REPUBLIC OF THE PHILIPPINES
***COURT OF TAX APPEALS***
QUEZON CITY

***En Banc***

| | |
|---|---|
| **COMMISSIONER OF INTERNAL REVENUE,** Petitioner, | **CTA EB CASE NO. 977** (CTA Case No. 7074) |
| | *Present*: |
| - versus - | **DEL ROSARIO,** *P.J.,* **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS,** *and* **RINGPIS-LIBAN,** *JJ.* |
| **FSM CINEMAS, INC.,** Respondent. | Promulgated: NOV 13 2014 |

x- - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - 1:30 p.m. -x

# RESOLUTION

***DEL ROSARIO, P.J.:***

This resolves petitioner's **"MOTION FOR RECONSIDERATION"** posted on August 22, 2014 with respondent's **"OPPOSITION"** filed on September 8, 2014.

In the subject Motion for Reconsideration, petitioner prays that the Court *En Banc* reconsider its Decision promulgated on July 22, 2014, the dispositive portion of which reads:

> **WHEREFORE**, in light of the foregoing principles, the *Petition for Review* filed by the Commissioner of Internal Revenue is hereby **DENIED** for lack of merit. Accordingly, the Decision dated September 26, 2012 and the Resolution dated December 11, 2012 rendered by the former Third Division of this Court in CTA Case No. 7074, entitled *FSM*

*Cinemas Inc., vs. Commissioner of Internal Revenue* are hereby **AFFIRMED.**

Citing the case of *Aznar vs. Court of Tax Appeals,* [1] petitioner maintains that the Monthly Remittance Returns of Income Taxes Withheld for the year 1999 filed by respondent are false returns since respondent failed to indicate therein certain income payments (i.e., payments to projectionist, electrician/plumber, film rental, cashiering labor and rental) on which withholding taxes are due. As such, petitioner insists that the applicable period to assess respondent for deficiency expanded withholding tax is ten (10) years from discovery pursuant to Section 222 of the National Internal Revenue Code of 1997 (1997 NIRC), as amended.

Respondent, on the other hand, counters that petitioner could not raise for the first time the issue on the alleged falsity of respondent's withholding tax returns in her Motion for Reconsideration as the same was not raised in her Petition for Review, without violating Section 15, Rule 44 of the 1997 Rules of Civil Procedure.

Upon perusal of the records of this case, the Court *En Banc* notes that the issue on the falsity of respondent's withholding tax returns was only raised for the first time in the present Motion for Reconsideration. Petitioner never alleged this issue nor submitted any evidence to establish the falsity of respondent's withholding tax returns.

Basic is the rule in evidence that the burden of proof lies on the party who makes the allegations— *ei incumbit probatio, qui dicit, non qui negat; cum per rerum naturam factum negantis probatio nulla sit.* [2] "Bare allegations, unsubstantiated by evidence, are not equivalent to proof under our Rules." [3] Petitioner's allegation as to the falsity of respondent's withholding tax returns involves a question of fact, and the burden rests upon petitioner to prove that respondent intentionally filed false withholding tax returns.

After a thorough review of the records of the case, there is nothing on record which proves petitioner's allegation that respondent's withholding tax returns are false. In truth, a perusal of respondent's withholding tax returns would even belie petitioner's claim as they clearly show that respondent indicated therein the required ATC Codes for income payments on which withholding taxes are due. As such, there is no basis to apply the ten-year

---

[1] G.R. No. L-20569, August 23, 1974.
[2] Acabal vs. Acabal, G.R. No. 148376, March 31, 2005.
[3] Philippine National Bank v. CA, 266 SCRA 136, January 6, 1997.

prescriptive period to assess respondent for deficiency expanded withholding tax for the year 1999.

In view of the foregoing, the Court *En Banc* finds no justifiable reason to alter or modify the assailed Decision.

**WHEREFORE**, premises considered, petitioner Commissioner of Internal Revenue's **"MOTION FOR RECONSIDERATION"** posted on August 22, 2014 is hereby **DENIED** for lack of merit.

**SO ORDERED.**

**ROMAN G. DEL ROSARIO**
Presiding Justice

Juanito C. Castañeda, Jr.
**JUANITO C. CASTAÑEDA, JR.**
Associate Justice

**LOVELL R. BAUTISTA**
Associate Justice

(On Leave)
**ERLINDA P. UY**
Associate Justice

**CAESAR A. CASANOVA**
Associate Justice

(On Leave)
**ESPERANZA R. FABON-VICTORINO**
Associate Justice

Cielito N. Mindaro-Grulla
**CIELITO N. MINDARO-GRULLA**
Associate Justice

**AMELIA R. COTANGCO-MANALASTAS**
Associate Justice

Ma. Belen
**MA. BELEN M. RINGPIS-LIBAN**
Associate Justice