REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

HEAVENLY URBAN CHEF, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8556

Members:

BAUTISTA, *Chairperson,*
FABON-VICTORINO, *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:

JAN 05 2017
10:00 a.m.

x- x

RESOLUTION

RINGPIS-LIBAN, *J*.:

For resolution is petitioner's **Motion for Reconsideration (Re: Decision dated 09 August 2016)**, filed on August 31, 2016, without respondent's comment as per Records Verification dated September 22, 2016.

Petitioner seeks reconsideration of the Court's Decision promulgated on August 9, 2016 (assailed Decision)[1], the dispositive portion of which reads:

> **"WHEREFORE**, premises considered, the instant Petition for Review is hereby **DENIED**. Accordingly, petitioner is **ORDERED TO PAY** respondent the modified amount of ₱28,724,811.72, representing basic deficiency income tax, VAT and IAET, inclusive of the fifty percent 50% surcharge imposed under Section 248 of the NIRC of 1997, as amended, computed as follows:

Tax Type	Basic	Surcharge	Total
Income Tax	₱ 5,638,563.46	₱ 2,819,281.73	₱ 8,457,845.19

[1] Docket, vol. 4, pp. 2315-2348.

Value-added Tax	13,182,288.12	6,591,144.06	19,773,432.18
Improperly Accumulated Earnings Tax	329,022.90	164,511.45	493,534.35
Total	**₱19,149,874.48**	**₱ 9,574,937.24**	**₱ 28,724,811.72**

In addition, petitioner is **ORDERED TO PAY**:

(a) Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency income tax, VAT, and IAET computed from the dates indicated below until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended:

	Basic Deficiency Tax	**Deficiency Interest computed from**
Income Tax	₱ 5,638,563.46	April 15, 2010
Value-added Tax	₱ 13,182,288.12	January 25, 2010
Improperly Accumulated Earnings Tax	₱ 329,022.90	January 15, 2011

(b) Delinquency interest at the rate of 20% per annum on the total amount of ₱28,724,811.72 and on the 20% deficiency interest which have accrued as afore-stated in (a), computed from October 24, 2012 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.

SO ORDERED."[2]

In its Motion for Reconsideration, petitioner raises the following grounds:

1. With all due respect, this Honorable Court gravely erred in finding petitioner liable for deficiency income tax in the amount of ₱5,638,563.46, specifically when this Honorable Court found petitioner liable and accountable for:

1.1 Unsupported expenses of ₱444,666.00 under the 50% Rule

1.2 Undeclared sales of ₱14,695,017.86

1.3 Overclaimed expenses of ₱39,733.00

[2] Docket, vol. 4, pp. 2346-2347.

1.4 Unsupported creditable tax withheld of ₱1,084,798.00.

2. With all due respect, this Honorable Court gravely erred in finding petitioner liable for deficiency VAT of ₱13,399,101.18, specifically when this Honorable Court found petitioner liable and accountable for:

2.1 Sales not subject to VAT of ₱89,433,742.28

2.2 Unsupported input taxes of ₱2,606,964.98.

3. With all due respect, this Honorable Court gravely erred in finding petitioner liable for deficiency tax on improperly accumulated earnings of ₱329,022.90.

4. With all due respect, this Honorable Court gravely erred when it dismissed the instant Petition for Review and ordered petitioner to pay respondent a total of ₱28,724,811.72.

We resolve *in seriatim.*

<u>Deficiency Income Tax</u>

Unsupported Expenses of ₱444,666.00 under the 50% Rule

Petitioner claims that this Court erred in finding that it failed to substantiate the expenses of ₱889,332.00 and in sustaining respondent's disallowance of fifty percent (50%) of the said expenses resulting in additional income taxes due. Petitioner insists that it had no unsupported expenses, thus, respondent has no legal basis to hold petitioner liable for any additional taxes thereon.

Petitioner avers that the Court overlooked the fact that in its letter dated April 3, 2012, received by respondent on April 25, 2012, it submitted a summary of its corporate operating expenses for the year 2009, together with the supporting receipts and submarks.

The Court is not persuaded.

Pursuant to Section 34(A)(1)(b) of the National Internal Revenue Code (NIRC) of 1997, as amended, no deduction from gross income shall be allowed unless the taxpayer shall substantiate with sufficient evidence the amount of expense being deducted, and the direct connection or relation of the expense being deducted to the development, management, operation and/or conduct of the trade, business or profession of the taxpayer. Hence, petitioner needs to present sufficient supporting documents to establish the validity of such expense in accordance with Sections 34(A)(1)(b) in relation to Section 34(A)(1)(a) of the NIRC of 1997, as amended.

However, petitioner failed in this regard. While it was able to present the Summary of Operating Expenses for 2009, the purported supporting receipts cannot be found in the records of the case. As already held in the assailed Decision, the Court cannot verify the nature and actual payment of the expenses indicated therein based on this summary alone. Petitioner should have submitted the documents from which the claimed expenses were based.[3]

Thus, for petitioner's failure to present sufficient and convincing evidence to support its claim, the findings of the respondent as to this item of assessment shall be deemed proper. It is well settled that assessments are presumed correct and made in good faith and the taxpayer has the duty to prove otherwise.[4]

Undeclared Sales of ₱14,695,017.86

Petitioner contends that the Court erred when it ruled that petitioner has undeclared sales in the total amount of ₱14,695,017.86 from its Convergys Makati outlet. Again, the Court overlooked the fact that in its letter dated April 3, 2012, petitioner submitted a summary of its official receipts issued to its clients, which bears the Bureau of Internal Revenue (BIR) receipts issued to Convergys, thus showing that all transactions in the Convergys Makati outlet have been duly receipted and declared in the petitioner's Audited Financial Statements.

Petitioner avers that the Court was mistaken in sustaining the "extrapolation" method used by respondent in determining the figure of ₱14,695,017.86 as alleged undeclared sales. Petitioner asserts that it is unsupported by any written testimony or report by any duly-authorized personnel, and that it is speculative, hypothetical, and fictional. According to petitioner, this method violated its right to due process of law as it is not

[3] Decision, docket, vol. 4, p. 2332.

[4] *Commissioner of Internal Revenue vs. Construction Resources of Asia, Inc. and the Court of Tax Appeals*, G.R. No. L-68230 November 25, 1986.

supported by any substantial evidence, but only by whimsical and capricious presumptions.

Petitioner further argues that the alleged BIR Memorandum No. 003-09, which served as respondent's basis in using the extrapolation method, was not part of respondent's Formal Offer of Evidence. It has never been mentioned before by the respondent. It was not even mentioned in any of the communications between the BIR and petitioner.

The Court does not agree.

As held in the assailed Decision, the Court finds that assessments issued based on extrapolation method are valid pursuant to and subject to compliance with the provisions of Section 6(C) of the NIRC of 1997, as amended, and as implemented by Revenue Memorandum Order (RMO) No. 003-09 dated January 15, 2009. Since there was sufficient reason to believe that petitioner had undeclared sales and considering that no evidence was presented by petitioner to controvert the findings of respondent, resorting to surveillance and to extrapolation method in assessing petitioner for undeclared sales are justified and in accordance with Section 6(C) of the NIRC of 1997, as amended. Consequently, the sales amounts used by respondent can be considered as *prima facie* valid and correct for purposes of determining the internal revenue tax liabilities of petitioner.[5]

Overclaimed Expenses of ₱39,733.00

In its motion, petitioner did not pose any arguments pertaining to the disallowance of the overclaimed expenses. Thus, the Court's findings regarding this item of assessment shall stay.

Unsupported Creditable Tax Withheld of ₱1,084,798.00

Petitioner alleges that the Court erred when it ruled that petitioner has unsupported creditable withholding tax in the amount of ₱1,084,798.00.

Considering that petitioner merely alleged in its motion that it has no unsupported creditable tax withheld without offering any arguments to refute the findings and conclusions of the Court, then respondent's disallowance of the same shall be upheld.

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[5] Decision, docket, vol. 4, pp. 2333-2336.

Thus, in sum, We affirm our ruling in the assailed Decision finding petitioner liable for deficiency income tax.

<u>Deficiency Value-added Tax</u>

Sales not subject to VAT of ₱89,433,742.28

Petitioner insists that based on its letter dated April 3, 2012, it submitted a summary of Philippine Economic Zone Authority (PEZA)-registered certificates of its clients and showed that most of the transactions of petitioner are with zero-rated VAT-registered corporate entities. Hence, petitioner claims that this Court gravely erred in overlooking this fact and when it deemed that the transactions of the petitioner with the zero-rated VAT-registered corporate entities should have been subjected to VAT. Worse, the sales extrapolated by respondent in the Convergys outlet of petitioner, as described above, were also deemed to be subject to VAT, in spite of the fact that the said sales are only speculations by respondent.

The Court is not convinced. The same arguments and evidence were already considered in the assailed Decision and the reason for upholding this item of assessment was already adequately discussed therein, to reiterate:

> "However, those PEZA Certifications were denied admission by this Court in the Resolution dated September 10, 2014. Thus, the Court cannot give credence to said exhibits. Moreover, petitioner did not offer in evidence its zero-rated official receipts to prove that it actually rendered services to its clients. This means that petitioner failed to discharge the burden of proving that its sales in the amount of ₱74,738,721.17 are subject to zero-rating. Consequently, the deficiency VAT on the said item of assessment shall be sustained.
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> Likewise, as stated earlier, petitioner had undeclared sales of ₱14,695,017.86. Accordingly, the deficiency VAT assessment thereon should be upheld pursuant to Section 108 of the NIRC of 1997, as amended."[6]

Hence, the Court finds no cogent reason to reverse its previous findings regarding this item of assessment.

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[6] Decision, docket, vol. 4, p. 2339.

Unsupported input taxes of ₱2,606,964.98

Petitioner avers that this Court committed serious error when it ruled that petitioner has unsupported input tax resulting in deficiency VAT liabilities. Petitioner claims that it submitted to respondent a Summary of Input Tax Claims which is supported by sales invoices.

The Court does not agree.

As already held in the assailed Decision, what petitioner offered in evidence was only the Summary of Input Tax, without the supporting invoices. In fact, such was even denied admission by this Court per Resolution dated September 10, 2014 for petitioner's failure to present the original for comparison.[7] As such, the Court cannot give credence to said exhibit.

Also, We emphasize that this Court disallowed only the amount of ₱2,409,031.60 as petitioner's input tax credit and not ₱2,606,964.98 as alleged by petitioner in his Motion for Reconsideration.

Deficiency Tax on Improperly Accumulated Earnings

Petitioner maintains that this Court gravely erred when it ruled that petitioner has improper accumulated earnings resulting in deficiency taxes.

At the risk of being repetitious, petitioner insists that the letter dated April 3, 2012 includes a board resolution showing the amount of ₱4,200,000.00 earmarked for its transfer of facilities to the FTI Compound, which is approximately the amount that covers the retained earnings of the Corporation from prior years.

Petitioner posits that pursuant to Revenue Regulations No. 2-2001, the touchstone of the liability for improperly accumulated earnings is the purpose behind the accumulation of the income and not the consequences of the accumulation itself of the income. Thus, if the failure to pay dividends is due to some other causes, such as the use of undistributed earnings and profits for the reasonable needs of the business, such purpose would not generally make the accumulated or undistributed earnings subject to the tax. However, if there is a determination that a corporation has accumulated income beyond the

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[7] Decision, docket, vol. 4, p. 2340.

reasonable needs of the business, the 10% improperly accumulated earnings tax shall be imposed.

Thus, considering that the amount of ₱4,200,000.00 was earmarked for its transfer of facilities to the FTI Compound, this Court has no legal basis at all to hold the petitioner liable for additional improperly accumulated earnings taxes.

Petitioner's contention is bereft of merit. This issue has already been discussed and passed upon by the Court in its Decision, *viz.*:

> "However, the Court finds the foregoing allegation wanting as the details of said planned expansion or transfer was not included in the said Board Resolution, even as to where the amount of ₱4.2 Million will be sourced was not indicated and explained therein. It must be emphasized that Section 7 of RR No. 02-01 explicitly provides that a speculative and indefinite purpose will not suffice. Definiteness of plans coupled with actions taken towards its consummation are essential.
>
> Considering that no other evidentiary documents were presented by petitioner, and that its Board Resolution was denied admission by this Court per Resolution dated September 10, 2014 for petitioner's failure to identify said exhibit and for not being found in the records, petitioner's contention has no leg to stand on. As a result, the findings of respondent shall be sustained and petitioner shall be held liable for basic IAET of ₱329,022.90."[8]

Finally, it bears stressing that under Section 8 of Republic Act No. 1125, the Court of Tax Appeals is described as a court of record. As cases filed before it are litigated *de novo*, party litigants should prove every minute aspect of their cases.[9] Accordingly, a formal offer of evidence is necessary, since judges are required to base their findings of fact and their judgment solely and strictly upon the evidence offered by the parties at the trial.[10] Evidence which were not formally offered cannot in any manner be treated as evidence.[11]

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[8] Decision, docket, vol. 4, pp. 2345-2346.

[9] *Commissioner of Internal Revenue vs. Manila Mining Corporation*, G.R. No. 153204, August 31, 2005.

[10] *Spouses Ong vs. Court of Appeals et. al.*, G.R. No. 117103, January 21, 1999.

[11] *Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, July 2, 2014; *Rafael Arsenio S. Dizon vs. Court of Tax Appeals et. al.*, G.R. No. 140944, April 30, 2008; *Far East Bank & Trust Company vs. Commissioner of Internal Revenue*, G.R. No. 149589, September 15, 2006; *Jose Tabuena vs. Court of Appeals and Emiliano Tabernilla, Jr.*, G.R. No. 85423, May 6, 1991.

Without the presentation of new arguments or pieces of evidence to support petitioner's claim, the Court finds no reason to disturb the assailed Decision.

WHEREFORE, premises considered, the instant **Motion for Reconsideration (Re: Decision dated 09 August 2016)** is **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice