REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

TELSTAR MANUFACTURING CORPORATION,
Petitioner,

CTA Case No. 8900

Members:

CASTAÑEDA, JR., *Chairperson,*
CASANOVA, and
MANAHAN, *JJ.*

- versus –

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
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RESOLUTION

CASTAÑEDA, JR., ***J.:***

Before this Court is the *Motion for Partial Reconsideration (Re: Resolution promulgated 8 February 2018)*[1] filed by the respondent Commissioner of Internal Revenue on March 6, 2018 with petitioner Telstar Manufacturing Corporation's *Comment/Opposition (To Respondent's Motion for Partial Reconsideration dated March 6, 2018)*[2] filed on April 2, 2018.

Respondent assails the Resolution dated February 8, 2018,[3] (the "Assailed Resolution") of this Court partly granting petitioner's Petition for Review. The dispositive portion of the Assailed Resolution reads:

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[1] Division Docket Vol. VI, pp. 2331-2337.
[2] *Id.*, pp. 2341-2348.
[3] *Id.*, pp. 2306-2326.

"**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 ₱7,455,067.03, inclusive of the 25% surcharge imposed under Section 248(A)(3) of the 1997 NIRC, detailed as follows:

Tax Type	Basic Deficiency	Surcharge	Total
Income tax	₱ 2,804,113.22	₱ 701,028.30	₱ 3,505,141.52
Value-added tax	3,127,208.39	781,802.10	3,909,010.49
WT-Expanded	32,732.01	8,183.00	40,915.01
TOTAL	**₱ 5,964,053.62**	**₱1,491,013.41**	**₱ 7,455,067.03**

In addition, Petitioner is **ORDERED** to pay:

(a) Deficiency interest at the rate of 20% per annum on the basic deficiency income tax, value-added tax and expanded withholding tax in the amounts of ₱2,804,113.22, ₱3,127,208.39 and ₱32,732.01, respectively, computed from April 15, 2010, January 25, 2010 and January 15, 2010, respectively, until full payment thereof pursuant to Section 249(B) of the 1997 NIRC; and

(b) Delinquency interest at the rate of 20% per annum on the total amount of ₱7,455,067.03, representing the sum of the basic deficiency income tax, value-added tax and expanded withholding tax in the aggregate amount of ₱5,964,053.62 and 25% surcharges of ₱1,491,013.41, and on the deficiency interest which have accrued as aforestated in (a), computed from August 29, 2014 until full payment thereof pursuant to Section 249(C) of the 1997 NIRC.'

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

SO ORDERED."

Petitioner moves for partial reconsideration of the Assailed Resolution based on the following grounds,[4] to wit:

1. The Honorable Court erred when it cancelled the deficiency income tax and value-added tax (VAT) assessments arising from discrepancy on sales.

2. The Honorable Court erred when it cancelled the deficiency income tax on the disallowed 2008 creditable withholding tax (CWT) on the sole ground that this only came out in respondent's FDDA.

In its *Comment/Opposition (To Respondent's Motion for Partial Reconsideration dated March 6, 2018)* petitioner prayed of this Court to deny respondent's *Motion for Partial Reconsideration* based on the following procedural and substantive grounds:

1. Respondent's *Motion for Partial Reconsideration* was filed out of time. Respondent failed to file his Motion for Partial Reconsideration within fifteen (15) days from receipt of this Court's Decision and thus, the said Decision has already become final and executory, as to respondent.

2. The filing of respondent's *Motion for Partial Reconsideration* violated the three-day notice rule under Rule 15 of the Rules of Court. Petitioner claims that it received respondent's *Motion for Partial Reconsideration* the same day it was supposedly set for hearing, *i.e.*, March 15, 2018. Thus, the same should be denied.

3. As regards respondent's claim that petitioner failed to refute respondent's findings that petitioner overstated its sales to Philusa Corporation by ₱230,574.03, thus making petitioner liable for deficiency income tax and value-added tax, petitioner contends that it has no merit. Petitioner asserts that, as correctly found by this Court, the books of accounts and *gc*

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[4] *Id.*, pp. 2331-2332.

financial records submitted in evidence were able to account for the discrepancy of ₱230,574.03.

4. With respect to the respondent's argument that the FLD already included the assessment for deficiency income tax on disallowed 2008 CWT of ₱17,777.44, petitioner counters that respondent, in quoting the Details of Discrepancy under the FLD and the FDDA, respondent actually affirms the point that there was no assessment for disallowed CWT under the FLD.

This Court shall now resolve respondent's *Motion for Partial Reconsideration*.

Regarding the alleged procedural defects raised by petitioner, this Court finds the same to be untenable.

Contrary to petitioner's assertion, respondent's *Motion for Partial Reconsideration* is not filed out of time. The said Motion seeks partial reconsideration, not of the Decision rendered by this Court on August 18, 2017, but of this Court's Resolution dated February 8, 2018 in which this Court partially granted petitioner's *Motion for Partial Reconsideration*. Under Section 1, Rule 15 of the Revised Rules of the Court of Tax Appeals (RRCTA), any aggrieved party may seek reconsideration or new trial of any decision, resolution or order of the Court by filing a motion for reconsideration or new trial within fifteen days from the date of receipt of notice of the decision, resolution or order of the Court in question. Given that respondent received this Court's Resolution dated February 8, 2018 on February 19, 2018, he had until March 6, 2018 within which to file a motion for reconsideration. Accordingly, the filing of respondent's *Motion for Partial Reconsideration* on March 6, 2018 is well within the reglementary period.

Neither can this Court subscribe to petitioner's view that respondent's *Motion for Partial Reconsideration* should be denied for violating the three-day notice rule provided under Rule 15 of the Rules of Court. Suffice it to say that this procedural lapse on the part of respondent is deemed cured because petitioner was given sufficient opportunity to oppose the motion. This is in line with the pronouncement of the Supreme Court in *Aneco Realty and Development Corporation v. Landex Development Corporation*,[5] which held that:

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[5] G.R. No. 165952, July 28, 2008, 560 SCRA 182, 194.

> "To be sure, the requirement of a notice of hearing in every contested motion is part of due process of law. The notice alerts the opposing party of a pending motion in court and gives him an opportunity to oppose it. What the rule forbids is not the mere absence of a notice of hearing in a contested motion but the unfair surprise caused by the lack of notice. **It is the dire consequences which flow from the procedural error which is proscribed. If the opposing party is given a sufficient opportunity to oppose a defective motion, the procedural lapse is deemed cured and the intent of the rule is substantially complied**." *(Emphasis supplied)*

In the above-cited case, the defect of the motion was absence of any notice of hearing yet the Supreme Court opted for the liberal construction of the procedural rules. With more reason that the alleged violation of the three-day notice rule in the present case should be deemed cured by the grant of opportunity to petitioner to comment on respondent's *Motion for Partial Reconsideration*.

In the Resolution dated March 13, 2018,[6] petitioner was ordered to comment on respondent's *Motion for Partial Reconsideration* within ten (10) days from notice. Petitioner received a copy thereof on March 20, 2018 and filed its *Comment/Opposition (To Respondent's Motion for Partial Reconsideration dated March 6, 2018)* on April 2, 2018.[7] Clearly, the procedural lapse was deemed cured and the intent of the rule was substantially complied with the filing of the foregoing *Comment/Opposition*.

With respect to the substantive issues raised by respondent, a careful evaluation thereof shows that the same had already been passed upon and sufficiently explained by this Court in the Assailed Resolution. As correctly pointed out by petitioner, this Court explained in the Assailed Resolution as follows:

> "As previously found by this Court, the amounts used in the computation of the discrepancy of ₱230,574.03 were lifted from petitioner's own books of accounts, specifically its sales ledger, and its Summary

[6] Division Docket Vol. VI, p. 2340.
[7] *Id.*, p. 2341.

List of Sales. Petitioner attributed the difference to the credit memoranda issued to Philusa, thus:

Exhibit	CM No.	Date	Issued to	Amount
P-17-A	0409	7/29/2009	Philusa Corporation	₱ 188,181.19
P-17-B	0414	7/31/2009	Philusa Corporation	43,464.29
TOTAL				**₱231,645.48**

The Court was not convinced because the amount ₱1,071.45 (₱231,645.48 less ₱230,574.03) is still unaccounted for.

In its *Motion for Partial Reconsideration*, petitioner alleged that it has declared all of its sales indicated in the ledger for income tax purposes. Upon examination of petitioner's annual Income Tax Return (ITR) for the taxable year 2009, gross sales declared amounted to ₱731,143,681.00, which corresponds to the gross sales reported in its audited financial statements for the same year.

However, the notes to the financial statements disclose that net sales for the year 2009 amounted to ₱702,247,009.00. When this amount is compared to the amount recorded in petitioner's sales ledger, the resulting difference is ₱231,645.74. The same can be attributed to the credit memoranda issued to Philusa, as shown hereafter:

Sales per ledger	₱ 702,478,654.74
Net sales per audited financial statements, Note 17	702,247,009.00
Difference	₱ 231,645.74
Less: Credit Memo issued to Philusa	231,645.48
Discrepancy	**₱ 0.26***

* *rounding difference*

Consequently, the deficiency income tax and value-added tax (VAT) assessments arising from the said discrepancy should be cancelled." *(Citations omitted)*

This Court also stands by its ruling in the Assailed Resolution that the disallowance of creditable withholding tax amounting to

₱17,777.44 only came out in respondent's FDDA and the FDDA did not provide a breakdown of the disallowed CWT. Thus, the said item of assessment must be declared void pursuant to the Supreme Court's ruling in *Commissioner of Internal Revenue v. Liquigaz Philippines Corporation and Liquigaz Philippines Corporation v. Commissioner of Internal Revenue.*[8]

In sum, the respondent failed to raise any new or substantial matter let alone any compelling reason that warrants the modification much less reversal of this Court's ruling in the Assailed Resolution.

WHEREFORE, respondent's *Motion for Partial Reconsideration* is **DENIED** for lack of merit.

SO ORDERED.

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

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

[8] G.R. Nos. 215534 & 215557, April 18, 2016, 790 SCRA 79, 93-97.