REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

EUROVERSAL PROPERTIES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 2393
(CTA Case No. 9869)

Present:

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

Promulgated:
AUG 3 1 2022 4:15pm

x - x

RESOLUTION

BACORRO-VILLENA, J.:

For the Court's resolution is petitioner Euroversal Properties, Inc.'s (**petitioner**'s/**EPI**'s) "Motion for Reconsideration (Re: Decision dated 01 March 2022)"[1] filed *via* registered mail on 23 March 2022[2], absent any comment or opposition from respondent Commissioner of Internal Revenue (**respondent/CIR**).[3] The instant motion seeks the reversal of this Court's Decision[4] dated 01 March 2022 (**assailed Decision**). The dispositive portion of the assailed Decision reads:

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[1] Rollo, pp. 247-258.

[2] Received by the Court on 06 April 2022; also filed *via* private courier on 24 March 2022, id., pp. 214-225.

[3] *Per* Records Verification dated 31 May 2022; id., p. 277.

[4] Id., pp.190-204.

> ...
>
> **WHEREFORE**, the foregoing premises considered, the instant Petition for Review filed by petitioner Euroversal Properties, Inc. on 17 December 2020 is hereby **DENIED** for lack of merit. Accordingly, the Decision and Resolution dated 03 August 2020 and 20 November 2020, respectively, of the First Division in CTA Case No. 9869 entitled *Euroversal Properties, Inc. v. Commissioner of Internal Revenue*, are hereby **AFFIRMED.**
>
> **SO ORDERED.**
>
> ...

In the instant motion, petitioner raises the following arguments: (1) the two (2)-year period within which to claim a refund of its capital gains tax (**CGT**) should be counted from the recission of its contract to sell with Filinvest Development Corporation (**FDC**); (2) it has the right to claim a refund of the CGT as the statutory taxpayer thereof; and, (3) the principle of *solutio indebiti* applies to its case.

As can be recalled, the Court *En Banc* made the following conclusions in arriving at the assailed Decision:

> ...
>
> The records show that FDC advanced the CGT payment under the withholding tax system upon its partial payment for the subject properties. When the parties subsequently agreed to rescind their agreement, petitioner agreed to pay back the amount of ₱150,000,000.00 to FDC while FDC committed to cause the cancellation of its adverse claims on six (6) of petitioner's properties. Interestingly, neither the Compromise Agreement nor petitioner's allegations indicate that the amount paid by petitioner to FDC also covered the CGT (that FDC paid in advance). Moreover, the records and evidence tend to show that FDC paid the CGT out of its own pocket and that petitioner incurred no expenses in relation to the CGT's payment (given that the contract's rescission restored the parties to their previous situation prior to the contract's perfection).
>
> From the foregoing, petitioner does not appear to be entitled to the remedy of refund. Consequently, it also bereft of any cause of action against respondent. ...
>
> ...
>
> At any rate, even assuming for the sake of argument that petitioner has a cause of action to file the present case against

respondent, the same would nevertheless be considered filed out of time.

It is noted that the case of *Philippine American Life* cited by petitioner is not applicable to the case at bar. *Philippine American Life* involved quarterly income tax returns. There, the Supreme Court ruled that the period of prescription to file a claim for refund should only begin to run upon the filing of the final adjusted return given that until such filing, the exact amount of the income tax due is not yet ascertainable. Hence, the Supreme Court held:

> ...
>
> It may be observed that although quarterly taxes due are required to be paid within sixty days from the close of each quarter, the fact that the amount shall be deducted from the tax due for the succeeding quarter shows that until a final adjustment return shall have been filed, the taxes paid in the preceding quarters are merely partial taxes due from a corporation. Neither amount can serve as the final figure to quantity what is due the government nor what should be refunded to the corporation.
>
> This interpretation may be gleaned from the last paragraph of Section 69 of the Tax Code which provides that the refundable amount, in case a refund is due a corporation, is that amount which is shown on its final adjustment return and not on its quarterly returns.
>
> Therefore, when private respondent paid P3,246,141.00 on May 30, 1983, it would not have been able to ascertain on that date, that the said amount was refundable. The same applies with cogency to the payment of P396,874.00 on August 29, 1983.
>
> Clearly, the prescriptive period of two years should commence to run only from the time that the refund is ascertained, which can only be determined after a final adjustment return is accomplished.
>
> ...

Unlike an annual corporate income tax which is paid on a quarterly basis and adjusted at the end of the taxable year for a final determination of the tax due, the CGT is readily ascertainable at the time the parties entered the transaction subject to CGT. Section 6(E) and Section 27(D)(5) of the NIRC of 1997, as amended. ...

...

... After the filing of the CGT return, the same would no longer be subject to adjustment unlike in the case of *Philippine American Life.* With that said, the two-year prescription period in this case should be counted from the CGT's payment on 05 July 2013. Therefore, any administrative and judicial claim for refund of the

> CGT should have been filed on or before 05 July 2015. Since petitioner only filed its administrative and judicial claims for refund on 03 July 2018 and 06 July 2018, respectively, its present claim is already barred regardless of any erroneous payment.
>
> ...
>
> It must likewise be emphasized that Section 229 of the NIRC of 1997, as amended, provides that the two-year prescription period applies "regardless of any supervening cause that may arise after payment". Therefore, the subsequent rescission of the contract between petitioner and FDC does not affect the validity of the CGT payment made. In any event, considerations of equity are also lost on petitioner since as explained earlier, it was FDC and not petitioner who paid the CGT subject of the present claim for refund.[5]
>
> ...

We resolve.

Upon review of the case records, it appears that petitioner's arguments are mere reiterations of those contained in its Petition for Review.[6] As gleaned from the above-cited portions of the assailed Decision, all of petitioner's arguments have already been exhaustively and squarely tackled therein. On this note, the Supreme Court in *Ortigas and Company Limited Partnership v. Judge Tirso Velasco and Dolores v. Molina*[7] (**Ortigas**) ruled thusly:

> ...
> 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 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

5 Citations omitted.
6 Rollo, pp. 1-22.
7 G.R. Nos. 109645 and 112564, 04 March 1996.

> 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.
>
> ...

Applying *Ortigas*, petitioner's motion deserves scant consideration and requires only a summary disposal since it only contains a repetition of arguments previously settled.

In sum, petitioner's Petition for Review was denied since the Court *En Banc* found petitioner **not to be the actual taxpayer** in the case at bar. Furthermore, the 2-year period provided in Section 229[8] of the National Internal Revenue Code (**NIRC**) of 1997, as amended, had already prescribed since the CGT on the sale had already been remitted as early as 05 July 2013[9], while its administrative claim for refund was only filed on 03 July 2018.[10] Lastly, such payment was not erroneous at the time the same was made.

For petitioner's clear failure to present any other arguments to warrant a deviation from these findings in its present motion, the Court *En Banc* is constrained to deny the same.

WHEREFORE, the foregoing premises considered, petitioner's "Motion for Reconsideration (Re: Decision dated 01 March 2022)" filed on 23 March 2022 is **DENIED** for lack of merit.

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8 **SEC. 229.** *Recovery of Tax Erroneously or Illegally Collected.*- no suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, of any sum alleged to have been excessively or in any manner wrongfully collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

9 The date of CGT payment in the Joint Stipulation of Facts and Issues (JSFI) and Pre-Trial Order is 05 July 2013. However, as *per* Exhibit "P-4" that was denied admission by the First Division, the date of payment is indicated as 05 June 2013.

10 JSFI, Division Docket, p. 296.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

ON LEAVE
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

ON LEAVE
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice