REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

NCR CEBU DEVELOPMENT CENTER, INC.,
Respondent.

CTA EB NO. 2150
(CTA Case No. 9255)

Present:

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

Promulgated: OCT 22 2021 11:35 a.m.

x - x

RESOLUTION

BACORRO-VILLENA, J.:

Before the Court *En Banc* is petitioner Commissioner of Internal Revenue's (**petitioner**'s/**CIR**'s) "Motion for Reconsideration (Re: Decision dated 10 February 2021)" (**MR**) filed on 03 March 2021[1], with respondent NCR Cebu Development Center, Inc.'s (**respondent**'s/**NCR CDCI**'s) "Comment (On the Motion for Reconsideration dated March 3, 2021)" (**Comment**) filed on 18 May 2021.[2]

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[1] Rollo, pp. 134-145.
[2] Id., pp. 150-176.

Petitioner's MR seeks the reversal of the Court *En Banc*'s Decision promulgated on 10 February 2021[3] (**assailed Decision**). The dispositive portion of the assailed Decision reads:

> ...
>
> **WHEREFORE**, with the foregoing premises, the instant Petition for Review filed by petitioner Commissioner of Internal Revenue is hereby **PARTIALLY GRANTED**. Accordingly, the Decision dated 04 April 2019 of the Special Third Division in CTA Case No. 9255, entitled *NCR Cebu Development Center, Inc. v. Commissioner of Internal Revenue* is **AFFIRMED WITH MODIFICATION.**
>
> Respondent NCR Cebu Development, Center, Inc. is thus **ORDERED TO PAY** the increased amounts of **₱2,705,052.94** and **₱651,781.31**, representing basic deficiency final withholding tax and withholding value-added tax, respectively, plus 25% surcharge, 20% deficiency interest and 20% delinquency interest imposed thereon under Sections 248(A)(3), 249(B) and (C) of the National Internal Revenue Code of 1997, as amended, respectively, computed until 31 December 2017, as determined below:
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> ...
>
> In addition, respondent is **ORDERED TO PAY** delinquency interest at the rate of 12% computed from 01 January 2018 until full payment thereof, pursuant to Section 249(C) of the NIRC of 1997, as amended by Republic Act No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN) and as implemented by Revenue Regulations No. 21-2018, on said deficiency taxes based on the following principal amounts:

Final Withholding Tax	**₱1,719,552.11**
Withholding Value-Added Tax	**₱414,325.32**

> Further, *other than* the amounts stated herein, petitioner or any person duly acting on his behalf is **ENJOINED** from proceeding with the collection of the taxes assessed against respondent arising from the Final Decision dated 07 January 2016 for taxable year 2010.
>
> **SO ORDERED.**
>
> ...

Petitioner raises the following grounds in his MR:

[3] Rollo, pp. 103-128.

I.
THE HONORABLE COURT *EN BANC* ERRED IN RULING THAT RESPONDENT IS NOT LIABLE FOR DEFICIENCY WITHHOLDING TAX-FINAL AND DEFICIENCY WITHHOLDING TAX-VAT FROM SERVICE FEES PAID TO RESPONDENT'S OTHER FOREIGN AFFILIATES FOR RENDERING SERVICES OUTSIDE OF THE PHILIPPINES.

II.
THE HONORABLE COURT *EN BANC* ERRED IN RULING THAT RESPONDENT IS NOT LIABLE FOR COMPROMISE PENALTIES IN THE AGGREGATE AMOUNT OF ₱100,000.00.

In support thereof, petitioner puts forward the arguments below.

With respect to the first ground, petitioner contends that respondent's failure to obtain tax treaty relief, pursuant to Revenue Memorandum Order (**RMO**) No. 1-2000[4], rendered the transaction subject to withholding tax. If only respondent applied for an International Tax Affairs Division (**ITAD**) ruling, the Bureau of Internal Revenue (**BIR**) would have made the proper verification on the surrounding circumstances behind such transactions. Also, the BIR would have been the proper authority to conclude whether or not these transactions were subject to Philippine tax pursuant to the provisions of the applicable treaties. Since respondent failed to do so, it could not invoke its exemption to withhold the proper final tax related to its alleged foreign transaction.

As to the second ground, petitioner insists that the compromise penalty against respondent is proper and respondent's assent thereto is not required. According to him, respondent's audit revealed that its gross revenues from combined service income and interest income were more than the Value-Added Tax (**VAT**) threshold and thus, it is required that it be registered as a VAT entity. With the obligation to register as such, respondent had the corresponding obligation to file its VAT returns and submit the related Summary List of Sales and Purchases (**SLSP**).

Corollary, petitioner adds that in respondent's Reply to the Preliminary Assessment Notice (**PAN**), Protest to the Formal Letter of

4 Procedures for Processing Tax Treaty Relief Application.

Demand (**FLD**) and Request for Reconsideration of the Final Decision on Disputed Assessment (**FDDA**), respondent did not question or assail the validity of the imposed compromise penalties. In effect, respondent has accepted its liability for compromise penalties in the administrative level for failing to dispute the same.

Lastly, petitioner invokes the case of *Commissioner of Internal Revenue v. Filinvest Development Corporation*[5] where the Supreme Court allegedly affirmed the imposition of compromise penalty in that case which also involves the supposed violations committed herein.

In opposition to petitioner's claims, respondent contends that petitioner's MR is a mere rehash of his past arguments. A perusal of the present MR shows that he merely repeated the arguments in his Motion for Partial Reconsideration (**MPR**) dated 24 April 2019[6] on the Special Third Division's Decision[7] and in the Petition for Review dated 18 October 2019[8], all of which the Court has already resolved.

In addition, respondent maintains that the imposition of compromise penalties is bereft of legal basis.

As to petitioner's argument that it did not contest the imposition of the compromise penalty in its Reply (to the PAN), Protest (to the FLD) and Request for Reconsideration (of the FDDA), respondent made reference to the pertinent pages[9] in the case records which clearly contradict petitioner's claim. It maintains that, *per* the case records, the compromise penalty was properly and timely contested.

Furthermore, respondent avers that the case records also confirm that the parties agreed to the issue of its alleged liability on compromise penalty in their Joint Stipulation of Facts and Issues[10] (**JSFI**), which the Special Third Division adopted in the Pre-Trial Order dated 26 August 2016.[11]

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[5] G.R. Nos. 163653 and 167689, 19 July 2011.
[6] Division Docket, Volume X, pp. 4705-4713.
[7] Id., pp. 4673-4704.
[8] Rollo, pp. 7-17.
[9] BIR Records, pp. 428-429; pp. 496-498; and, pp. 843-844.
[10] Id., Volume VI, p. 2685.
[11] Id., pp. 2716-2717.

Even assuming that respondent did not expressly contest the assessment of compromise penalty, the Court has the authority to take cognizance of issues although not raised by the parties. Citing the case of *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*[12] wherein the Supreme Court ruled, among others, that "the CTA is not bound by the issues specifically raised by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case", respondent insists the Court's action was correct.

As to its alleged non-registration as a VAT taxpayer, respondent reiterates its claim that it was previously registered as such as shown in its initial BIR Certificate of Registration or BIR Form No. 2303[13] issued by Revenue District Office (**RDO**) No. 81. However, it was advised by a revenue officer of RDO No. 81 that it is no longer liable to pay VAT since it enjoyed 5% preferential rate as an entity registered in Philippine Economic Zone Authority (**PEZA**).

With respect to its alleged non-submission of SLSPs, respondent reiterates that it had no VAT transactions for 2010 and thus, it had no obligation to file the SLSPs. It added that, even assuming that it is indeed obligated to submit the said SLSPs, the maximum amount it can be held liable would only be for ₱8,000.00 and not ₱50,000.00. Under RMO No. 7-2015[14], ₱1,000.00 shall be imposed for each failure to make, file or submit the SLSP. Moreover, under Section 4.114-3(b)[15] of Revenue Regulation (**RR**) No. 16-05[16], SLSPs are submitted quarterly. Accordingly, in a year, a taxpayer shall submit a total of eight (8) SLSPs (four SLSs and four SLPs) hence respondent could have been assessed only ₱8,000.00 at most and not ₱50,000.00.

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12 G.R. No. 183408, 12 July 2017.

13 Exhibit "P-12", Division Docket, Volume X, p. 4552.

14 The Revised Consolidated Schedule of Compromise Penalties for Violations of the National Internal Revenue Code.

15 **SECTION 4.114-3.** *Submission of Quarterly Summary List of Sales and Purchases.* —

...

b. When and Where to File the Summary Lists of Sales/Purchases. — The quarterly summary list of sales or purchases, whichever is applicable, shall be submitted in diskette form to the RDO or LTDO or LTAD having jurisdiction over the taxpayer, on or before the twenty-fifth (25th) day of the month following the close of the taxable quarter (VAT quarter)-calendar quarter or fiscal quarter. However, taxpayers under the jurisdiction of the LTS, and those enrolled under the EFPS, shall, through electronic filing facility submit their Summary List of Sales/Purchases to the RDO/LTDO/LTAD, on or before the thirtieth (30th) day of the month following the close of the taxable quarter.

...

16 Consolidated Value-Added Tax Regulations of 2005.

Lastly, respondent claims that petitioner's MR failed to raise substantial grounds that could warrant the reversal or modification of the assailed Decision. According to it, petitioner merely rehashed all his arguments in the proceedings a *quo* and disregarded deliberately the ratiocinations of the assailed Decision.

We resolve.

After considering the arguments of both parties, the Court *En Banc* is constrained to deny petitioner's MR.

It must be emphasized that other than his claim that respondent did not question or assail the validity of the imposed compromise penalties in its Reply (to the PAN), Protest (to the FLD) and Request for Reconsideration (of the FDDA), petitioner failed to raise any new argument or present novel matter which the Court, either in Division and *En Banc*, has not previously scrutinized, studied and discussed.

A simple reading of the instant MR would reveal that the same contain the very identical arguments it earlier raised in his MPR[17] (on the Special Third Division's Decision dated 04 April 2019[18]) as well as in his Petition for Review[19] before the Court *En Banc*.

With respect to petitioner's argument that respondent did not question or assail the validity of the imposed compromise penalties in the latter's previous submissions, the same is clearly contradicted by the records of the case.

It is evident from the Reply[20] (to the PAN), Protest[21] (to the FLD) and Request for Reconsideration[22] (of the FDDA) that respondent contested the imposition of the compromise penalties in every stage of the proceedings.

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17 Supra at note 6.
18 Supra at note 7.
19 Supra at note 8.
20 BIR Records, pp. 428-429.
21 Id., pp. 496-498.
22 Id., pp. 843-844.

As to his recycled arguments, the Supreme Court, in *Licomcen Incorporated v. Foundation Specialists, Inc.*[23] citing *Ortigas and Company Limited Partnership v. Judge Tirso Velasco, et al.*[24], held that:

> ...
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> 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, x x x deemed waived because not asserted at the first opportunity. It suffices for the Court to deal 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.
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> ...

Considering that petitioner merely recycled his previous submissions and his new arguments are already clearly belied by the records, the Court *En Banc* finds no cogent reason to disturb the assailed Decision.

WHEREFORE, with the foregoing, Commissioner of Internal Revenue's Motion for Reconsideration (Re: Decision dated 10 February 2021) filed on 03 March 2021 is **DENIED** for lack of merit.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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[23] G.R. Nos. 167022 and 169678, 31 August 2007.
[24] G.R. Nos. 109645 and 112564, 04 March 1996.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice