REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

FIRST PHILIPPINE UTILITIES CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8993

Members:

CASTAÑEDA, JR., *Chairperson,*
MANAHAN, *and*
FABON-VICTORINO, *JJ.*

Promulgated:

FEB 2 6 2019 1:35 pm

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RESOLUTION

CASTAÑEDA, JR., *J.*:

For the Court's resolution are the following:

1. respondent's **Motion for Partial Reconsideration (Re: Decision promulgated 5 November 2018)**, filed on November 20, 2018, with petitioner's **Comment/Opposition (To Respondent's Motion for Partial Reconsideration Re: Decision promulgated 5 November 2018)**, filed on December 13, 2018; and

2. petitioner's **Motion for Partial Reconsideration (Re: Decision dated November 5, 2018)**, filed on November 21, 2018, with respondent's **Opposition (Re: Motion for Reconsideration of the Decision**

dated 5 November 2018), filed on December 27, 2018.

Both parties move for the reconsideration of the Decision promulgated on November 5, 2018, the dispositive portion of which is quoted as follows:

> "**WHEREFORE**, premises considered, the Petition for Review is partially **DENIED**. The deficiency assessments for income tax and miscellaneous tax for taxable year 2009 are **CANCELLED**. However, the basic DST assessment of ₱139,767,103.56 is **UPHELD**.
>
> Accordingly, petitioner FPUC is ordered to pay **One Hundred Thirty-Nine Million Seven Hundred Sixty-Seven Thousand One Hundred Three and 56/100 Pesos (₱139,767,103.56)** representing basic deficiency DST.
>
> **SO ORDERED**."

Respondent's Motion for Partial Reconsideration

In his motion, respondent claims that the Court erred in ruling that petitioner is not liable for deficiency income tax, compromise penalty, interest and surcharge. As to the cancellation of the deficiency income tax, respondent claims that other than the bare allegation of petitioner's witness that the unaccounted or overclaimed amount in NOLCO for the year 2009 was merely caused by typographical error, no other evidence was presented to support the same. With regard to the issue on the compromise penalty, respondent alleges that its imposition is valid pursuant to Revenue Memorandum Order No. 19-2007. Lastly, respondent avers that petitioner cannot rely on good faith as a defense on the issue of its liability to pay interest and surcharge and that the same must be relatively applied.

Petitioner, on the other hand, counters that respondent failed to show how petitioner derived any income as a result of such typographical error. In fact, petitioner suffered a taxable loss for 2009. Petitioner also claims that respondent is incorrect in saying that its argument against the deficiency income tax assessment is only the bare allegation of the typographical error, noting that petitioner also presented the Annual Income Tax Returns (ITR) for the year 2009, and as well as the ITRs for the three subsequent years during which the Net Operating Loss in 2009 may be carried over as a deduction, i.e. year 2010, 2011 and 2012. Petitioner also mentions that the Court is correct in canceling the compromise penalty and in ruling that petitioner is not liable to pay interest and surcharge.

Petitioner's Motion for Partial Reconsideration

In its motion, petitioner alleges that rulings of the Commissioner of Internal Revenue (CIR) may be relied upon by taxpayers in a similar position. It asserts that Section 246 of Tax Code is applicable even when the Supreme Court reverses, revokes, or modifies prior rulings in the Filinvest Case. Petitioner also contends that retroactive application of the Filinvest Case should not be permitted on the grounds of fairness, equity, and compassionate social justice.

On the other hand, respondent claims that petitioner's contention that the general rule on non-retroactivity should apply to Revenue Memorandum Circular (RMC) No. 48-2011 is utterly bereft of merit.

Both motions lack merit.

Apparently, the issues and arguments presented by both parties in their respective motions are essentially a mere rehash of what have been said and reiterated in previous pleadings and that which have been considered, weighed and resolved by the Court in the assailed Decision.

It has been ruled that petitioner is not liable for income tax, compromise penalty, interest and surcharge. It must be noted that the Net Operating Loss Carry Over (NOLCO) involved in this case was incurred in taxable year 2009, the same taxable year covered by the present assessment. The Court found it improper for respondent to disallow the NOLCO because any tax benefit derived by petitioner from the carry-over of the amount redounds to the succeeding years. Since the tax benefit will be in the succeeding year, at most, petitioner may be assessed in the said succeeding year.

As for the compromise penalty, it is settled that the Court cannot compel a taxpayer to pay the compromise penalty because by its very nature, it implies a mutual agreement between the parties in respect to the thing or subject matter that is so compromised, and the choice of paying or not paying it distinctly belongs to the taxpayer.

Moreover, the Court stressed that good faith and honest belief that one is not subject to tax on the basis of previous interpretation of government agencies tasked to interpret and implement the tax laws, are sufficient justification to delete the imposition of surcharges and interest. Considering that petitioner merely relied on the pronouncements made by the CIR and Court of Appeals (CA) on a similar matter, it is therefore not liable to pay interest and surcharges.

It has been settled that the interpretation in the Filinvest Case constitutes a part of the National Internal Revenue Code (NIRC) as of the date it was originally passed since it merely reflects the contemporaneous legislative intent of the law. It is worthy to note that Section 180 (now Section 179) was incorporated in the NIRC, through Republic Act (RA) No. 7660 on December 23, 1993. The same Section 180 was carried over in RA No. 8424 (Tax Reform Act of 1997) on January 1, 1998. Then on February 17, 2004, Section 180 was amended through RA No. 9243 and renumbered as the present Section 179 of the 1997 NIRC. Accordingly, the interpretation of this provision of law in the Filinvest Case became part of the NIRC as early as December 23, 1993. The interpretation became part of the law from the moment it became effective. Hence, the same may be applied to this case without violating the rule against retroactive application of laws and rulings. Furthermore, the prospective application of decisions applies only in cases where an old doctrine of the Supreme Court is overruled by a subsequent decision which adopts a new doctrine. In such situation, the new doctrine must be applied prospectively. In this case, there had been no doctrine previously established by the Supreme Court that was overturned by Filinvest Case.

In the case of *Shangri-La International Hotel Management, Ltd., et al. vs. Developers Group of Companies, Inc.*[1], the Supreme denied respondent's Motion for Reconsideration for being a mere reiteration of their previous arguments and for failure to raise Jc

[1]G.R. No. 159938, January 22, 2007.

matters substantially plausible or compellingly persuasive to warrant the reversal of the assailed Decision, as follows:

> "The bulk of the aforementioned grounds is a mere rehash of movant's previous arguments. While DGCI is correct in stating that a motion for reconsideration, by its very nature, may tend to dwell on issues already resolved in the decision sought to be reconsidered and that this should not be an obstacle for a reconsideration, the hard reality is that movant has failed to raise matters substantially plausible or compellingly persuasive to warrant the desired course of action.
>
> Considering that the grounds presently raised have been sufficiently considered, if not squarely addressed, in the subject Decision, it behooves movant to convince the Court that certain findings or conclusions in the Decision are contrary to law. As it is, however, the instant motion does not raise any new or substantial legitimate ground or reason to justify the reconsideration sought."

Considering that both parties' motions do not raise any new or substantial legitimate ground or reason to justify the reconsideration sought, the Court, therefore, finds no reason to reverse or modify the assailed Decision.

WHEREFORE, premises considered, respondent's **Motion for Partial Reconsideration (Re: Decision promulgated 5 November 2018)** and petitioner's **Motion for Partial Reconsideration (Re: Decision dated November 5, 2018)**, are **DENIED** for lack of merit.

SO ORDERED.

Juanito C. Castañeda, Jr.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

(With all due respect, I maintain my Concurring and Dissenting Opinion.)
CATHERINE T. MANAHAN
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice