20-000052-0092

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

CTA CASE NO. 10259

MUNICIPALITY OF PULILAN, represented by Municipal Mayor HON. MARIA ROSARIO O. MONTEJO and Municipal Accountant, MR. PAULO BERBENZANA,
Petitioners,

NOTICE OF RESOLUTION

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street, Legazpi Village, Makati City

ATTY. NAPOLEON P. CAMPOS, JR.
ATTY. LEONARD BRYAN DG. GONZALES
ATTY. CHRISTIAN WILFRED D. MORALES
Bureau of Internal Revenue-Revenue Region No. 5
9th Floor, Legal Division, BIR Regional Office Building
No. 140, Bo. Kalaanan, Brgy. 86
EDSA, Caloocan City

ATTY. GERARD EMMANUEL V. TAYAO
Pulilan Municipal Legal Office
Pulilan Municipal Hall
Brgy. Poblacion, Pulilan, Bulacan

GREETINGS:

You are hereby notified by these presents that on **November 13, 2024,** a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **November 15, 2024.**

Atty. Margarette Y. Guzman
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
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MUNICIPALITY OF PULILAN, represented by Municipal Mayor HON. MARIA ROSARIO O. MONTEJO and Municipal Accountant, MR. PAULO BERBENZANA,
Petitioner,

CTA Case No. 10259

Members:

DEL ROSARIO, *PJ, Chairperson,*
MANAHAN, and
REYES-FAJARDO, *JJ.*

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

NOV 13 2024; 10:40 AM

x---x

RESOLUTION

REYES-FAJARDO, ***J.*:**

For action is petitioner's *Motion for Reconsideration* dated April 16, 2024, with respondent's *Comment on Petitioner's Motion for Reconsideration*[1] dated May 14, 2024.

By Decision dated March 22, 2024,[2] CTA Case No. 10259 was disposed in the following manner:[3]

> "**WHEREFORE**, the Petition for Review dated February 13, 2020, filed by the Municipality of Pulilan, Bulacan is **PARTIALLY GRANTED**. Accordingly, we **RESOLVE** to:

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1 Comment, Docket, Vol. II, pp. 931 - 967.

2 Decision, Docket, Vol. II, pp. 884 - 917.

3 *Id.* at pp. 916 - 917.

a. **CANCEL** the deficiency OPT and VAT withheld assessment issued by respondent against petitioner for TY 2016 in the amount of ₱1,919,489.87; and,

b. **AFFIRM** with **MODIFICATION** the deficiency Income Tax, VAT and EWT assessments issued by respondent against petitioner for TY 2016. Accordingly, petitioner is **DIRECTED TO PAY** respondent the total amount of **FOURTEEN MILLION SEVEN HUNDRED FIFTY THOUSAND ONE HUNDRED FIFTY-TWO PESOS AND EIGHTY-SIX CENTAVOS (₱14,750,152.86)**, inclusive of the surcharge and deficiency interest imposed under Sections 248 (A) (3) and 249 (B) of the NIRC of 1997, as amended by Republic Act (RA) No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN), as implemented by Revenue Regulations (RR) No. 21-2018, computed as follows:

	Income Tax	VAT	EWT	Total
Basic Tax	₱1,201,200.00	₱7,362,360.00	₱ 682,630.24	₱ 9,246,190.24
25% Surcharge	300,300.00	1,840,590.00	170,657.56	2,311,547.56
20% Deficiency Interest				
from April 16, 2017 to Dec. 31, 2017 *(₱1,201,200.00 x 20% x 260/365 days)*	171,129.86			171,129.86
from Jan. 26, 2017 to Dec. 31, 2017 *(₱7,362,360.00 x 20% x 340/365 days)*		1,371,617.75		1,371,617.75
from Jan. 11, 2017 to Dec. 31, 2017 *(₱682,630.24 x 20% x 355/365 days)*			132,785.61	132,785.61
12% Deficiency Interest				
from Jan. 1, 2018 to May 14, 2019				
(₱1,201,200.00 x 12% x 499/365 days)	197,062.62			197,062.62
(₱7,362,360.00 x 12% x 499/365 days)		1,207,830.46		1,207,830.46
(₱682,630.24 x 12% x 499/365 days)			111,988.76	111,988.76
Total Amount Due as of May 14, 2019	**₱1,869,692.48**	**₱11,782,398.21**	**₱1,098,062.17**	**₱14,750,152.86**

