REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

HOTEL SPECIALIST (TAGAYTAY), INC.,
Petitioner,

CTA EB NO. 2084
(CTA Case No. 9349)

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

x - x

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA EB NO. 2092
(CTA Case No. 9349)

- versus -

Present:

DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, *and*
MODESTO-SAN PEDRO, *JJ.*

HOTEL SPECIALIST (TAGAYTAY), INC.,
Respondent.

Promulgated:
JUN 0 2 2021 4:30 pm

x - x x - x

RESOLUTION

BACORRO-VILLENA, J.:

For the Court *En Banc*'s resolution are the following:

1. Hotel Specialist (Tagaytay), Inc.'s (**HSTI's**) "Motion for Reconsideration" (**MR**) filed on 16 December 2020[1], without the Commissioner of Internal Revenue's (**CIR's**) comment[2]; and,

2. CIR's "Motion for Partial Reconsideration [re: Decision dated November 25, 2020]" (**MPR**) filed on 16 December 2020[3], with HSTI's "Comment/Opposition (Motion for Partial Reconsideration dated 16 December 2020)" filed on 19 January 2021[4].

Both the MR and MPR seek the partial reversal of the Court *En Banc*'s Decision promulgated on 25 November 2020[5] (**assailed Decision**). The dispositive portion of the assailed Decision pertinently reads:

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> **WHEREFORE**, with the foregoing, Hotel Specialist (Tagaytay), Inc.'s Petition for Review filed on 19 June 2019 and the Commissioner of Internal Revenue's Petition for Review filed on 01 July 2019 are both **DENIED** for lack of merit. Accordingly, the Decision dated 18 January 2019 and the Resolution dated 30 May 2019 of the Special Second Division, respectively, in CTA Case No. 9349, entitled *Hotel Specialist (Tagaytay), Inc. v. Commissioner of Internal Revenue*, are hereby **AFFIRMED** with modification but *only* to correct the *typographical errors in the dispositive portion* of the Decision dated 18 January 2019 insofar as deficiency Value-Added Tax and deficiency Expanded Withholding Tax are concerned, which should read as follows:
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> ...
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> **SO ORDERED.**

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[1] Rollo (CTA EB No. 2084), pp. 122-132.
[2] *Per* Records Verification dated 08 February 2021.
[3] Rollo (CTA EB No. 2084), pp. 133-143.
[4] Id., pp. 147-151.
[5] Id., pp. 91-117.

...

In its MR, HSTI claims that the assailed Decision is contrary to the facts and applicable law, rules and regulations.

Specifically, HSTI avers that the Court *En Banc* erred in ruling that the imposition of 25% surcharge and 20% delinquency interest is proper, as the Preliminary Assessment Notice[6] (**PAN**), Formal Letter of Demand[7] (**FLD**) and the Final Decision on Disputed Assessment[8] (**FDDA**) subject of these consolidated cases failed to impose surcharges while the 20% delinquency interest may no longer be imposed as HSTI has already paid the assessments for withholding tax on compensation (**WTC**) and expanded withholding tax (**EWT**) prior to the filing of its Petition for Review before the Court in Division.

HSTI also claims that the Court *En Banc* erred in holding that the payment of the assessed deficiency withholding tax after the issuance of FDDA would not entitle it to claim the deduction relative thereto, relying on the pertinent provision of Section 2.58.5[9] of Revenue Regulations (**RR**) No. 2-98[10], as amended by RR 14-2002[11]. According to it, the phrase "at the time of the audit/investigation or reinvestigation/reconsideration" should be interpreted to mean from the issuance of the Letter of Authority (**LOA**) until the assessment becomes final and executory. In these cases, the assessment has not yet attained finality in view of HSTI's pending appeal.

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6 Exhibit "P-5", Division Docket, Volume II, pp. 432-438.

7 Exhibit "P-7", id., pp. 448-458.

8 Exhibit "P-9", id., Volume I, pp. 18-24.

9 **Sec. 2.58.5.** *Requirements for Deductibility.* – Any income payment which is otherwise deductible under the Code shall be allowed as a deduction from the payor's gross income only if it is shown that the income tax required to be withheld has been paid to the Bureau in accordance with Secs. 57 and 58 of the Code.

A deduction will also be allowed in the following cases where no withholding of tax was made:

...

(C) The withholding agent erroneously underwithheld the tax but pays the difference between the correct amount and the amount of tax withheld, including the interest, incident to such error, and surcharges, if applicable, at the time of the audit investigation or reinvestigation/reconsideration.

...

10 Implementing Republic Act No. 8424, "An Act Amending the National Internal Revenue Code, as Amended" Relative to the Withholding on Income Subject to the Expanded Withholding Tax and Final Withholding Tax, Withholding of Income Tax on Compensation, Withholding of Creditable Value-Added Tax and Other Percentage Taxes.

11 Amending Further Pertinent Provisions of Revenue Regulations No. 2-98, as amended.

Furthermore, HSTI posits that the Court *En Banc* likewise erred in ruling that the former failed to adduce proof to support its claim that the amount of value-added tax (**VAT**) assessment represents 100% of the service charge. According to it, the computation in the FDDA would reveal that the CIR subjected the total service charge collected to VAT without any statement that the same is based on its actual finding that the said service charges were not distributed. Thus, since what is involved is only a question of law, the same may be resolved solely on what the law provides.

Lastly, HSTI maintains that the Court *En Banc* likewise erred in holding it liable for 20% deficiency interest under Section 249(B)[12] of the National Internal Revenue Code (**NIRC**) of 1997, as amended. It argues that said deficiency interest may be imposed only on "deficiency in the tax due as the term is defined in the Code". Since the term "deficiency" relates only to income tax, donor's tax and estate tax, the same may not be imposed on VAT, EWT and WTC.

On the other hand, in CIR's MPR, he insists that there was no factual or legal basis for the Court *En Banc*'s disallowance of the tax credits and in holding that HSTI is not liable to pay compromise penalty.

The CIR claims that the PAN, FLD and FDDA have sufficiently complied with the requirements of the law as it had stated with certainty and clarity the basis of the assessment, citing *Commissioner of Internal Revenue v. Liquigaz Philippines Corporation*[13] where the Court *En Banc* held that Section 228[14] of the NIRC of 1997, as amended, does not require a full explanation of every legal and factual basis, as posited by HSTI.

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12 **SEC. 249.** *Interest.* -

...

(B) Deficiency Interest. - Any deficiency in the tax due, as the term is defined in this Code, shall be subject to the interest prescribed in Subsection (A) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof.

13 CTA EB Nos. 989 and 990, 22 May 2014.

14 **SEC. 228.** *Protesting of Assessment.* - ...

...

The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

...

As to the compromise penalty, the CIR asserts that a reading of HSTI's submissions would reveal that the issue on the imposition of the same was never raised. Since such imposition of compromise penalty is not in issue, it can thus be said that HSTI implicitly admitted the validity of the subject assessment. The CIR adds as basis the case of *Aguinaldo Industries Corporation (Fishing Nets Division) v. Commissioner of Internal Revenue, et al.*[15] where the Supreme Court held that "issues not raised in the lower court cannot be raised for the first time on appeal".

In its Comment/Opposition to the CIR's MPR, HSTI claims that the Court *En Banc* correctly ruled that there were no factual or legal bases for the disallowance of tax credits, as the CIR failed to point out which part of PAN, FLD and FDDA that the facts and the laws were disclosed pursuant to the said Section 228 of the NIRC of 1997, as amended.

With respect to the argument on the compromise penalty, HSTI sides with the Court *En Banc*'s ruling that the latter may not limit itself to the parties' stipulated issues but may also rule upon related issues necessary to achieve an orderly disposition of the case. Therefore, it was not an error for the Court in Division and for the Court *En Banc* to have ruled on the cancellation of the compromise penalty notwithstanding the parties' failure to deem it an issue, especially so with the glaring evidence that HSTI never consented to the imposition of compromise penalty.

We resolve.

After considering the arguments in both HSTI's MR and the CIR's MPR, the Court *En Banc* is constrained to deny them.

It must be emphasized that both parties failed to raise any new argument or present novel matter which the Court, either in Division and *En Banc*, has not previously scrutinized, studied and discussed.

A closer examination of both the MR and MPR would reveal that the same contain the very identical arguments HSTI and the CIR have

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15 G.R. No. L-29790, 25 February 1982.

earlier raised in their respective Petitions for Review. Furthermore, both parties palpably failed to refute the factual and legal justifications laid down in the assailed Decision, as to warrant its modification or reversal.

In *Licomcen Incorporated v. Foundation Specialists, Inc.*[16], the Supreme Court, citing *Ortigas and Company Limited Partnership v. Judge Tirso Velasco, et al.*[17], held that:

> ...
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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, x x x 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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> ...

As both HSTI and CIR merely recycled their previous submissions and arguments, the Court *En Banc* finds no cogent reason to disturb the assailed Decision.

WHEREFORE, with the foregoing, Hotel Specialist (Tagaytay), Inc.'s Motion for Reconsideration filed on 16 December 2020 and Commissioner of Internal Revenue's Motion for Partial Reconsideration filed on 16 December 2020 are both **DENIED** for lack of merit.

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16 G.R. Nos. 167022 and 169678, 31 August 2007.
17 G.R. Nos. 109645 and 112564, 04 March 1996.

x - x

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

ON LEAVE
CATHERINE T. MANAHAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice