REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

TELSTAR MANUFACTURING CORPORATION, *Petitioner,*	CTA EB No. 1797 (CTA CASE No. 8900)
-versus-	
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	

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COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	CTA EB No. 1879 (CTA CASE No. 8900)
-versus-	*Present*: DEL ROSARIO, P.J., CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, and MODESTO-SAN PEDRO, *JJ.*
TELSTAR MANUFACTURING CORPORATION, *Respondent.*	Promulgated: SEP 10 2019 3:39 p.m.

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RESOLUTION

MINDARO-GRULLA, J.:

Before the Court *En Banc* are the Motions for Partial Reconsideration filed by the Commissioner of Internal

Revenue (CIR)[1] on April 30, 2019 and by Telstar Manufacturing Corporation (Telstar)[2] on May 23, 2019, seeking to set aside this Court's Decision promulgated on April 15, 2019,[3] the dispositive portion of which reads:

> "**WHEREFORE,** premises considered, the Petitions for Review are hereby **DENIED** for lack of merit.
>
> Accordingly, the Resolution dated February 8, 2018 is hereby **AFFIRMED with MODIFICATIONS** in the computation of deficiency interest and delinquency interest in view of the effectivity of Republic Act No. 10963 (TRAIN Law) on January 1, 2018 and the issuance of Revenue Regulation No. 21-2018[4] and shall read as follows:
>
>> "**WHEREFORE**, petitioner's *Motion for Partial Reconsideration* is **PARTLY GRANTED**. Accordingly, the dispositive portion of the assailed Decision of this Court dated August 18, 2017 is **MODIFIED** as follows:
>>
>>> "**WHEREFORE,** the present Petition for Review is **PARTLY GRANTED**. Petitioner is **ORDERED** to pay basic deficiency income tax, value-added tax and expanded withholding tax for the year 2009 in the aggregate amount of ₱25,348,408.53, inclusive of the 25% surcharge and deficiency and delinquency interests imposed under Sections 248(A)(1)(3) and 249(B) and (C) of the NIRC of 1997, as amended, respectively

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[1] *En Banc* Docket Vol. II, pp. 978-985.
[2] *Ibid.*, pp. 986-1012.
[3] *Ibid.*, pp. 942-973.
[4] Regulations Implementing Section 249 (Interest) of the National Internal Revenue Code (NIRC) of 1997, as amended under Section 75 of the Republic Act (RA) No.10963 or the "Tax Reform for Acceleration and Inclusion (TRAIN Law)".

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computed until December 31, 2017 as follows:[5]

	Income Tax	Value-Added Tax	Expanded Withholding Tax	Total Due
Basic Tax	2,804,113.22	3,127,208.39	32,732.01	5,964,053.62
25% surcharge	701,028.31	781,802.10	8,183.00	1,491,013.41
20% Deficiency Interest				
April 16, 2010 to August 29, 2014 (1596 days) (basic tax x .20 x 4.372 years)	2451916.6			2,451,916.60
January 26, 2010 to August 29, 2014 (1676 days) (basic tax x .20 x 4.5917 years)		2871840.553		2,871,840.55
January 16, 2010 to August 29, 2014 (1687 days) (basic tax x .20 x 4.6219 years)			30256.8154	30,256.82
Total Amount due as of August 29, 2014	**5,957,058.12**	**6,780,851.04**	**71,171.83**	**12,809,080.99**
Add:				
20% Deficiency Interest August 30, 2014 to December 31, 2017 (1219 days) (basic tax x .20 x 3.3397 years)	1872979.384	2088787.572	21863.01876	3983629.975
20% Delinquency Interest August 30, 2014 to December 31, 2017 (1219 days) (total amount due as of August 29, 2014 x .20 x 3.3397 years)	3978957.404	4529201.644	47538.51073	8555697.558
Total Amount due as of December 31, 2017	**11,808,994.91**	**13,398,840.26**	**140,573.36**	**25,348,408.53**

In addition, Telstar Manufacturing Corporation is liable to pay delinquency interest at the rate of 12% on the total unpaid basic deficiency tax, surcharge and deficiency interest as of August 29, 2014 amounting to ₱5,957,058.12 for Income Tax, ₱6,780,851.04 for VAT, and ₱71,171.83 for Expanded Withholding Tax, or in the aggregate amount of ₱12,809,080.99, computed from January 1, 2018 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended by Republic Act No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN).

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[5] Section 6 of Revenue Regulations No. 21-2018 dated September 14, 2018.

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> Petitioner's *Manifestation with Motion for Correction of Dispositive Portion of Decision* is **NOTED**."
>
> **SO ORDERED.**"

In his motion, the CIR merely reiterates that Telstar is still liable for deficiency income tax (IT) and value-added tax (VAT) since it failed to explain the alleged ₱230,574.03 discrepancy in its sales to Philusa Corporation, as well as for deficiency IT on disallowed creditable withholding tax (CWT), since this was already an item in the Formal Letter of Demand (FLD).

Telstar filed its Comment[6] on July 26, 2019, restating therein that it has fully substantiated the alleged discrepancy on sales and that the face of the FLD itself does not contain an assessment for deficiency IT on disallowed CWT.

On the other hand, Telstar, in its motion, merely rehashes its arguments that the waivers did not extend the period to assess from three to ten years since they are are void; that the failure of the CIR to complete its tax audit investigation within 120 days from the service of the Letter of Authority (LOA) nullified the same; that there was no definite time for payment indicated in the Final Assessment Notice (FAN); that it is not liable for deficiency IT and VAT on sales, as well as IT on overclaimed salaries and CWT and VAT on property per cash flow; and it is not liable for deficiency interest on the assessment for deficiency VAT and expanded withholding tax (EWT).

The CIR filed his Opposition[7] on July 26, 2019, stating therein that the arguments raised by Telstar in its Motion have already been conclusively passed upon and considered in the assailed Decision; that Telstar is already estopped in assailing the validity of the waivers; a definitive time for payment was clearly stated in the FAN; and that the

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[6] *En Banc* Docket Vol. II, pp. 1031-1035.
[7] *Ibid.*, pp. 1031-1035.

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imposition of deficiency interest on the assessed deficiency VAT and EWT is in accordance with law.

The motions are bereft of merit.

This Court has no reason to deviate from the findings in the assailed Decision. All the arguments presented by both parties readily reveal that they deal with the very same issues which have been thoroughly passed upon by the Court in Division and extensively discussed in the assailed Decision.

The Court is guided by the rulings in the Supreme Court case of *Coquilla v. Commission on Elections*,[8] 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 movants 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:
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> > Among the ends to which a motion for reconsideration is addressed, <u>one is precisely to convince the court that its ruling is erroneous and improper, contrary to the law or the evidence</u>; xxx" (Underlining Supplied.)

Upon review of the Motions for Reconsideration, there is no provision of law raised by both parties that is contrary to the findings or conclusions of the Court in the assailed Decision. A motion for reconsideration is *pro forma* where:[9]

1. it was a second motion for reconsideration;
2. it did not comply with the rule that the motion must specify the findings and conclusions

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[8] 434 Phil. 861 (2002), cited in the case of *Philippine National Bank vs. Pineda,* G.R. No. 149236, February 14, 2007.
[9] *Ibid.*

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alleged to be contrary to law or not supported by the evidence;
3. it failed to substantiate the alleged errors;
4. it merely alleged that the decision in question was contrary to law; and
5. the adverse party was not given notice thereof.

It is apparent that both parties merely reiterated and restated their arguments in the Petitions for Review and Motion for Reconsideration filed before this Court in Division and *En Banc*. The motion is a mere slashed adaptation of their arguments already considered and exhaustively discussed by the Court *En Banc* in its assailed Decision.

To reiterate, Telstar is estopped to question the validity of the waivers and validly extended the assessment period to ten years, following the Supreme Court case of *Commissioner of Internal Revenue vs. Next Mobile Inc. (formerly Nextel Communications Phils. Inc.).*[10] Also, Revenue Memorandum Circular No. 23-09 provides that failure of the revenue officer to request for revalidation of LOA before the expiration of the revalidation period does not nullify the LOA.

Due date for payment is also clearly indicated in the Final Decision on Disputed Assessment (FDDA) since it was stated therein that the deficiency tax must be paid immediately upon receipt. The final demand was also clear as it was stated therein that such was the final decision of the CIR, *i.e.,* to pay the deficiency tax immediately upon receipt of the FDDA.

The Court also upholds the findings in the assailed Decision as to the liability of Telstar to pay deficiency IT and VAT on sales, IT on overclaimed salaries and CWT, as well as VAT on property per cash flow and deficiency interest on the assessment for deficiency VAT and EWT, while exonerating it from payment of IT and VAT on its sales to Philusa Corporation, as well as from payment of IT on disallowed CWT.

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[10] G.R. No. 212825, December 7, 2015.

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WHEREFORE, premises considered, the Motions for Reconsideration are hereby **DENIED** for lack of merit.

SO ORDERED.

CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

(See Concurring and Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

(On Leave)
ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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CONCURRING AND DISSENTING OPINION

DEL ROSARIO, P.J.:

I reiterate the position I have taken in my Concurring and Dissenting Opinion dated April 15, 2019. As elucidated therein, the Formal Letter of Demand[1] (FLD) and the Final Assessment Notices[2]

[1] Exhibits R-10.
[2] Exhibits R-10-a to R-10-e.

(FANs), all dated October 16, 2013, are void for their failure to demand payment of the taxes due within a specific period. Noticeably, the spaces for the due dates in the October 16, 2013 FANs were conspicuously left blank. Absent such demand for payment, the October 16, 2013 FANs are fatally infirm.[3] Being void assessments, the aforesaid FANs bear no fruit[4] and must be slain at sight.

With due respect to the *ponencia*, the fact that the Final Decision on Disputed Assessment (which the Commissioner of Internal Revenue eventually issued) demanded that the deficiency taxes be paid "immediately upon receipt" thereof does not cure the inherent defect of the FANs. Stated otherwise, a void assessment may not be a legitimate basis of a taxpayer's liability; it cannot be a valid source of obligation to pay deficiency taxes.

All told, I vote to: (i) **DENY** the Motion for Reconsideration filed by the Commissioner of Internal Revenue; and, (ii) **GRANT** the Motion for Reconsideration filed by Telstar Manufacturing Corporation thereby ultimately **CANCELLING** the Formal Letter of Demand and the Final Assessment Notices, all dated October 16, 2013.

ROMAN G. DEL ROSARIO
Presiding Justice

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[3] *Commissioner of Internal Revenue vs. Fitness by Design*, G.R. No. 215947, November 9, 2016; pertinent pronouncement in the case was quoted in the Concurring and Dissenting Opinion of Presiding Justice Roman G. Del Rosario on the assailed Decision.
[4] *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010.