Petitioner is further **ORDERED TO PAY** respondent, delinquency interest at the rate of twelve percent (12%) per annum on the ₱14,750,152.86 total amount due as of May 14, 2019, or an amount equivalent to ₱4,849.37 per day, [124] from May 14, 2019 until full payment thereof pursuant to Section 249 (C) of the NIRC of 1997, as amended by RA No. 10963 and implemented by RR No. 21-2018; and

c. **DENY** petitioner's prayer to lift the Warrant of Distraint and/or Levy dated January 15, 2020.

SO ORDERED."

In its *Motion for Reconsideration* dated April 16, 2024,[4] petitioner faults the Court in: a) failing to consider that its income derived from market, slaughterhouse, and garbage collection operations are exempt from Value-Added Tax (VAT) because it provided these local services to their constituents, recognized in the Local Government Code; and b) reckoning the applicable delinquency interest on May 14, 2019, or the due date in the Formal Letter of Demand (FLD) dated April 4, 2019.

By way of *Comment,*[5] respondent retorts that: a) petitioner explicitly acknowledged the acceptance of its tax liabilities and the waiver of issues concerning the procedural matters that could potentially invalidate the tax assessments; b) the claim of tax exemption by petitioner should be strictly construed; c) the Letter of Authority was properly received by petitioner's authorized representative; d) petitioner is liable for value-added tax (VAT) and expanded withholding tax (EWT); e) the imposition of deficiency interest and surcharge on the deficiency internal revenue taxes is appropriate; and f) the amount of tax liability for which the petitioner is accountable is definite and fixed.

Through its *Reply,*[6] petitioner advances the following observations: (a) respondent did not file a motion for reconsideration on the assailed Decision; and (b) respondent's counter-arguments in his comment, are a replica of his Memorandum dated February 15, 2023.

The Motion lacks merit.

One. Contrary to petitioner's assertion, the Court did consider respondent's deletion of the assessed VAT on petitioner's *income from market, slaughterhouse,* and *garbage collection operations* in the FDDA. Specifically, petitioner's VAT deficiency was only based on petitioner's income derived from *waterworks system fees* and *other*

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4 Motion for Reconsideration, Docket, Vol. II, pp. 918 – 928.

5 Docket, Vol. II, pp. 931 - 967.

6 Docket, Vol. II, unpaginated. Embodied in petitioner's Motion for Leave to Admit Attached Reply (To Respondent's Comment dated 14 May 2024).

business income, as extensively discussed in pages 28 to 29[7] of the assailed Decision.

Two. We differ from petitioner's position that its income derived from waterworks system fees and other business income should be excused from VAT imposition. The reasons are:

First, the provision previously invoked by petitioner, *i.e.,* Section 32(B)(7)(b) of the 1997 National Internal Revenue Code (NIRC), as amended, is only an exclusion from income taxes under Title II thereof and may not be used as an exemption from VAT found under Title IV thereof.

Second, VAT is imposed on, *inter alia,* any kind of services performed in the Philippines for a fee, done in the course of trade or business. The government is no exception. Pertinent portions of Section 105, in relation to Section 108(A) of the NIRC, as amended, explicitly confirmed:

> Section 105. Persons Liable. – Any person who, **in the course of trade or business**, sells barters, exchanges, leases goods or properties, **renders services**, and any person who imports goods **shall be subject to the value-added tax (VAT)** imposed in Sections 106 to 108 of this Code.
>
> . . .
>
> The phrase 'in the course of trade or business' means **the regular conduct or pursuit of a commercial or an economic activity**, including transactions incidental thereto, by **any person** regardless of whether or not the person engaged therein is a nonstock, nonprofit private organization (irrespective of the disposition of its net income and whether or not it sells exclusively to members or their guests), or **government entity**.
>
> . . .
>
> **SEC. 108.** ***Value-added Tax on Sale of Services and Use or Lease of Properties.*** –
>
> *(A)* ***Rate and Base of Tax.*** - There shall be levied, assessed and collected, a value-added tax equivalent to twelve percent (12%) of the gross sales derived from the sale or exchange of services, including the use or lease of properties.

