REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

FIRST PHILIPPINE UTILITIES CORPORATION,
Respondent.

CTA EB No. 2500
(CTA Case No. 9431)

Present:

DEL ROSARIO, *PJ,*
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, and
ANGELES, *JJ.*

Promulgated:
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RESOLUTION

DEL ROSARIO, PJ.:

For resolution is petitioner's "**Motion for Reconsideration (on Decision dated May 24, 2023)**" posted *via* registered mail on June 9, 2023, with respondent's "**Comment/Opposition (to the Motion for Reconsideration dated June 9, 2023)**" filed *via* electronic mail on July 24, 2023.

In said Motion for Reconsideration, petitioner prays that: *(i)* the Decision dated September 29, 2020 and the Resolution dated March 22, 2021 of the Court in Division, and the Decision dated May 24, 2023 of the Court *En Banc* be reversed; and, *(ii)* the Petition for Review filed by respondent before the Court in Division be dismissed for lack of merit.

The dispositive portion of the assailed Decision reads:

> "**WHEREFORE**, in light of the foregoing, the Petition for Review posted on July 26, 2021 by the Commissioner of Internal Revenue is **DENIED** for lack of merit. The Decision dated September 29, 2020 and Resolution dated March 22, 2021 of the Court in Division in CTA Case No. 9431 are **AFFIRMED**.
>
> The Commissioner of Internal Revenue, his representatives, agents or any person acting on his behalf are hereby **ENJOINED** from enforcing the collection of the deficiency income tax, value-added tax, documentary stamp tax and compromise penalty assessments issued against First Philippine Utilities Corporation[.] *sic* arising from the Formal Letter of Demand and Final Assessment Notice dated December 22, 2015 in the aggregate amount of ₱100,884,707.73, inclusive of interests and penalties, for taxable year ended December 31, 2012. The order of suspension is **IMMEDIATELY EXECUTORY** consistent with Section 4, Rule 39 of the Rules of Court.
>
> **SO ORDERED.**"

In the present Motion, petitioner asserts the following:

1. The findings of the Bureau of Internal Revenue (BIR) on the deficiency income tax must be upheld. Specifically, the interest income not subjected to income tax in the amount of ₱179,288,707.67 must be added back to the taxable income of respondent as it failed to prove that the said interest income was subjected to final withholding tax;

2. Respondent's income tax return (ITR) shows gain instead of a net loss; thus, respondent's net operating loss carry over (NOLCO) in the amount of ₱165,722,261.00, which was already carried over to succeeding periods and from which respondent derived the corresponding tax benefit, must be disallowed and added back to respondent's taxable income for the taxable year 2012;

3. Respondent's excess minimum corporate income tax (MCIT) and tax credit carried forward to succeeding periods must also be disallowed as credits against respondent's income tax due as the same were carried over and credited against the estimated quarterly income tax liabilities for the taxable quarter of the succeeding taxable years;

4. Respondent's service income in the amount of ₱6,927,843.75, which was not fully declared in respondent's ITR for taxable year 2012, is subject to 12% value-added tax

(VAT) pursuant to Section 108 of the National Internal Revenue Code of 1997, as amended; and,

5. Tax assessments are presumed to be correct and there is a presumption of regularity in the performance of the Revenue Officer's investigation.

Respondent counter-argues the following:

1. The interest income from money market placements were correctly held by the Court *En Banc* as not subject to income tax;

2. It validly claimed NOLCO as deduction from gross income;

3. The MCIT and excess tax credits, if unused, could be carried over to the next taxable year, and disallowance of such is not proper in the current year; and,

4. It has no deficiency VAT on any alleged service income.

THE COURT'S RULING

After careful evaluation of the parties' respective arguments, the Court resolves to deny petitioner's "Motion for Reconsideration".

A motion for reconsideration shall point out specifically the findings or conclusions of the judgment or final order which are not supported by the evidence or which are contrary to law, making express reference to the testimonial or documentary evidence or to the provisions of law alleged to be contrary to such findings and conclusions.[1] It is thus incumbent upon the movant to convince the Court that certain findings and conclusions in the assailed decision are not supported by evidence or are contrary to law.

The Court notes that no new substantial arguments have been adduced to warrant the reconsideration sought. Petitioner merely raised matters which the Court has thoroughly passed upon in the assailed Decision. Accordingly, the Court finds no cogent reason to reverse or modify the assailed Decision.

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[1] Section 2, Rule 37 of the Rules of Court.

WHEREFORE, in light of the foregoing, petitioner's "**Motion for Reconsideration (on Decision dated May 24, 2023)**" is hereby **DENIED** for lack of merit.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
Associate Justice