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

## SPECIAL SECOND DIVISION

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| **FIRST GLOBAL BYO CORPORATION,** Petitioner, | **CTA CASE NOS. 9172, 9212 and 9242** |
| | Members: |
| - versus - | **CASTAÑEDA, JR.,** *Chairperson,* *and* **MANAHAN,** *JJ.* |
| **HONORABLE KIM HENARES, in her capacity as the Commissioner of the BUREAU OF INTERNAL REVENUE,** Respondent. | Promulgated: OCT 15 2019 9:09 pm |

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## RESOLUTION

**CASTAÑEDA, JR., *J.*:**

For resolution is respondent's **Motion for Reconsideration (On the Decision promulgated on August 6, 2019)**, filed through registered mail on August 22, 2019 and received by the Court on August 29, 2019, with petitioner's **Comment/Opposition (to the Motion for Reconsideration dated 19 August 2019)**, filed on September 27, 2019.

Respondent moves for reconsideration of the Court's Decision (assailed Decision) promulgated on August 6, 2019, the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the instant Petitions for Review are hereby **GRANTED**. Accordingly, the Final Assessment Notices dated February 23, 2015, April 23, 2015, and June 16, 2015 respectively issued for

taxable years 2009, 2010, and 2011 are hereby **CANCELLED** and **SET ASIDE**.

**SO ORDERED**."

Respondent maintains that the ten (10)-year prescriptive period on assessments for the taxable years 2009, 2010 and 2011 should be applied on the following grounds:

(1) the Preliminary Assessment Notice (PAN) and the Final Assessment Notice (FAN) with the attached details of discrepancies included an assessment on deficiency Expanded Withholding Tax (EWT) and Documentary Stamp Tax (DST);

(2) petitioner did not file with the Bureau of Internal Revenue (BIR) the required withholding tax remittance return (BIR Form 1606) and DST Declaration/Return (BIR Form 2000-OT) on its transfer of the subject condominium units;

(3) petitioner's contract to manage and execute the construction of the Fort Palm Spring Condominium constitute a taxable sale, exchange or disposition of real property, hence, subject to EWT and DST assessments;

(4) the recommendation for assessment based on Best Evidence Obtainable justifies the application of the ten (10)-year prescriptive period to assess; and

(5) petitioner has not secured a License to Sell from the Housing and Land Use Regulatory Board (HLURB) for the sale of condominium units.

On the other hand, petitioner counters that the instant motion does not bring new arguments and the issues therein have been thoroughly discussed and duly resolved by the Court in the assailed Decision.

Petitioner further notes that respondent is not alleging that the assessments for 2009, 2010 and 2011 were filed within the three (3)-year assessment period under the National Internal Revenue Code (NIRC). Hence, the undisputed fact is that the said assessments had been made beyond the three (3)-year period to assess. ℊ

The Court finds respondent's Motion for Reconsideration without merit.

After a careful consideration of the grounds raised in respondent's Motion for Reconsideration, the Court finds that the issues and arguments raised therein had already been amply discussed, passed upon and considered by this Court in the Decision sought to be reconsidered.

Contrary to respondent's argument, there was no assessment in the PAN and FAN for deficiency DST for taxable years 2009, 2010 and 2011 while an assessment for deficiency EWT was included only in taxable year 2011 and pertains to petitioner's alleged failure to withhold/remit correct withholding tax due on several income payments (from a comparison of income payments per ledger and per 1601-E). Further, as discussed in the assailed Decision, there was nothing in the PAN and FAN issued against petitioner for taxable years 2009, 2010 and 2011 that indicate the allegation of non-filing of the EWT and DST returns which warrants the application of the ten (10)-year prescriptive period to assess. Moreover, such allegation was only raised during the preliminary hearing on the issue of prescription. Indeed, Section 228 of the NIRC of 1997, as amended, requires that the taxpayer be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void. To assess petitioner for alleged deficiency EWT and DST on the transfer of the subject condominium units within the ten (10)-year prescriptive period due to non-filing of withholding tax remittance return and DST declaration/return which was never alleged in the PANs and FANs would violate petitioner's right to due process as it was not informed of the facts and law from which this assessment was based, which petitioner could have disputed in its protest to the assessments as well as in its petition for review.

Further, considering that the assessments on Income Tax and Value-Added Tax (VAT) are based on unverified Third Party Information, said assessments are therefore based on mere presumptions and not actual facts. Hence, respondent failed to prove by clear and convincing evidence that petitioner committed fraud to justify the application of the ten (10)-year prescriptive period to assess.

Accordingly, since the regular prescriptive period to assess of three (3) years is applicable in these cases, the assessments issued against the petitioner for the taxable years 2009, 2010 and 2011 have already prescribed.

**WHEREFORE**, premises considered, respondent's **Motion for Reconsideration (On the Decision promulgated on August 6, 2019)** is **DENIED** for lack of merit.

**SO ORDERED.**

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

I CONCUR:

Catherine T. Manahan
**CATHERINE T. MANAHAN**
Associate Justice