

## SECOND DIVISION

[ G.R. No. 203403, November 14, 2018 ]

### COMMISSIONER OF INTERNAL REVENUE, PETITIONER, V. COURT OF TAX APPEALS, THIRD DIVISION AND WINTELECOM, INC., RESPONDENTS.

#### DECISION

##### A. REYES, JR., J.:

Before the Court is a Petition for *Certiorari*,<sup>[1]</sup> filed by the Commissioner of Internal Revenue (petitioner) under Rule 65 of the 1997 Rules of Civil Procedure, seeking the nullification of the Resolution<sup>[2]</sup> dated July 30, 2012 rendered by the Court of Tax Appeals (CTA), Third Division, which denied the petitioner's "Motion for Partial Reconsideration (*Re: Decision dated June 7, 2012*) and For Leave to Re-Open Case"<sup>[3]</sup> (subject motion) in CTA Case No. 7056.

##### The Antecedent Facts

The petitioner is a duly appointed official of the Republic of the Philippines charged with the duty of assessing and collecting national and internal revenue taxes while private respondent Wintelecom, Inc. (Wintelecom) is a duly organized domestic corporation engaged in the sale and repair of mobile phones.<sup>[4]</sup>

Following an investigation and a pre-assessment notice of its internal revenue tax liabilities for taxable years 2001 and 2000, Wintelecom received a Final Assessment Notice (FAN) on March 10, 2004 for the alleged deficiency with discrepancies in the total amount of Php 553,344,468.98. It filed a corresponding protest to the FAN on April 6, 2004 which was eventually denied by the petitioner on August 20, 2004.<sup>[5]</sup>

On September 22, 2004, Wintelecom filed a Petition for Review against the petitioner with the CTA in Division docketed as CTA Case No. 7056.<sup>[6]</sup>

Thereafter, the petitioner filed a series of Motions for Extension of Time to File Answer on October 14, 2004, October 27, 2004, and November 16, 2004, respectively. The CTA, in turn, granted the motions in its respective Orders dated October 20, 2004, November 2, 2004, and November 17, 2004, with the last order warning the petitioner of its final extension.<sup>[7]</sup>

Notwithstanding, the petitioner filed a fourth, and eventually, a fifth Motion for Extension of Time to File Answer. In its Resolution dated December 17, 2004, the CTA denied the petitioner's fifth motion for extension. Prior to her receipt of the said resolution on January 5, 2005, the petitioner belatedly filed her Answer on December 20, 2004.<sup>[8]</sup>

On January 13, 2005, the petitioner moved for reconsideration of the Resolution dated December 17, 2004. In a Resolution dated May 20, 2005, the CTA denied the

petitioner's motion for reconsideration and set the case for the *ex parte* presentation of evidence for Wintelecom. In turn, the petitioner questioned the said resolution *via* a petition with the Court of Appeals, but the same was dismissed. A subsequent appeal before this Court was likewise denied.<sup>[9]</sup>

After the termination of the *ex parte* presentation of evidence for Wintelecom, the CTA rendered a Decision dated February 20, 2008. Thereafter, the petitioner filed a Motion for Reconsideration with Motion to Admit Answer and Set Aside All Evidence Presented which was denied by the CTA in a Resolution dated August 5, 2008.<sup>[10]</sup>

In turn, the petitioner filed a Petition for Review with the CTA *en banc* docketed as CTA EB No. 417, assailing the Resolution dated May 20, 2005, Decision dated February 20, 2008, and Resolution dated August 5, 2008. Principally, the petitioner questioned the CTA in Division in ordering the *ex parte* presentation of evidence for Wintelecom without any motion from the latter to declare her in default, without a hearing on such motion, without an order declaring her in default, and in rendering judgment thereon.<sup>[11]</sup>

In its Decision dated May 21, 2009, the CTA *en banc* held that while it does not countenance the petitioner's repeated motions for extension, the declaration of default against the petitioner was tainted with procedural defects.<sup>[12]</sup> Thus, the CTA *en banc* granted the petitioner's Petition for Review. Accordingly, it annulled the above-mentioned CTA resolutions and decision, admitted the petitioner's Answer, and remanded CTA Case No. 7056 to the CTA in Division for further proceedings. Wintelecom moved for reconsideration, but the same was denied.<sup>[13]</sup>

Hence, the case concerning Wintelecom's Petition for Review was remanded back to the CTA in Division where the petitioner's Answer was admitted.

