REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FIRST DIVISION

DEL MONTE PHILIPPINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9766

Members:

DEL ROSARIO, *P.J., Chairperson,*
FABON-VICTORINO, *and*
MANAHAN, *JJ.*

Promulgated:

OCT 01 2019 · 3:01 pm

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RESOLUTION

DEL ROSARIO, P.J.:

For resolution is respondent's **"Motion for Reconsideration (re: Decision dated 15 July 2019)"** filed on July 31, 2019, with petitioner's "Comment/Opposition (On Respondent's Motion for Reconsideration dated 29 July 2019)" filed on September 9, 2019.

In its Motion for Reconsideration, respondent prays that the Court's Decision dated July 15, 2019 be reversed and set aside, and a new one be entered dismissing the Petition for Review for lack of jurisdiction and/or be denied for lack of merit. In support of his motion, petitioner insists the following:

1. The Court has no jurisdiction over the petition.

2. To exercise the power of abatement is to enter into a contract, hence, consent is essential. The mutuality of contracts hinders the courts from contracting for the parties.

3. The exercise of the power of abatement is a waiver on the part of the government of its right to receive the contribution from its inhabitants, hence, the waiver must be voluntary.

4. The Court erred in granting a relief that was not prayed for by petitioner. Respondent's basic right to fair play and due process was violated.

5. Assuming the Court may rule on an issue that was not raised by petitioner during the trial nor was derived from the pleadings, the collection of the surcharge and penalties accompanying the tax liabilities is justified and in accordance with law and the rules, despite the absence of a Letter of Authority ("LOA") and Preliminary Assessment Notice ("PAN").

On the other hand, petitioner claims the following:

1. The Court has jurisdiction over the case.

2. The Court may rule upon related issues which are necessary to an orderly disposition of cases.

3. It is not liable for surcharge, interest and compromise penalty.

THE COURT'S RULING

The Court resolves to deny respondent's Motion for Reconsideration.

Records show that the arguments posited by respondent are mere reiteration or amplification of those raised in his Answer to petitioner's Petition for Review and Memorandum, which have been exhaustively and thoroughly discussed in the assailed Decision, ***particularly on pages 7 to 18 thereof***.

Anent respondent's argument that the Court may not consider the issue on the revenue officer's lack of authority to conduct the audit as it was never raised by petitioner, the Court reiterates that in ***Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.,***[1] the Supreme Court declared that the Court of Tax Appeals ("CTA") can resolve the issue involving the authority of the Revenue Officers to conduct the audit, **albeit the same was not raised by the parties in their pleadings or memoranda**, *viz.*:

[1] G.R. No. 183408, July 12, 2017.

> "On whether the CTA can resolve an issue which was not raised by the parties, we rule in the **affirmative**.
>
> xxx xxx xxx
>
> xxx xxx xxx, **the CTA Division was, therefore, well within its authority to consider in its decision the question on the scope of authority of the revenue officers who were named in the LOA even though the parties had not raised the same in their pleadings or memoranda.** The CTA *En Banc* was likewise correct in sustaining the CTA Division's view concerning such matter." (Boldfacing supplied)

For want of a valid LOA, ***Lancaster*** ultimately resolved to declare the assessment void. Applying the pronouncement in *Lancaster*, the Court is well within its authority to make a proper ruling on this matter.

All told, the Court finds no compelling reason or substantial justification to modify its findings much more reverse the assailed Decision.

WHEREFORE, premises considered, the **"Motion for Reconsideration (re: Decision dated 15 July 2019)"** filed by respondent is hereby **DENIED** for lack of merit.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

CATHERINE T. MANAHAN
Associate Justice