REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PEOPLE OF THE PHILIPPINES,
Petitioner,

CTA EB CRIM. NO. 029
(CTA Crim. Case Nos. O-049,
O-050 & O-051

-versus-

Present:

Del Rosario, *P.J.,*
Castañeda, Jr.
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Cotangco-Manalastas,
and
Ringpis-Liban, *JJ.*

ITALCAR PILIPINAS, INC. (ITALCAR), FERNANDO T. FRANCISCO and ANTONINO B. CARINGAL,
Accused.

Promulgated:
JAN 05 2016 1:30 p.m.

x---x

RESOLUTION

RINGPIS-LIBAN, *J*.:

For resolution is the petitioner's "Motion for Reconsideration" of the Decision promulgated on May 28, 2015 denying the present petition for lack of merit. Petitioner prays that the Court *En Banc* set aside the Decision and a new one be rendered ordering respondent-accused to pay:

1) Deficiency excise tax in the amount of Php36,597,812.61 for CTA Criminal Case O-049;
2) Deficiency value-added tax in the amount of Php41,387,893.11 for CTA Criminal Case No. O-050;
3) Deficiency withholding tax in the amount of Php2,631,687.27 for CTA Criminal Case No. O-051;
4) Penalties, surcharges, deficiency interest and delinquency interest until fully paid pursuant to Sections 248 and 249 of the NIRC of 1997.

On July 28, 2015, the Court *En Banc* issued a Resolution ordering respondent-accused to file its Comment within ten (10) days from notice.

On August 17, 2015, ITALCAR Pilipinas, Inc. (ITALCAR) through its counsel filed its "Omnibus: I. Comment to the Motion for Reconsideration; II. Reiterative Motion for Withdrawal as Counsel".

The petitioner argues that the Court *En Banc* erred in holding that her right to make an assessment had prescribed; that the element of fraud was explicitly averred by petitioner-plaintiff in her Complaint-Affidavit and Supplemental Complaint-Affidavit; that the under-declaration of reported income, failure to withhold taxes, underpayment of Value Added Tax on certain transactions and underpayment of Excise Taxes are prima facie evidence of the existence of fraud; that the instant case falls under the exceptions in Section 222 (a) of the NIRC of 1997; that the non-imposition of 50% penalty should not be the basis in preventing her from assessing accused' deficiency tax liabilities; and Withholding Tax is not an internal revenue tax but is only a system used to collect income tax in advance, thus the period within which to assess finds no application in the present case.

On the other hand, ITALCAR argues that the arguments alleged in the Motion for Reconsideration are mere repetition of the same arguments contained in the Petition and Memorandum filed before the Court and that the Motion for Reconsideration is purely pro forma in character.

Atty. Peter T. Tabang moved that he be allowed to withdraw as counsel since his services as counsel were hired only by the deceased accused Fernando Francisco and Antonino Caringal; that he is presently a sickly 72-year old suffering from diabetes and hypertension and could hardly work due to incessant seizures of repetitive vertigo; and that he is not physically fit to handle the works in this case particularly the preparation of pleadings. Hence, Atty. Tabang prayed that the foregoing be considered as good causes to allow him to withdraw as counsel in this case.

After evaluation of petitioner's arguments, this Court finds no merit in the instant Motion for Reconsideration.

The Court *En Banc* agrees with respondent that the arguments presented by petitioner in the instant Motion for Reconsideration are mere rehash of its previous arguments which have been duly considered and thoroughly discussed in the assailed Decision. Hence, this Court finds no cogent reason to modify or reverse the assailed Decision.

Petitioner insists that her right to make an assessment has not prescribed. However, as found by the Court in Division, which was affirmed by this Court, the petitioner failed to present any evidence to prove that there was fraud in the instant cases. Hence, the applicable period within which to assess the corporation is within three years after the last day prescribed by law for the filing of the return or from the day the return was filed, whichever is later.

In the Assailed Decision,[1] the Court *En Banc* unanimously ruled in this wise:

> **"In this case, other than the allegation of fraud in the Opposition (To Accused's Demurrer to Evidence) and in the instant Motion for Partial Reconsideration, no other compelling argument was asserted and evidence presented to fortify this allegation of fraud. Further, as can be observed in the records of this case, no allegation of fraud can be traced on the face of the above-captioned criminal informations.**
>
> To reiterate, fraud must be proven by clear and convincing evidence, and not by mere conjectures and speculations. Further, fraud is a serious charge and to be sustained, it must be supported by clear and convincing proof.
>
> Also, failure of accused to submit requested documents does not amount to fraud and does not justify plaintiff's failure to observe the 3-year prescriptive period. xxx
>
> xxx xxx xxx

[1] *Rollo*, pp. 100- 111.

> **It is now a settled rule in this jurisdiction that a void assessment bears no fruit. Thus, no civil liability arises in this case.**" *(Emphasis supplied, citations omitted)*

Moreover, the petitioner's argument on withholding tax assessment should likewise fail. To reiterate, this Court has ruled that:

> "The concept of a withholding tax on income obviously and necessarily implies that the amount of the tax withheld comes from the income earned by the taxpayer.[2] Considering that the subject of withholding tax is the income of a taxpayer, hence, it shall also be assessed within three (3) years after the last day prescribed by law. Therefore, the argument of the petitioner finds no basis in our tax laws."

In fine, the Court *En Banc* sees no reason to deviate from the previous ruling that the Court in Division did not commit a reversible error in denying petitioner's Motion for Partial Reconsideration (of the Civil Aspect of the Case).

In *Ferdinand Marcos et al. vs. Hon. Raul Manglapus et al.*[3], the Supreme Court emphasized that "in all motions for reconsideration, the burden is upon the movants, petitioner herein, to show that there are compelling reasons to reconsider the decision of the Court." Petitioner, however, did not satisfy this burden.

As regards Atty. Tabang's "Motion for Withdrawal as Counsel," the Court *En Banc* resolves to grant the same pursuant to Rule 22.01(d) Canon 22 of the Code of Professional Responsibility.

> CANON 22- A lawyer shall withdraw his services only for good cause and upon notice appropriate in the circumstances.
>
> Rule 22.01- A lawyer may withdraw his services in any of the following cases:
>
> xxx xxx xxx
>
> (d) when the mental or physical condition of the lawyer renders it difficult for him to carry out the employment effectively.

WHEREFORE, the instant Motion for Reconsideration is hereby **DENIED**. Atty. Tabang's Motion for Withdrawal as counsel is **GRANTED**.

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[2] China Banking Corporation vs. CA, CTA and CIR, G.R. No. 146749, June 10, 2003, citing Bank of America NT & SA v. Court of Appeals, G.R. No. 103092, 21 July 1994, 234 SCRA 302.
[3] *Marcos vs. Manglapuz,* G.R. No. 88211, October 27, 1989.

Atty. Peter T. Tabang is hereby allowed to withdraw as counsel for the respondent. Hence, all notices and pleadings shall be sent to ITALCAR at its address on record.

ITALCAR is hereby ordered to secure a new counsel and inform the Court within 10 days from notice.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

(I maintain my Concurring and Dissenting Opinion.)
ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO – MANALASTAS
Associate Justice