In her Answer, the petitioner alleged that pursuant to the provisions of the National Internal Revenue Code (NIRC) of 1997 she has the power to assess the proper tax on any taxpayer based on the best evidence obtainable and such evidence shall be *prima facie* correct and sufficient for all legal purposes. The petitioner claimed that for taxable year 2000, Wintelecom under declared sales in the latter's Income Tax Return (ITR) in the amount of Php 150,153,394.00. For taxable year 2001, Wintelecom declared its sales amounting to Php 113,570,076.00, but in its amended ITR, it declared sales amounting to Php 2,221,499,968.00. The petitioner further alleged that based on third-party information, reconciliation of purchases per unreported books, and verification from the Information Systems Operations Service Data Center of the Bureau of Internal Revenue (BIR), Wintelecom incurred tax deficiencies for taxable years 2000 and 2001. She further asserted that all presumptions are in favor of the correctness of tax assessments.<sup>[14]</sup>

In turn, Wintelecom presented its testimonial and documentary evidence, which were all admitted by the CTA.<sup>[15]</sup>

On April 4, 2011, the petitioner moved for the resetting of the scheduled initial presentation of her evidence which was granted by the CTA with a warning. Despite this, the petitioner moved for resetting again on May 2, 2011. The CTA granted the said motion with a final warning to the petitioner's counsel. On June 1, 2011, the petitioner filed an Urgent Motion to Reset Hearing, alleging that she will not be able to present her evidence on June 6, 2011 due to the heavy volume of work and that

she has yet to communicate with her witnesses, who are revenue examiners mostly doing field work.<sup>[16]</sup>

The petitioner failed to attend the scheduled hearing on June 6, 2011. Thus, upon motion of Wintelecom's counsel and considering that a final warning had already been issued against the petitioner against any further resetting, the petitioner was deemed to have waived the right to present evidence in a Resolution dated June 17, 2011 issued by the CTA. The petitioner moved for reconsideration, but the same was denied for lack of merit in CTA Resolution dated August 23, 2011.<sup>[17]</sup>

Thereafter, both parties were ordered to file their simultaneous memoranda within 30 days from notice. While Wintelecom filed its Memorandum, the petitioner failed to file the same despite notice. Subsequently, the case was deemed submitted for decision.<sup>[18]</sup>

Meanwhile, in a Petition for *Certiorari* filed before this Court on October 26, 2011 and docketed as G.R. No. 199071, the petitioner assailed the CTA Resolutions dated June 17, 2011 and August 23, 2011. Therein, the petitioner prayed that the declaration deeming her to have waived her right to present evidence be set aside and that she be allowed to present evidence in the case. On December 12, 2011, the Court issued a Resolution denying the said petition for having been filed out of time. The petitioner moved for reconsideration, but the same was denied with finality in a Resolution by the Court dated March 19, 2012. Consequently, an Entry of Judgment was made in that case on June 7, 2012.<sup>[19]</sup>

On June 7, 2012, the CTA, Third Division rendered its Decision<sup>[20]</sup> in the main case, the dispositive portion of which reads:

**WHEREFORE**, premises considered, the instant Petition for Review is hereby **PARTLY GRANTED**, as follows:

1. The assessments for deficiency income tax for taxable years 2000 and 2001 – are hereby **CANCELLED** and **SET ASIDE**;

2. As regards the assessments for deficiency VAT, withholding tax on compensation, expanded withholding tax and final withholding tax on fringe benefits for the years 2001 and 2000, [Wintelecom] is hereby **ORDERED TO PAY** [the petitioner] the reduced amount of **FIVE MILLION NINE HUNDRED FORTY[-]NINE [sic] THOUSAND EIGHT HUNDRED FORTY[-]SIX PESOS AND EIGHTY[-]EIGHT CENTAVOS (P5,949,846.88)**, computed as follows:

	<b>YEAR 2001</b>	<b>YEAR 2000</b>	<b>TOTAL</b>
Deficiency VAT	P553,177.65	P2,898,767.65	P3,451,945.30
Deficiency Withholding Taxes			
Compensation	27,540.25	26,056.73	53,596.98
Expanded Withholding Tax	1,203,728.18	39,512.76	1,243,240.94

Final Withholding Tax ---			
Fringe Benefits	1,201,063.66	---	1,201,063.66
	<u>P2,985,509.74</u>	<u>P2,964,337.14</u>	<b><u>P5,949,846.88</u></b>

3. In addition, [Wintelecom] is hereby **ORDERED TO PAY** an additional 20% delinquency interest on the total amount of P5,949,846.88 computed from August 23, 2004 until fully paid, pursuant to *Section 249 (C) of the NIRC of 1997, as amended.*

**SO ORDERED.**<sup>[21]</sup>

Finding against the petitioner's assessments for deficiency income tax, the CTA found that there were no factual and legal bases to support such claim as the petitioner failed to present evidence thereof.<sup>[22]</sup>

On June 26, 2012, the petitioner filed the subject motion<sup>[23]</sup> claiming she did not intend to waive her right to present evidence as the delay in presenting her evidence-in-chief was due to the massive demands of government on her limited pool of lawyers.<sup>[24]</sup> She then prayed that the Decision dated June 7, 2012 be set aside, the case be re-opened, and she be allowed to present its evidence in the interest of substantial justice.<sup>[25]</sup> In the assailed Resolution<sup>[26]</sup> dated July 30, 2012, the CTA denied the petitioner's motion in this wise:

**WHEREFORE**, premises considered, [the petitioner's] "Motion for Partial Reconsideration (Re: Decision dated June 7, 2012) and For Leave to Re-Open Case" is hereby **DENIED** for lack of merit.

**SO ORDERED.**<sup>[27]</sup>

On September 4, 2012, the CTA issued an Entry of Judgment in CTA Case No. 7056.<sup>[28]</sup> Hence, this petition.

### The Issue

WHETHER OR NOT THE CTA, THIRD DIVISION GRAVELY ABUSED ITS DISCRETION WHEN IT DENIED THE PETITIONER'S MOTION FOR PARTIAL RECONSIDERATION AND FOR LEAVE TO RE-OPEN THE CASE.

In denying the subject motion, the CTA held that the petitioner's excuses of heavy volume of work and non-availability of witnesses are not acceptable considering that the case is already a re-trial. Hence, the petitioner must have already developed a system and notified her witnesses in advance in order not to further delay the proceedings. The CTA also found that there is no provision in the Rules of Court that contemplates the re-opening of a case and that the grounds relied upon by the petitioner do not fall within those prescribed for a motion for new trial.

The petitioner argues that the CTA's denial of the subject motion amounts to grave abuse of discretion because it will result in apparent miscarriage of justice as it deprives the petitioner a chance to fully prove her case against Wintelecom and recover alleged deficiency taxes. She contends that a liberal stance in the matter of

procedural technicalities should have been adopted by the CTA considering the assessment involves a sizeable amount in alleged deficiency taxes and the supposed existence and availability of the third party information which will prove the basis of the said assessment. Lastly, the petitioner insists that in the performance of government functions, the State is not bound by the neglect of its agents and officers.

Meanwhile, apart from agreeing with the CTA, Wintelecom questions the propriety of the instant petition and further claims that the petitioner is guilty of forum shopping. It points out that in the Verification and Certification of Non-Forum Shopping, the petitioner admitted that at the time the petition was filed, there was a "Motion to Admit Motion for Reconsideration" pending before this Court in G.R. No. 199071. Wintelecom likewise contends that the issue of whether or not the petitioner can still present evidence has been ruled upon with finality by the Court in G.R. No. 199071 and is, thus, moot and academic. Moreover, Wintelecom argues that there is no admissible evidence for the petitioner which warrants a re-opening of the case as no third-party information was identified and pre-marked during pre-trial before the CTA.

### **Ruling of the Court**

The petition must fail.

Prefatorily, the Court first discusses the procedural matters raised by Wintelecom.

#### *The petitioner did not engage in forum shopping.*

As previously mentioned, prior to filing the instant petition, the petitioner filed an earlier Petition for *Certiorari* before this Court in G.R. No. 199071 assailing the Resolution dated June 17, 2011, which declared her to have waived her right to present evidence. Premised on practically the same facts as the petition at bench, the petitioner prayed that the said resolution be reversed and she be allowed to present her evidence-in-chief. The Court denied the earlier petition for *certiorari* on December 12, 2011 for having been filed out of time. The Court likewise denied the petitioner's eventual motion for reconsideration with finality per Resolution dated March 19, 2012. Notwithstanding, the Entry of Judgment on June 8, 2012, the petitioner filed a Motion to Admit Motion for Reconsideration before this Court on June 21, 2012. As admitted by the petitioner in her Verification and Certification of Non-Forum Shopping, the said motion was pending before this Court when she filed the present petition, which now seeks to re-open CTA Case No. 7056 and one again, for the petitioner to be allowed to present evidence.

Forum shopping is the act of instituting two or more actions or proceedings involving the same parties for the same causes of action, either simultaneously or successively, on the supposition that one or the other court would make a favorable disposition. It is resorted to by any party against whom an adverse judgment or order has been issued in one forum, in an attempt to seek a favorable opinion in another, other than by appeal or a special civil action for *certiorari*.<sup>[29]</sup>

Applying the foregoing definition in the case at bar, this Court finds no forum shopping was committed by the petitioner as the instant petition was neither simultaneously nor successively filed with the earlier petition for *certiorari*, the latter having been filed on October 26, 2011 and the former almost one year later on