alleged failure to include indemnity fee to its Income Tax Return (ITR) and accompanying Financial Statements (FS) for the fiscal year ending 30 June 2007 constitutes an omission warranting the application of the ten (10) year prescriptive period from the time of its discovery, pursuant to Section 222 of the National Internal Revenue Code of 1997 as amended.

Further, respondent asserts that petitioner's convenient denial of the existence of the subject Agreement and payments or remittances to its bank accounts with Metropolitan Bank and Trust Company should never be countenanced by this Court.

In his Supplemental Motion for Reconsideration (with Alternative Motion to Re-open Proceedings), respondent submits for consideration of this Court the copy of the Agreement (between Yamaha and Norkis) and the copy of the letter from the National Tax Agency of Japan which are allegedly public documents citing Sections 19 and 23, Rule 132 of the Revised Rules of Court to support the same. *fe*

Respondent maintains that the above documents are prima facie evidence of the fact of their execution. Respondent prays if deem proper to re-open proceedings for the identification of the said documents.

On the other hand petitioner contends that even if these documents had been identified and offered in evidence, neither the letter from the National Tax Agency of Japan nor the Indemnity Agreement is admissible as public documents. It must be attested and accompanied with proper certifications in accordance with Sections 24 and 25 of Rule 132 of the Revised Rules of Court for it to be admissible.

Petitioner citing *Nedlloyd Lijnen B.V. Rotterdam v. Glow Laks Enterprises*[1], states that for a copy of a foreign public document to be admissible, it must be attested by the officer having legal custody of the records or his deputy; and it must be accompanied by a certificate by a secretary of the embassy or legation, consul general, consul, vice consular or consular agent or foreign service officer, and with seal of his office which is not complied in this case.

After careful evaluation of the parties' arguments, this Court finds no compelling reason to reverse or modify the assailed Decision.

The arguments posited by respondent in his Motion for Reconsideration are mere amplification of his previous arguments in his Answer which have been duly considered and adequately discussed in the assailed Decision.

As to respondent's alternative prayer to reopen proceedings, the Court finds no compelling or persuasive reason to grant the same.

In *Republic of the Philippines v. Sandiganbayan*,[2] the Supreme Court explained the nature of a motion to reopen a case to introduce further evidence is as follows:

> "The basis for a motion to reopen a case to introduce further evidence is Section 5, Rule 30 of the Rules of Court, which reads: *gc*

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[1] G.R. No. 156330, November 19, 2014

[2] G.R. No. 152375, December 13, 2011, 662 SCRA 185-187

> Sec. 5. Order of trial. - Subject to the provisions of section 2 of Rule 31, and unless the court for special reasons otherwise directs, the trial shall be limited to the issues stated in the pre-trial order and shall proceed as follows:
>
> xxx xxx
>
> (f) The parties may then respectively adduce rebutting evidence only, unless the court, for **good reasons** and in the furtherance of justice, permits them to adduce evidence upon their original case. "(emphasis supplied)

In the instant case, the additional documents submitted are neither newly discovered evidence nor omitted due to fraud, accident, mistake or excusable negligence. The Court finds that respondent has not demonstrated any cogent reason for its consideration.

Note that the admission of Agreement between petitioner and Yamaha Motors Co. Ltd. has already been previously denied and expunged from the records by the Court in its Resolution dated August 30, 2016.

While as to the letter from the National Tax Agency of Japan, although respondent asserts that the same forms an integral part of the BIR Records submitted to this Court, the subject document was not formally offered to merit consideration. In fact, such additional documentary evidence constitutes forgotten evidence.

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. 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. 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.[3]

Although Section 8 of RA No. 1125, as amended, creating the Court of Tax Appeals, expressly provides that proceedings before this

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[3] Office of the Ombudsman vs. Coronel, G.R. No. 164460, June 27, 2006.

Court shall not be governed strictly by technical rules of evidence and there are instances where the Court allows the reopening of trial even though judgment has already been rendered, still, the Court finds that respondent has not demonstrated any convincing reason for the Court to apply the technical rules liberally.

WHEREFORE, premises considered, respondent's **Motion for Reconsideration** and **Motion for Leave of Court to Admit Attached Supplemental Motion for Reconsideration (with Alternative Motion to Re-open Proceedings)** are hereby **DENIED** for lack of merit.

SO ORDERED.

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

CAESAR A. CASANOVA
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice