REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

<u>SECOND DIVISION</u>

DOLE FRESH FRUIT COMPANY,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondents.

CTA CASE NO. 9012

Members:

CASTAÑEDA, JR., *Chairperson, and*
BACORRO-VILLENA, *JJ.*

Promulgated:

SEP 08 2020 9:39 am

x - x

RESOLUTION

CASTAÑEDA, JR., J.:

Before this Court is respondent's **Motion for Reconsideration**, filed on February 26, 2020, with petitioner's **Comment (To: Motion for Reconsideration filed by Commissioner of Internal Revenue dated 26 February 2020)**, filed on June 29, 2020.

On February 5, 2020, a Decision was promulgated by this Court granting petitioner's claim for refund of erroneously paid capital gains tax under the Republic of the Philippines–United States (RP–US) Tax Treaty, the dispositive portion of which reads as follows:

> "**WHEREFORE**, in light of the foregoing considerations, the instant Petition for Review is **GRANTED**. Accordingly, respondent is **ORDERED TO REFUND** in favor of petitioner Dole Fresh Fruit Company the amount of **₱9,036,864.40**, representing erroneously paid capital gains tax from sale of its shares of stock in Dole Philippines, Inc. to Dole Asia Holding Pte. Ltd.
>
> **SO ORDERED**."

In his Motion, respondent assails the above Decision claiming that the financial statement for the year ended December 31, 2012 dated May 17, 2013 which petitioner submitted to this Court, is not a duly audited financial statement required under Revenue Regulations (RR) No. 4-86[1] since it is not audited by an external auditor. As such, respondent insists that the submitted unaudited financial statement is self-serving and is merely an internal document that proves nothing in relation to the grant of tax exemption.

Moreover, respondent also argues that petitioner failed to sufficiently establish whether the real property interests in Dole Philippines, Inc. (DPI) are indeed located outside the Philippines; and, that also the real property interest ratio of DPI that are located in the Philippines is not properly adjusted, as required under Revenue Regulations No. 4-86. Lastly, respondent maintains that tax exemptions are to be construed *strictissimi juris* against the petitioner.

On the other hand, in its Comment, petitioner argues that respondent failed to show any reversible error committed by this Court to warrant a reversal of the Decision he assails. Petitioner states that contrary to respondent's allegations, there is nothing in RR No. 4-86 that requires financial statements to be audited, much less by an external auditor. In fact, the only requirement is that it must be verified by the Bureau of Internal Revenue (BIR).

Also, petitioner continuous that there is no basis in respondent's claim that it failed to establish the fact that DPI's real property interests in the Philippines are less than fifty percent (50%) of its total assets. Petitioner argues that DPI's real property interest ratio was properly arrived at using DPI's 2012 Audited Financial Statement (AFS) and Comparative Schedule of Property, Plant and Equipment, in determining the ratio of DPI's real property against its total assets. Nonetheless, petitioner asserts that respondent waived his right to object to the admissibility and competence of DPI's 2011 AFS, 2012 AFS, and Comparative Schedule of Property, Plant and Equipment during the hearing in spite of having been given the opportunity to do so.

After due consideration, the instant Motion for Reconsideration is bereft of merit.

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[1] "SUBJECT: Determination of Whether the Assets of a Corporation Consist Principally of Real Property Interest under the Philippine Tax Treaties", dated April 2, 1986.

First, simple perusal of the records of the case readily reveals that petitioner's financial statement for the year ended December 31, 2012 dated May 17, 2013 were in fact audited by Navarro Amper & Co.[2], an auditing firm duly accredited by both the Board of Accountancy and BIR.

Second, a careful evaluation of the arguments raised by respondent in his Motion shows that they are a rehash of the same facts and issues which have already been duly considered and extensively discussed in the Decision assailed. Again, to emphasize:

> "In *Goodyear Philippines, Inc. vs. Commissioner of Internal Revenue*, this Court made the following pronouncements as to the exemption of shares from CGT under the RP-US Tax Treaty:
>
> > 'In the case of petitioner, its Audited Financial Statements (AFS) for the years 2007 and 2008 reveal that the real property components of its property, plant and equipment (PPE) comprise less than 50% of its assets, detailed as follows:
> >
> > x x x
> >
> > Furthermore, as correctly pointed out by petitioner, the entire values of the PPE of petitioner for the years 2007 and 2008, respectively, comprise less than 50% of its total assets for said years, respectively, to wit:
> >
> > x x x
> >
> > Since petitioner's assets do not consist principally of real property interest, the Reservation Clause of the RP-US Tax Treaty does not apply in this case. Accordingly, the net capital gain derived by GTRC in the redemption of its 3,729,216 preferred shares by petitioner is exempt from the 5% or 10% capital gains tax imposed under Section 28(B)(5)(c) of the NIRC of 1997, as amended.'

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[2] Exhibit "P-18", Docket – Vol. II, pp. 933-1005.

Summarizing the provisions thus: (1) capital gains derived by residents of other Contracting States from the disposition of shares or interests in a Philippine corporation are taxable in the Philippines only if the assets of the corporation consist principally of real property interest located in the Philippines; (2) real property interests are interests on properties enumerated in RR 4-86, including real properties as defined under Philippine law; (3) principally means more than fifty percent (50%) of the entire assets in terms of value; and, (4) the value of the assets shall be determined from the financial statements as of the date of the sale, as verified by the BIR.

Applying the foregoing to the instant case, petitioner presented DPI's Audited Financial Statements for the year ended December 31, 2012 dated May 17, 2013. Evident from the said audited Financial Statements that the percentage of DPI's real property interest over its total assets was only **17.80%,** to wit:

Assets	As of December 31, 2012
Property, plant and equipment	₱ 4,725,601,019.00
Total Assets	26,549,527,599.00
Percentage	17.80%

Petitioner likewise submitted the Comparative Schedule of Property, Plant and Equipment to show that the valuation of DPI's real property during the transaction date amounts to ₱4,568,099,916.00 which way less than 50% of DPI total assets.

As computed, the real property interest of DPI does not exceed 50%, thus it cannot be said to have assets consisting principally of a real property interest in the Philippines. Therefore, petitioner's capital gains derived from the transfer of its shares of stock in the DPI shall be exempt from CGT in the Philippines, pursuant to RP-US Tax Treaty.

As stressed by the High Tribunal in *Commissioner of Internal Revenue vs. Fortune Tobacco Corporation*, if the State expects taxpayers to observe fairness and honesty in paying their taxes, it must hold itself against the same standard in refunding erroneous exactions and payment of such taxes. It thus behooves the government to refund what it erroneously collected."[3] *(Citations omitted)*

In view of the foregoing discussion, this Court finds no cogent reason to disturb the assailed Decision.

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

SO ORDERED.

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

I Concur:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

[3] Decision, pp. 19 to 21.