REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

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COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA EB No. 2538
(CTA Case No. 9600)

- versus -

Present:

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

THE HEIRS OF EMILIO L. GAN,
Respondent.

Promulgated:
MAY 26 2023 2:10 pm

x - x

RESOLUTION

UY, J.:

For resolution is petitioner's ***MOTION FOR RECONSIDERATION*** filed by petitioner Commissioner of Internal Revenue (CIR) via registered mail on March 16, 2023[1] with respondent's ***Opposition (re: Petitioner's Motion for Reconsideration dated 16 March 2023)*** posted on May 10, 2023.[2]

In the said *Motion*, petitioner prays that the Court *En Banc* reconsider the assailed Decision dated February 27, 2023, the dispositive portion of which reads:

[1] EB Docket, pp. 93 to 118.
[2] EB Docket, pp. 125 to 129.

"**WHEREFORE**, in light of the foregoing considerations, the instant Petition for Review is hereby **DENIED** for lack of merit. The Amended Decision dated January 8, 2021 and the Resolution dated September 30, 2021 rendered by the First Division of this Court in CTA Case No. 9600 are hereby **AFFIRMED** and **UPHELD**.

Moreover, petitioner CIR or persons acting on his behalf, are hereby **ENJOINED** from proceeding with the collection of the said deficiency taxes against the respondent.

SO ORDERED."

Petitioner's Motion for Reconsideration:

Petitioner maintains that the Court in Division erred in relaxing the technical rules of procedure when it admitted respondents' Petition for Review in CTA Case No. 9600, despite having been filed beyond the reglementary period.

According to petitioner, the Court in Division cannot relax the rule when it had never acquired lawful jurisdiction over the case.

Petitioner argues that appeal is not a matter of right, but is a mere statutory privilege. As such, it may be availed of only in the manner provided by law and the rules. Thus, a party who seeks to exercise the right to appeal must comply with the requirement of the rules; otherwise, the privilege is lost.

Petitioner reiterates that the strict adherence to the rules of procedure should govern rather than the exception as the belated filing of the Petition for Review in CTA Case No. 9600 was directly caused by the counsel of the heirs, and in turn, unduly prejudiced the interest of the respondent causing further delay in the collection of taxes due to the government given that taxes are the lifeblood of the nation.

Petitioner repleads petitioner's failure to file a valid protest rendered the assessment final, executory and demandable. There being no disputed assessment, the Court in Division has no jurisdiction over the Petition for Review in CTA Case No. 9600.

Allegedly, the Court in Division erred in ruling on an issue that was belatedly raised by respondent. The issue on the absence of a Letter of Authority (LOA) was not raised by the respondent in the administrative level, the alleged defect of the FLDs based on this issue was never part of the records of the instant case nor were the same has been considered by petitioner in its exercise of quasi-judicial function in deciding the disputed tax assessment. Respondent should not be allowed to raise for the first time issues, errors, or defenses in relation to the tax assessment, which were forgotten and abandoned in the administrative level.

Petitioner also maintains that its right to fair play and due process was violated when the Court in Division considered an allegation that was raised for the first time by respondent in its memorandum.

Likewise, petitioner claims that the Court in Division erred in cancelling the deficiency tax assessments issued against respondent for the alleged lack of LOA, and continuing to stress that there is no strict requirement under the law for the issuance of a LOA in the conduct of inventory taking.

Petitioner again emphasizes that under the broad powers of the respondent to examine taxpayers and assess taxes, the latter is empowered to order the taking of an inventory at any time during the taxable year to determine the correct amount of tax due, and to this end, Revenue Memorandum Order (RMO) No. 3-2003 was promulgated, which provides that an inventory verification shall be authorized through a Mission Order (MO) and issuance of a letter to the taxpayer duly signed by the Assistant Commissioner, Large Taxpayers Service or the concerned Regional Director. Based on the said RMO, the issuance of Mission Orders, and not an LOA amounted to sufficient authority to conduct an inventory of the taxpayer.

Lastly, petitioner reasserts that the assessment has factual and legal basis.

Respondent's Opposition:

Respondent counters that petitioner's *Motion for Reconsideration* is a mere rehash of the arguments in his Petition for Review, which were already exhaustively discussed in the assailed Amended Decision and Resolution of the Court in Division and Decision of the Court *En Banc.*

Respondent also argues that the relaxation of technical rules may be warranted in order to prevent the miscarriage of justice. Otherwise, to rule on the instant case based on a mere technicality would frustrate rather than meet the ends of justice.

Finally, respondent contends that the absence of a valid LOA authorizing the revenue officer to conduct the audit investigation and issue the subject tax assessments, makes the assessment void and ineffectual.

THE COURT *EN BANC'S* RULING

We deny petitioner's *Motion for Reconsideration* for lack of merit.

After a careful perusal of petitioner's arguments in his Motion for Reconsideration, We find that petitioner has not raised substantially new grounds to justify the reconsideration sought. Petitioner's arguments are mere rehash of his arguments in his Motion for Reconsideration posted on January 28, 2021 before the Court in Division and the instant Petition for Review filed on November 26, 2021 before the Court *En Banc*, the issues and matters of which have already been amply discussed, passed upon and considered in the assailed Decision. Clearly, petitioner merely reiterated and restated his arguments, failing to show new arguments raised as well as cogent reasons to disturb Our findings.

As held by the Supreme Court in the case of *Social Justice Society (SJS) Officers v. Alfredo S. Lim,*[3] if the grounds relied on being mere reiterations of the issues already passed upon by the Court, there is no need to "cut and paste" pertinent portions of the Decision or re-write the *ponencia* in accordance with the outline of the instant motion.

Moreover, in *Ortigas and Company Limited Partnership v. Judge Tirso Velasco et. al.,*[4] the Supreme Court emphasized on the effect and disposition of a motion for reconsideration, to wit:

> "It suffices for the Court to deal generally and summarily with the motion for reconsideration, and merely state a legal ground for its denial (Sec. 14, Article VIII, Constitution); i.e., the motion contains merely a reiteration

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[3] G.R. Nos. 187836 and 187916, March 10, 2015.
[4] G.R. No. 109645, March 4, 1996.

or rehash of arguments already submitted to and pronounced without merit by the Court in its judgment, or the basic issues have already been passed upon, or the motion discloses no substantial argument or cogent reason to warrant reconsideration or modification of the judgment or final order; or the arguments in the motion are too unsubstantial to require consideration, etc."

In sum, We find no compelling reason to modify or reverse our findings and conclusions reached in the Assailed Decision. Hence, We shall no longer in this Resolution, repeat the disquisitions made therein.

WHEREFORE, petitioner's *Motion for Reconsideration* is **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(On Leave)
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

(On official Business)
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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

(On Leave)
LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice