REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

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COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

TOTAL (PHILIPPINES) CORPORATION,
Respondent.

CTA EB NO. 1616
(CTA Case No. 8479)

x--x

TOTAL (PHILIPPINES) CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 1621
(CTA Case No. 8479)

Present:

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

Promulgated:

SEP 26 2019
3:42 p.m.

x---x

RESOLUTION

UY, J.:

For resolution are the following:

1) **"MOTION FOR PARTIAL RECONSIDERATION (Re: Amended Decision dated 10 May 2019"** filed by the

Commissioner of Internal Revenue (CIR) on May 30, 2019,[1] with **"COMMENT *(To Motion for Partial Reconsideration filed by Commissioner of Internal Revenue dated 30 May 2019)*"** filed by Total (Philippines) Corporation (TPC) on July 12, 2019;[2] and

2) **"MOTION FOR RECONSIDERATION"** filed by TPC on May 31, 2019,[3] without the CIR's comment despite due notice.[4] as per Records Verification dated July 18, 2019.

Both *Motions* pray for the reconsideration of the Court *En Banc's* Amended Decision dated May 10, 2019,[5] the dispositive portion of which reads:

> "**WHEREFORE**, in light of the foregoing considerations, the CIR's *Motion for Partial Reconsideration* and TPC's *Motion for Reconsideration* are both **DENIED** for lack of merit. However, the dispositive portion of the Decision dated November 6, 2018 is hereby **MODIFIED** to read as follows:
>
> > '**WHEREFORE**, in light of the foregoing considerations, the consolidated *Petitions for Review* are **PARTIALLY GRANTED**. The Decision dated December 22, 2016 and the Resolution dated March 6, 2017, both rendered by the Court in Division in CTA Case No. 8479, are **AFFIRMED with MODIFICATION**.
> >
> > Accordingly, TPC is **ORDERED TO PAY EIGHTY THREE MILLION SEVEN HUNDRED SIXTY FOUR THOUSAND SEVEN HUNDRED FIFTY-NINE AND 88/100 PESOS (₱83,764,759.88)** representing deficiency EWT and FBT for taxable year 2005, inclusive of the twenty-five percent (25%) surcharge, and twenty percent (20%) deficiency interest and delinquency interest imposed under Sections 248(A) and 249(B) and (C), of the NIRC of 1997, as amended,

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[1] EB Docket (CTA EB No. 1616), pp. 257 to 262.
[2] EB Docket (CTA EB No. 1616), pp. 293 to 303.
[3] EB Docket (CTA EB No. 1616), pp. 264 to 282.
[4] EB Docket (CTA EB No. 1616), p. 307.
[5] EB Docket (CTA EB No. 1616), pp. 239 to 250.

respectively, computed until December 31, 2017, as follows:

	EWT		FBT	TOTAL
	Supplier at 1%	*Contractor at 2%*		
Basic Tax Due	₱11,589,526.30	₱451,048.99	₱821,540.84	₱12,862,116.13
Add: 25% Surcharge	2,897,381.58	112,762.25	205,385.21	3,215,529.04
Add: 20% Deficiency Interest from January 16, 2006 March 31, 2012[6]				
[₱11,589,526.30 x 20% x 2,267/365 days]	14,396,414.31			14,396,414.31
[₱451,048.99 x 20% x 2,267/365 days]		560,289.35		560,289.35
[₱821,540.84 x 20% x 2,267/365 days]			1,020,511.28	1,020,511.28
Total Amount Due, March 31, 2012	**₱28,883,322.19**	**₱1,124,100.59**	**₱2,047,437.33**	**₱32,054,860.11**
Add: 20% Deficiency Interest from April 1, 2012 to December 31, 2017				
[₱11,589,526.30 x 20% x 2,101/365 days]	13,342,243.70			13,342,243.70
[₱451,048.99 x 20% x 2,101/365 days]		519,262.43		519,262.43
[₱821,540.84 x 20% x 2,101/365 days]			945,784.82	945,784.82
20% Delinquency Interest from April 1, 2012 to December 31, 2017				
[₱28,883,322.19 x 20% x 2101/365 days]	33,251,430.09			33,251,430.09
[₱1,124,100.59 x 20% x 2,101/365 days]		1,294,101.56		1,294,101.56
[₱2,047,437.33x 20% x 2,101/365 days]			2,357,077.17	2,357,077.17
Total Amount Due, Dec. 31, 2017	**₱75,476,995.98**	**₱2,937,464.58**	**₱5,350,299.32**	**₱83,764,759.88**

In addition, TPC is **ORDERED TO PAY** delinquency interest at the rate of twelve percent (12%), on the total unpaid amount as of March 31, 2012 in the amount of **₱32,054,860.11**, as determined above, computed from January 1, 2018 until full payment thereof pursuant to Section 249(C) of

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[6] Exhibit "K", Division Docket – Vol. 2 (CTA Case No. 8479), pp. 922 to 925.

the NIRC of 1997, as amended by RA No. 10963 and implemented by RR No. 21-2018.

SO ORDERED.'

SO ORDERED."

The CIR's arguments:

In his *Motion for Partial Reconsideration*, the CIR maintains its position that TPC failed to prove that its purchases were valid importations, hence, the same should be subject to deficiency assessment for expanded withholding tax (EWT).

The CIR likewise reiterates his allegation that the assessment issued against TPC is valid and lawful. According to the CIR, all presumptions are in favor of the correctness of tax assessments.

TPC's arguments:

In its *Motion for Reconsideration*, TPC reaffirms its stand that the revenue officers lack the authority to conduct the audit investigation. It insists that the assessment is a nullity in view of the failure of the revenue officer to submit a report within the 120-day validity period of the LOA, and that no evidence was shown that the LOA was revalidated.

TPC further reiterates that the assessment for the deficiency EWT and fringe benefit tax (FBT) liabilities for taxable year 2005 had already prescribed. TPC submits that the principle of *in pari delicto* as enunciated in the case of *Commissioner of Internal Revenue vs. Next Mobile, Inc.* is not applicable to the present case; and that the waivers executed in this case are defective as the requisites for the validity of the waivers under Section 222(b) of the 1997 Tax Code and Revenue Memorandum Order No. 20-90 were not complied with.

Finally, in its *Comment* to the CIR's *Motion*, TPC contends that it is not liable for the alleged deficiency EWT and FBT since the Final Letter of Demand issued to the petitioner lacked factual and legal bases, and thus it is void.

THE COURT *EN BANC*'S RULING

Both *Motions* lack merit.

A careful perusal of the CIR's *Motion for Partial Reconsideration* and TPC's *Motion for Reconsideration* show that the arguments respectively raised therein are mere reiterations of matters which have already been considered, weighed and resolved in the Court's Decision dated November 6, 2018 and in the assailed Amended Decision.

Finding no compelling reason to reconsider or reverse Our Amended Decision, We shall no longer belabor in this Resolution, to repeat the disquisitions made therein.

WHEREFORE, in light of the foregoing considerations, the CIR's *Motion for Partial Reconsideration* and TPC's *Motion for Reconsideration* are both **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice