REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

LEO MARIO CELDRAN,
Respondent.

CTA EB No. 1527
(CTA Case No. 8722)

Present:

Del Rosario, *P.J.*,
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban, and
Manahan, *JJ.*

Promulgated:

AUG 16 2017 3:55 p.m.

x--x

RESOLUTION

CASTAÑEDA, JR., *J.*:

For resolution of the Court *En Banc* is petitioner's Motion for Reconsideration Re: Decision dated 14 March 2017 filed on April 7, 2017, with respondent's Comment (to Petitioner's Motion for Reconsideration dated 7 April 2017) filed through registered mail on May 30, 2017.

In his motion, petitioner reiterated that the real estate transaction entered into by respondent and Star Asset Management ROPOAS, Inc. (SAMRI) is subject to six percent (6%) expanded creditable withholding tax (CWT). Further, petitioner asserts that there is no erroneous payment of expanded CWT by respondent.

On the other hand, respondent asserts that the instant pro-forma motion should be dismissed.

After careful consideration of the merits, the Court *En Banc* rules in favor of respondent.

Petitioner merely rehashed his arguments

The Court *En Banc* observes that petitioner merely copied the substantial portions of the instant motion from his Petition for Review. As such, petitioner failed to present new arguments. To stress, the Court *En Banc* sees no error in finding that SAMRI is not a bank and therefore, the sale of real properties owned or acquired by it is not subject to six percent (6%) CWT. Thus, the Court *En Banc* correctly found that:

> "Based on the foregoing, it was sufficiently proved during the proceedings below that SAMRI is habitually engaged in real estate business as evidenced by the confirmation issued by the HLURB. Further, the Court *En Banc* observes that petitioner attempts to broaden the scope of RR No. 2-98 to entities 'akin to a bank or a financial institution', where the subject provision is limited only to 'banks' defined under the law as 'entities engaged in the lending of funds obtained in the form of deposits'. SAMRI is not engaged in the lending of funds obtained in the form of deposits."

Considering the foregoing, the Court *En Banc* finds no merit to petitioner's arguments.

The Court *En Banc* did not rule that there was erroneous payment of the 30% expanded CWT initially paid by respondent

Petitioner asserts that respondent voluntarily paid the three percent (3%) deficiency expanded CWT and as such, he is estopped from contesting the legality and validity of the collection for deficiency tax. Yet, a careful reading of the assailed Decision reveals that the Court *En Banc* did not pass upon the correctness of respondent's payment of the 3% CWT. *We* therefore quote the relevant portions of the Decision, as follows:

> "Section 15 of the SPV Act of 2002 pertinently provides that the sale of NPAs from an SPV to a third party shall be

exempt from documentary stamp tax (DST) on the transfer of such NPAs, CWT imposed on the transfer of land and/or buildings treated as ordinary assets pursuant to RR No. 2-98, as amended, and Value-Added Tax (VAT) on the transfer of NPAs as may be imposed under Title IV of the National Internal Revenue Code of 1997 or gross receipts tax under Title V of the same Code, whichever is applicable. These incentives and privileges are subject to the conditions set forth under the SPV Act of 2002.

In the instant case, it appears that respondent paid the corresponding DST and VAT. Furthermore, petitioner agreed to pay the 3% CWT under Section 2.57.2 (J) of RR No. 2-98. Considering that no issue was raised as to respondent's liability to pay DST and VAT, the Court *En Banc* **need not discuss the same**. On the other hand, the Court *En Banc* notes that respondent would have been altogether exempt from payment of CWT under Section 15 of the SPV Act of 2002, provided that he can prove that he is entitled thereto under the conditions set forth by law. In other words, he would have been entitled to a refund of the entire 6% CWT paid, and not merely to the 3% rate as prayed for in his Petition before the Court in Division.

However, the fundamental rule is that reliefs granted a litigant are limited to those specifically prayed for in the complaint; other reliefs prayed for may be granted only when related to the specific prayer(s) in the pleadings and supported by the evidence on record. Necessarily, any such relief may be granted only where a cause of action therefor exists, based on the complaint, the pleadings, and the evidence on record.

Here, while respondent's 3% CWT already paid to the BIR is related to his relief prayed for in his Petition before the Court in Division, *i.e.*, **refund of the additional 3% CWT**, the Court *En Banc* is **constrained to limit the Decision to the issues raised by the parties**, considering that the evidence on record failed to meet or to prove the requirements under the SPV Act of 2002."*(Emphasis supplied)*

It should be noted that the Court *En Banc* merely set forth its observations for the complete disposal of the case. It did not rule, however, whether there was erroneous payment on the part of respondent, because the assailed Decision should only be limited to the issues raised by the parties. Therefore, there is no need for petitioner to raise the foregoing issue in the instant motion.

In sum, petitioner failed to raise new or meritorious arguments which can justify the reversal of the assailed Decision. Hence, the denial of the instant motion is in order.

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

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR. A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice