REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

MOOG CONTROLS CORPORATION-PHILIPPINE BRANCH,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 1809
(CTA CASE No. 9077)

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COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

MOOG CONTROLS CORPORATION-PHILIPPINE BRANCH,
Respondent.

CTA EB No. 1810
(CTA CASE No. 9077)

Present:
DEL ROSARIO, *P.J.;*
CASTAÑEDA, JR.
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO, *JJ.*

Promulgated:

NOV 14 2019 1:47 p.m.

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DECISION

Fabon-Victorino, J.:

Before the Court are the two (2) Petitions for Review separately filed by Moog Controls Corporation-Philippine Branch (Corporation) and the Commissioner of Internal

Revenue (CIR) on March 12, 2018 and March 27, 2018, respectively, assailing the Decision dated January 3, 2018, as well as the Amended Decision dated February 22, 2018, both rendered by the Court in Division.

The Decision dated January 3, 2018 sustained with modifications the CIR's assessment for deficiency Income Tax for fiscal year ended October 3, 2009 in the reduced amount of P7,974,837.73. On the other hand, the Amended Decision dated February 22, 2018 denied for lack of merit the respective motions for reconsideration of both parties. While the Amended Decision upheld the tax liability of the Corporation in the amount of P7,974,837.73 as stated in the Decision dated January 3, 2018, the imposition of deficiency and delinquency interests were modified taking into account Section 75 of Republic Act (R.A.) No. 10963, otherwise known as the Tax Reform for Acceleration and Inclusion (TRAIN) law which took effect on January 1, 2018.

The following are the facts as established during trial of the case.

Moog Controls Corporation-Philippine Branch (Moog) is a foreign corporation organized and existing under the laws of Ohio, United States of America. It is a Security and Exchange Commission (SEC)-registered enttity with License No. 1113 dated December 14, 1984, authorized to do business as branch in the Philippines. It is engaged in the manufacture, assembly of parts and components and assemblies of electro-hydraulic servo, electronic, pneumatic, electrical and hydraulic valves, controls, motors and other devices for use in aerospace and industrial applications.

Moog, with business address at Loakan Road, Baguio City, is also a PEZA-registered export enterprise, entitled to the five percent (5%) preferential tax regime on gross income earned pursuant to R.A. No. 7916 or the PEZA law, as implemented by Revenue Regulations (RR) No. 11-2005.

On the other hand, the Commissioner of Internal Revenue (CIR) is the head of the Bureau of Internal Revenue (BIR) with authority to assess and collect all national internal revenue taxes and to decide and approve protests by taxpayers against assessments. He holds office at the 5th Floor, BIR National Office Building, BIR Road, Diliman, Quezon City.

On August 18, 2014, Moog's representative received a Final Assessment Notice (FAN) and Formal Letter of Demand (FLD), both dated August 15, 2014 issued by the BIR assessing it for deficiency income tax for fiscal year (FY) ended October 3, 2009 in the total amount of P12,206,739.18, inclusive of interest up to August 31, 2014, computed as follows:

Assessment No. ELTAD-II-IT-09-0020		
Revenue per Income Tax Return		P3,428,320,610.00
Less: adjusted Cost of Goods Sold		3,209,377,272.46
Gross Profit		218,943,337.54
Add: Other Income		12,498,078.00
Total Gross Income		231,441,415.54
Multiply by tax rate		5%
Gross income tax due		11,572,070.78
Less: Gross income tax paid per return		
share (2%) of other agency	2,069,690.00	
per 1702Q / 1702	3,104,535.00	5,174,225.00
Income tax due		6,397,845.78
Add: interest up to 8-31-2014		5,808,893.40
Total deficiency income tax		**P12,206,739.18**

The Details of Discrepancies attached to the FLD dated August 15, 2014, the deficiency Income Tax assessment of P12,206,739.18, inclusive of interest, arose from BIR's disallowance of the following reported cost of sales as deductions in computing the 5% Income Tax liability of Moog for FY ended October 3, 2009, to wit:

Item of Expense	Amount in USD
1. Repairs & Maintenance	$1,861,447.00
2. Data Processing	673,186.00
3. Insurance	284,503.03
4. Outside Services	141.29
Total	$2,819,277.32

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On September 12, 2014, Moog protested the FAN and the FLD, which was however denied for lack of factual and legal bases in the Final Decision on Disputed Assessment (FDDA) of June 5, 2015, which Moog received on June 5, 2015.

On June 23, 2015, Moog filed a Petition for Review with the Court in Division for the cancellation and withdrawal of the deficiency Income Tax assessment issued against it for FY ended October 3, 2009 in the total amount of P12,206,739.18.

On January 3, 2018, the Court in Division promulgated the assailed Decision, partially granting the Petition for Review in the following manner:

> WHEREFORE, premises considered, the instant Petition for Review is hereby PARTIALLY GRANTED. Accordingly, the deficiency income tax assessment for fiscal year ended October 3, 2009 is AFFIRMED WITH MODIFICATIONS. Petitioner (Corporation) is ORDERED TO PAY the amount of SEVEN MILLION NINE HUNDRED SEVENTY-FOUR THOUSAND EIGHT HUNDRED THIRTY-SEVEN PESOS AND SEVENTY-THRE CENTAVOS (P7,974,837.73), inclusive of the twenty-five percent (25%) surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, computed as follows:

Tax Type	Basic Tax	25% Surcharge	Total
Gross Income Tax (5%)	P6,379,870.18	P1,594,967.55	P7,974,837.73

> In addition, petitioner (Corporation) is ORDERED TO PAY
>
> (a) Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency income tax computed from February 15, 2010 until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended; and
>
> (b) Delinquency interest at the rate of 20% per annum on the total amount of P7,974,837.73 and on the 20% deficiency interest which have accrued as afore-stated in (a), computed from June 8, 2015 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.

SO ORDERED.

Both Moog and the CIR moved for the reconsideration of the above assailed Decision but both were denied in the equally assailed Amended Decision dated February 22, 2018. In the Amended Decision, the Court in Division affirmed the tax liability of Moog with modification as to the imposition of deficiency and delinquency interests on account of the express provision of the TRAIN law. The dispositive portion of the Amended Decision reads as follows:

> WHEREFORE, premises considered, petitioner's (Corporation) Motion for Partial Reconsideration is partially granted and respondent's (CIR) Motion for Reconsideration (Re: Decision dated 03 January 2018) is DENIED for lack of merit.
>
> Accordingly, the dispositive portion of the assailed Decision dated January 3, 2018 is hereby AMENDED to read as follows:
>
> "WHEREFORE, premises considered, the instant Petition for Review is hereby PARTIALLY GRANTED. Accordingly, the deficiency income tax assessment for fiscal year ended October 3, 2009 is AFFIRMED WITH MODIFICATIONS. Petitioner is ORDERED TO PAY the amount of SEVEN MILLION NINE HUNDRED SEVENTY-FOUR THOUSAND EIGHT HUNDRED THIRTY SEVEN PESOS AND SEVENTY THREE CENTAVOS (P7,974,837.73), inclusive of the twenty five percent (25%) surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, computed as follows:

Tax Type	Basic Tax	25% Surcharge	Total
Gross Income Tax (5%)	P6,379,870.18	P1,594,967.55	P7,974,837.73

> 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 computed from February 15, 2010 until December 31, 2017 pursuant to Section 249(B) of the NIRC of 1997;
>
> (b) Delinquency interest at the rate of 20% per annum on the total amount of P7,974,837.73 and on the 20% deficiency interest which have accrued as afore-stated in (a), computed from

June 8, 2015 until December 31, 2017 pursuant to Section 249(C) of the NIRC of 1997; and

(c) Delinquency interest at the rate of 12% on the unpaid amount (basic tax plus surcharge plus interests computed in (a) and (b) above) from January 1, 2018 until the amount is fully paid pursuant to the relevant provisions of the TRAIN law.

SO ORDERED.

On March 12, 2018, Moog filed its Petition for Review with the Court *En Banc* docketed as CTA EB No. 1809. The CIR followed suit and filed his own on March 27, 2018, docketed as CTA EB No. 1810.

The two Petitions for Review were consolidated on April 5, 2018.[1]

In its Petition for Review, Moog claims that the Court in Division erred when it ruled that, except for "Repairs and Maintenance," the items being claimed as deductions were not direct costs related to its PEZA activities which could be included as deductions from gross income.

According to Moog, the said items had been acknowledged as direct costs by the CIR for he did not indicate this ground as basis for the assessment in the FAN and FLD. Moreover, Moog's witness, Richard P. Villarico, testified that the BIR RO Meliza Wepee, and the Chief of the Excise Large Taxpayers Audit Division II, acknowledged that the deductions claimed were indeed direct costs.

Further, the issue of whether these items claimed as deductions were direct costs was never raised as an issue by the parties. For this reason, the Court in Division should not have a ruling on it as it was already beyond the scope of its review. And by so ruling, the Court in Division deprived it of the opportunity to present evidence in support of its position that the deductions being claimed were indeed direct costs.

[1] Minute Resolution dated April 5, 2018, docket p. 49.

Besides, its position had already been acknowledged at the administrative level, thus, it did not present any evidence on the matter during the trial before the Court in Division. At the very least the Court should have remanded the issue for resolution at the administrative level.

Finally, with the effectivity of the TRAIN law on January 1, 2018, both deficiency and delinquency interests should no longer be imposed against Moog.

In his Petition for Review, the CIR reiterated its position before the Court in Division that the enumeration of allowable deductions from gross income in Rule XX of the Implementing Rules and Regulations of R.A. No. 7916 and RR No. 11-2005, is exclusive. And since Moog's reported costs of sales were not expressly included in the enumeration of allowable deduction under the cited provisions, they were correctly disallowed for purposes of computing Moog's Income Tax liability for FY ended October 3, 2009

The CIR further claims that Moog failed to adduce sufficient evidence to prove that subject deductions were indeed direct costs included in the list of allowable deductions from gross income.

The CIR also complains the ruling that the item "Repairs and Maintenance" are cost of sales, hence, valid deductions in the determination of Moog's taxable income since the said item is not among the allowable deductions exclusively enumerated in Rule XX of the IRR of R.A. No. 7916 and RR No. 11-2005.

Both parties failed to file their respective Comments to the consolidated Petitions for Review, despite notice.[2]

The consolidated Petitions for Review were submitted for decision on November 15, 2018.[3]

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[2] See Resolution dated July 31, 2018, docket p. 69.
[3] Resolution dated November 15, 2018, docket pp. 90-91.

THE RULING OF THE COURT

The Petition for Review filed by Moog Controls Corporation-Philippine Branch (Corporation) in CTA EB No. 1809.

On Moog's contention that the Court in Division erred when it ruled on the issue not raised by the parties during the trial, to wit: whether the other items claimed as deductions were direct costs related to Moog's PEZA registered activities, suffice it to say, when a case is on appeal, the Court has authority to review matters not specifically raised or assigned as error by the parties if their consideration is necessary in reaching a just conclusion of the case,[4] as in the present case.

Further, Moog cannot whine lack of due process and strongly blame the Court in Division for its own decision not to present evidence in support of its position that the other deductions being claimed were indeed direct costs or expense directly attributed in providing its PEZA-registered services. Note that Moog admitted that it opted not to present any evidence on the belief that the BIR already acknowledged its position. But the record is silent on the matter.

Moreover, Moog was accorded full opportunity during the trial to prove its position but chose not to. As stated by the Court in Division, without submitting documentary evidence to support its claim, the Court could not ascertain the nature of the deductions. It has been ruled that as long as a party is given the opportunity to defend his interests in due course, he would have no reason to complain, for it is this opportunity to be heard that makes up the essence of due process.[5] What the law prohibits is *absolute* absence of the opportunity to be heard, hence, a party cannot feign

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[4] Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue, G.R. No. 173241, March 25, 2015; Aichi Forging Company of Asia, Inc. vs. Court of Tax Appeals – En Banc and Commissioner of Internal Revenue, G.R. No. 193625, August 30, 2017.

[5] Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue, G.R. NO. 168498, June 16, 2006.

denial of due process where he had been afforded the opportunity to present his side.[6]

Significantly, the Court in Division already ruled that "Repairs and Maintenance" should form part of Moog's costs of sales in the determination of its taxable income subject to the 5% preferential tax rate on gross income earned. The ruling was based on R.A. No. 7916 or the PEZA law, as amended by R.A. No. 8748.

Truth to tell, Moog, in the instant Petition for Review, merely reiterated its argumentss in its pleadings filed with the Court in Division. For emphasis and if only to put the issue to rest, the Court *En Banc* discussed them anew.

The Petition for Review filed by the Commissioner of Internal Revenue (CIR) in CTA EB No. 1810.

Just like Moog, the CIR merely mimics his position submitted for determination of the Court in Division. He insists that the enumeration of allowable deductions from gross income in Rule XX of the Implementing Rules and Regulations of R.A. No. 7916 and RR No. 11-2005, is exclusive. For this reason, Moog's reported costs of sales, including those under the item Repairs and Maintenance should be disallowed since they were not expressly included in the enumeration of allowable deduction under the cited provisions.

In this regard, the Court *En Banc* is one with the Court in Division in its ruling that the enumeration of the allowable deductions under RR No. 11-2005 and Rule XX of the IRR of the PEZA Law is not exclusive. To reach such conclusion, the Court in Division discussed and meticulously tackled the evolution the PEZA Law and its implementing rules and regulations as well the reason for their enactment. To discuss them anew could only be a wasteful expenditure of judicial resources.

[6] Placido vs. NLRC. G.R. No. 180888, September 18, 2009.

In any event, the Court *En Banc,* in interpreting the amendment made under RR No. 11-2005 in the case of Commissioner of Internal Revenue v. East Asia[7], ruled as follows:

> "It is clear from the amendment made under RR No. 11-05 that the list is not meant to be all-inclusive but merely enumerates the expenses that can be considered as direct costs. PEZA-registered enterprises may be allowed to deduct expenses which are in the nature of direct costs even though the same are not included in the list.
>
> The criteria in determining whether the item of cost or expense should be part of direct cost is (sic) the direct relation of such item in the rendition of the PEZA-registered services. If the item of cost or expense can be directly attributed in providing the PEZA-registered services, then it should be treated as direct cost."

The ruling was echoed in the case of *Commissioner of Internal Revenue vs. Lear Automotive Services (Netherlands) B.V. – Philippine Branch*[8], where the Court *En Banc* sustained the ruling of the Court in Division that "Section 2 of Rule XX of the PEZA Implementing Rules enumerates the allowable deductions for purposes of computing the 5% tax rate on gross income of PEZA-registered enterprises. It is noteworthy that the Rules *did not limit,* but merely enumerated the allowable deductions. Subsequently, RR No. 2-2005 limited the direct costs to the enumeration of allowable deductions therein. As it stands, RR No. 11-2005 removed the exclusivity of the allowable deductions from gross income."

By deleting the phrase "consists only" and rephasing it with the phrase "the following direct costs are included in the allowable deductions xxx, RR 11-05 amended RR 02-05. In other words, the allowable deductions from gross income of PEZA-registered enterprises enumerated in the IRR of the PEZA Law and RR No. 2-2005, as amended by RR No. 11-2005, are not exclusive. Thus, if a particular cost or expense is directly related to the PEZA-registered activity, it

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[7] CTA EB No. 1207, February 3, 2016.
[8] CTA EB No. 1346, June 2, 2016.

should be treated as a direct cost and includible in the allowable deductions from the gross income.[9]

WHEREFORE, the Petition for Review filed by Moog Controls Corporation–Philippine Branch in CTA EB No. 1809 and the Petition for Review filed by the CIR in CTA EB No. 1810, are both DENIED, for lack of merit.

However, taking into account Revenue Regulations (RR) No. 21-2018[10] Implementing Section 249 of the NIRC of 1997, as amended by Section 75 of the TRAIN law, the imposition of deficiency and delinquency interests is modified, as follows:

> Accordingly, Moog Controls Corporation - Philippine Branch is **ORDERED TO PAY TWENTY-FIVE MILLION SIX HUNDRED THREE THOUSAND FOUR HUNDRED EIGHTY-SIX PESOS & 69/100 (Php25,603,486.69)** representing deficiency income tax for fiscal year ended October 3, 2009, inclusive of twenty-five percent (25%) surcharge imposed under Section 248(A)(3) of the Tax Code, as amended, and twenty percent (20%) deficiency interest and twenty percent (20%) delinquency interest imposed under Section 249(A) and (B), respectively, of the same Code, computed until December 31, 2017, which is prior to its amendment under the TRAIN Law, thus:

	Income Tax
Basic Tax Due	Php6,379,870.18
Add: 25% Surcharge	1,594,967.55
20% Deficiency Interest from February 16, 2010 to June 08, 2015	
[Php6,379,870.18 x 20% x 1939/365 days]	6,778,393.58
Total Amount Due, June 08, 2015	**Php14,753,231.30**
Add: 20% Deficiency Interest from June 09, 2015 to December 31, 2017	

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[9] *Lear Automotive Services (Netherlands) B.V. — Philippine Branch vs. Commissioner of Internal Revenue*, CTA Case Nos. 8421 & 8561, Resolution dated July 29, 2015.
[10] Regulations Implementing Section 249 (Interest) of the National Internal Revenue Code (NIRC) of 1997, as amended under Section 75 of the Republic Act (RA) No. 10963 or the "Tax Reform for Acceleration and Inclusion (TRAIN Law)".

[Php6,379,870.18 x 20% x 937/365 days]	3,275,582.66
20% Delinquency Interest from June 09, 2015 to December 31, 2017	
[Php14,753,231.30 x 20% x 937/365 days]	7,574,672.73
Total Amount Due, Dec. 31, 2017	**Php25,603,486.69**

In addition, Moog Controls Corporation - Philippine Branch is **ORDERED TO PAY** delinquency interest at the rate of twelve percent (12%), which is double the legal interest rate for loans or forbearance of any money, on the total amount due as of June 08, 2015 in the amount of **Php14,753,231.30**, as determined above, computed from January 01, 2018 until full payment thereof pursuant to Section 249(C) of the Tax Code, as amended by TRAIN Law and implemented by RR No. 21-2018.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

ON LEAVE
ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

NO PART
(On Official Time)
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the consolidated cases were assigned to the writer of the opinion of the Court.

JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice