REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

ONG BENG GUI, (operating under the name and style "MUCH PROSPERITY TRADING"),
Respondent.

CTA EB NO. 1248
(CTA CASE NO. 8410)

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

Promulgated:

JAN 22 2018 4:08 p.m.

x---x

RESOLUTION

RINGPIS-LIBAN, *J.*:

Submitted for resolution is petitioner's "Motion for Reconsideration" filed on June 23, 2017.

Petitioner seeks reconsideration of the Court *En Banc's* Decision, the dispositive portion of which reads as follows:

> "**WHEREFORE**, premises considered, the Petition for Review is **DENIED for lack of merit**. Accordingly, the Decision

dated September 8, 2014 and Resolution dated October 28, 2014 are hereby affirmed *in toto.*

SO ORDERED.”

The “Motion for Reconsideration” is anchored on the grounds that the Court *En Banc* erred in ruling that the Second Division fully and exhaustively resolved the issues in the Petition for Review, and in holding that respondent is entitled to the reduced amount of P174,460.01 representing excess payment of Withholding Tax on Compensation for the taxable month of December 2009.

In the Resolution dated July 19, 2017, the Court *En Banc* required respondent to file his Comment on the “Motion for Reconsideration.” However, to date respondent has not filed his Comment.

After consideration, the Court *En Banc* resolves to deny the instant motion. The Court *En Banc* reviewed the grounds relied upon by petitioner in support of his “Motion for Reconsideration” but finds no cogent reason to grant the same. The issues raised and the arguments contended in the instant “Motion for Reconsideration” are the same issues and arguments presented in the Petition for Review and Memorandum which have already been passed upon, discussed and judiciously resolved.

The Court *En Banc* reiterates its ruling that the evidence presented by respondent Ong Beng Gui evidently shows that the employees declared to the Department of Labor and Employment (DOLE) who received the separation pay, are the same employees referred to in the closed private warehouse of the respondent. All the evidence presented show that the Withholding Tax on Compensation (WTC) remitted to the government pertains to the terminated employees of respondent.

In the Assailed Decision, the Court *En Banc* ruled in this wise:

> “Records show that on December 14, 2009, petitioner resolved to retire his business and applied to terminate thirty seven (37) employees with the Department of Labor and Employment (DOLE) effective January 16, 2010 as evidenced by his Cancellation of TIN for Permanent Closure of a Branch filed with the BIR on January 5, 2010 as well as the Establishment Employment Report and List of Affected Workers by Displacement/Flexible Work Arrangements/Flexible Work Arrangements filed with the DOLE on December 14, 2009.

Consequently, petitioner paid separation pay, in full, to 31 of his employees in the total amount of P1,167,191.00 as indicated in the notarized statements of waiver and quitclaim entitled "PAGPAPALAYA SA LAHAT NG OBLIGASYON" duly executed and signed by the said employees in the presence of two (2) DOLE Labor Employment Officers.

However, petitioner avers that, while the separation pay was disbursed in full, his accountant erroneously withheld withholding taxes on compensation on separation pay, which he paid in behalf of his employees.

As stated earlier, petitioner filed his BIR Form 1601-C for the month of December 2009 on January 12, 2010 and paid the corresponding WTC in the amount of P320,099.79. In the attached Computation of Withholding Taxes for 2009, the separation pay to each of petitioner's 31 employees totaling P1,167,191.00 was labeled as "Taxable" and was included in the "Net Taxable Income after exemption". Consequently, the total income taxes due on the employees' compensation for the year 2009 amounted to P465,739.57 against which the total taxes withheld for January to November 2009 in the amount of P145,639.78 was deducted resulting to net taxes due for December 2009 in the amount of P320,099.79.

Realizing that the separation pay is exempt from withholding tax, petitioner filed his Amended BIR Form No. 1601-C for the month of December 2009 and paid WTC in the amount of P16,104.82 without deducting his previously remitted tax. Correspondingly, in his Amended Computation of Withholding Taxes for 2009, the separation pay of P1,167,191.00 was labeled as "Non-Taxable" and was included in the Net Taxable Income after exemption". Thus, total income taxes due on the employees' compensation for the year 2009 amounted only to P161,744.60 from which the total taxes withheld for January to November 2009 in the amount of P145,639.78 was deducted resulting to net taxes due for December 2009 in the amount of only P16,104.82.

However, the amount of P161,744.60 taxes withheld and remitted for the year 2009 per the amended Computation of Withholding Taxes for 2009 does not tally with that reflected in petitioner's Annual Information Return of Income Taxes withheld on Compensation and Final Withholding Taxes [BIR Form No. 1602-CF]. While petitioner reported in BIR Form No. 1604-CF the amount of P181,906.05 as total taxes withheld and remitted for the year 2009, which is of higher amount, the same cannot be considered to include the Monthly Remittance returns of Income Taxes Withheld on Compensation for January to November 2009 to ascertain the amounts withheld and remitted for the said months.

As such, petitioner may be entitled to a refund only to the extent of what was paid per his BIR forms No. 1601-C (original and amended) for December 2009 in excess of what was due, as computed below:

WTC remitted per original BIR Form No. 1601-C	P 320,099.79
WTC remitted per amended BIR Form No. 1601-C	16,104.82
Total WTC remitted to the BIR	P 336,204.61
Less: Total WTC due and payable	161,744.60
Overremittance to the BIR	P174,460.01

In fine, this Court finds no cogent reason to deviate from the previous ruling that respondent is entitled to refund but in the reduced amount of P174,460.01 representing excess payment of WTC for taxable month of December 2009.

In *Ferdinand Marcos et al. vs. Hon. Raul Manglapus et al.*[1], the Supreme Court emphasized that in all motions for reconsideration, the burden is upon the movant, petitioner herein, to show that there are compelling reasons to reconsider the decision of the Court. In this case, petitioner did not satisfy this burden.

WHEREFORE, premises considered, the "Motion for Reconsideration" is hereby **DENIED for lack of merit**.

SO ORDERED.

Ma. Belen S

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

[1] *Marcos vs. Manglapuz*, G.R. No. 88211, October 27, 1989.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate 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
Associate Justice

CATHERINE T. MANAHAN
Associate Justice