REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA *EB* NO. 2287** *(CTA Case No. 9130)*
-versus-	Present: **DEL ROSARIO, P.J., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID,** *and* **FERRER-FLORES,** *JJ.*
MERIDIEN EAST REALTY & DEVELOPMENT CORPORATION, *Respondent.*	Promulgated: JAN 26 2023 11:40am

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RESOLUTION

MODESTO-SAN PEDRO, J.:

For resolution by this Court *En Banc* is petitioner's Motion for Reconsideration, filed on 8 August 2022,[1] with respondent's Ad Cautelam Opposition (To: Motion for Reconsideration dated 5 August 2022) ("Comment"), filed on 19 August 2022 through registered mail.[2]

In his Motion for Reconsideration, petitioner presented the following arguments:

1. The retroactive application of Bureau of Internal Revenue ("BIR") Rulings or Circulars may be made if the facts subsequently gathered by the BIR are materially different from the facts on which the ruling is based or where the taxpayers acted in bad faith.

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1 Records, pp. 155-161.
2 *Id.*, pp. 164-192.

a. The investigation made by the revenue officers resulted to a finding that respondent deliberately misrepresented material facts in its request for ruling. It was discovered that the co-development scheme employed by respondent and Century Properties, Inc., is considered as pre-selling, hence, subject to Income Tax ("IT"), Value Added Tax ("VAT"), Expanded Withholding Tax ("EWT") and Documentary Stamp Tax ("DST"). It is precisely because of this blatant misrepresentation that petitioner issued ***Revenue Memorandum Circular No. 20-10 ("RMC 20-10").***

2. Even assuming that ***RMC 20-10*** should only be applied prospectively, respondent is still liable for deficiency taxes since the subject assessment of this case covers transactions which occurred during the taxable year 2010, wherein respondent is also aware that the co-development scheme they are using is considered as pre-selling, thus, subject to IT, VAT, EWT and DST.

3. The Built to Own or Build Your Own Home Concept of purportedly pooling condominium unit owners' funds to be used for the construction of the condominium units on behalf of the fund owners constitute a taxable sale, exchange, or disposition of real property, hence, subject to IT, EWT and DST.

In its Comment, respondent counter-alleged as follows:

1. This Honorable Court correctly ruled that the revocation of ***BIR Ruling No. DA-245-05*** cannot be retroactively applied. Petitioner failed to prove any misrepresentation and/or bad faith on the part of respondent. While petitioner argues that respondent committed misrepresentation and/or bad faith when it secured ***BIR Ruling No. DA-245-05,*** which results in the retroactive application of ***RMC 20-10,*** still, petitioner failed to provide proof that respondent indeed committed misrepresentation and/or bad faith.

2. The mere issuance of ***RMC No. 20-10*** does not constitute notice to respondent.

3. The "Build to Own" or "Build Your Own Home Concept" does not constitute a taxable sale, exchange or disposition of real property subject to IT, VAT, EWT and DST.

Following a studied review of the arguments, we **DENY** the Motion for Reconsideration for lack of merit.

In ***Ortigas and Company Limited Partnership vs. Judge Tirso Velasco and Dolores V. Molina, and Dolores V. Molina vs. Hon. Presiding Judge, RTC, Quezon City, Br. 105, and Manila Banking Corporation,***[3] the Supreme Court had the occasion to rule in this wise:

> "*Effect, and Disposition of*
> *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 be 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, as above stated, 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."

Moreover, in ***H. Harry L. Roque, Jr., et al. v. Commission on Election, represented by Hon. Chairman Jose Melo, et al.,***[4] the Supreme Court *En Banc* ruled that whenever the issues raised in the Motion for Reconsideration have already been addressed and passed upon in the Decision, and the Motion for Reconsideration failed to raise matters which are substantially plausible or compellingly persuasive, enough to lead the Court to rule in favor of the desired course of action, then the Motion for Reconsideration will be denied by the Court, to wit:

> "Petitioners' above contention, as well as the arguments, citations, and premises holding it together, is a rehash of their previous position articulated in their memorandum in support of their petition. They have been considered, squarely addressed, and found to be without merit in the Decision subject hereof. The Court is not inclined to embark on another extended discussion of the same issue again...
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> xxx xxx xxx
>
> While a motion for reconsideration may tend to dwell on issues already resolved in the decision sought to be reconsidered—and this should not be an obstacle for a reconsideration—the hard reality is that petitioners have failed to raise matters substantially plausible or compellingly persuasive to warrant the desired course of action.

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[3] G.R. Nos. 109645 and 112564, Resolution, 4 March 1996.

[4] G.R. No. 188456, Resolution, 10 February 2010

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WHEREFORE, the instant separate motions for reconsideration of the main and intervening petitioners are DENIED."

This was equally enunciated in ***Shangri-La International Hotel Management, Ltd., et al. v. Developers Group of Companies, Inc.***:[5]

> "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."

A perusal of the Motion for Reconsideration would show that the arguments raised therein have already been sufficiently passed upon, discussed, threshed out and judiciously resolved in the Decision, dated 14 July 2022, which is sought to be reconsidered. The Motion for Reconsideration discloses no cogent reason to disturb the findings and conclusions which this Court made in said Decision.

Applying the judicial pronouncements, above, nothing is left for this Court to do but to deny the same.

WHEREFORE, the instant Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

[5] G.R. No. 159938, Resolution, 22 January 2007.

WE CONCUR:

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

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(With due respect, I join PJ's DO)
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice