REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

SUMITOMO CORPORATION – PHILIPPINE BRANCH,
Respondent.

CTA EB No. 2429
(CTA Case No. 9422)

Present:

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

Promulgated:
JUL 29 2022 4:02 p.m.

x -- x

RESOLUTION

DEL ROSARIO, PJ.:

For resolution is petitioner's "**Motion for Reconsideration [re: Decision dated April 5, 2022]**" filed on April 27, 2022, with respondent's "**Comment (To Petitioner's Motion for Reconsideration [re: Decision dated 5 April 2022])**" filed on May 23, 2022.

In said Motion for Reconsideration, petitioner prays that the Court: *(i)* reverse and set aside the Decision promulgated on April 5, 2022; *(ii)* render another one denying respondent's original Petition for Review filed before the Court in Division; and, *(iii)* order respondent to pay its deficiency tax liability with increments, pursuant to Sections 248 and 249 of the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act No. 10963 (TRAIN Law). The dispositive portion of the assailed Decision reads:

> "**WHEREFORE**, in light of the foregoing, the Petition for Review filed on February 22, 2021 by the Commissioner of Internal Revenue is **DENIED** for lack of merit. The assailed Decision dated June 30, 2020 of the Court in Division in CTA Case No. 9422 is **AFFIRMED**; while, the assailed Resolution dated January 15, 2021 is **SET ASIDE**.
>
> Anent respondent's "Motion for Reconsideration (of the Resolution dated 30 June 2021) with Submission", the same is **DENIED** for lack of merit; and, its "Comment (To Petitioner's Petition for Review)" is **EXPUNGED** from the records of the case for being filed out of time.
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> Petitioner Commissioner of Internal Revenue or any person acting on his behalf is **ENJOINED** from proceeding with the collection of the taxes subject of the present case.
>
> **SO ORDERED.**"[1]

In support thereof, petitioner contends that:

1. His basic right to fair play and due process was violated when the Court *En Banc* ruled on a matter not raised as an issue by respondent in its Petition for Review or Pre-Trial Brief, not joined by the parties, nor defined by the Court in Division in the Pre-Trial Order;

2. Assuming the Court *En Banc* may decide the case based on an issue that was never raised by respondent, was never joined by the pleadings, never raised at the Pre-Trial Conference, never defined by the Court in Division in the Pre-Trial Order and never tried by the parties – still the assessment is valid as the Memorandum of Assignment (MOA) signed by the Chief of Regular LT Audit Division I authorized Revenue Officer (RO) Susan Salcedo and Group Supervisor (GS) Marivic P. Bautista to conduct the audit; and,

3. The Court *En Banc* cannot enjoin him from taking any further action against respondent arising from the same subject assessment.[2]

Respondent, on the other hand, counter-argues that:

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[1] *CTA En Banc Docket*, p. 124.
[2] Petitioner's Motion for Reconsideration, *CTA En Banc Docket*, pp. 137 to 147.

1. The Court *En Banc* is empowered to rule on related issues necessary to achieve an orderly disposition of the case. There was no violation of petitioner's right to due process;

2. The absence of a valid Letter of Authority (LOA) renders the assessment void for violating respondent's right to due process; and,

3. Petitioner is enjoined from resorting to summary methods of collection. A void assessment cannot attain finality.[3]

After careful evaluation of the parties' respective arguments, the Court resolves to deny petitioner's "Motion for Reconsideration".

Petitioner's arguments are substantially mere reiterations or rehash of arguments he previously raised

A motion for reconsideration shall point out specifically the findings or conclusions of the judgment or final order which are not supported by the evidence or which are contrary to law, making express reference to the testimonial or documentary evidence or to the provisions of law alleged to be contrary to such findings and conclusions.[4] It is thus incumbent upon the movant to convince the Court that certain findings and conclusions in the assailed decision are not supported by evidence or are contrary to law.

Petitioner's arguments raised in his Motion, except for his argument on this Court's power to enjoin him from proceeding with the collection of the assessment, are mere reiteration of the arguments pleaded in his "Motion for Reconsideration [re: Decision dated 09 July 2020]"[5] filed before the Court in Division on September 1, 2020, and in his "Petition for Review"[6] filed before this Court on February 22, 2021, all of which were duly considered in the assailed Decision, particularly on pages 10 to 17 thereof. Accordingly, it would be a useless superfluity for the Court to reiterate its pronouncements in the assailed Decision in addressing the same issues.

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[3] Respondent's Comment, *CTA En Banc Docket*, pp. 155 to 172.
[4] Section 2, Rule 37 of the Rules of Court.
[5] *CTA Division Docket*, pp. 900-919.
[6] *CTA En Banc Docket*, pp. 13 to 22.

The teachings of *Social Justice Society (SJS) Officers, et al. vs. Lim,*[7] which cited *Ortigas and Co. Ltd. Partnership vs. Judge Velasco,*[8] is instructive:

> "**The grounds relied on being mere reiterations of the issues already passed upon by the Court, there is no need to 'cut and paste' pertinent portions of the Decision or re-write the *ponencia* in accordance with the outline of the instant motion.**
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> As succinctly put by then Chief Justice Andres R. Narvasa in *Ortigas and Co. Ltd. Partnership v. Judge Velasco* on the effect and disposition of a motion for reconsideration:
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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; xxx. **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.**" (*Boldfacing supplied*)

The Court En Banc has the power to enjoin petitioner from proceeding further action on an invalid assessment

Respondent's timely appeal of petitioner's Amended Final Decision on Disputed Assessment dated June 30, 2016 before the Court in Division which eventually nullified the assessment against respondent precludes the assessment from becoming final and

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[7] Resolution, G.R. Nos. 187836 & 187916, March 10, 2015.
[8] G.R. Nos. 109645 & 112564, March 4, 1996.

enforceable. The assessment not becoming final and executory was further affirmed by this Court in the Decision dated April 5, 2022. Even without the categorical prohibition, any action that tends to degrade the administration of justice including the imprudent collection of a tax, on the basis of an assessment which the Court in Division and this Court declared as void in a judgment, is contemptuous, to say the least. Section 3, Rule 71 of the Rules of Court provides:

> "Section 3. *Indirect contempt to be punished after charge and hearing.* — After a charge in writing has been filed, and an opportunity given to the respondent to comment thereon within such period as may be fixed by the court and to be heard by himself[/herself] or counsel, **a person guilty of any of the following acts may be punished for indirect contempt**;
>
> xxx xxx xxx
>
> (b) **Disobedience of** or resistance to a lawful writ, process, order, or **judgment of a court**, including the act of a person who, after being dispossessed or ejected from any real property by the judgment or process of any court of competent jurisdiction, enters or attempts or induces another to enter into or upon such real property, for the purpose of executing acts of ownership or possession, or in any manner disturbs the possession given to the person adjudged to be entitled thereto; xxx" (*Boldfacing supplied*)

Trite is the rule that a void assessment, bears no fruit.[9] Thus, it cannot be the basis of collection of deficiency tax assessment.

All told, the Court finds no cogent reason to reverse or modify the assailed Decision.

WHEREFORE, premises considered, petitioner's "**Motion for Reconsideration [re: Decision dated April 5, 2022]**" is hereby **DENIED** for lack of merit.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

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[9] *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010.

WE CONCUR:

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice