REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

SPECIAL SECOND DIVISION

PROCTER & GAMBLE INTERNATIONAL OPERATIONS SA - ROHQ,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9897

Members:

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

Promulgated:
JUN 05 2023 4:10 pm

x - x

RESOLUTION

BACORRO-VILLENA, J.:

For the Court's resolution are the following:

1. Petitioner Procter & Gamble International Operations SA - ROHQ's (**petitioner**'s/**P&G**'s) "Motion for Reconsideration (Re: Amended Decision dated October 4, 2022)"[1] (**MR**), filed on 21 October 2022, without respondent Commissioner of Internal Revenue's (**respondent**'s/**CIR**'s) Comment[2]; and,

2. Respondent's "Motion for Partial Reconsideration (to the Amended Decision dated 04 October 2022)"[3] (**MPR**), filed *via* registered mail on 21 October 2022[4], with petitioner's "Comment

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1 Division Docket, Volume II, pp. 710-807, with exhibits.
2 *See* Resolution dated 25 January 2023, where the Court denied respondent's "Motion for Extension of Time to File Comment" for being a prohibited motion and thus, deemed respondent's belatedly filed "Comment/Opposition (To Petitioner's Motion for Reconsideration RE: Amended Decision dated October 4, 2022) with Manifestation" as a mere scrap of paper, id., pp. 859-861.
3 Id., pp. 809-820.
4 Received by the Court on 27 October 2022.

(Re: Respondent's Motion for Partial Reconsideration dated October 21, 2022)"[5] (**Comment**) filed on 28 November 2022.

The parties respectively pray that the Court reconsider its Amended Decision promulgated on 04 October 2022[6] (**assailed Amended Decision**), still partially granting petitioner's Petition for Review but increasing the refundable amount to **₱7,493,598.87** (from ₱5,349,214.78 *per* Original Decision dated 19 January 2022[7] [**Original Decision**]). The dispositive portion thereof reads:

> ...
>
> **WHEREFORE**, premises considered, petitioner Procter & Gamble International Operations SA - ROHQ's Motion for Reconsideration with Motion to Reopen Case is hereby **PARTIALLY GRANTED**, while respondent Commissioner of Internal Revenue's Motion for Partial Reconsideration (to the Decision dated 19 January 2022) is hereby **DENIED** for lack of merit.
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> Accordingly, respondent Commissioner of Internal Revenue is **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of Procter & Gamble International Operations SA-ROHQ in the amount of **SEVEN MILLION FOUR HUNDRED NINETY-THREE THOUSAND FIVE HUNDRED NINETY-EIGHT PESOS and EIGHTY-SEVEN CENTAVOS (₱7,493,598.87)**, representing its excess and unutilized input VAT attributable to its zero-rated sales for the 3rd and 4th quarters of FY 2016 ended 30 June 2016.
>
> **SO ORDERED.**
>
> ...

Petitioner, in its MR[8], once again insists that this Court should (1) order the reopening of trial to allow the presentation of its supplemental evidence and, ultimately, (2) grant a full refund or issuance of a tax credit certificate (TCC) in the total amount of **₱41,071,160.17**, representing the excess and unutilized input value-added tax (VAT) on its domestic purchases of goods and services attributable to zero-rated sales for the 3rd and 4th quarters of the fiscal year (FY) 2016.

5 Division Docket, Volume II, pp. 824-834.
6 Id., pp. 688-709.
7 Id., pp. 492-541.
8 Supra at note 1.

Conversely, respondent, in his MPR[9], asks this Court to (1) deny petitioner's entire claim for refund and (2) order petitioner to instead pay a deficiency VAT of **₱47,946,947.09**.

PETITIONER'S ARGUMENTS

Firstly, as to the denial of petitioner's motion to reopen trial to allow the presentation of supplemental evidence (which it claims the Court should have appreciated as 'newly discovered evidence'), petitioner insists that this Court should grant the same in the paramount interest of substantial justice. It attached to the present MR[10] copies of the following documents (earlier attached to its MR[11] of the Original Decision[12]):

Document	**Reference (Exhibit No.)**
The Procter & Gamble Company: Galleria Business Restructuring Services Agreement dated 15 April 2016	"P-24-1"[13]
Procter & Gamble Egypt Ltd.: Tax Certificate issued by the Egyptian Tax Authority Large Taxpayer Center	"P-24-2"[14]
Procter & Gamble Egypt Distribution Ltd.: Affidavit issued by Tamer Mohamed Hamed	"P-24-3"[15]
Procter & Gamble Egypt Distribution Ltd.: Tax Certificate issued by the Egyptian Tax Authority Large Taxpayer Center	"P-24-4"[16]
Procter & Gamble Egypt Supplies Ltd.: Affidavit issued by Ahmed Adel Abderahman Genena	"P-24-5"[17]
Procter & Gamble Egypt Supplies Ltd.: Tax Certificate issued by the Egyptian Tax Authority Large Taxpayer Center	"P-24-6"[18]
Procter & Gamble Export Operations SARL, Taiwan Branch: Services Agreement dated 01 June 2011	"P-24-7"[19]
SEC Certification of Non-Registration of Company of P&G Max Factor Godo Kaisha	"P-24-8"[20]
Amended Foreign Registration Document of P&G Max Factor Godo Kaisha	"P-24-9"[21]
Affidavit of Stanislav Vecera	"P-24-10"[22]

9 Supra at note 3.
10 Supra at note 1.
11 Division Docket, Volume II, pp. 542-636, with exhibits.
12 Supra at note 7.
13 Id., pp. 583-591.
14 Id., pp. 592-595.
15 Id., pp. 596-597.
16 Id., pp. 598-599.
17 Id., pp. 600-601.
18 Id., pp. 602-603.
19 Id., pp. 604-622.
20 Id., p. 623.
21 Id., pp. 624-629.
22 Id., pp. 630-632.

Document	Reference (Exhibit No.)
Reconciliation of Export Sales and Dollar Remittances for the period 01 January 2016 to 31 March 2016	"P-25-1"[23]
Reconciliation of Export Sales and Dollar Remittances for the period 01 April 2016 to 30 June 2016	"P-25-2"[24]
Supplemental Sworn Statement of Mr. Alvin D. Trambulo	"P-26"[25]

Petitioner explains that it made reasonable efforts to procure the authenticated business registration documents of its non-resident foreign corporation (**NRFC**)-clients situated in various foreign jurisdictions with varying rules on authentication and/or certification. Despite allegedly setting various deadlines to its NRFC-clients, it was only able to obtain them after trial.

Secondly, as to the Court's appreciation of evidence to establish entitlement to the subject VAT refund claim, petitioner reiterates that its sales of services are zero-rated pursuant to Section 108(B)(2)[26] of the National Internal Revenue Code (**NIRC**) of 1997, as amended, as it presented sufficient evidence to prove that: (1) the recipients of its services are NRFCs not engaged in business in the Philippines; and, (2) the subject services were performed in the Philippines.

Petitioner insists that the Court erred in treating some of its NRFC-clients with Securities and Exchange Commission (**SEC**) Certificates of Non-Registration of Company as separate and distinct entities from the other NRFCs with foreign registration documents and in refusing to consider the other documents presented for the purpose of satisfying the ***2nd requirement*** for VAT zero-rating under Section 108(B)(2) of the NIRC of 1997, as amended, (*i.e.*, that the recipient of the services must be performing business outside the Philippines) such as the authenticated affidavits from the authorized representatives of the

23 Id., pp. 633-634.
24 Id., pp. 635-636.
25 Id., pp. 571-582.
26 **SEC. 108**. *Value-Added Tax on Sale of Services and Use or Lease of Properties.* —

...

(B) *Transactions Subject to Zero Percent (0%) Rate* — The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate.

...

(2) **Services other than those mentioned in the preceding paragraph, rendered to a person engaged in business conducted outside the Philippines or to a nonresident person not engaged in business who is outside the Philippines when the services are performed the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP).** (Emphasis supplied)

NRFC-clients[27] (**Sworn Statements**), screenshots of the list of foreign affiliates in the US SEC Website[28], and Service Agreements between petitioner and each of its NRFC-clients. Absent any proof to the contrary, petitioner claims these documents should be deemed sufficient to establish that its clients are doing business outside the Philippines.

To bolster petitioner's argument that each pair of the entities (which the Court deemed separate and distinct since their corporate names are different) refers to only one entity, the present MR[29] introduces, for the first time, the following explanations:

1. **"P&G Distribution Morocco"** *vis-à-vis* **"P&G Distribution Morocco S.A.S."**: Article 4 of the latter's Consularized Company Registration[30], which states "La dénomination de la Société est: 'P&G Distribution Morocco'" in French, translates to "The name of the Company is: 'P&G Distribution Morocco'" in English;

2. **"Procter & Gamble International Operations SA"** *vis-à-vis* **"Procter & Gamble International Operations SA Singapore Branch"**: Attached to the former's Consularized Company Registration[31] is a Certificate Confirming Registration of Foreign Company[32] for the latter issued by the Accounting and Corporate Regulatory Authority (**ACRA**) of Singapore;

3. **"Procter & Gamble Korea, Inc."** *vis-à-vis* **"Procter & Gamble Korea"**: The latter's Consularized Company Registration[33] taken together with the Affidavit of SueKyung Lee[34] (the latter's authorized representative) would show that the former and the latter names are used interchangeably; and,

4. **"Procter & Gamble Europe SA"** *vis-à-vis* **"Procter & Gamble Europe SA Singapore Branch"**: Attached to the

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27 Offered and admitted as Exhibits "**P-7**" to "**P-7.43**".
28 Offered and admitted as Exhibit "**P-10**".
29 Supra at note 1.
30 Exhibit "P-6.38", CD.
31 Exhibit "P-6.27", id., pp. 1-37.
32 Id., p. 37.
33 Exhibit "P-6.18", id.
34 Exhibit "P-7.17", id.

former's Consularized Company Registration[35] is a Certificate Confirming Registration of Foreign Company[36] for the latter issued by the ACRA of Singapore.

As to the Court's finding in the assailed Amended Decision[37] that there is no evidence on record to prove that "P&G Prestige Godo Kaisha" was formerly known as "P&G Max Factor Godo Kaisha", petitioner once more requests that this Court to grant the reopening of this case so that it can present the pertinent Amended Consularized Foreign Registration Document[38] indicating that the tradename "P&G Max Factor Godo Kaisha" was changed to "P&G Max Factor Godo Kaisha", the Affidavit of Stanislav Vecera[39] (the authorized representative of "P&G Prestige Godo Kaisha", and the SEC Certificate of Non-Registration of Company[40] under the name "P&G Max Factor Godo Kaisha".

With respect to the "excess receipts" relating to unsubstantiated reimbursable costs incurred while rendering services to NRFC-clients (deemed by the Court as unreported zero-rated sales), petitioner re-submits that there is no requirement under the law to provide the nature of such receipts not subject of the refund claim. According to petitioner, since the said reimbursable costs were offset against its gross receipts and not included in the total amount of zero-rated sales declared *per* VAT returns, there is no reason for the Court to deduct the same for purposes of determining the refundable amount of substantiated input VAT. Additionally, should there be a need for substantiation of such "excess receipts", petitioner likewise requests the opportunity to present voluminous supporting documents through the reopening of this case for new trial.

Anent the ***4th requirement*** for VAT zero-rating under Section 108(B)(2)[41] of the NIRC of 1997, as amended, (*i.e.*, that the subject sales of services were performed in the Philippines), petitioner submits anew that the Court failed to consider the nature of its business as a Regional Operating Headquarters (**ROHQ**). As such, it should be allowed to

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35 Exhibit "P-6.21", id., pp. 1-20.
36 Id., p. 20.
37 Supra at note 6.
38 Exhibit "P-24-9, supra at note 21.
39 Exhibit "P-24-10, supra at note 22.
40 Exhibit "P-24-8, supra at note 20.
41 Supra at note 26.

derive income within the Philippines through the performance of services that, logically, shall be performed in the Philippines following the rules on situs of taxation.

Harping on this Court's decision in *Asurion Hong Kong Limited – ROHQ v. Commissioner of Internal Revenue*[42] (**Asurion**), petitioner reiterates that the fact that it is an ROHQ is sufficient to establish that its services were rendered in the Philippines. It also posits that the unrebutted testimony of its witness, Alvin D. Trambulo (**Trambulo**), as to the fact that the subject services were performed in the Philippines to entities located and conducting business outside the Philippines should suffice.

RESPONDENT'S ARGUMENTS

In the present MPR[43], respondent reiterates word-for-word the grounds and discussion in his or her MPR[44] of the Original Decision[45] and argues that this Court should not have reversed the disallowance of petitioner's alleged zero-rated sales in the total amount of ₱41,071,160.17 on the bare allegation that the names "Procter & Gamble Technical Centres Limited" and "Procter & Gamble Technical Centers Ltd" refer to one and the same entity.

In its Comment[46], petitioner notes that respondent's arguments have been considered and thoroughly passed upon by this Court in its Original Decision[47] and assailed Amended Decision.[48] Additionally, petitioner asserts that since it is of public knowledge that the abbreviation of the word "Limited" is "Ltd." and that the word "Centers" in American English may be spelled as "Centres" in British English, this Court may take judicial notice of the same and, on that basis, it thus properly treated the names "Procter & Gamble Technical Centres Limited" and "Procter & Gamble Technical Centers Ltd" as one and the same.

42 CTA Case No. 10121, 05 October 2022.
43 Supra at note 3.
44 Division Docket, Volume II, pp. 642-652.
45 Supra at note 7.
46 Supra at note 5.
47 Supra at note 7.
48 Supra at note 6.

We resolve below.

After a thorough and careful review of the parties' arguments, both petitioner's MR[49] and respondent's MPR[50] fail to convince this Court that it should deviate from or modify its earlier ruling. For emphasis, the Court will elaborate further on the reasons for upholding the assailed Amended Decision[51], as will be essayed below.

RESPONDENT'S MOTION FOR
PARTIAL RECONSIDERATION

Respondent's MPR contains a rehash of his or her earlier submissions that have already been thoroughly passed upon by this Court in its Original Decision[52] and which were no longer discussed in the assailed Amended Decision following the Supreme Court's ruling in *Licomcen Incorporated v. Foundation Specialists, Inc.*[53], the Supreme Court, citing *Ortigas and Company Limited Partnership v. Judge Tirso Velasco, et al.*[54], *viz*:

> ...
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> The filing of a motion for reconsideration, authorized by Rule 52 of the Rules of Court, does not impose on the Court the obligation to deal individually and specifically with the grounds relied upon therefor, in much the same way that the Court does in its judgment or final order as regards the issues raised and submitted for decision. This would be a useless formality or ritual invariably involving merely a reiteration of the reasons already set forth in the judgment or final order for rejecting the arguments advanced by the movant; and it would be a needless act, too, with respect to issues raised for the first time, these being, ... deemed waived because not asserted at the first opportunity. It suffices for the Court to deal generally and summarily with the motion for reconsideration, and merely state a legal ground for its denial (Sec. 14, Art. VIII, Constitution); *i.e.*, the motion contains merely a reiteration or rehash of arguments already submitted to and pronounced without merit by the Court in its judgment, or the basic issues have already been passed upon, or the motion discloses no substantial argument or cogent reason to warrant reconsideration or modification of the judgment or final order; or the arguments in the motion are too unsubstantial to require consideration, etc.
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> ...

49 Supra at note 1.
50 Supra at note 3.
51 Supra at note 6.
52 Supra at note 7.
53 G.R. No. 167022, 31 August 2007.
54 G.R. No. 109645, 04 March 1996.

Accordingly, this Court shall only discuss petitioner's point regarding judicial notice of the fact that the word "Limited" is abbreviated as "Ltd." and that the word "Centers" in American English may be spelled as "Centres" in British English for purposes of treating the names "Procter & Gamble Technical Centres Limited" and "Procter & Gamble Technical Centers Ltd" as one and the same.

Under Section 2[55], Rules 129[56] of the Revised Rules on Evidence, as amended, the Court may take judicial notice of matters which are of public knowledge, or are capable of unquestionable demonstration, or ought to be known to judges because of their judicial functions.

In *Expertravel & Tours Inc. v. Court of Appeals and Korean Airlines*[57], the Supreme Court held that courts may take judicial notice of facts which are universally known, and which may be found in encyclopedias, dictionaries or other publications, provided, they are of such universal notoriety and so generally understood that they may be regarded as forming part of the common knowledge of every person, *viz*:

> ...
>
> Generally speaking, matters of judicial notice have three material requisites: (1) the matter must be one of common and general knowledge; (2) it must be well and authoritatively settled and not doubtful or uncertain; and (3) it must be known to be within the limits of the jurisdiction of the court. The principal guide in determining what facts may be assumed to be judicially known is that of notoriety. Hence, it can be said that judicial notice is limited to facts evidenced by public records and facts of general notoriety. Moreover, a judicially noticed fact must be one not subject to a reasonable dispute in that it is either: (1) generally known within the territorial jurisdiction of the trial court; or (2) capable of accurate and ready determination by resorting to sources whose accuracy cannot reasonably be questionable.
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> **Things of "common knowledge," of which courts take judicial matters coming to the knowledge of men generally in the course of the ordinary experiences of life, or they may be matters which are generally accepted by mankind as true and are capable of ready and unquestioned demonstration. Thus,**

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55 SEC. 2. *Judicial notice, when discretionary.* — A court may take judicial notice of matters which are of public knowledge, or are capable of unquestionable demonstration, or ought to be known to judges because of their judicial functions.

56 WHAT NEED NOT BE PROVED.

57 G.R. No. 152392, 26 May 2005; Citations omitted, emphasis supplied, and italics in the original text.

> **facts which are universally known, and which may be found in encyclopedias, dictionaries or other publications, are judicially noticed, provided, they are of such universal notoriety and so generally understood that they may be regarded as forming part of the common knowledge of every person.** As the common knowledge of man ranges far and wide, a wide variety of particular facts have been judicially noticed as being matters of common knowledge. *But a court cannot take judicial notice of any fact which, in part, is dependent on the existence or non-existence of a fact of which the court has no constructive knowledge.*
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> ...

From the foregoing, petitioner need not present further proof to substantiate the alleged typographical error made in spelling the word "Centres" as "Centers" and in abbreviating the word "Limited" as "Ltd" since these matters are of common knowledge.

Indeed, there is adequate basis for this Court to treat "Procter & Gamble Technical Centres Limited" and "Procter & Gamble Technical Centers Ltd" as one and the same entity and consequently, reverse the disallowance of the pertinent zero-rated sales to such entity in the total amount of ₱41,161,463.41.

PETITIONER'S MOTION FOR RECONSIDERATION.

This Court finds no merit in petitioner's contentions concerning both the reopening of the case to admit supplemental evidence and the disallowance of zero-rated sales for the grounds mentioned in the assailed Amended Decision[58], as will be discussed below in *seriatim*.

A. THE REOPENING OF TRIAL FOR THE ADMISSION OF SUPPLEMENTAL EVIDENCE IS NOT PROPER.

Petitioner argues that the paramount interest of substantial justice dictates that this Court should have allowed the reopening of trial for the admission of additional documents. Allegedly, this would have enabled petitioner to comply with the strict documentary

[58] Supra at note 6.

requirements to prove that its foreign affiliates (the sales to whom were disallowed as zero-rated sales) are indeed registered abroad and not doing in business in the Philippines.

We disagree.

It is well-settled that cases filed before this Court are litigated *de novo*, party litigants should prove every minute aspect of their cases. No evidentiary value can be given to a document as the rules on documentary evidence require that these documents must be formally offered during trial before this Court.[59] A party should present all its evidence at first instance and not by piecemeal to avoid injurious surprises to the other party.

The reopening of a case for the reception of additional evidence after a case has been submitted for decision, rests entirely in the sound judicial discretion of a trial court. In *Ramon J. Alegre v. Hon. Manuel T. Reyes, et al.*[60], the Supreme Court instructively ruled as follows:

> ...
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> ... [T]he reopening of a case for the reception of additional evidence **after a case has been submitted for decision but before judgment is actually rendered** is, it has been said, **controlled by no other rule than that of the paramount interests of justice, resting entirely in the sound judicial discretion of a Trial Court**; and its concession, or denial, by said Court in the exercise of that discretion will not be reviewed on appeal unless a clear abuse thereof is shown. ...
>
> ...

In this case, however, the Court already rendered its judgment, taking into account the pieces of evidence adduced by the parties to prove their respective claims. At this point, no further evidence may be considered unless warranted on the grounds of fraud, accident, mistake or excusable negligence; or of newly discovered evidence, in the manner

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59 See *Rafael Arsenio S. Dizon, in his capacity as the Judicial Administrator of the Estate of the deceased Jose P. Fernandez v. Court of Tax Appeals and Commissioner of Internal Revenue*, G.R. No. 140944, 30 April 2008.

60 G.R. No. L-56923, 09 May 1988; Citation omitted, emphasis and underscoring supplied.

provided for proof of motions under Sections 1[61] and 2[62], Rule 37 of the Rules of Court, as amended, in relation to Sections 5[63] and 6[64], Rule 15 of the Revised Rules of the Court of Tax Appeals (RRCTA).

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[61] 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.

[62] 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.

[63] SEC. 5. *Grounds of motion for new trial.* — A motion for new trial may be based on one or more of the following causes materially affecting the substantial rights of the movant:

(a) Fraud, accident, mistake or excusable negligence which ordinary prudence could not have guarded against and by reason of which the rights of such aggrieved party has probably been impaired in his rights; or
(b) Newly discovered evidence, which the party could not, with reasonable diligence, have discovered and produced at the trial and, which, if presented, would probably alter the result.

A motion for new trial shall include all grounds then available and those not included shall be deemed waived.

[64] 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.

Since petitioner's request to present supplemental evidence is not based on fraud, accident, mistake or excusable negligence, the Court's resolution centers on the determination of the nature of the above-listed documents[65] (attached to its MR[66] of the Original Decision[67]), either as newly discovered evidence to warrant the reopening of the trial or allow the presentation of the proposed evidence, or merely forgotten evidence which can no longer be considered.

In *Luzon Hydro Corporation v. Commissioner of Internal Revenue*[68], the Supreme Court enumerated the requisites for the grant of a motion for new trial on the ground of newly discovered evidence in this wise:

> ...
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> ... 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.
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> ...

Newly discovered evidence refers to that which already exists prior to or during a trial, but the existence is not known to the offering litigant; or, though known, could not have been secured and presented during the trial despite reasonable diligence. What is essential for a particular piece of evidence to be properly regarded as "newly discovered" is that the offering party exercised reasonable diligence in seeking to locate the evidence before or during the trial, but nonetheless failed to secure it. Thus, a party who knows of the existence of specific pieces of evidence cannot offer them as "newly discovered" without any explanation for not presenting them earlier.[69]

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65 Supra at pp. 3-4.
66 Supra at note 11.
67 Supra at note 7.
68 G.R. No. 188260, 13 November 2013; Citation omitted.
69 *Office of the Ombudsman, Represented by Hon. Simeon V. Marcelo v. Carmencita D. Coronel*, G.R. No. 164460, 27 June 2006.

In this case, while petitioner was only able to secure the above-listed documents[70] (attached to its MR[71] of the Original Decision[72]) after trial, it nonetheless failed to show that these could not have been produced at the trial with reasonable diligence. It is worth noting that petitioner's claim of exercising reasonable diligence is unconvincing, as it neglected to inform the Court that it was still in the process of securing those documents and did not request additional time to obtain them before resting its case. Consequently, the Court cannot consider these documents as newly discovered evidence, but rather as "forgotten evidence" that petitioner intends to present only after receiving an unfavorable decision.

To reiterate, the 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.[73]

B. RE: DISALLOWANCE OF ZERO-RATED SALES FOR FAILURE TO ESTABLISH BOTH COMPONENTS OF A CLIENT'S NRFC STATUS.

As found in the Original Decision and in the assailed Amended Decision[74], some of petitioner's clients cannot be considered as NRFCs as it failed to present either the SEC Certificate of Non-Registration of Company or the proof of incorporation/association/business registration in a foreign country, as follows:

Registered Name of Client	SEC Certification of Non-Registration	Consularized Company Registration	Sworn Statement from Authorized Representatives
A. *Supported only by SEC Certificates of Non-Registration of Company were submitted as evidence*			
GILLETTE PAKISTAN LIMITED	"P-5.44"	"P-6.42"	"P-7.41"

[70] Supra at pp. 3-4.
[71] Supra at note 11.
[72] Supra at note 7.
[73] *Office of the Ombudsman, Represented by Hon. Simeon V. Marcelo v. Carmencita D. Coronel*, supra at note 69.
[74] Supra at note 6.

Registered Name of Client	SEC Certification of Non-Registration	Consularized Company Registration	Sworn Statement from Authorized Representatives
		(Denied Admission)[75]	
P&G DISTRIBUTION MOROCCO	"P-5.2"	-	-
PROCTER & GAMBLE DISTRIBUTING (NEW ZEALAND) LTD	"P-5.13"	-	-
PROCTER & GAMBLE EGYPT DISTRIBUTION LTD.	"P-5.37"	-	-
PROCTER & GAMBLE EGYPT LTD.	"P-5.5"	-	-
PROCTER & GAMBLE EGYPT SUPPLIES LTD.	"P-5.38"	-	-
PROCTER & GAMBLE EUROPE SA SINGAPORE BRANCH	"P-5.26"	-	-
PROCTER & GAMBLE INTERNATIONAL OPERATIONS SA SINGAPORE BRANCH	"P-5.32"	-	-
PROCTER & GAMBLE LEVANT S.A.L.	"P-5.9"	-	-
B. ***No SEC Certificate of Non-Registration of Company***			
P&G DISTRIBUTION MOROCCO S.A.S.	-	"P-6.38"	"P-7.32"
PROCTER & GAMBLE EUROPE SA	-	"P-6.21"	"P-7.21"
PROCTER & GAMBLE INTERNATIONAL OPERATIONS SA	-	"P-6.27"	"P-7.27"
PROCTER & GAMBLE KOREA, INC.	-	-	-

As to petitioner's claim that some of its NRFC-clients with SEC Certificates of Non-Registration of Company are one and the same with the others found to be without SEC Certificates of Non-Registration of Company, the Court finds petitioner's explanations bereft of merit for the reasons herein stated:

1. **"P&G Distribution Morocco"** *vis-à-vis* **"P&G Distribution Morocco S.A.S."**: The provisions in latter's Consularized Company Registration[76] could not be given probative value as they were written or printed in foreign language without English translation. There was no way for the Court to determine the contents of the documents, ascertain the indicated entity's name, or verify the attestations/certifications made therein;

2. **"Procter & Gamble International Operations SA"** *vis-à-vis* **"Procter & Gamble International Operations SA Singapore Branch"**: While the Certificate Confirming

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75 The foreign client's consularized company registration (*i.e.*, Exhibit "P-6.42") was denied admission by the Court for failure of the document formally offered to correspond with the duly marked document in its Resolutions dated 10 September 2019 and 21 February 2020.

76 Supra at note 30.

Registration of Foreign Company[77] attached to the former's Consularized Company Registration[78] mentions the latter, it does not necessarily mean that they are one and the same without a categorical statement therein to that effect;

3. **"Procter & Gamble Korea, Inc."** *vis-à-vis* **"Procter & Gamble Korea"**: While the latter's Consularized Company Registration[79] and the Affidavit of SueKyung Lee[80] (the latter's authorized representative) mention the former, it does not necessarily mean that they are one and the same without a categorical statement therein to that effect; and,

4. **"Procter & Gamble Europe SA"** *vis-à-vis* **"Procter & Gamble Europe SA Singapore Branch"**: While the Certificate Confirming Registration of Foreign Company[81] attached to the former's Consularized Company Registration[82] mentions the latter, it does not necessarily mean that they are one and the same without a categorical statement therein to that effect.

Notably, the SEC employs a matching process to determine whether a specific entity is not registered to conduct business in the Philippines. During the matching process, the SEC checks its database to determine if the entity in question is already registered. A discrepancy in the corporate name, such as the addition of the words "S.A.S.", "Inc." or "Singapore Branch" may alter the verification result. Considering the possibility of a "registered" verification result under a shorter or longer corporate name and absent any clear evidence to prove that each of the above pairs are one and the same, it remains necessary for the Court to treat them as separate and distinct entities.

As for the screenshots of the list of foreign affiliates in the US SEC Website[83], this Court has already ruled that these cannot give credence or probative value because they do not in any way confirm that petitioner's foreign clients therein listed are actually registered in the countries indicated in brackets nor establish that they are *not* doing business here in the Philippines.

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77 Supra at note 32.
78 Supra at note 31.
79 Supra at note 33.
80 Supra at note 34.
81 Supra at note 36.
82 Supra at note 35.
83 Supra at note 28.

Accordingly, this Court must uphold the disallowance of petitioner's alleged zero-rated sales to its NRFC-clients (1) with no SEC Certificate of Non-Registration of Company and (2) those supported only by SEC Certificates of Non-Registration of Company in the total amounts of ₱3,474,055.55 and ₱1,072,623,656.85, respectively.

C. RE: DISALLOWANCE OF ZERO-RATED SALES DUE TO DISCREPANCIES IN THE NAMES OF ITS NRFC-CLIENTS PER REGISTRATION DOCUMENTS AND PER ORs.

Having settled that a reopening of trial for the admission of supplemental evidence is not proper and no longer possible, and there being no evidence on record to prove that "**P&G Max Factor Godo Kaisha**" is the former name of "**P&G Prestige Godo Kaisha**", this Court must sustain the disallowance of the pertinent zero-rated sales to such entity in the total amount of ₱24,310,057.56.

D. RE: DISALLOWANCE OF ZERO-RATED SALES PERTAINING TO UNSUBSTANTIATED OR UNSUPPORTED ADJUSTMENTS TO GROSS RECEIPTS FOR "CROSS CHARGES TO/FROM AFFILIATES" AND "RECONCILIATION OF INTER-AFFILIATE BILLINGS".

Petitioner claims that since the "excess receipts" relating to unsubstantiated reimbursable costs incurred while rendering services to NRFC-clients were offset against its gross receipts and not included in the total amount of zero-rated sales declared *per* VAT returns, there is no reason for the Court to deduct the same for purposes of determining the refundable amount of substantiated input VAT.

The Court finds petitioner's argument flawed.

As petitioner itself admitted and as confirmed from the records, the total amount of zero-rated sales declared *per* VAT returns is already net of the reimbursable costs incurred while rendering services to

NRFC-clients pertains to "Cross charges to/from affiliates" and "Reconciliation of inter-affiliate billings". In consequence of such offsetting or netting of receivables and payables, petitioner had "unreported zero-rated sales" to the extent of the said reimbursable costs of ₱58,633,020.95 (*i.e.*, the peso equivalent of $1,250,071.07, as translated using the average of the monthly average of Bangko Sentral ng Pilipinas [**BSP**] cross rates of Philippine Peso and US Dollar from January to June 2016).

For purposes of computing the "**Total Valid and Substantiated Zero-Rated Sales**", the unreported zero-rated sales of ₱58,633,020.95 was added back to arrive at the should be "**Total Zero-Rated Sales**" for VAT purposes since petitioner failed to show that the "excess receipts" were amounts earmarked for payment to unrelated third parties or reimbursements for advance payment of the third-party obligations of its foreign clients (through an invoice or official receipt [**OR**] issued by the third party creditors to petitioner's foreign clients). Then, the same amount was deducted from the "**Total Zero-Rated Sales**" as a disallowance (for being unsubstantiated) to arrive at the "**Total Valid and Substantiated Zero-Rated Sales**".

While the foregoing adjustments has a zero net effect in terms of the "**Total Valid and Substantiated Zero-Rated Sales**", the "**Percentage of Valid Zero-Rated Sales**" or the ratio between the "**Total Valid and Substantiated Zero-Rated Sales**" and the "**Total Zero-Rated Sales**" is lower for purposes of determining the "**Substantiated/Valid Input VAT attributable to Zero-Rated Sales**", as shown below:

Comparison	**With Adjustments due to Unreported Zero-Rated Sales (*Per* assailed Amended Decision[84])**	**Without Adjustments due to Unreported Zero-Rated Sales**
Zero-Rated Sales	₱1,444,423,146.01	₱1,444,423,146.01
Add: Unreported Zero-Rated Sales	**58,633,020.95**	-
Total Zero-Rated Sales	1,503,056,166.96	1,444,423,146.01
Less: Disallowances		
Unreported Zero-Rated Sales	**58,633,020.95**	-
Other Disallowances	1,108,786,300.55	1,108,786,300.55
Total Disallowances	1,167,419,321.50	1,108,786,300.55
Total Valid and Substantiated Zero-Rated Sales	**₱335,636,845.46**	**₱335,636,845.46**

84 Supra at note 6.

Comparison	**With Adjustments due to Unreported Zero-Rated Sales (*Per* assailed Amended Decision[84])**	**Without Adjustments due to Unreported Zero-Rated Sales**
Total Zero-Rated Sales [A]	₱1,503,056,166.96	₱1,444,423,146.01
Valid Zero-Rated Sales [B]	335,636,845.46	335,636,845.46
Percentage of Valid Zero-Rated Sales [C=B/A]	22.33%	23.24%
Substantiated/Valid Input VAT [D] Less: Output VAT [E]	55,792,826.85 22,234,390.33	55,792,826.85 22,234,390.33
Substantiated/Valid Input VAT attributable to Zero-Rated Sales [F=D-E]	33,558,436.52	33,558,436.52
Excess and Unutilized Input VAT attributable to Valid Zero-Rated Sales [F x C]	**₱7,493,598.87**	**₱7,798,980.65**

We cannot likewise indulge petitioner's request to present additional documents to substantiate the reimbursable costs offset against the gross receipts and not declared *per* VAT returns because that would necessitate the reopening of the case to admit "forgotten evidence", which, as aforesaid, is improper.

Accordingly, this Court must also sustain the disallowance of unreported zero-rated sales in the total amount of ₱58,633,020.95.

E. RE: DISALLOWANCE OF ZERO-RATED SALES TO NRFC-CLIENTS UNSUPPORTED BY SERVICE AGREEMENTS.

This Court is still unconvinced of petitioner's claim that, as an ROHQ, it is allowed to derive income within the Philippines through the performance of services that, logically, must necessarily be performed in the Philippines.

To reiterate, the issue as to whether or not petitioner performed services in the Philippines is a question of fact. Hence, it must be proven by specific evidence. Petitioner cannot merely rely on the provision that ROHQs are licensed to do business in the Philippines to prove a fact in issue. To the Court's mind, although it was shown that petitioner is an ROHQ, it is still necessary on its part to prove that its services were indeed performed in the Philippines.

It must be emphasized that *Asurion* is not on all fours with this case. Unlike herein petitioner who failed to submit some of its Service Agreements between it and its alleged NRFC-clients, therein taxpayer was able to present all such Service Agreements and the same were also authenticated by a witness, who testified on how these services were carried out within the Philippines.

The fact that herein petitioner submitted only some and not all the pertinent Service Agreements casted doubt on whether its claim that it rendered services to those NRFC-clients (with no Service Agreements with petitioner) within the Philippines is true. Absent such Service Agreements, this Court had to look for proof that the said services were not only rendered to its NRFC-clients and that the same were performed in the Philippines. As it is, this Court could not even determine the nature of the services rendered by petitioner to those NRFC-clients (with no Service Agreements with petitioner) since proof thereof came only in the form of the general and self-serving testimony of its witness, Trambulo.

To be clear, this Court disallowed the sales of services to some of petitioner's NRFC-clients not only because it failed to present the pertinent Service Agreements but, more so, because it did not offer any other specific evidence to show that the services to such NRFC-clients were rendered in the Philippines. Apart from the self-serving testimony of petitioner's witness, no other document was presented from which to infer that the qualifying services to such NRFC-clients (with no Service Agreements with petitioner) are to be rendered and performed by petitioner in the Philippines.

It bears stressing that a claimant has the burden of proof to establish the factual basis of his or her claim for tax credit or refund. Tax refunds, like tax exemptions, are construed strictly against the taxpayer.[85] As such, they are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the refund.[86]

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85 *Citibank, N.A. v. Court of Appeals and Commissioner of Internal Revenue*, G.R. No. 107434, 10 October 1997.

86 *Commissioner of Internal Revenue v. S.C. Johnson & Son, Inc., et al.*, G.R. No. 127105, 25 June 1999.

In closing, this Court finds no sufficient reason to disturb the assailed Amended Decision.

WHEREFORE, with the foregoing, petitioner Procter & Gamble International Operations SA - ROHQ's "Motion for Reconsideration (Re: Amended Decision dated October 4, 2022)" filed on 21 October 2022 and respondent Commissioner of Internal Revenue's "Motion for Partial Reconsideration (to the Amended Decision dated 04 October 2022)" filed on 21 October 2022, are both **DENIED** for lack of merit.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

LANEE S. CUI-DAVID
Associate Justice