**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

## SECOND DIVISION

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| **RIECKERMANN PHILIPPINES, INC.,** Petitioner, | **CTA CASE NO. 8715** |
| | Members: |
| - versus - | **CASTAÑEDA, JR.,** *Chairperson,* **CASANOVA,** *and* **MANAHAN,** *JJ.* |
| **COMMISSIONER OF INTERNAL REVENUE,** Respondent. | Promulgated: MAY 02 2019 4:20 pm |

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# RESOLUTION

**CASTAÑEDA, JR., *J.*:**

For the Court's resolution is respondent's **Motion for Partial Reconsideration**, filed on January 31, 2018, with petitioner's **Comment to Respondent's Motion for Partial Reconsideration**, filed February 19, 2018.

Respondent moves for the reconsideration of the Decision promulgated on January 15, 2018, the dispositive portion of which is quoted as follows:

> "**WHEREFORE**, premises considered, the Petition for Review is **PARTIALLY GRANTED**. The assessments issued by respondent against petitioner for the calendar year 2007 covering deficiency income tax, value-added tax, expanded withholding tax and withholding tax on compensation are **PARTIALLY UPHELD**. Accordingly, petitioner is **ORDERED TO**

**PAY** the amount of **ONE HUNDRED THIRTY-ONE THOUSAND ONE HUNDRED PESOS AND SIXTY-SEVEN CENTAVOS (₱131,100.67)**, inclusive of the twenty-five percent (25%) surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, computed as follows:

| Tax Type | Basic | 25% Surcharge | Total |
|---|---|---|---|
| Income Tax | ₱ 6,886.01 | ₱ 1,721.50 | ₱ 8,607.51 |
| Value-Added Tax | 65,308.76 | 16,327.19 | 81,635.95 |
| Expanded Withholding Tax | 10,963.26 | 2,740.81 | 13,704.07 |
| Withholding Tax on Compensation | 21,722.51 | 5,430.63 | 27,153.14 |
| **Total** | **₱104,880.54** | **₱26,220.13** | **₱131,100.67** |

In addition, petitioner is **ORDERED TO PAY**:

(a) Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency income tax, value-added tax, expanded withholding tax and withholding tax on compensation computed from the dates indicated below until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended:

| Tax Type | Basic Tax | Deficiency Interest Computed From |
|---|---|---|
| Income Tax | ₱ 6,886.01 | April 15, 2008 |
| Value-Added Tax | 65,308.76 | January 25, 2008 |
| Expanded Withholding Tax | 10,963.26 | January 15, 2008 |
| Withholding Tax on Compensation | 21,722.51 | January 15, 2008 |

(b) Delinquency interest at the rate of 20% per annum on the total amount of ₱131,100.67, and on the 20% deficiency interest which have accrued as afore-stated in (a), computed from September 3, 2013 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.

However, the following partial payments made by petitioner shall have to be deducted in the final settlement of the above deficiency taxes including surcharge, deficiency interest and delinquency interest:

| Tax Type | Basic Tax | Interest | Total |
|---|---|---|---|
| Income Tax | ₱ 512,461.70 | | ₱ 512,461.70 |
| Value-Added Tax | 878,959.36 | | 878,959.36 |
| Withholding Tax on | 21,722.51 | ₱ 13,259.66 | 34,982.17 |

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|---|---|---|---|
| Compensation | | | |
| **Total** | **₱1,413,143.57** | **₱ 13,259.66** | **₱1,426,403.23** |

**SO ORDERED.**"

Respondent invokes the following grounds: (1) the subject assessments had become final, executory and demandable by reason of the failure of petitioner to timely file its Petition for Review pursuant to the provisions of Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended; (2) petitioner was fully informed of the factual and legal bases of the subject deficiency assessments; and (3) petitioner is liable for deficiency taxes subject of the assessments.

On the other hand, petitioner argues that respondent's motion absolutely lacks merit and deserves scant consideration. It contends that the it is a pro-forma motion that does not toll the reglementary period of appeal under Section 2 of Rule 37 of the Rules of Court.

At the outset, it must be noted that respondent's motion is merely a rehash or a mere reiteration of the grounds and arguments already passed upon and resolved by the Court.

To reiterate, in case of disputed assessment, the taxpayer has two (2) options, either: (1) file a petition for review with the Court of Tax Appeals (CTA) within thirty (30) days after the expiration of the 180-day period from submission of documents; or (2) await the final decision of the Commissioner of Internal Revenue (CIR) or his authorized representative on the disputed assessment and appeal such final decision to the CTA within thirty (30) days after the receipt of a copy of such decision.

In arguing that the assessment became final, executory and unappealable by the sole reason that petitioner failed to file the Petition for Review within thirty (30) days after the 180-day reglementary period, respondent, in effect, limited the remedy of petitioner, as a taxpayer, under Section 228 of the NIRC of 1997, as amended, to just one, that is - to appeal the inaction of the CIR or his authorized representative on the protested assessment after the lapse of the 180-day period. *gr*

A taxpayer cannot be prejudiced if he chooses to wait for the final decision of the CIR or his authorized representative on the protested assessment.

Accordingly, considering that petitioner opted to await the Final Decision of the Regional Director on the protested assessment, it then had the right to appeal such final decision to the Court by filing a Petition for Review within thirty (30) days after receipt of a copy of such decision or ruling, even after the expiration of the 180-day period. Thus, Petitioner filed its Petition for Review on October 3, 2013, which was within thirty (30) days after its receipt of the Final Decision dated August 28, 2013 on September 3, 2013. Clearly, the Court had acquired jurisdiction over the instant case since the assessments had not become final, executory, and demandable.

Moreover, the Court already ruled that considering that the Final Decision is just a reiteration of the assessments in the Formal Letter of Demand (FLD) dated January 3, 2011, the reference to the latter is sufficient to inform petitioner of the factual and legal bases of the Final Decision.

Likewise, the Court had exhaustively discussed petitioner's liability for the subject assessments. After thorough study of both parties' evidence, the Court partially upheld respondent's assessments and found that petitioner is liable to pay only the amount of ₱131,100.67, representing deficiency income tax, value-added tax (VAT), expanded withholding tax (EWT) and withholding tax on compensation (WTC), inclusive of twenty-five percent (25%) surcharge, for the calendar year (CY) 2007.

It is an elementary rule enshrined in the 1987 Constitution that no person shall be deprived of property without due process of law. In balancing the scales between the power of the State to tax and its inherent right to prosecute perceived transgressors of the law on one side, and the constitutional rights of a citizen to due process of law and the equal protection of the laws on the other, the scales must tilt in favor of the individual, for a citizen's right is amply protected by the Bill of Rights under the Constitution. Thus, while "taxes are the lifeblood of the government," the power to tax has its limits, in spite of all its plenitude.[1] Even as we concede the inevitability and indispensability of taxation, it is a requirement in all

[1] *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010.

democratic regimes that it be exercised reasonably and in accordance with the prescribed procedure.[2]

Thus, the Court finds no compelling reason to justify the reversal of the assailed Decision.

**WHEREFORE**, premises considered, respondent's **Motion for Partial Reconsideration** is **DENIED** for lack of merit.

**SO ORDERED**.

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

WE CONCUR:

**CAESAR A. CASANOVA**
Associate Justice

Catherine T. Manahan
**CATHERINE T. MANAHAN**
Associate Justice

[2] *Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, July 2, 2014.