CTA Form No. 8 (For DCC)

23-000260-0025

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NO. 11187

OPAL PORTFOLIO INVESTMENTS [(FISTC-AMC ASSET MANAGEMENT COMPANY)], INC. Formerly Opal Portfolio Investments (SPV-AMC), Inc.,
Petitioner,

NOTICE OF RESOLUTION

\- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street, Legazpi Village
Makati City

ATTY. SYLVIA R. ALMA JOSE
ATTY. AYESHA HANIA B. GUILING-MATANOG
ATTY. KARL KENNY M. RAMO
Bureau of Internal Revenue
Room 703, Litigation Division, BIR National Office Building
Sen. Miriam P. Defensor-Santiago Avenue
Diliman, Quezon City

TERENCIO R. YUMANG, JR. & ASSOCIATES
Unit 204, 2/F, Corporate 101 Building
Mother Ignacia St., Brgy. South Triangle
Quezon City

GREETINGS:

You are hereby notified by these presents that on **January 30, 2024,** a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **January 31, 2024.**

Atty. Margarette Y. Guzman
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION

OPAL PORTFOLIO INVESTMENTS [FISTC-AMC (ASSET MANAGEMENT COMPANY)], INC. Formerly Opal Portfolio Investments (SPV-AMC), Inc.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. **11187**

Members:

DEL ROSARIO, *P.J.*, *Chairperson*,
BACORRO-VILLENA, *and*
CUI-DAVID, *JJ.*

Promulgated:
JAN 30 2024 2:20 PM

x - x

RESOLUTION

For the Court's resolution is respondent's "Motion for Reconsideration (Re: Resolution Promulgated on 28 September 2023)"[1] (**MR**) filed on 20 October 2023[2], with petitioner's "Comment (To Respondent's Motion for Reconsideration)" (**Comment**) filed on 11 December 2023.[3]

The instant motion seeks reconsideration of this Court's Resolution dated 28 September 2023[4] (**assailed Resolution**) that treated petitioner's Petition for Review[5] (**petition**) challenging the validity of respondent's issuance of a Warrant of Distraint and/or Levy[6] (**WDL**) and Warrant of Garnishment[7] (**WOG**) against petitioner (**collectively referred to as the "assailed warrants"**) as a Petition

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1 Division Docket, pp. 226-245.
2 Received on 25 October 2023.
3 Division Docket, pp. 251-256.
4 Id., pp. 214-225.
5 Filed on 13 June 2023, id., pp. 7-22.
6 Exhibit "P-2", id., p. 137.
7 Exhibit "P-3", id., p. 138.

for *Certiorari* under Rule 65[8] of the Rules of Court, as amended. The dispositive portion of the assailed Resolution reads:

> ...
>
> **WHEREFORE**, the foregoing premises considered, petitioner's Petition for Review, treated as a Petition for *Certiorari* under Rule 65 of the Rules of Court, as amended, filed on 13 June 2023, is hereby **GRANTED** insofar as it prays for the nullification of the assailed warrants. Accordingly, the Warrant of Distraint and/or Levy dated 10 May 2023 and Warrant of Garnishment dated 15 May 2023 are **ANNULLED** and **SET ASIDE.** Consequently, respondent Commissioner of Internal Revenue and his representatives are **ORDERED** to **DESIST** from enforcing any collection measures against petitioner.
>
> Considering the above pronouncement, petitioner's Verified Motion for the Issuance of Preliminary Injunction filed on 04 July 2023 is hereby rendered **MOOT**. Respondent's "Motion with Leave of Court to Admit Attached Comment" filed on 18 July 2023 is **NOTED** without action as the same has been likewise rendered **MOOT.**
>
> **SO ORDERED.**[9]
>
> ...

Here, respondent reiterates his or her argument that the Court lacks jurisdiction over the present petition since petitioner's Request for Reconsideration is still pending before respondent. Respondent further challenges the propriety of the cancellation of the WDL dated 10 May 2023 and WOG dated 16 May 2023. Lastly, petitioner argues that this Court should not have treated petitioner's petition as a Petition for *Certiorari*.

8

RULE 65
Certiorari, Prohibition and Mandamus

Section 1. *Petition for certiorari.* — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of section 3, Rule 46.

...

9 Supra at note 4.

Petitioner, on the other hand, maintains the Court had convincingly discussed the *ratio* of its assailed Resolution, and it subscribes to the decision to treat the present petition as a Petition for *Certiorari*.

We resolve.

Respondent's arguments are a mere rehash of those previously raised in his or her Comment[10] filed on 18 July 2023, which the Court had adequately passed upon in the assailed resolution.

As regards the Court's decision to treat the present petition as Petition for *Certiorari*, We ruled in the assailed Resolution that:

> ...
> While an ordinary appeal or petition for review and a petition for *certiorari* are distinct legal remedies with different requirements and purposes, a petition for review may be treated as a petition for *certiorari* if it appears from an examination of the allegations and the relief sought therein that it is a petition for *certiorari*. What determines the nature of the action and which court has jurisdiction over it are the allegations of the complaint and the character of the relief sought. The cause of action in a complaint is not what the designation of the complaint states, but what the allegations in the body of the complaint define or describe.
>
> In *Marvin Cruz and Francisco Cruz, in his capacity as Bondsman v. People of the Philippines* (**Cruz**), the Supreme Court explained that the following requisites must be present in order for a petition for *certiorari* to prosper:
>
>> ...
>> An essential requisite for filing a petition for certiorari is the allegation that the judicial tribunal acted with grave abuse of discretion amounting to lack or excess of jurisdiction. Grave abuse of discretion has been defined as a "capricious or whimsical exercise of judgment that is patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform a duty enjoined by law." In order to determine whether the Court of Appeals erred in dismissing the Petition for Certiorari for being the wrong remedy, it is necessary to find out whether the Regional Trial Court acted with grave abuse of discretion as to warrant the filing of a petition for certiorari against it.
>> ...

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10 Division Docket, pp. 154-176.

> Here, petitioner alleges in its petition that the ACIR-LTS had no authority to issue the assailed warrants considering that the latter's decision on its assessment is still on appeal with respondent CIR. Therefore, petitioner sees these issuances as a violation of its right to due process. Clearly, the allegations alone depict that the assailed warrants were issued arbitrarily by the ACIR-LTS in excess of his or her jurisdiction considering that the latter should have been aware of the appeal pending before the CIR.
>
> Furthermore, bearing in mind the above discussions, it would seem that there is no other speedy or adequate remedy to prevent the BIR's collection attempts as the Court has already declared that the assailed warrants in this case are not proper subjects of appeal.
>
> Treating the petition now as a petition for *certiorari* under Rule 65 of the ROC, We shall proceed to determine the timeliness of the instant petition and whether the reliefs sought in the instant motion should be granted.[11]
>
> ...

The Court maintains that what is controlling under the circumstances is not the petition's caption but the allegations therein. Clear in the above-cited disquisition is that petitioner alleges an arbitrary exercise of power by the Assistant Commissioner of Internal Revenue - Large Taxpayers Service (**ACIR-LTS**) when the latter issued the WDL and WOG despite the fact that petitioner's case is still pending before the CIR. This preemption of the CIR's actions was clearly beyond the jurisdiction of the ACIR-LTS being respondent's subordinate.

All told, aside from respondent's repetitive arguments, the merits of which have already been weighed in the assailed Resolution, respondent also fails to put forth any substantial issue that warrants a reconsideration of Our previous ruling on the matter. It is on these grounds that the Court cannot oblige to grant petitioner's present motion. In *Ortigas and Company Limited Partnership v. Judge Tirso Velasco*[12], the Supreme Court held:

> ...
>
> The filing of a motion for reconsideration, authorized by Rule 52 of the Rules of Court, does not impose on the Court the obligation to deal individually and specifically with the grounds relied upon therefor, in much the same way that the Court does in its judgment or final order as regards the issues raised and submitted for decision. This would be a useless formality or ritual invariably involving merely

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[11] Citations omitted, emphasis and italics in the original text.

[12] G.R. Nos. 109645 & 112564, 04 March 1996.

a reiteration of the reasons already set forth in the judgment or final order for rejecting the arguments advanced by the movant; and it would be a needless act, too, with respect to issues raised for the first time, these being, as above stated, deemed waived because not asserted at the first opportunity. **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, ART. VIII, Constitution); i.e., the motion contains merely a reiteration 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.

. . .

WHEREFORE, the foregoing premises considered, respondent's "Motion for Reconsideration (Re: Resolution Promulgated on 28 September 2023)" filed on 20 October 2023 is hereby **DENIED** for lack of merit.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

LANEE S. CUI-DAVID
Associate Justice