REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

En Banc

PNOC DEVELOPMENT AND MANAGEMENT CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 1486
(CTA Case No. 8649)

Present:

DEL ROSARIO, *PJ,*
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, *and*
MANAHAN, *JJ.*

Promulgated:

JAN 24 2019 10:44am

X---X

RESOLUTION

RINGPIS-LIBAN, *J.*:

Before the Court is the **Motion for Reconsideration** filed by petitioner through registered mail on March 23, 2018 which the Court received on April 3, 2018, without respondent's Comment which he failed to file despite due notice.

Petitioner's motion assails the Decision promulgated on February 19, 2018 (assailed Decision) which denied the Petition for Review for lack of merit. The dispositive portion thereof states:

> "**WHEREFORE,** the Petition for Review is **DENIED** for lack of merit. The Assailed Decision is **MODIFIED** to read as follows:

'**WHEREFORE**, all the foregoing considered, the instant Petition for Review is **PARTIALLY GRANTED**. The assessments issued by respondent against petitioner for taxable year 2007 covering deficiency EWT, WTC, income tax, VAT, and final withholding VAT are **AFFIRMED** with some modifications. Accordingly, petitioner is **ORDERED TO PAY** the amount of **EIGHTY-ONE MILLION FIVE HUNDRED EIGHT THOUSAND FIVE HUNDRED SIXTY-NINE PESOS AND TWELVE CENTAVOS (₱81,508,569.12)**, representing basic deficiency EWT, WTC, income tax, VAT, and final withholding VAT, inclusive of the twenty-five percent (25%) surcharge imposed under Section 248(A)(3) of the NIRC of 1997, computed as follows:

Deficiency Tax	Basic Tax	25% Surcharge	Total
EWT	₱ 310,817.69	₱ 77,704.42	₱ 388,522.11
WTC	941,394.73	235,348.68	1,176,743.41
Income Tax	4,522,197.00	1,130,549.25	5,652,746.25
VAT	58,263,714.65	14,565,928.66	72,829,643.31
Final Withholding VAT	1,168,731.23	292,182.81	1,460,914.04
Total	**₱65,206,855.30**	**₱16,301,713.82**	**₱81,508,569.12**

In addition, petitioner is **ORDERED TO PAY**:

(a) Deficiency interest at the rate of twenty percent (20%) *per annum* on the basic deficiency income tax, **EWT, WTC, VAT, and Final Withholding VAT** computed from April 15, 2008 until full payment thereof, pursuant to Section 249(8) of the NIRC of 1997;

(b) Delinquency interest at the rate of 20% *per annum* on the total amount of ₱81,508,569.12, and on the 20% deficiency interest which has accrued as stated in subparagraph (a) hereof, computed from October 1, 2012 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997.

SO ORDERED."

In its motion for reconsideration, petitioner contends that the Court *en banc* erred: 1) in upholding the assessment of the CIR as the BIR Ruling NO. [DA-(C-130) 413-08] involving the Sta. Elena Properties, Inc. (SEPI) might have involved the same issue, but differs in the manner of disposal of the property; 2) in finding that PDMC was accorded due process as there were several submissions of PDMC to the CIR that remained unacted upon; and 3) in holding that PDMC's proposal to include its payment in support of its Application for Compromise Agreement in the computation of its remaining tax liability as untenable and premature.

PDMC argues that the Site 2A Property must be considered as a capital asset and not an ordinary asset as held by the Court because the facts in the case at bar differ from the SEPI case cited by the CIR as regards the manner of disposal. The PDMC properties sold to MTS were not in the course of trade or business as the sale was involuntary, pursued neither by reason of any commercial or economic activity nor in the exercise of a corporate purpose as a real estate developer, but in obeisance to a Government plan to privatize all of PNOC's subsidiaries. As PDMC started out as an oil refinery, then its assets, including the lands on hand, should be classified as its capital assets.

PDMC also begs to differ with the conclusion of the Court that there was no "absolute absence" of notice, stating the following:

a) PDMC submitted documents consisting of vouchers to support its claim;

b) The box of vouchers was never opened, hence PDMC was not given the opportunity to explain its contents;

c) Since it was not opened and considered, the documents supporting PDMC's claim were never examined nor considered in the issuance of the FAN;

d) PDMC's request for an extension of time to send a representative in the informal conference, citing justifiable reason was unreasonably denied;

e) The Revenue Examiner assigned never examined the box of documents and even admitted that he had been on leave of absence last December 2011; and

f) There is no truth that PDMC failed to act within seven months, considering that the latest Notice of Informal Conference was dated June 29, 2012 or two months after the August 31, 2012 Assessment Notice was issued.

Finally, PDMC argues that its Application for Compromise Agreement should have been considered by the Court in computing its tax liability despite the fact that the Court ruled that PDMC had ample time to offer it in evidence and, yet, failed to do so.

After considering the arguments of PDMC, it is apparent to this Court that, indeed, the arguments raised by PDMC in its Motion for Reconsideration are not new. They have been previously discussed and considered in the Decision dated January 22, 2016 and the Resolution dated June 27, 2016 of the First Division in CTA Case No. 8323. More importantly, they have also been exhaustively studied and considered by this Court prior to rendering our Decision dated February 19, 2018 and find that they still fail to persuade.

Considering that no new matters have been raised, PDMC's "Motion for Reconsideration" is **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

I reiterate my Dissenting Opinion
ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

I maintain my position as indicated in the signature page of the assailed Decision.
ESPERANZA R. FABON-VICTORINO
Associate Justice

With due respect, I join PJ's Dissenting Opinion
CIELITO N. MINDARO-GRULLA
Associate Justice

With due respect, I join PJ's Dissenting Opinion
CATHERINE T. MANAHAN
Associate Justice