REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

ALPHA 245, INCORPORATED (formerly, ARC WORLDWIDE PHILIPPINES CO. INC.),
Respondent.

CTA EB NO. 1875
(CTA Case No. 9225)

Present:
Del Rosario, *P.J.,*
Castañeda, Jr.,
Uy,
Fabon-Victorino,
Ringpis-Liban,
Manahan,
Bacorro-Villena, *and*
Modesto-San Pedro, *JJ*

Promulgated:

JUL 10 2020 3:45 p.m.

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RESOLUTION

RINGPIS-LIBAN, J.:

For resolution are the "Manifestation with Motion for Partial Reconsideration"[1] filed by respondent on October 21, 2019 and the "Motion for Partial Reconsideration"[2] filed by petitioner on October 23, 2019.

In the "Manifestation with Motion for Partial Reconsideration," respondent manifests that on May 31, 2018, it paid the Bureau of Internal Revenue (BIR) the amount of P10,837,486.37, in compliance with the Decision dated April 6, 2018 of the Second Division of this Court in CTA Case No. 9225; that the 12% per annum delinquency interest stopped running on May

[1] Rollo, CTA EB No. 1875, pp. 623-629.
[2] Ibid., pp. 631-636.

31, 2018, and respondent was liable only in the amount of P10,395,803.36, computed as follows:

Particulars	*Amount*
Deficiency VAT based on this Honorable Court's Decision	P10,076,111.19
12% Delinquency Interest from January 1, 2018 to May 31, 2018 *[P6,482,646.80 x 12% x 150/365 days]*	319,692.10
Total Amount Due, May 31, 2018	**P10,395,803.36**

and that respondent moves that the Court issue a Supplemental or Amended Decision absolving it from its obligation under the Decision to pay deficiency VAT, in view of its payment of P10,837,486.37 to the BIR on May 31, 2018.

On the other hand, the CIR argues that respondent's operation showed a table income instead of net operating loss as previously claimed in its income tax return for taxable year 2009; that the tax benefit of this amount has already been forwarded to the succeeding period as provided for under Section 34 (D)(3) of the NIRC OF 1997; that the disallowance of the claimed Net Operating Loss-Over (NOLCO) in the amount of P22,688,614.00 is proper; that the minimum corporate income tax return of respondent was not allowed as tax credit against the computed deficiency income tax since the said amount shall be carried over and credited against its normal income tax for the three immediately succeeding taxable years; that the disallowance of the claimed minimum corporate income tax amounting to P125,366.00 is proper; that the excess tax credit carried over to succeeding period in the amount of P5,929,429.00 was deducted from the total allowable tax credit since the amount has been credited against the estimated quarterly income tax liabilities of respondent for the taxable quarter of the succeeding taxable years; that the disallowance of the claimed excess credit carried forward to succeeding year amounting to P5,929,429.00 is proper; that the Court erred when it found that respondent suffered a net operating loss for taxable year 2009 without the latter presenting any concrete evidence during trial that it suffered a net operating loss for taxable year 2009, as well as for the years 2010, 2011 and 2012; and that the deficiency income tax issued by petitioner to respondent for taxable year 2009 in the amount of P4,603,4545.53 is *prima facie* presumed correct and was made in good faith.

In the "Comment [on the Motion for Partial Reconsideration dated October 23, 2019], respondent states that petitioner merely rehashed his arguments in his Petition for Review. The petitioner's "Motion for Partial Reconsideration" failed to raise new and substantial arguments, hence, it is *pro forma* and undeserving of the Court's attention.

After consideration of the motions submitted by both parties, the Court *En Banc* resolves to deny both motions.

The Court *En Banc* observes that the respondent's "Manifestation with Motion for Partial Reconsideration" was filed without the required notice of hearing.

> "Sections 4 and 5, Rule 15 of the Rules of Court read as follows:
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> Section 4. Hearing of motion. - Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant.
>
> Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice.
>
> Section 5. Notice of hearing. - The notice of hearing shall be addressed to all parties concerned, and shall specify the time and date of the hearing which must not be later than ten (10) days after the filing of the motion.
>
> These requirements are mandatory. Except for motions which the court may act on without prejudice to the adverse party, all motions must set a hearing. This includes motions for reconsideration.
>
> The notice of hearing on the motion must be directed to the adverse party and must inform him or her of the time and date of the hearing. Failure to comply with these mandates renders the motion fatally defective, equivalent to a useless scrap of paper."[3]

Hence, the "Manifestation with Motion for Partial Reconsideration" is a worthless piece of paper. Nevertheless, the Court *En Banc* will note respondent's payment of its VAT tax liability on May 31, 2018. Respondent should be aware that the Court in Division's Decision dated April 6, 2018 and the Court *En Banc* Decision dated October 1, 2019 have not yet attained

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[3] Bernice Joan TI vs. Manuel S. Diño, G.R. No. 219260, November 6, 2017.

finality. Hence, respondent's prayer to absolve it from its obligation to pay its value-added tax (VAT) liability in view of its payment will not prosper.

On the other hand, the Court noticed that the petitioner's "Motion for Partial Reconsideration" received by the Court on October 28, 2019 was not accompanied by the required Affidavit of Service.

Section 6, Rule 15 of the Rules of Court provides that "No written motion set for hearing shall be acted upon by the court without proof of service thereof."

But respondent was able to file its Comment to the petitioner's "Motion for Partial Reconsideration" on November 7, 2019.[4] Hence, the Court *En Banc* finds that there was substantial compliance with the requirements of due process since the adverse party actually had the opportunity to be heard and had filed pleadings in opposition to the petitioner's "Motion for Partial Reconsideration."

A perusal of the petitioner's motion shows that petitioner merely reiterates or amplifies the arguments previously raised in his Petition for Review which were already considered and extensively discussed upon by the Court *En Banc* in the assailed Decision dated October 1, 2019.

It must be stressed that among the ends to which a motion for reconsideration is addressed, one is precisely to convince the Court that its ruling is erroneous and improper, contrary to law or the evidence.[5] If the movant failed to do so, the motion for reconsideration must necessarily fail.

Thus, the respondent's "Manifestation with Motion for Partial Reconsideration" and the petitioner's "Motion for Partial Reconsideration" deserve to be denied for failing to present any legitimate argument which could warrant reconsideration of the Court *En Banc's* Decision dated October 1, 2019.

In view of the foregoing, the Court finds it needless to reiterate the discussions made in the assailed Decision.

WHEREFORE, premises considered, the respondent's "Manifestation with Motion for Partial Reconsideration" and the petitioner's "Motion for Partial Reconsideration" are both **DENIED for lack of merit**. The **assailed Decision** dated October 1, 2019 is **AFFIRMED**.

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[4] Rollo, pp. 638- 649.

[5] *Teodulo M. Coquillo vs. The Hon. Commission on Elections and Mr. Neil M. Alvarez,* G.R. No. 151914, July 31, 2002.

SO ORDERED.

Ma. Belen s. L

MA. BELEN M. RINGPIS-LIBAN
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

ESPERANZA R. FABON-VICTORINO
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA G. MODESTO-SAN PEDRO
Associate Justice