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[7] Docket, Vol. II, pp. 911-912.

> ...
>
> The phrase "***sale or exchange of services***" means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration ...
>
> ...[8]

Relevantly, *National Waterworks & Sewerage Authority v. NWSA Consolidated Unions, et al. (NWSA)*[9] considered the operation of waterworks systems by municipalities as falling under the proprietary and **business** undertaking of the latter:

> The business of providing water supply and sewerage service, as this Court held, "may for all practical purposes be likened to an industry engaged in by coal companies, gas companies, power plants, ice plants, and the like" (Metropolitan Water District vs. Court of Industrial Relations, et al., L-4488, August 27, 1952). These are but mere ministrant functions of government which are aimed at advancing the general interest of society. As such they are optional (Bacani *vs.* National Coconut Corporation, *supra*). And it has been held that "although the state may regulate the service and rates of water plants owned and operated by municipalities, such property is not employed for governmental purposes and in the ownership operation thereof the municipality acts in its proprietary capacity, free from legislative interference" (1 McQuillin, p. 683). In Mendoza vs. De Leon, 33 Phil., 508, 509, this Court also held:
>
>> "**Municipalities of the Philippine Islands** organized under the Municipal Code have both governmental and **corporate or business functions**. Of the first class are the adoption of regulations against fire and disease, preservation of the public peace, maintenance of municipal prisons, establishment of primary schools and post-offices, etc. **Of the latter class are the establishment of municipal waterworks for the use of the inhabitants**, the construction and maintenance of municipal slaughterhouses, markets, stables, bathing establishments, wharves, ferries, and fisheries . . ."[10]

Following *NWSA*, petitioner's water service to its constituents in Pulilan, Bulacan is in the exercise of its corporate or business functions; hence, the waterworks system fees derived therefrom is

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8 Emphasis supplied.
9 G.R. No. L-18938, August 31, 1964.
10 Emphasis supplied.

subject to VAT, on the strength of Section 105, in relation to Section 108(A) of the NIRC, as amended.

Three. We find no flaw in reckoning the delinquency interest per due date on the FLD/Final Assessment Notice (FAN). Section 4(3) of Revenue Regulations (RR) No. 21-18[11] provides that delinquency interest shall be imposed from the due date appearing in respondent's notice and demand, until the amount is fully paid: [12]

> Section 4. Delinquency Interest. — Interest imposed on the failure to pay:
>
> ...
>
> (3) A deficiency tax, or any surcharge or interest thereon **on the due date appearing in the notice and demand of the Commissioner** or **his authorized representative until the amount is fully paid**, which interest shall form part of the tax. [13]

In turn, the FLD/FAN calls for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties. [14] It contains not only a computation of tax liabilities but also a demand for payment within a prescribed period. As soon as it is served, an obligation arises on the part of the taxpayer concerned to pay the amount assessed and demanded. It also signals the time when penalties and interests begin to accrue against the taxpayer. [15] Likewise, the delinquency interest is to be collected from the date prescribed for payment until the amount is fully paid.[16]

Therefore, the computation of the delinquency interest should indeed be reckoned from the due date prescribed for payment in the FLD/FAN.

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11 Regulations Implementing Section 249 (Interest) of the NIRC of 1997, as Amended under Section 75 of the TRAIN Law, September 14, 2018.

12 Section 4, Revenue Regulations No. 21-18.

13 Emphasis supplied.

14 Revenue Regulations No. 12-99, Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty, September 6, 1999.

15 *Commissioner of Internal Revenue v. Transitions Optical Philippines, Inc.*, G.R. No. 227544, November 22, 2017.

16 *Id.*

WHEREFORE, petitioner's Motion for Reconsideration dated April 16, 2024 is **DENIED**, for lack of merit. The assailed Decision dated March 22, 2024 is **AFFIRMED**.

Further, petitioner's Motion for Leave to Admit Attached Reply (To Respondent's Comment dated 14 May 2024), posted on May 31, 2024 is **GRANTED**. Accordingly, the Reply embedded therein is **ADMITTED**.

SO ORDERED.

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice