REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA *EB* NO. 1542** (CTA Case No. 8668)
-versus-	Present: **DEL ROSARIO,** *P.J.,* **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN,** *and* **MANAHAN,** *JJ.*
VICTORIAS FOODS CORPORATION, *Respondent.*	Promulgated: MAY 31 2018 11:46 a.m.

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RESOLUTION

BAUTISTA, J.:

For resolution are:

1. petitioner's Motion for Reconsideration Re: Decision dated February 19, 2018 ("Motion for Reconsideration") filed on March 23, 2018; with respondent's Comment/Opposition (to the Motion for Reconsideration) ("Comment") submitted on May 4, 2018; and

2. respondent's Motion for Extension filed on April 13, 2018.

On February 19, 2018, the Court *En Banc* promulgated a Decision, disposing of the case as follows:

WHEREFORE, the instant Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the Court in Division's Decision dated May 20, 2016 and Resolution dated October 17, 2016 are hereby **AFFIRMED**.

SO ORDERED.[1]

In the assailed Decision, the Court *En Banc* found that the Second Division of the Court of Tax Appeals ("Court in Division") did not err in holding that the period to assess income tax has not yet prescribed; but value-added tax ("VAT") for the first to third quarters, and expanded withholding tax ("EWT") from September 2008 to May 2009 have prescribed; and that there is no error in the Court in Division's findings relating to respondent's taxes due.

In petitioner's Motion for Reconsideration filed on March 23, 2018, he avers that the deficiency income tax, VAT, and EWT were assessed within the three (3)-year period prescribed by law; and that the liability of the withholding agent is a penalty for failure to withhold and remit funds to the government, thus the period of limitation provided in *Section 203 of the 1997 NIRC* finds no application since said provision prescribes a limitation only as to the assessment of taxes, not penalties; and that the compromise penalties were imposed in accordance with *Revenue Memorandum Order ("RMO") No. 19-2007* and was affirmed in the case of *Commissioner of Internal Revenue v. Filinvest Development Corporation.*

On April 13, 2018, respondent filed its Motion for Extension. Acting thereon, the same is **GRANTED**. Accordingly, respondent is given a final and non-extendible period to file its Opposition until May 4, 2018.

On April 19, 2018, the Court *En Banc* ordered respondent to file its comment.

Consequently, respondent's Comment was timely filed with the Court *En Banc* on May 4, 2018. Respondent claims that the issues raised by petitioner were already resolved in the May 20, 2016 Decision and October 17, 2016 Resolution of the Court in Division; that the same is also the subject of the Court *En Banc*'s February 19, 2018 Decision; that the said arguments were the same ones raised in petitioner's Answer,

[1] Emphases retained.

Motion for Partial Reconsideration and Petition for Review filed with the Court *En Banc*; that no new issues or arguments were raised, nor were there new evidence of facts presented to merit a different appreciation of its position; and that petitioner failed to prove any reversible error that would merit the reconsideration of the Court *En Banc*'s Decision. Respondent further states that being merely reiterations of the same issues and arguments, the Motion for Reconsideration is *pro forma*.

In view of the foregoing antecedents, the Court *En Banc* shall now rule on petitioner's Motion for Reconsideration, and finds no merit therein.

Petitioner's grounds were already exhaustively discussed in the Court *En Banc*'s Decision. Below are the arguments of petitioner, as summarized in the assailed Decision:

> ***Petitioner's Arguments***
>
> Petitioner avers that the deficiency tax assessments were assessed within the three (3)-year period prescribed by law. As to income tax, petitioner insists that the Court in Division erred in deleting or reducing the items of overstatement of net operating loss carry-over ("NOLCO") for 2008, disallowed purchases, disallowed expenses due to non-withholding, overstatement of salaries and wages, and unreported purchases of food ingredients. With regard to VAT, it claims that the zero-rated sales were not supported by sales invoices described as zero-rated sales, and that he correctly disallowed the presumptive income tax for failure to support purchases of primary agricultural products used as inputs for production, in violation of Revenue Regulations ("RR") No. 16-2005. Moving on to EWT, petitioner insists that respondent failed to withhold income payments, as one of the top 20,000 corporations. Lastly, as to compromise penalties, petitioner avers that respondent should be made liable therefor for failure to pay income tax and VAT, and failure to withhold and remit EWT on income payments.[2]

As to petitioner's claim that EWT are not taxes but penalties, hence, not covered by the period of limitation, the Court begs to differ

[2] Emphases retained; underscoring ours.

and finds the need to refer to the October 17, 2016 Resolution of the Court in Division addressing this argument, to wit:

> To reiterate, the amounts required to be withheld from VFC's payments to its suppliers are not penalties. Based on RR [No.] 2-98, these are income taxes under the expanded withholding tax system.
>
> Since the EWT assessed on the petitioner are considered income taxes, they are deemed national internal revenue taxes under Section 21 of the NIRC:
>
> xxx xxx xxx
>
> As internal revenue taxes, their assessments are subject to the three-year prescription under Section 203 of the 1997 NIRC.

The Court *En Banc* finds no additional arguments in petitioner's Motion for Reconsideration that would merit a reversal of the February 19, 2018 Decision.

WHEREFORE, premises considered, the petitioner's Motion for Reconsideration Re: Decision dated February 19, 2018 is hereby **DENIED** for lack of merit.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

(I maintain my Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

(I join P.J.'s Dissenting Opinion)
CIELITO N. MINDARO-GRULLA
Associate Justice

(On Leave)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(I join P.J's Dissenting Opinion)
CATHERINE T. MANAHAN
Associate Justice