Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

NICKEL ASIA CORPORATION,
Respondent.

CTA EB No. 1355
(CTA Case No. 8662)

Present:

DEL ROSARIO, *PJ*,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, *and*
MANAHAN, *J.J.*

Promulgated:

JAN 09 2018 2:55 p.m.

x- -x

RESOLUTION

CASANOVA, *J*.:

Submitted for resolution is petitioner's Motion for Reconsideration[1] dated September 6, 2017, filed on the same date, with respondent's Comment (Re: Petitioner's Motion for Reconsideration), filed on October 18, 2017.

In his Motion, petitioner seeks reconsideration of this Court's Decision[2] dated August 4, 2017, the dispositive portion of which reads, as follows:

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

[1] En Banc Docket, pp. 111-116.
[2] Ibid, pp. 94-103.

SO ORDERED."

Petitioner contends that the OIC-Assistant Commissioner Misajon did not interpret Section 4-106.5(a)(5) of Revenue Regulations (RR) No. 16-2005, as amended by RR 4-2007, but merely enforced it. According to petitioner, a plain reading of the following pertinent portion of the subject Final Decision on Disputed Assessment (FDDA), to wit:

> "We find this allegation of yours to be incorrect simply because Section 4.106-5 of the RR 16-2005 pertains only to sale of goods or properties, as the Section's title, which is Zero-Rated Sales of Goods or Properties, clearly indicates. Thus, any reference to sale of services under this Section must be erroneous, and accordingly, we believe that the inclusion of services in reference to sales to Board of Investments (BOI)-registered manufacturer/producer in the proviso in paragraph (a)(5) of Section 4.106-5 is an inadvertent or typographical error. Further we believe that Section 4.108-5 of RR 16-2005, with the title 'Zero-Rated Sale of Services', is intended to govern zero-rated sales of services, including sale of services to BOI-registered manufacturer/producer. Paragraph (b) of said Section 4.108-5 entitled 'Transactions Subject to Zero Percent (0%) VAT Rate', enumerates the various zero-rated sales of services - numbering seven (7) kinds of transactions – which enumeration should have included the sale of services to BOI-registered manufacturer/producer if it were the intention of the Revenue Regulations to provide such sale of services is subject to zero-rating."

That, a plain reading of the above-quoted portion of the FDDA would show that nowhere in the said FDDA did ACIR Misajon create a new interpretation of the law, much less a new legislation.

Petitioner further contends that the National Internal Revenue Code outweighs any Revenue Regulations.

Respondent, on the other hand, maintains that ACIR Misajon, contrary to petitioner's postulations that Assistant Commissioner of Internal Revenue (ACIR) Misajon merely enforced pertinent tax rules and regulation, has no authority to interpret a duly issued revenue regulation, particularly RR 16-2005, as amended by RR 4-2007; that petitioner has no new arguments/grounds in the Motion for Reconsideration, and, as duly noted by this Court, the matters raised therein are mere rehash of issues which have already been fully and exhaustively resolved by the Third Division.

We have carefully perused the Motion for Reconsideration and find no valid or compelling reason to grant the same. The motion does not raise any new, cogent or substantial ground to warrant a reconsideration of this Court's Decision dated August 4, 2017.

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

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice