REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

G&W ARCHITECTS, ENGINEERS AND PROJECT CONSULTANTS, CO.,
Respondent.

CTA EB NO. 1572
(CTA Case No. 8604)

Present:

DEL ROSARIO, ***PJ,***
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN , *and*
MANAHAN, ***JJ.***

Promulgated:

OCT 10 2018
3:46 p.m.

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RESOLUTION

For resolution is the "Motion for Reconsideration (Re: Decision dated February 23, 2018)" timely filed on March 23, 2018 by petitioner Commissioner of Internal Revenue (CIR), asking the Court *En Banc* to reconsider its Decision dated February 23, 2018, the dispositive portion of which states:

> **"WHEREFORE**, finding no cogent reason to disturb the findings and conclusions reached by the Second Division in the Assailed Decision dated August 16, 2016 as well as in the Assailed Resolution dated December 02, 2016, the same are **AFFIRMED.** Accordingly, the Petition for Review filed with the Court *En Banc* on January 12, 2017 *via* registered mail is **DENIED** for lack of merit.
>
> **SO ORDERED."**

Petitioner anchors its motion on the following grounds:

1) having established the discrepancy on actual purchases not reported by respondent, the investigation and findings of the BIR examiner must be upheld, and the presumption of correctness in favor of his assessment warrants judicial affirmance; and

2) respondent's employment of a false or fraudulent return warrants petitioner's assessment within ten (10) years after the discovery of the falsity, fraud or omission.

Petitioner argues in his motion that respondent committed acts to evade the payment of taxes, making it appear that it merely manages the construction of the condominium project when it is really doing business as a real estate developer. He argues that there is proof on record that the payments reported by both seller and buyer do not match and, having established a discrepancy on actual purchases not reported by respondent, the investigation and findings of the BIR examiner must be upheld.

Furthermore, with the foregoing, the falsity of respondent's tax returns for 2007 were recognizable since there was no trace of purchases made to build the condominium projects. Hence, given the disparity in the under-declaration per examination by the BIR examiner, the ten-year period from discovery of the discrepancy must apply.

In a Resolution dated April 16, 2018, respondent was ordered to file Comment on petitioner's motion.

On May 5, 2018, respondent filed its "Comment (to the Petitioner's Motion for Reconsideration re Decision dated 23 February 2018)".

In its Comment, respondent argues that petitioner's motion should be denied for the following reasons: 1) the motion fails to raise any new legal or factual issues to justify or warrant a reversal of the Decision; 2) the tax deficiency assessment, being based on mere presumptions, has no factual and legal basis and should be cancelled; 3) the tax deficiency assessments are null and void for being issued beyond the three-year prescriptive period considering that fraud was not clearly established; 4) the entry of wrong information in a tax return due to mistake, carelessness, or ignorance, without intent to evade the tax, does not constitute a false return; and 5) petitioner did not engage in any selling activity, which may be subject to VAT and income tax under Revenue Regulations (RR) No. 2-98, as amended by RR No. 6-2001 and Section 196 of the Tax Code.

After considering the arguments of both parties, it is apparent to this Court that, indeed, the arguments raised by the CIR in its Motion for Reconsideration are not new. They have been previously discussed and considered in the Decision dated August 16, 2016 and the Resolution dated December 2, 2016 of the Second Division in CTA Case No. 8604. More importantly, they have also been exhaustively studied and considered by this Court prior to rendering our Decision dated February 23, 2018.

Considering that no new matters have been raised, petitioner's "Motion for Reconsideration (Re: Decision dated February 23, 2018" is **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

(I reiterate my Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

CATHERINE T. MANAHAN
Associate Justice