REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

CLARK WATER CORPORATION,
Respondent.

CTA EB No. 1693
(CTA Case No. 8572)

Present:
DEL ROSARIO, *P.J.,*
CASTAÑEDA JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:

NOV 12 2019 4:16 p.m.

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RESOLUTION

RINGPIS-LIBAN, *J.*:

For resolution is the "Motion for Reconsideration" of petitioner Commissioner of Internal Revenue (CIR) filed on March 14, 2019[1] asking the Court *en banc* to reconsider its Decision dated February 21, 2019 on the following grounds:

1. the Court *en banc* erred in affirming the ruling of the Court in Division that the Preliminary Assessment Notice (PAN) and the Final Assessment Notice (FAN) were not received by respondent Clark Water Corporation (CWC); and

2. the Court *en banc* erred in ruling that the CIR has the burden of proving that the PAN and Final Letter of Demand (FLD) were actually received by CWC.

[1] *Rollo*, p. 155-166.

In a Resolution dated May 6, 2019[2] the Court *en banc* ordered respondent to file its Comment.

On May 24, 2019, CWC asked the Court *en banc* additional time to file its Comment.[3] This was granted in a Resolution dated June 27, 2019.[4]

On June 10, 2019, CWC posted its "Comment (Re: Motion for Reconsideration dated March 13, 2019)"[5] which the Court *en banc* received on June 17, 2019.

In a Resolution dated September 16, 2019, CWC's Comment was admitted and the CIR's motion for reconsideration was submitted for resolution.

In his motion, the CIR argues that he need not prove that the PAN and FLD were actually received by CWC, as the *onus probandi* had already shifted back to CWC with the presentation of independent pieces of evidence[6] to prove receipt by CWC of the subject mail matters. The convenient denial of CWC of receipt thereof through its witness' testimony is self-serving and cannot overcome the CIR's positive pieces of evidence. Moreover, CWC's protest was filed only on May 24, 2012, beyond the period prescribed for an administrative protest which rendered the assessments final, executory and demandable.

On the other hand, CWC argues that, contrary to the allegations of the CIR, the presumption that "a letter duly directed and mailed was received in the regular course of the mail"[7] is not conclusive, but merely a disputable one. While the evidence that the CIR presented operates to raise the presumption, it is subject to controversion, and a direct denial of receipt shifts the burden on the CIR to prove that the mail matters were actually received by the intended recipient. Since the CIR was unable to discharge the burden of proving that the PAN and FAN were received by CWC, the deficiency tax assessments issued against it are for CY 2008 are null and void.

After considering the arguments of both parties, it is apparent to this Court that, indeed, the arguments raised by the CIR in its Motion for

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[2] *Id.*, pp. 168-169.
[3] *Id.*, pp. 170-172.
[4] *Id.*, pp. 175-176.
[5] *Id.*, pp. 177-189.
[6] Transmittal Sheet and Registry Receipt No. 455, Exhibits "12" and "12-a", Transmittal Sheet and Registry Receipt No. 638, Exhibits "13" and "13-a", Post Office Certification dated July 25, 2012, Exhibit "14", and Affidavit of Loss, Exhibit "15".
[7] Section 3(v), Rule 131, Rules of Court.

Reconsideration are not new. Not only are they a mere rehash of the arguments he raised in his Answer filed on February 16, 2013, they have also been previously discussed and considered in the Decision dated February 16, 2017 and the Resolution dated October 9, 2014 of the Second Division in CTA Case No. 8572. More importantly, they have also been exhaustively studied and considered by this Court prior to rendering our Decision dated February 21, 2019.

In *La Bugal B'Laan Tribal Association, Inc. v. Ramos*[8], the Supreme Court, noting that the arguments and positions raised in the Motion for Reconsideration therein were already raised and discussed extensively, held that a further discussion of the same issues would not serve any useful purpose.

> "A close perusal of the above issues and the discussions thereof shows that they are a mere rehash of arguments and positions already raised and discussed extensively in the 246-page Resolution of December 1, 2004 penned by Justice Artemio V. Panganiban; as well as in the 125-page Dissenting Opinion of Justice Antonio T. Carpio, the 100-page Dissenting Opinion of Justice Conchita Carpio-Morales, the 29-page Separate Opinion of Justice Dante O. Tinga, and the 10-page Concurring Opinion of Justice Minita V. Chico-Nazario.
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> **Further discussion of these issues would not serve any useful purpose, as it would merely repeat the same justifications and reasons** already taken up in the foregoing Opinions, which tackled precisely those matters and even more; **any further elucidations, disquisitions and disputations would merely reiterate the same points already passed upon.**" *(Emphasis supplied)*

Considering that no new matters have been raised, the CIR's "Motion for Reconsideration" is **DENIED** for lack of merit.

SO ORDERED.

Ma. Belen

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

[8] G.R. No. 127882, February 1, 2005.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

ON LEAVE
CIELITO N. MINDARO-GRULLA
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

NO PART
(On Official Time)
MARIA ROWENA MODESTO- SAN PEDRO
Associate Justice