REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

SARA LEE KIWI HOLDINGS, LLC.,
Petitioner,

- versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8741

Members:

Castañeda, Jr., *Chairperson*
Casanova, and
Cotangco-Manalastas, *JJ.*

Promulgated:

NOV 2 5 2015 10:50 am

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RESOLUTION

COTANGCO-MANALASTAS, *J.*:

This resolves respondent's Motion for Reconsideration[1], filed on September 23, 2015, with petitioner's Comment/Opposition[2], filed on October 8, 2015.

Respondent Commissioner of Internal Revenue seeks reconsideration of this Court's Decision[3], dated September 4, 2015, which disposed of the case, as follows:

> "WHEREFORE, premises considered, the instant Petition for Review is hereby GRANTED. Accordingly, respondent is ORDERED TO REFUND in favor of petitioner the amount of Fifty-Seven Million Eight Hundred Twenty-Nine Thousand Six Hundred Pesos and 50/100 (P57,829,600.50) representing erroneously paid donor's tax."[4]

Respondent, in its motion, argues that petitioner is not entitled to the refund. Regarding the basis of the fair market

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[1] Docket, pp. 601-607.
[2] Docket, pp. 610-613.
[3] Docket, pp. 587-600.
[4] Docket, p. 599.

value of the stocks sold, respondent argues that it should have been based on the audited financial statements for fiscal year 2010. Further, respondent argues that even if petitioner is not liable for donor's tax, petitioner should be made liable for capital gains tax arising from the sale of its shares of stock.[5]

In its comment/opposition, petitioner counters that the nearest audited financial statements, as required by the rules, were the audited financial statements as of June 30, 2011. Even assuming that the book value should be determined using the audited financial statements for fiscal year 2010, the transaction results to an even bigger capital gain and therefore not subject to donor's tax.[6] Finally, petitioner argues that it cannot be made liable for capital gains tax for the sale of shares of stock pursuant to the RP-US tax treaty.[7]

The motion is without merit. As discussed in the September 4, 2015 Decision, the fair market value of the Sara Lee Household Care (Philippines), Inc. (SLHCPI) shares sold should be the book value based on the Audited Financial Statements, as of the date nearest to the sale.

The CTA *En Banc*, had occasion to rule on the issue of determining the nearest valuation date, as follows:

> "Anent petitioner's proposition that the nearest valuation date of the stocks for the purposes of CGT should be December 31, 1996 and not December 31, 1997, suffice to say that the subject transactions took place in July 1997 or within the second half of that year. Logically, the nearest reliable valuation date would be December 31, 1997.[8] (*Underscoring ours*)

In the instant case, the sale took place on April 4, 2011. Petitioner uses the fiscal year, and therefore, the nearest audited financial statements to the April 4, 2011 sale is the Audited Financial Statements as of June 30, 2011, and not the June 30, 2010 financial statements.

As to the issue of petitioner's liability for capital gains tax, the same is being raised for the first time in the instant

[5] Docket, pp. 604-605.
[6] Docket, pp. 611-612.
[7] Docket, p. 612.
[8] *Philip G. Brodett vs. Commissioner of Internal Revenue*, CTA EB Case No. 543, December 8, 2010.

motion for reconsideration, with no opportunity for the parties to be heard before the Court, thus the Court will not rule on the matter.

WHEREFORE, premises considered, the instant Motion for Reconsideration is **DENIED** for lack of merit.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CAESAR A. CASANOVA
Associate Justice