REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

KEPCO PHILIPPINES CORPORATION,
Petitioner,

-versus-

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 1155
(CTA Case No. 8319)

Present:

Del Rosario, *P.J.*,
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Cotangco-Manalastas, and
Ringpis-Liban, *JJ.*

Promulgated:
MAR 3 1 2015
3:38 p.m.

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RESOLUTION

CASTAÑEDA, JR., *J.*:

For resolution is petitioner's "Motion for Reconsideration" assailing the Decision dated November 3, 2014 with respondent's Comment/Opposition thereto.

In the Decision dated November 3, 2014, the Court *en banc* in effect ordered petitioner to pay P57,038,200.98 representing 2007 basic deficiency VAT from income interest on loans extended to affiliates, surcharge exclusive of interests.

petitioner to its affiliates which were earned not because of the performance of any service, but due to the fact that this is simply a compensation for the use or forbearance of money, the same, should not be treated as a sale or performance of a service within the coverage of VAT.

The interest income earned from the loans is merely a passive income, and cannot be considered as sale of goods or services subject to VAT.

The mere fact that the affiliate-borrower is also engaged in the power generation sector is of no moment. Extending two loans is no way incidental to petitioner's main business as a power generation company. Whether directly or indirectly, petitioner will not be able to manage, operate and maintain the power plants of the affiliates despite the loans extended to them. These loans cannot be considered incidental to the purpose of generating or selling electricity. Simply stated, petitioner is in the business of generating power, and not lending money.

Respondent on the other hand, insists that the interest income earned by petitioner from the loans granted to its affiliates are incidental to its primary business, hence subject to VAT pursuant to Section 105, in relation to Section 108 of the 1997 NIRC, as amended.

Petitioner's Motion for Reconsideration is unmeritorious.

The grounds interposed by petitioner in the Motion for Reconsideration have been fully explained in the assailed Decision. We reiterate the following salient points:

1. A transaction is characterized as having been entered into by a person *in the course of trade or business* if it is (1) regularly conducted and (2) undertaken in pursuit of a commercial or *economic activity*[1], regardless of whether or not the entity is profit-oriented.[2] *ge*

1a. The law treats transactions undertaken incidental to the pursuit of a commercial or economic activity as entered in the course of trade or business.[3]

2. The Court in Division correctly observed that the loans granted to its affiliates, Kepco Ilijan Corporation ("KEILCO") and Kepco Philippines Holdings Inc. ("KPHI") are incidental to petitioner's primary business of power generation of its Malaya Power Complex in Rizal and other power generating plants justifying the imposition of VAT.

3. The loans to KEILCO and KPHI are intended to be allocated for the construction of the generating power plant to be located in Ilijan, Batangas and for the purchase of shares of stock in SALCON Power Corporation ("SPC"), a publicly listed generation company in Cebu, respectively. Evidently, these loan transactions are in furtherance of petitioner's main line of business of rehabilitation, operation, maintenance, management not only of its power generating plants **but also "other power generating plants and related facilities for the conversion into electricity of fuel" as shown in its amended articles of incorporation.**[4]

The Court sees no cogent reason to reverse, much less, modify the assailed Decision.

WHEREFORE, premises considered, petitioner's Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

(On Leave)
CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

Ma. Belen S. L.
MA. BELEN M. RINGPIS-LIBAN
Associate Justice