REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

JUSTICE MARIA LOURDES P. A. SERENO, *Petitioner,*	**CTA CASE NO. 10792**
	Members:
-versus-	**BACORRO-VILLENA**, *Acting Chairperson, and* **CUI-DAVID**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated:
	AUG 16 2024 4:00 pm

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RESOLUTION

CUI-DAVID, J.:

Before this Court is respondent's ***Motion for Reconsideration (Decision dated May 14, 2024)*** filed on May 30, 2024, with petitioner's *Opposition (to Respondent's Motion for Reconsideration dated May 27,2024)* filed on June 25, 2024.

Respondent's *Motion for Reconsideration (Motion)* assails the *Decision* promulgated by this Court on May 14, 2024, with the following dispositive portion:

> **WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is **GRANTED**. Accordingly, the undated FDDA TFS-11-16-22-002 and the FLD/FANs dated November 5, 2018 issued by respondent CIR against petitioner Justice Maria Lourdes P.A. Sereno for deficiency income taxes, surcharges and interests covering taxable years 2011 to 2016, are **CANCELLED** and **SET ASIDE**.
>
> Further, respondent is **ENJOINED and PROHIBITED** from enforcing the collection of the subject deficiency taxes during the pendency of this case.
>
> **SO ORDERED**.

In his *Motion*, respondent argues that his assessment against petitioner is valid. He states that "if [he] did not consider the legal arguments and evidence presented by petitioner during the investigation, it only means that said legal arguments and evidence are not sufficient to support petitioner's claims;" and that petitioner's mere allegations will not automatically be considered by him. Respondent further argues that the Preliminary Assessment Notice (**PAN**), Final Assessment Notice and Formal Letter of Demand (**FAN/FLD**), and the Final Decision on Disputed Assessment (**FDDA**) sufficiently explained the factual and legal bases for the assessment and complied with the minimum requirements laid down by law and regulations; and that this was bolstered by the fact that petitioner was able to file her Reply to the PAN and Protest to the FAN/FLD.[1]

Respondent invokes the lifeblood doctrine, the presumption in favor of the correctness of tax assessments, and the presumption of regularity in the discharge of one's official duties and functions enjoyed by public officials in support of his case.[2] Regarding the issue of prescription, he invokes the prescriptive period as set forth under Section 222 of the National Internal Revenue Code (**NIRC**) of 1997, as amended, which provides for a prescriptive period of ten (10) years after the discovery of the falsity, fraud, or omission. He points out that the FAN/FLD and the FDDA impose a 50% surcharge, which can be "clearly seen," as such, "petitioner cannot deny respondent's falsity/fraud findings."[3]

Finally, in relation to the computation of petitioner's alleged deficiency tax liabilities, respondent reiterates anew his *Answer* to the *Petition for Review* on what he deems as the proper tax treatment of the various items of income received by petitioner and pray that petitioner be ordered to pay deficiency income taxes in the total amount of P8,846,769.12.[4]

On the other hand, in her *Opposition*, petitioner first points out that the *Motion for Reconsideration* is pro-forma and must be denied outright, considering that it failed to "point out specifically the findings or conclusions" which are not supported by evidence or are contrary to law as required by

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[1] *Motion for Reconsideration*, pp. 3-7, 9-12.
[2] *Id.*, pp. 8-9.
[3] *Id.*, pp. 12-17.
[4] *Id.*, pp. 17-25.

Section 2, Rule 37 of the Rules of Court.[5] Petitioner also states that most of the CIR's "Arguments and Discussions" were "simply copied *verbatim*" from his previous submissions to the Court.

Petitioner states that the assailed *Decision* is supported by the ruling of the Supreme Court in *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc* (*Avon*).[6] According to petitioner, respondent had not considered her *Reply* to the PAN when the FAN/FLD was issued.[7] Petitioner also calls the attention of the Court to the premise used by respondent in his Motion, which assumes that respondent indeed did not consider petitioner's arguments. According to petitioner, the pronouncement in *Avon* thus "squarely applies."[8]

Petitioner also assails the invocation of respondent of mere presumptions. According to petitioner, these presumptions "[do] not apply upon proof that an assessment is utterly without foundation, meaning it is arbitrary and capricious. For petitioner, the capriciousness and arbitrariness is based on "the CIR's continued insistence on the propriety of using 'schedules' of petitioner's taxable income that purportedly originated from the Commission on Audit (**COA**)," with the schedules being mere photocopies and not being admitted to evidence.[9]

Anent the issue on prescription, petitioner invokes the Supreme Court case of *McDonald's Philippines Realty Corp. v. Commissioner of Internal Revenue (McDonald's).*[10] According to petitioner, respondent failed to comply with the due process requirements set forth in McDonald's, and thus, the 10-year assessment period does not apply, something which respondent allegedly did not deny in his *Motion.*[11] Petitioner also states that respondent's argument that petitioner cannot deny respondent's falsity/fraud findings with the indication of the 50% surcharge is circular reasoning and a logical fallacy.[12]

Petitioner adds that there is nothing in the PAN, FAN/FLD, or FDDA which indicates that respondent ascertained or made a categorical finding of any under-declaration of income or over-declaration of deductions exceeding 30%, and that evidence in

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[5] *Opposition*, pars. 3-5.
[6] G.R. Nos. 201398-99 & 201418-19, October 3, 2018.
[7] *Opposition*, pars. 10-14, 18-19.
[8] *Id.*, pars. 15-17.
[9] *Id.*, pars. 20-24.
[10] G.R. No. 247737, August 8, 2023.
[11] *Opposition*, pars. 27-31.
[12] *Id.*, pars. 32-38, 46-52.

the instant case shows that the threshold was never breached. Petitioner additionally argues that, even if the *prima facie* presumption of fraud applies, she was able to dispute it.[13]

THE COURT'S RULING

The *Motion* is unmeritorious.

At the outset, the Court notes that the grounds raised in respondent's *Motion for Reconsideration* merely reiterate the arguments previously raised in his *Answer* and *Memorandum,* which have been thoroughly considered, resolved, and passed upon in the assailed *Decision.*

It is well-settled that a motion for reconsideration containing a mere reiteration or rehash of grounds and arguments that have already been considered, weighed, passed upon, and resolved by the court before the decision sought to be reconsidered is rendered does not need a new judicial determination.[14] Therefore, there is no necessity to discuss and rule again on these grounds since this would be a useless formality of ritual invariably involving merely a reiteration of the reasons for rejecting the arguments advanced by the movant already set forth in the judgment.[15]

In *Shangri-La International Hotel Management v. Developers Group of Companies, Inc.*,[16] the Supreme Court ruled that it is incumbent upon the movant to convince the Court that certain findings or conclusions are contrary to law, to wit:

> "The bulk of the aforementioned grounds is a mere rehash of movant's previous arguments. While DGCI is correct in stating that a motion for reconsideration, by its very nature, may tend to dwell on issues already resolved in the decision sought to be reconsidered and that this should not be an obstacle for a reconsideration, the hard reality is that movant has failed to raise matters substantially plausible or compellingly persuasive to warrant the desired course of action.

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[13] *Id.*, pars. 42-45.
[14] *People v. Agacer*, G.R. No. 177751 (Resolution), January 7, 2013 citing *People v. Larrañaga*, G.R. Nos. 138874-75, July 21, 2005; *Madeleine Mendoza-Ong v. Hon. Sandiganbayan, et al.*, G.R. Nos. 146368-69 (Resolution), October 18, 2004.
[15] *People v. Agacer*, G.R. No. 177751 (Resolution), January 7, 2013 citing *People v. Larrañaga*, G.R. Nos. 138874-75, July 21, 2005 and *Ortigas Land Co. Ltd. Partnership v. Judge Velasco*, G.R. No. 109645 (Resolution), March 4, 1996.
[16] *Shangri-la International Hotel Management, Ltd. v. Developers Group of Companies, Inc.*, G.R. No. 159938 (Resolution), January 22, 2007.

> Considering that the grounds presently raised have been sufficiently considered, if not squarely addressed, in the subject Decision, it behooves movant to convince the Court that certain findings or conclusions in the Decision are contrary to law. As it is, however, the instant motion does not raise any new or substantial legitimate ground or reason to justify the reconsideration sought."

As in the *Shangri-la* case, the instant *Motion* does not raise any new or substantial legitimate ground or reason to justify the reconsideration sought.

Accordingly, the Court maintains its ruling that (1) the FAN/FLD are void for being issued in violation of petitioner's right to due process, (2) respondent's right to assess petitioner has partially prescribed, and (3) respondent's right to collect the alleged deficiency taxes has prescribed.

As regards respondent's claim in his *Motion for Reconsideration* that "if [he] did not consider the legal arguments and evidence presented by petitioner during the investigation, it only means that said legal arguments and evidence are not sufficient to support petitioner's claims;" and that petitioner's mere allegations will not automatically be considered by him, the Supreme Court, in *Avon*,[17] has this to say:

> It is true that the Commissioner is not obliged to accept the taxpayer's explanations, as explained by the Court of Tax Appeals. However, when he or she rejects these explanations, he or she must give some reason for doing so. He or she must give the particular facts upon which his or her conclusion are based, and those facts must appear in the record.

Finally, as to the application of the 10-year extraordinary prescriptive period under Section 222 of the NIRC of 1997, as amended, the exacting due process requirements as ruled in *Mcdonald's*[18] govern, *viz.:*

> *F. Summary:* ***Conditions*** *for a Valid Extension of Assessment Period in Case of a False Return ...*

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[17] *Supra* at note 6.
[18] *Supra* at note 10.

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ii. ***Due Process Requirements***

(1) *First* Due Process Requirement. The *assessment notice* issued to the taxpayer must clearly state the following:

(a) that extraordinary prescriptive period (not the basic three-year period) is being applied, and

(b) the bases of allegations of falsity or fraud, *e.g.*, if the CIR seeks to rely on the *presumption of falsity or fraud* particularly, the formal notice to the taxpayer *must set out the computation by which it ascertained that the misdeclaration in the return surpassed the 30% threshold.*

(2) *Second* Due Process Requirement. The tax authorities have not acted in a manner that is inconsistent with the invocation of the extraordinary prescriptive period or have otherwise misled the taxpayer that the basic period will be applied.

Accordingly, for respondent's failure to comply with the *first* due process requirement, i.e., that "the formal notice to the taxpayer must set out the computation by which it ascertained that the misdeclaration in the return surpassed the 30% threshold," this Court cannot apply the three-year prescriptive period.

Given the foregoing, the Court finds no cogent reason to reverse or modify the assailed *Decision.*

WHEREFORE, in light of the foregoing considerations, respondent's ***Motion for Reconsideration (Decision dated May 14, 2024)*** is **DENIED** for lack of merit.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

I CONCUR:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice