REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-*versus*-

PHILIPPINE COMMUNICATIONS SATELLITE CORPORATION,
Respondent.

CTA *EB* NO. 2209
(CTA Case No. 9219)

Present:

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

Promulgated: MAR 04 2022 2:40pm

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RESOLUTION

MANAHAN, J.:

This resolves the Commissioner of Internal Revenue's *Motion for Reconsideration*[1] posted on August 6, 2021, and received by the Court on September 27, 2021, seeking reconsideration of the Decision dated July 19, 2021, denying the Petition for Review, *to wit*:

> **WHEREFORE**, the Petition for Review is **DENIED** for lack of merit. The Decision and Resolution of the Court's Second Division, dated September 11, 2019 and December 6, 2019, respectively, are **AFFIRMED**.
>
> **SO ORDERED**.

In his *Motion*, petitioner argues that Section 222(A) of the 1997 National Internal Revenue Code, as amended (NIRC),

[1] EB Docket, pp. 113-121.

applies considering that the assessment involves falsity and non-filing of VAT returns. Respondent Philippine Communications Satellite Corporation (PCSC) failed to declare the subject sale of property as a VATable transaction which was discovered only upon actual audit. The CIR further argues that the falsity was discovered on December 21, 2010 by the issuance of the Preliminary Assessment Notice (PAN), from which the ten (10)-year prescriptive period starts to run. Thus, the Formal Assessment Notice (FAN) dated June 29, 2011 was well within the ten (10)-year prescriptive period.

The CIR also states that he did not change his defense. He states that his argument underscored that besides committing non-filing of VAT return for the sale of property in issue, respondent had also committed falsity for failing to file the correct VAT returns.

Finally, the CIR reiterates that the sale of property is subject to VAT and must be assessed for deficiency VAT. He states that respondent erred in considering the subject property as a capital asset, and failed to show proof that the same had not been used in business for more than two (2) years prior to the consummation of the sale. Since respondent was still in operation on taxable years 2008 and 2007, the subject properties were still being used in business. The CIR also refers to Exhibit "P-4" [ONETT Computation Sheet, Expanded Withholding Tax (EWT) and Documentary Stamp Tax (DST), Sale of Real Property Considered as Ordinary Asset] as evidence showing that the subject property was considered an ordinary asset.

On November 25, 2021, respondent PCSC filed its *Comment (Re: Petitioner's Motion for Reconsideration Dated August 6, 2021).*

Respondent states that the assessment has already prescribed and that there is no basis to apply the ten (10)-year prescriptive period. Respondent also states that the CIR should not be allowed to change his theory on appeal. In his Answer, the CIR cited the basis for the ten (10)-year prescriptive as "failure to file return", but on motion for reconsideration, the CIR was citing "filing a false return".

Finally, respondent states that the sale of the TMC property is not subject to VAT because it was no longer an ordinary asset at the time of sale. The subject property was classified as a capital asset because it had not been used in business for more than two (2) years prior to the consummation of the sale on June 29, 2007.

We deny the motion.

The arguments stated in the CIR's *Motion for Reconsideration* are mere verbatim reproduction of his *Petition for Review*, which arguments have been discussed and found to be without merit in the assailed Decision, viz:

> ...the Court notes that the motion contains merely a reiteration or rehash of arguments already submitted to the Court and found to be without merit. Petitioner fails to raise any new and substantial arguments, and no cogent reason exists to warrant a reconsideration of the Court's Resolution. It would be a useless ritual for the Court to reiterate itself.[2]

All told, this Court finds no reason to reverse the assailed Decision dated July 19, 2021.

WHEREFORE, the *Motion for Reconsideration* posted on August 6, 2021 is **DENIED** for lack of merit.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

[2] *Madeleine Mendoza-Ong v. Hon. Sandiganbayan and People of the Philippines*, G.R. Nos. 146368-89, October 18, 2004.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(On Leave)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice