REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

SWIFT FOODS, INC., Petitioner,	CTA Case No. 8399
	Members:
- versus -	BAUTISTA, *Chairperson* FABON-VICTORINO, and RINGPIS-LIBAN, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: FEB 15 2017 10:25 a.m.

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RESOLUTION

***Fabon-Victorino, J.*:**

This resolves the following:

1. Respondent's *Motion for Partial Reconsideration*[1] filed on October 27, 2016, with petitioner's *Comment/Opposition* thereto posted on November 18, 2016; and

2. Petitioner's *Motion to Pay* filed on December 7, 2016, with respondent's *Comment* filed on January 9, 2017.

In his *motion*, respondent seeks reconsideration of the Decision[2] promulgated on September 22, 2016, the dispositive portion of which reads as follows:

> **WHEREFORE**, the instant Petition for Review filed by Swift Foods, Inc. is **PARTIALLY GRANTED**. Accordingly, petitioner is hereby **ORDERED TO PAY** deficiency income and

[1] Docket, pp. 1493-1499.
[2] Docket, pp. 1469-1492.

value-added taxes in the aggregate amount of ₱556,254.72, inclusive of the 25% surcharge imposed under Section 248(3) of the NIRC of 1997, as amended, computed as follows:

Tax Type	Basic	Surcharge	Total
Income Tax	₱ 98,921.77	₱ 24,730.44	₱ 123,652.21
Value Added Tax	346,082.01	86,520.50	432,602.51
TOTAL	**₱ 445,003.78**	**₱ 111,250.94**	**₱ 556,254.72**

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 of ₱98,921.77 and value added tax of ₱346,082.01, computed from the dates indicated below until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended:

Tax Type	Basic Tax	Deficiency Interest Computed From
Income Tax	₱ 98,921.77	April 15, 2008
Value Added Tax	₱ 346,082.01	January 25, 2008

(b) Delinquency interest at the rate of 20% per annum on the total amount of ₱556,254.72 and on the 20% deficiency interest which have accrued as aforestated in (a), computed from January 1, 2012 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.

SO ORDERED.

In his bid for reconsideration of the Decision of September 22, 2016, respondent clarifies that he only assails the cancellation of the deficiency Income Tax (IT) and Value-Added Tax (VAT) assessment on petitioner's gross sales to its customers amounting to ₱44,817,318.78, as itemized in the assailed Decision, based on the following grounds:

a. The certifications submitted by the petitioner's customers were never authenticated, thus, are inadmissible and should not have been considered in cancelling the assessment;

b. RFM's Certification is not substantiated by presentation of official receipts/invoices issued to petitioner's customers;

c. Petitioner failed to overcome the presumption of validity of the assessment, thus should be liable for deficiency taxes relative thereto; and

d. The deficiency tax assessment has already attained finality, by operation of law.

In its *Comment/Opposition* filed on November 18, 2016, petitioner agrees with the Court saying that the cancellation of deficiency IT and VAT assessments on the sales amounting to ₱44,817,318.78 is correct as they arose from the inadvertent use of its Tax Identification Number (TIN) by the customers of RFM in recording their purchases from the latter. Further, contrary to respondent's claim, the submitted Certifications from its customers were identified by the very persons who issued them. Petitioner also points out that respondent did not object to these Certifications during their presentation and formal offer.

On the other hand, in its *Motion to Pay*, petitioner clarifies that it has no intention to appeal the Decision of September 22, 2016 and that its intention to pay the tax liability as ordered in the said Decision is merely to stop the running of the interest imposed. In any event, petitioner requests that its payment for compromise settlement in the amount of ₱1,194,729.88 be deducted from the total deficiency tax due. According to petitioner, on November 26, 2012, it applied for a compromise settlement of its deficiency IT and VAT liabilities for 2007 and made an advance payment in the aggregate amount of ₱1,194,729.88. As proof of such payment, petitioner attached to its *motion* certified true copies of Payment Forms (BIR Form 0605), Filing Reference No. for BIR form 0605, Confirmation Receipt of Payment from Land Bank of the Philippines and BIR *e*FPS Confirmation of Receipt of Payment. Petitioner however states that despite payment of the compromise fee, its application for a compromise settlement was not acted upon by respondent. Thus, its prayer that the said payment be deducted from its total deficiency tax liabilities. Petitioner is aware that any favorable resolution on its *Motion to Pay* is without prejudice to the Court's ruling on respondent's *Motion for Partial Reconsideration*.

In his *Comment*, respondent interposes no objection to petitioner's *Motion to Pay* filed on December 7, 2016.

Respondent's *Motion for Partial Reconsideration* must fail.

Indeed, the Certifications pertaining to the sales amounting to ₱44,817,318.78 were duly authenticated by RFM customers and duly acknowledged by RFM as its own sales and not of petitioner. The record speaks for itself.

Anent respondent's claim that the deficiency tax assessment has already attained finality for petitioner's failure to lodge a valid protest, suffice it to say that the same has already been passed-upon and found wanting by the Court.

WHEREFORE, the *Motion for Partial Reconsideration* filed by respondent Commissioner of Internal Revenue on October 27, 2016, is hereby **DENIED,** for lack of merit.

On the other hand, there being no objection on the part of respondent, petitioner Swift Foods, Inc.'s *Motion to Pay* filed on December 7, 2016, is hereby **GRANTED**. Consequently, petitioner's payment for compromise settlement in the amount of ₱1,194,729.88 shall be deducted from its total tax liabilities.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We concur:

LOVELL R. BAUTISTA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice