REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PHILIPPINE PLAZA HOLDINGS, INC., Petitioner, - versus - **HON. KIM S. JACINTO-HENARES, COMMISSIONER OF INTERNAL REVENUE,** Respondent.	**CTA CASE NO. 8609** Members: **CASTAÑEDA, JR.,** *Chairperson,* *and* **CASANOVA,** *JJ.* Promulgated: NOV 2 3 2016 4:11 pm

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RESOLUTION

CASANOVA, J.:

For resolution of this Court is respondent's Motion for Reconsideration Re: Amended Decision dated August 12, 2016[1], filed on September 7, 2016, sans petitioner's Comment per Records Verification dated October 12, 2016, praying that the Amended Decision[2] dated August 12, 2016, be recalled, and a new one be rendered dismissing the Amended Petition for Review for lack of jurisdiction.

The dispositive portion of the assailed Amended Decision reads:

> "In view of the foregoing, **petitioner's Motion for Reconsideration (Re: Honorable Court's Decision dated 6 April 2016)** is hereby **GRANTED**. Accordingly, the dispositive portion of the Decision dated April 6, 2016 is hereby modified to read as follows:

[1] Docket (Vol. II), pp. 710-719.
[2] Ibid, pp. 696-709.

WHEREFORE, premises considered, the Amended Petition for Review, filed by Philippine Plaza Holdings, Inc., claiming for a refund of surcharge collected and paid in the amount of Eight Hundred Seven Thousand Nine Hundred Fifty One Pesos and 22/100 (₱807,951.22) is hereby **GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND** in favor of petitioner the amount of ₱807,951.22.

SO ORDERED.

SO ORDERED."

In the instant Motion, respondent raised the following issues for the consideration of the Court: that the abatement of surcharges is a purely executive function and cannot in any way be appealed to the Court of Tax Appeals since the said Court can only take cognizance of such matters that are clearly within its jurisdiction, pursuant to Section 7 of Republic Act No. 9282[3] and Section 3(a) (1), Rule 4 of the Revised Rules of the Court of Tax Appeals[4]; and, that the circumstances surrounding petitioner's failure to file its second quarterly Value-Added Tax Return within the required period are not one of those mentioned in Section 2 of Revenue Regulations No. 13-2001[5].

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[3] Section 7. Section 7 of the same Act is hereby amended to read as follows:

"Sec. 7. Jurisdiction. - The CTA shall exercise:

a. Exclusive appellate jurisdiction to review by appeal, as herein provided:

'1. Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;"

[4] SEC. 3. *Cases within the jurisdiction of the Court in Divisions.* – The Court in Divisions shall exercise:

(a) Exclusive original or appellate jurisdiction to review by appeal the following:

(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;"

[5] SECTION 2. Instances When the Penalties and/or Interest Imposed on the Taxpayer May Be Abated or Cancelled on the Ground That the Imposition Thereof is Unjust or Excessive. —

2.1 When the filing of the return/payment of the tax is made at the wrong venue;

2.2 When taxpayer's mistake in payment of his tax is due to erroneous written official advice of a revenue officer;

2.3 When taxpayer fails to file the return and pay the tax on time due to substantial losses from prolonged labor dispute, force majeure, legitimate business reverses such as in the following instances, provided, however, that the abatement shall only cover the surcharge and the compromise penalty and not the interest imposed under Section 249 of the Code:

2.3.1 Labor strike for more than six (6) months which has caused the temporary shutdown of business;

2.3.2 Public turmoil;

2.3.3 Natural calamity such as lightning, earthquake, storm, flood and the like;

2.3.4 Armed conflicts such as war or insurgency;

2.3.5 Substantial losses sustained due to fire, robbery, theft, embezzlement;

2.3.6 Continuous heavy losses incurred by the taxpayer for the last two (2) years;

2 3.7 Liquidity problem of the taxpayer for the last three (3) years; or

The Court is not impressed with respondent's Motion.

A cursory reading of the arguments presented by respondent readily reveals that no new matters or issues have been raised and that they deal with the very same issues which have been thoroughly passed upon at length in our Decision[6] dated April 6, 2016 and assailed Amended Decision dated August 12, 2016. To discuss them anew is superfluity.

In view thereof, this Court finds no reversible error in assailed Amended Decision to warrant reconsideration thereof.

WHEREFORE, the instant Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

I CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

2.3.8 Such other instances which the Commissioner may deem analogous to the enumeration above.
2.4 When the assessment is brought about or the result of taxpayer's non-compliance with the law due to a difficult interpretation of said law;
2.5 When taxpayer fails to file the return and pay the correct tax on time due to circumstances beyond his control, provided, however, that abatement shall cover only the surcharge and the compromise penalty and not the interest;
2.6 Late payment of the tax under meritorious circumstances such as those provided hereunder:
2.6.1 One day late filing and remittance due to failure to beat bank cut-off time:
2.6.2 Use of wrong tax form but correct amount of tax was remitted;
2.6.3 Filing an amended return under meritorious circumstances, provided, however, that abatement shall cover only the penalties and not the interest;
2.6.4 Surcharge erroneously imposed;
2.6.5 Late filing of return due to unresolved issue on classification/valuation of real property (for capital gains tax cases, etc.);
2.6.6 Offsetting of taxes of the same kind, i.e., overpayment in one quarter/month is offset against underpayment in another quarter/month;
2.6.7 Automatic offsetting of overpayment of one kind of withholding tax against the underpayment in another kind;
2.6.8 Late remittance of withholding tax on compensation of expatriates for services rendered in the Philippines pending the issuance by the Securities and Exchange Commission of the license to the Philippine branch office or subsidiary, provided, however, that the abatement shall only cover the surcharge and the compromise penalty and not the interest;
2.6.9 Wrong use of Tax Credit Certificate (TCC) where Tax Debit Memo (TDM) was not properly applied for; and
2.6.10 Such other instances which the Commissioner may deem analogous to the enumeration above.
2.7 Other cases similar or synonymous thereto.

[6] Docket (Vol. II), pp. 655-677.