REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

****

LIBERTY TELECOMS HOLDINGS INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 2035
(CTA Case No. 9311)

x---x

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

LIBERTY TELECOMS HOLDINGS INC,
Respondent.

CTA EB NO. 2041
(CTA Case No. 9311)

Present:

DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, and
MODESTO-SAN PEDRO, *JJ.*

Promulgated:

FEB 04 2021
2:59 p.m.

x - x

RESOLUTION

UY, *J.*:

For resolution is the ***MOTION FOR PARTIAL RECONSIDERATION (Re: Decision dated 24 September 2020)***[1] filed by the Commissioner of Internal Revenue's (CIR) on October 16, 2020 *via* registered mail and received by the Court on October 26,

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[1] EB Docket (EB No. 2035), pp. 361 to 374.

2020, with Liberty Telecoms Holdings, Inc.'s (or "LTHI") ***COMMENT ON/OPPOSITION TO "MOTION FOR PARTIAL RECONSIDERATION....." DATED OCTOBER 16, 2020 OF COMMISSIONER OF INTERNAL REVENUE***[2] filed on November 27, 2020, praying for the partial reversal and setting aside of the Court *En Banc's* Decision[3] dated September 24, 2020. The dispositive portion of the assailed Decision reads:

> "**WHEREFORE,** in light of the foregoing considerations, the consolidated *Petitions for Review* in CTA EB Nos. 2035 and 2041, are hereby **DENIED** for lack of merit. Accordingly, the assailed Decision dated October 18, 2018 and Resolution dated March 12, 2019, both rendered by the Court in Division in CTA Case No. 9311, are **AFFIRMED**.
>
> **SO ORDERED.**"

CIR's arguments:

In support of his *Motion*, the CIR reiterates that LTHI's reliance on BIR Ruling [DA (C-035) 127-08] dated August 8, 2008 is misplaced. Allegedly, the said ruling does not apply in this case since it was based only on a set of facts as represented by a taxpayer and made applicable only to the facts and circumstances thereto.

According to the CIR, the imposition of interest, surcharge and compromise penalty has factual and legal basis under the National Internal Revenue Code (NIRC) of 1997 and as ruled by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Filinvest Development Corporation*[4] ("Filinvest case" for brevity).

Moreover, the CIR insists that LTHI cannot simply invoke good faith to escape liability from deficiency and delinquency interest.

Finally, the CIR maintains that the imposition of the compromise penalties was valid pursuant to Revenue Memorandum Order (RMO) No. 19-2007[5] because compromise penalty is not only

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[2] EB Docket (EB No. 2035), pp. 380 to 382.
[3] EB Docket (EB No. 2035), pp. 326 to 353.
[4] G.R. Nos.163653 & 167689, July 19, 2011
[5] SUBJECT: *The Consolidated Revised Schedule of Compromise Penalties for Violations of the National Internal Revenue Code*

for settlement of criminal liability but for certain violations of the NIRC of 1997 such as, but not limited, to failure to pay the correct internal revenue taxes.

LTHI's counter-arguments:

LTHI contends that the arguments raised by the CIR in the instant *Motion* are the same arguments set forth in his *Petition for Review* and that the CIR offers nothing new which may serve as basis for the Court to reconsider the assailed Decision.

THE COURT *EN BANC'S* RULING

We find the instant *Motion for Partial Reconsideration* bereft of merit.

After a careful examination and consideration of the instant *Motion*, it is noted that the arguments raised therein are mere reiteration of matters which have already been considered, weighed and resolved in the assailed Decision.

Contrary to the CIR's contention, LTHI's reliance on BIR Ruling [DA (C-035) 127-08] dated August 8, 2008, which provides that inter-company loans and advances covered by inter-office memoranda are not subject to DST, is a valid justification for the non-imposition of surcharges and interest. It bears reiterating that good faith and honest belief that one is not subject to tax on the basis of previous interpretations of government agencies tasked to implement the tax law are sufficient justification to delete the imposition of surcharges and interest.[6]

As regards the compromise penalty, We maintain that the same should not be imposed. As held in the assailed Decision, compromise penalties are only amounts suggested in settlement of criminal liability, and may not be imposed or exacted on the taxpayer in the event that a taxpayer refuses to pay the same.[7] Considering that LTHI disputed the assessment of compromise penalty, the said penalty cannot therefore be imposed.

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[6] *Tambunting Pawnshop, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 179085, January 21, 2010.
[7] Revenue Memorandum Order No. 1-90 dated November 28, 1989. MO

In summary, We find no compelling reason to reconsider, modify or reverse Our assailed Decision. Hence, We shall no longer belabor in this Resolution, to repeat the disquisitions made therein.

WHEREFORE, in light of the foregoing considerations, the instant *Motion for Partial Reconsideration* is hereby **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

(I maintain my Concurring and Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

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

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

Catherine T. Manahan
(I maintain my Concurring and Dissenting Opinion dated October 18, 2018 under CTA Case No. 9311)
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice