REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

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AXIA POWER HOLDINGS PHILIPPINES CORPORATION, Petitioner,	**CTA EB No. 1203** (CTA Case No. 8092)
- versus -	Present: **DEL ROSARIO,** *PJ* **CASTAÑEDA, JR. BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN,** *and* **MANAHAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: APR 06 2017 9:15a.m.

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AMENDED RESOLUTION

RINGPIS-LIBAN, ***J.:***

This resolves petitioner's Motion for Reconsideration[1] filed on January 4, 2016 via registered mail, seeking the reconsideration of the Decision[2] promulgated on December 2, 2015 (assailed Decision).

The Court notes petitioner's Manifestation filed on January 18, 2016. Considering that respondent failed to file her comment,[3] petitioner's Motion for Reconsideration is now for the resolution of the Court.

The dispositive portion of the assailed Decision reads as follows:

> **WHEREFORE**, the instant "Petition for Review" is hereby **DISMISSED**; the petition filed in CTA Case No. 8092 is likewise

[1] Docket, pp. 144-155.
[2] Id. at pp. 124-134.
[3] Records Verification Report dated March 21, 2016 of the Judicial Records Division.

dismissed for petitioner's failure to exhaust administrative remedies.[4]

In its motion, petitioner stated the following grounds:

I. THIS HONORABLE COURT ERRED IN ITS CONCLUSION THAT PETITIONER FAILED TO EXHAUST THE ADMINISTRATIVE REMEDY PROVIDED UNDER SECTION 229 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, BECAUSE MARUBENI ENERGY SERVICE CORPORATION (MESC) HAS LEGAL PERSONALITY WHEN IT FILED ITS ADMINISTRATIVE CLAIM ON APRIL 15, 2010.

II. THIS HONORABLE COURT ERRED IN ITS FINDING THAT MESC'S ORIGINAL *PETITION FOR REVIEW* FILED WITH THE FIRST DIVISION OF THIS HONORABLE COURT WAS DEFECTIVE BECAUSE SAID *PETITION FOR REVIEW* WAS PROPERLY VERIFIED BY MESC'S THEN PRESIDENT, RYUKICHI KAWAGUCHI.

III. KAZUNOBU TAKIJIMA IS DULY AUTHORIZED TO VERIFY THE *AMENDED PETITION FOR REVIEW* AS PRESIDENT OF PETITIONER, HOWEVER, THROUGH HONEST MISTAKE THE WRONG SECRETARY'S CERTIFICATE WAS INADVERTENTLY ATTACHED TO THE SAID *AMENDED PETITION.*

After a careful consideration of the grounds raised in the motion for reconsideration, the Court finds that the issues and arguments raised therein have already been amply discussed, passed upon and considered by this Court in the Decision sought to be reconsidered. Petitioner's arguments constitute neither compelling nor cogent reason to modify, much less reverse our Decision dated December 2, 2015.

1. Petitioner failed to exhaust administrative remedies.

Section 229 requires that a claim for refund must be filed with the Commissioner before any suit or proceeding can be maintained in Court. The excess creditable withholding tax (CWT) for calendar year (CY) 2007 sought to be refunded belonged to Marubeni Energy Services Corporation (MESC). MESC was dissolved upon the approval of the merger with petitioner by the Securities and Exchange Commission (SEC) on March 29, 2010. On April 15,

[4] Docket, p. 133.

2010, the date when the administrative and judicial claims were filed, MESC no longer existed.

We reiterate our finding that –

> The allegations in the present Petition, as well as that in the original and amended petitions in CTA Case No. 8092, all stated above, establish that MESC ceased to exist when its merger with petitioner APHPC was approved by the Securities and Exchange Commission (SEC) on March 29, 2010. This effectively dissolved MESC as a corporate entity. x x x MESC no longer had any legal personality at the time the administrative claim was filed x x x. [N]o administrative claim can be considered filed, thus no suit or proceeding can be maintained in any court for the recovery of the tax x x x.

2. The failure to exhaust administrative remedies is not cured by showing the authority of Ryukichi Kawaguchi and Kazunobu Takijima, respectively, to verify the original Petition for Review and the Amended Petition for Review filed before the Court in Division.

In the present Motion for Reconsideration, petitioner clarified that Ryukichi Kawaguchi was the president of MESC. However, as discussed above, MESC already ceased to exist on March 29, 2010.

Petitioner further manifested[5] that Kazunobu Takijima is the president of petitioner since October 1, 2010,[6] and that the wrong Secretary's Certificate was attached. Even if the Amended Petition for Review were properly verified, the same was still filed without exhausting administrative remedies, as discussed above.

3. In any event, the Court in Division adequately discussed the merits of petitioner's claim, and found that it is not entitled to a refund due to the irrevocability rule.

The Court in Division held –

> Under the irrevocability rule, once the option to carry-over excess CWT is chosen by the taxpayer, such option shall be irrevocable for the taxable period, and a refund of excess CWT shall not be allowed. The irrevocability rule applies only to the option of carry-over and not to the option of a refund as explicitly stated in Section 76 of the 1997 NIRC, as amended.

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5 Petitioner attached a Secretary's Certificate to its Manifestation filed on January 18, 2016.

6 The Amended Petition for Review was filed on October 15, 2010.

Citing *Systra Philippines, Inc. vs. Commissioner of Internal Revenue* and *Sankyu Construction Philippines*, petitioner Axia argues that it can claim for a refund or apply for the issuance of a tax credit certificate of MESC's excess unutilized CWT as an exception to the irrevocability rule under Section 76 of the 1997 NIRC, as amended, due to the cessation of MESC's business on account of its merger with petitioner Axia.

The Court finds petitioner's argument bereft of merit.

A perusal of *Sankyu* reveals that it is not on all fours with the subject case as it involves dissolution with permanent cessation of business and not a dissolution by operation of law of the absorbed corporation on account of its merger with another corporation. In *Systra*, by way of *obiter*, the Supreme Court stated that "[w]here, however, the corporation **permanently ceases its operations** before full utilization of the tax credits it opted to carry over, it may then be allowed to claim the refund of the remaining tax credits. In such a case, the remaining tax credits can no longer be carried over and the irrevocability rule ceases to apply. *Cessante ratione legis, cessat ipse lex.*"

Clearly, the purpose of allowing the refund of excess CWT for dissolved corporations with permanent cessation of operations, as an exception to the irrevocability rule, is due to the **impossibility of carrying it over to succeeding years**. As compared to dissolution with permanent cessation of business, however, the rights, privileges, immunities and franchises, and all assets of the absorbed corporation in a merger is transferred to the surviving corporation by operation of law.

A merger is defined as a union whereby one or more existing corporations are absorbed by another corporation that survives and **<u>continues the combined business</u>**. x x x

Upon the effectivity of the merger among MESC, MPEHC and MPEHC II as absorbed corporation and petitioner Axia as the surviving corporation, the rights, assets and obligations of the absorbed corporations were transferred to petitioner Axia which shall continue the combined business. The excess CWT of MESC, being a prepaid tax asset, was transferred to petitioner Axia by operation of law, as a necessary consequence of the merger. Since MESC has chosen to carry over its excess CWT for the CY ended December 31, 2007, as shown in its 2007 Annual ITR, petitioner Axia, having succeeded to the rights, properties and liabilities of

> MESC, cannot now claim for a refund of MESC's excess CWT for CY ended December 31, 2007. Petitioner Axia may nonetheless carry over MESC's excess CWT to the succeeding taxable years and use the same as tax credits against its future tax liabilities, until fully utilized, provided that said excess CWT of MESC is duly substantiated. *(Citations omitted.)*[7]

Indeed, petitioner's claim for refund, even if properly filed, must be denied. The rights, privileges, assets and obligations of MESC were transferred to petitioner as a consequence of the merger. Hence, the excess CWT of MESC for CY 2007, including the right to carry-over the same, was transferred to petitioner. MESC no longer had the right to refund the said excess CWT for 2007, and petitioner could not have acquired such a right through the merger.

WHEREFORE, premises considered, petitioner's Motion for Reconsideration (of the Decision dated 2 December 2015) is hereby **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

I reiterate my Separate Concurring Opinion
ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

(On Leave)
ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

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7 Docket, pp. 19-22.