REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

LEVEL UP, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9424

Members:

CASTAÑEDA, JR., *Chairperson*
and
MANAHAN, *JJ.*

Promulgated:
APR 16 2019 4:00 pm

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RESOLUTION

MANAHAN, *J.:*

This resolves the following:

1) Petitioner's *Motion for Reconsideration (Re: Decision dated 6 December 2018)* filed on December 27, 2018, with respondent's *Comment/Opposition (on Motion for Reconsideration)*, filed through registered mail on January 31, 2019 and received by the Court on February 7, 2019; and

2) Respondent's *Motion for Partial Reconsideration*, filed through registered mail on December 21, 2018, and received by the Court on January 7, 2019. Despite notice, petitioner failed to file its comment thereto, per Records Verification dated February 11, 2019.

The assailed Decision disposed of the case, as follows:

WHEREFORE, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, petitioner is **ORDERED TO PAY** respondent the amount of **TWENTY-THREE MILLION FOUR HUNDRED SEVENTY-THREE**

THOUSAND FIVE HUNDRED ELEVEN PESOS AND FORTY-NINE CENTAVOS (Php23,473,511.49), inclusive of the 25% surcharge imposed under Section 248(A)(3) of the NIRC, and deficiency and delinquency interests imposed under Sections 249(B) and (C) of the same Code, until December 31, 2017, computed as follows:

Basic Deficiency VAT		Php 8,846,280.86
Add:	25% Surcharge	2,211,570.22
	20% Deficiency Interest from July 26, 2013 to August 12, 2016 *[Php8,846,280.86 x 20% x 1,114/365 days]*	5,399,866.79
Total Amount Due, August 12, 2016		**Php 16,457,717.87**
	20% Deficiency Interest from August 13, 2016 to December 31, 2017 *[Php8,846,280.86 x 20% x 506/365 days]*	2,452,722.25
	20% Delinquency Interest from August 13, 2016 to December 31, 2017 *[Php16,457,717.87 x 20% x 506/365 days]*	4,563,071.37
Total Amount Due, December 31, 2017		**Php 23,473,511.49**

In addition, petitioner is **ORDERED TO PAY** respondent delinquency interest at the rate of twelve percent (12%), which is double the legal interest for loans or forbearance of any money, on the Php16,457,717.87 total amount due as of August 12, 2016, as determined above, computed from January 1, 2018 until full payment thereof pursuant to Section 249(C) of the NIRC, as amended by Republic Act No. 10963,also known as Tax Reform for Acceleration and Inclusion (TRAIN), as implemented by Revenue Regulations No. 21-2018.

SO ORDERED.

Petitioner's Motion for Reconsideration

In its Motion, petitioner argues that the Court erred in upholding the assessment on Undeclared Receipts from Uniwiz Trade Sales, Inc. (Uniwiz) and Veritas Solutions, Inc. (Veritas) in the total amount of Php44,212,818.04; and that the Court erred in sustaining the disallowance of the Unsupported Input Tax in the amount of Php4,804,976.63.

It can be recalled that petitioner's defense against the assessment for Undeclared Receipts from Uniwiz and Veritas was that said sales were actually made by Playweb Games, Inc. (Playweb), and not petitioner. In this motion, petitioner points to Playweb's Sales Transaction Reconciliation of Listing for Enforcement to reconcile the purchases made by Uniwiz to sales made by Playweb. Even with this alleged reconciliation, petitioner was still not able to reconcile the assessed amounts with Playweb's sales invoices and official receipts.

Instead, the Court reiterates that based on its verification, there are still unexplained discrepancies between the total sales per invoices and official receipts issued by Playweb to Uniwiz and Veritas, and the Undeclared Receipts found by the BIR.

Taxable Month	Customer	Undeclared Sales	Sales per Playweb's Invoices and ORs	Discrepancy
5/31/2013	Powerhouse Distribution Inc.	Php 168,950.89	Php 168,950.89	
6/30/2013	Powerhouse Distribution Inc.	81,562.50	81,562.50	
		Php 250,513.39	Php 250,513.39	-
1/31/2013	Uniwiz Trade Sales Inc.	Php 4,512,348.22	Php 4,317,375.00	Php 194,973.22
2/28/2013	Uniwiz Trade Sales Inc.	10,956,756.70	4,539,827.01	6,416,929.69
3/31/2013	Uniwiz Trade Sales Inc.	5,739,024.00	4,397,089.85	1,341,934.15
4/30/2013	Uniwiz Trade Sales Inc.	7,116,735.94	5,961,247.76	1,155,488.18
5/31/2013	Uniwiz Trade Sales Inc.	7,909,504.01	6,014,457.59	1,895,046.42
6/30/2013	Uniwiz Trade Sales Inc.	7,313,806.50	4,266,340.19	3,047,466.31
		Php 43,548,175.37	Php29,496,337.41	Php14,051,837.96
6/30/2013	Veritas System Solutions Inc.	Php 664,642.67	Php 117,857.14	546,785.53
	Total	**Php44,463,331.43**		

Thus, the Court cannot ascertain whether the assessed receipts are one and the same with the foregoing sales transactions of Playweb.

As to the alleged Unsupported Input Tax, petitioner states that it submitted the Summary List of Purchases that includes the local transactions which would substantiate the remaining amount of Php4,804,976.63.

We disagree. Section 110 of the 1997 National Internal Revenue Code, as amended (NIRC) states that a creditable input tax should be evidenced by a VAT invoice or official receipt. In relation thereto, Section 113 of the NIRC provides that a VAT invoice is necessary for every sale, barter or exchange of goods or properties, while a VAT official receipt properly pertains to every lease of goods or properties and sale, barter or exchange of services. Unfortunately, petitioner failed to submit the required VAT invoice or official receipt to support the claimed input taxes amounting to Php4,804,976.63. Thus, the disallowance of said amount is sustained.

For the foregoing, petitioner's Motion for Reconsideration is denied.

Respondent's Motion for Partial Reconsideration

In his Motion, respondent seeks reconsideration of the Court's finding that respondent's disallowance of petitioner's Excess Input Tax Carried Over to Succeeding Quarter/Period in the amount of Php1,264,223.93 is improper.

Respondent states that Section 110(B) of the NIRC and Section 19 of Revenue Regulations No. 4-2007 clearly and categorically provides that any excess input tax accumulated for the period and from previous periods shall be carried over to the succeeding quarter or quarters. Thus, it can only be inferred that the carrying over of the excess input tax is mandatory and it is only proper for respondent to disallow such excess input tax on the period covered by the assessment since such excess input tax can be utilized by petitioner to the succeeding quarter or quarters.

Again, it is reiterated that any tax benefit derived by petitioner from such carry-over redounds to the succeeding period. If at all, petitioner may only be assessed in the succeeding period for the alleged excess input tax carried over.

Thus, respondent's Motion for Partial Reconsideration is likewise denied.

WHEREFORE, petitioner's *Motion for Reconsideration (Re: Decision dated 6 December 2018)* and respondent's *Motion for Partial Reconsideration* are both **DENIED** for lack of merit.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

I CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice