20-000271-0091

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NO. 10343

FORT BONIFACIO DEVELOPMENT CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

NOTICE OF RESOLUTION

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street, Legazpi Village
Makati City

ATTY. AYESHA HANIA B. GUILING-MATANOG
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Ayala Triangle, Ayala Avenue
1226 Makati City

GREETINGS:

You are hereby notified by these presents that on **May 6, 2025,** a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **May 7, 2025.**

Atty. Maria Johoanna F. Chan-Te
Executive Clerk of Court II

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

FORT BONIFACIO DEVELOPMENT CORPORATION, Petitioner,	CTA CASE NO. **10343**
	Members:
- versus -	**DEL ROSARIO,** *P.J., Chairperson,* **BACORRO-VILLENA,** *and* **CUI-DAVID,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: MAY 06 2025; 10:00AM

x - x

RESOLUTION

BACORRO-VILLENA, J.:

For the Court's resolution are the following:

1. respondent Commissioner of Internal Revenue (**respondent**'s/**CIR**'s) Motion for Partial Reconsideration[1] (**MPR**) filed on 13 September 2024, with petitioner Fort Bonifacio Development Corporation's (**petitioner**'s) Comment[2] thereto, filed on 14 October 2024; and,

2. petitioner's MPR[3] filed on 13 September 2024, *sans* respondent's Comment or Opposition thereto.[4]

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1 Respondent's "Motion for Partial Reconsideration (Re: Decision dated [22August] 2024)", Division Docket, Volume II, pp. 1304-1311.

2 Petitioner's "Comment (to the Motion for Partial Reconsideration Re: Decision dated [22 August] 2024)", id., pp. 1358-1369.

3 Petitioner's "Motion for Partial Reconsideration (Re: Decision dated August 22, 2024)", id., pp. 1318-1350.

4 See Records Verification dated 30 October 2024, id., p. 372.

Both MPRs seek the partial reversal of the Court's Decision dated 22 August 2024[5] (**assailed Decision**), partially granting petitioner's Petition for Review[6] filed on 09 September 2020. The dispositive portion of the assailed Decision reads, thus:

> ...
>
> **WHEREFORE**, premises considered, the Petition for Review filed by petitioner Fort Bonifacio Development Corporation is hereby **PARTIALLY GRANTED**. As a result, the assessments for deficiency income tax and value-added tax shall be **ADJUSTED**. Meanwhile, the assessments for deficiency expanded withholding tax, withholding tax on compensation, documentary stamp tax, and the compromise penalties shall be **CANCELLED** and **WITHDRAWN**.
>
> Accordingly, petitioner Fort Bonifacio Development Corporation is **ORDERED TO PAY** respondent Commissioner of Internal Revenue the amounts of **₱230,900,021.79** and **₱5,059,668.54**, representing deficiency income tax and value-added tax, respectively, inclusive of the 25% surcharge, 20% deficiency interest imposed thereon under Section 249(B) of the NIRC of 1997, as amended by Republic Act No. 10963, also known as Tax Reform for Acceleration and Inclusion (**TRAIN Law**) and as implemented by Revenue Regulations No. 21-2018, respectively, computed until 26 August 2020, as determined below:

	IT	VAT	Total
Basic tax due	₱91,933,838.70	₱1,979,971.71	₱93,913,810.41
Surcharge (25%)	22,983,459.68	494,992.93	23,478,452.61
Deficiency Interest (20%) until 31 December 2017			
IT - 16 April 2013 to 31 December 2017 (Basic IT due x 20% x 1,721 days / 365 days)	86,694,869.26		86,694,869.26
VAT - 26 January 2013 to 31 December 2017 (Basic VAT due x 20% x 1,801 days / 365 days)		1,953,933.73	1,953,933.73
Deficiency Interest (12%) from 01 January 2018 to 26 August 2020			
IT – 01 January 2018 to 26 August 2020 (Basic IT due x 12% x 969 days / 365 days)	29,287,854.15		29,287,854.15
VAT – 01 January 2018 to 26 August 2020 (Basic VAT due x 12% x 969 days / 365 days)		630,770.17	630,770.17
Total Amount Due as of 26 August 2020	**₱230,900,021.79**	**₱5,059,668.54**	**₱235,959,690.33**

> In addition, petitioner is **ORDERED TO PAY** delinquency interest at the rate of 12%, computed from 27 August 2020 until full payment thereof, pursuant to Section 249(C) of the NIRC of 1997, as amended by the TRAIN Law, on said deficiency taxes based the following principal amounts:

[5] Id., pp. 1230-1301.
[6] Id., Volume I, pp. 6-41.

Income Tax	₱230,900,021.79
Value-Added Tax	₱5,059,668.54

SO ORDERED.

...

In respondent's MPR, he or she principally argues that the amount of the assessment is correct and valid, thus, petitioner should have been made liable to pay the same in full. Relatedly, respondent adds that the Bureau of Internal Revenue's (**BIR**'s) findings (particularly as to petitioner's supposed undeclared purchases and sales) justifies the application of the extraordinary ten (10)-year prescriptive period and the 50% surcharge. Similarly, he or she underscores that the imposition of compromise penalties is proper.

On the other hand, petitioner, in its Comment, counters that mere underdeclarations in a taxpayer's returns do not automatically equate to findings of falsity or fraud, which must still be proven (and respondent failed to prove). As such, it deemed the application of 10-year prescriptive period as improper, as well as the 50% surcharge. Likewise, petitioner questions the validity of the compromise penalties in the assessment, stating that it never agreed to their imposition.

Meanwhile, in petitioner's own MPR, it asserts anew that: (1) the instant assessment is void as the issued Formal Letter of Demand (**FLD**) and Final Decision on Disputed Assessment (**FDDA**) did not bear a final demand for payment nor a definite amount of tax liability; (2) the instant assessment is also void by virtue of the lack of authority (through a valid Letter of Authority [**LOA**]) of the Revenue Officer (**RO**) assigned to evaluate petitioner's request for reinvestigation; and, (3) the items comprising the assessment lacked factual and/or legal bases.

We resolve.

RESPONDENT'S MOTION FOR
PARTIAL RECONSIDERATION

At the outset, it is noted that respondent has only raised issues that have already been passed upon and discussed exhaustively in the assailed Decision.

As stated in the assailed Decision, respondent fell short of establishing that petitioner filed any false or fraudulent returns. Similarly, there was no sufficient basis for the *prima facie* presumption of a false or fraudulent return under Section 248(B)[7] of the National Internal Revenue Code (NIRC) of 1997, as amended. To begin with, respondent did not specifically forward arguments concerning the extraordinary 10-year prescriptive period, though the Court found the need to address the matter in its discussion of prescription, for a complete and orderly disposition of the case.

In any case, as We had thoroughly covered each matter in the assailed Decision, We find little need to reiterate our disquisitions concerning the legal and factual basis of petitioner's claim in the absence of any new, compelling arguments from respondent. As the records bear, the Court has already considered in the assailed Decision everything that respondent raised in his or her MPR.

Relevantly, in *Ortigas and Company Limited Partnership v. Judge Tirso Velasco, et al.* [8] (**Ortigas**), the Supreme Court explained, to wit:

> ...
>
> The filing of a motion for reconsideration, authorized by Rule 52 of the Rules of Court, does not impose on the Court the obligation to deal individually and specifically with the grounds relied upon therefor, in much the same way that the Court does in its judgment or final order as regards the issues raised and submitted for decision. This would be a useless formality or ritual invariably involving merely a reiteration of the reasons already set forth in the judgment or final order for rejecting the arguments advanced by the movant; and it would be a needless act, too, with respect to issues raised for the first time, these being, as above stated, deemed waived because not asserted at the first opportunity. It suffices for the Court to deal

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7 **SEC. 248.** *Civil Penalties.* -

...

(B) In case of willful neglect to file the return within the period prescribed by this Code or by rules and regulations, or in case a false or fraudulent return is willfully made, the penalty to be imposed shall be fifty percent (50%) of the tax or of the deficiency tax, in case any payment has been made on the basis of such return before the discovery of the falsity or fraud: Provided, That **a substantial under-declaration of taxable sales, receipts or income, or a substantial overstatement of deductions, as determined by the Commissioner pursuant to the rules and regulations to be promulgated by the Secretary of Finance, shall constitute prima facie evidence of a false or fraudulent return: Provided, further, That <u>failure to report sales, receipts or income in an amount exceeding thirty percent (30%) of that declared per return, and a claim of deductions in an amount exceeding thirty percent (30%) of actual deductions shall render the taxpayer liable for substantial under-declaration of sales, receipts or income or for overstatement of deductions, as mentioned herein.</u>** *(Emphasis and underscoring supplied.)*

8 G.R. No. 109645 (Resolution), 04 March 1996.

> generally and summarily with the motion for reconsideration, and merely state a legal ground for its denial (Sec. 14, Art. VIII, Constitution); i.e., the motion contains merely a reiteration or rehash of arguments already submitted to and pronounced without merit by the Court in its judgment, or the basic issues have already been passed upon, or the motion discloses no substantial argument or cogent reason to warrant reconsideration or modification of the judgment or final order; or the arguments in the motion are too unsubstantial to require consideration, etc.
>
> ...

Furthermore, the Supreme Court in *Shangri-La International Hotel Management, Ltd., et al. v. Developers Group of Companies, Inc.*[9] (**Shangri-La**) ruled:

> ...
>
> The bulk of the aforementioned grounds is a mere rehash of movant's previous arguments. While DGCI is correct in stating that a motion for reconsideration, by its very nature, may tend to dwell on issues already resolved in the decision sought to be reconsidered and that this should not be an obstacle for a reconsideration, the hard reality is that movant has failed to raise matters substantially plausible or compellingly persuasive to warrant the desired course of action.
>
> Considering that the grounds presently raised have been sufficiently considered, if not squarely addressed, in the subject Decision, it behooves movant to convince the Court that certain findings or conclusions in the Decision are contrary to law. **As it is, however, the instant motion does not raise any new or substantial legitimate ground or reason to justify the reconsideration sought**.
>
> ...

Indubitably, it is the movant's duty to convincingly show grounds for a reconsideration of an assailed judgment or order, or at the least give its previous arguments a fresh perspective in such a way that would warrant a re-examination of the case. Unfortunately, in the instant case, respondent had failed to do so.

PETITIONER'S MOTION FOR PARTIAL RECONSIDERATION

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9 G.R. No. 159938, 22 January 2007; Citation omitted and emphasis supplied.

We proceed to petitioner's MPR.

Firstly, in attacking the Court's inferences after it had gone over each subsisting item of the present assessment, petitioner mainly exclaims that, against the Court's findings, it had presented sufficient evidence to refute each item of the assessment.

As to its "Disallowed Expenses due to Non-Withholding" resulting in deficiency Income Tax (**IT**) and Value-Added Tax (**VAT**), petitioner maintains that it submitted all documents pertinent to its claim. Particularly, it highlights its submissions of: (1) documentation in support of its allegation that a substantial portion of the supposed payments not subjected to Expanded Withholding Tax (**EWT**) relates to a timing difference as the pertinent taxes were already withheld in prior taxable years (**TYs**); (2) sufficient notarized certifications to prove that it met the requirements to prove withholding on the proper tax base (*i.e.*, agency fees) from salaries of its security guards; (3) documentation elucidating the nature of its employee benefits supposedly not subject to Withholding Taxes on Compensation (**WTC**); (4) documentation refuting repeated claims of Creditable Withholding Taxes (**CWTs**) flagged from its own schedules and submissions to the BIR (which were supposedly subsequently offset and reversed in its books); (5) the source documents for a portion of its imposed and collected "Common Area Charges" supposedly not subject to VAT (which should thus be filtered out from its receipts after determining that these indeed formed part thereof); and, (6) its disallowed input tax claims due to noncompliance with invoicing requirements. Petitioner also disagreed with the Court's finding that it should be faulted for such defects in invoicing (which it believes should be imputed to its suppliers) and the former's ruling upholding a deficiency VAT finding on equipment disposals (not subjected to VAT).

On this front, We have already considered all evidence available on record in discerning whether each item of deficiency tax is to be cancelled or upheld in full or in part. The assailed Decision has made clear the deficiencies in substantiation for each item enumerated above, namely: (1) proof of withholding EWT in prior years is absent from the records; (2) notarized certifications were belatedly obtained, failing to meet the requirement of Revenue Memorandum Circular (**RMC**) 39-07[10]

[10] Clarifying the Income Tax and VAT Treatment of Agency Fees/Gross Receipts of Security Agencies Including the Withholding of Taxes Due thereon.

dated 22 January 2007; (3) itemization and substantiation of petitioner's alleged non-payroll items were never submitted to the Court nor the Court-commissioned Independent Certified Public Accountant (**ICPA**) for examination; (4) any timely reversals of its supposed multiple claims of the same CWTs remained bare allegations unsupported by documentation; (5) the official receipts (**ORs**) supporting "Common Area Charges" that petitioner collected, which are essential to confirm petitioner's own representation that it issued VAT ORs but clearly marked said charges therein as exempt from VAT; and, (6) missing invoices for its disputed input tax claims were never submitted.

As to petitioner's equipment disposals not subjected to VAT, the assailed Decision explored the nature of each piece of equipment, ultimately finding their disposal to be incidental to petitioner's main business (and thus subject to VAT), pursuant to *Lapanday Foods Corporation v. Commissioner of Internal Revenue*:[11]

> ...
>
> ... **The term "incidental" means depending upon or appertaining to something else primary; something necessary appertaining to, or depending upon another, which is termed the principal; something incidental to the main purpose.** That the primary or main activity is characterized by regularity or habituality cannot be in doubt, and that which is merely incidental to it may indeed be conducted only occasionally.
>
> Yet, although merely occasional or isolated, **a transaction may** still **be embraced in the definition of the phrase "in the course of the trade or business" — thus, subject to VAT — so long as it may be established that such transaction is incidental to the seller's or service provider's main business activity. Thus, We have once held that an isolated transaction can be considered an incidental transaction for purposes of VAT liability.** ...
>
> ...

Secondly, as to the RO and Group Supervisor's (**GS**'s) authority in the reinvestigation stage, We had already declared in the assailed Decision that the absence of a valid LOA for the team assigned to evaluate petitioner's protest is not fatal to the FDDA. As distinguished from the reinvestigation that would eventually lead to the CIR's final decision (and shown in an FDDA), the assessment is laid out in the FLD and Final Assessment Notice (**FAN**).

[11] G.R. No. 186155, 17 January 2023; Citation omitted and emphasis supplied.

As clarified in the assailed Decision, the conduct of a reinvestigation falls beyond the purpose of an LOA as the taxpayer no longer anticipates the BIR at its doorstep, but instead submits itself for the CIR's re-evaluation. The LOA's relevance, as exemplified in *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*[12] is contextually relevant:

> ...
>
> **To comply with due process in the audit or investigation by the BIR, the taxpayer needs to be informed that the revenue officer knocking at his or her door has the proper authority to examine his books of accounts.** The only way for the taxpayer to verify the existence of that authority is when, upon reading the LOA, there is a link between the said LOA and the revenue officer who will conduct the examination and assessment; and the only way to make that link is by looking at the names of the revenue officers who are authorized in the said LOA. **If any revenue officer other than those named in the LOA conducted the <u>examination and assessment</u>, taxpayers would be in a situation where they cannot verify the existence of the authority of the revenue officer to conduct the examination and assessment.** Due process requires that **taxpayers must have the right to know that the revenue officers are duly authorized to conduct the <u>examination and assessment</u>**, and this requires that the LOAs must contain the names of the authorized revenue officers. In other words, identifying the authorized revenue officers in the LOA is a jurisdictional requirement of a valid audit or investigation by the BIR, and therefore of a valid assessment.
>
> ...

Finally, as encapsulated in the assailed Decision, the Court thoroughly discussed that the FLD contained a sufficient demand for the payment of a definite amount of tax liability. As the Court found, the ANs accompanying the FLD clearly specified the due date for payment as "30 days from date of receipt thereof", a date readily and easily determinable.

In line with the Supreme Court's disquisitions in *Commissioner of Internal Revenue v. Fitness By Design, Inc.*[13], the vital element determining the validity of the assessment is the definiteness of the amount indicated in the FLD and the deadline for payment (shown in the assessment notices attached to the FLD). As to the amount due, what is proscribed is an indefinite amount of total tax due or liability,

[12] G.R. No. 242670, 10 May 2021; Emphasis and underscoring supplied.
[13] G.R. No. 215957, 09 November 2016.

not the amount of interest. In any case, a plain reading of the FLD enables petitioner to determine the updated total tax due without difficulty.

All told, all the foregoing issues had been covered comprehensively in the assailed Decision. Petitioner had not proffered any new points or arguments that would convince the Court to vacate its earlier conclusions. Standing by the principles in *Ortigas* and *Shangri-La* above, the Court finds little reason to rehash itself.

WHEREFORE, the foregoing premises considered, respondent Commissioner of Internal Revenue's "Motion for Partial Reconsideration (Re: Decision dated [22 August] 2024)" and petitioner's "Motion for Partial Reconsideration (Re: Decision dated August 22, 2024)", both filed on 13 September 2024, are both **DENIED** for lack of merit.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

LANEE S. CUI-DAVID
Associate Justice