REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	CTA EB No. 1664 (CTA CASE No. 8866)
	Present: DEL ROSARIO, P.J., CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, and MODESTO-SAN PEDRO, *JJ.*
-versus-	
NORTHERN TOBACCO REDRYING CO., INC., *Respondent.*	Promulgated: JUL 19 2019 3:52 p.m.

x---x

RESOLUTION

MINDARO-GRULLA, J.:

Submitted for resolution on April 17, 2019, of this Court En Banc, is the Commissioner of Internal Revenue's (CIR) "Motion for Partial Reconsideration (re: Decision dated February 2, 2019) (sic) filed on February 26, 2019 with respondent Northern Tobacco Redrying Co., Inc.'s (NTRCI) Comment filed on April 8, 2019.

The motion seeks for the reversal of the Decision[1] promulgated January 31, 2019, the dispositive portion of which reads as follows:

Decision dated January 31, 2019:

> "**WHEREFORE**, the petition is **DENIED**. The Decision of the Third Division of this Court in CTA

[1] En Banc Docket, pp.

Case. No. 8866 dated 23 February 2017, and its Resolution dated 18 May 2017, are **AFFIRMED with MODIFICATION** in the computation of the deficiency interest and delinquency interests in view of the effectivity of Republic Act No. 10963 (TRAIN Law) on January 1, 2018 and the issuance of Revenue Regulations No. 21-2018[2] dated September 14, 2018.

Petitioner is hereby **ORDERED TO PAY** deficiency IT, WTC and EWT in the total amount of Six Hundred Forty One Thousand One Hundred Eighty-Five Pesos and 99/100 (Php641,185.99), inclusive of the 25% surcharge and deficiency and delinquency interests imposed under Sections 248(A)(1)(3) and 249(B) and (C) of the NIRC of 1997, as amended, respectively computed until December 31, 2017 as follows[3]:

	IT	WTC	EWT	TOTAL
BASIC	Php 157,663.18	Php 782.39	Php 1,087.07	**Php 199,415.80**
25%	39,415.795	195.5975	271.7675	**39,883.16**
Deficiency Interest 4/16/11-01/15/14 (157,663.18x20%x2.753yrs)	86,809.3469			**87,931.0229**
01/16/11-01/15/14 (782.39x20%x3yrs)		469.434		
01/16/11-01/15/14 (1,087.07x20%x3yrs)			652.242	
Total Amount Due as of January 15, 2014	**Php 283,888.322**	**Php 1,447.4215**	**Php 2,011.0795**	**Php 287,346.823**
Deficiency Interest 01/16/14-12/31/17 (157,663.18x20%x3.959yrs)	124,837.706			**126,317.944**
01/16/14-12/31/17 (782.39x20%x3.959yrs)		619.496402		
01/16/14-12/31/17 (1,087.07x20%x3.959yrs)			860.742026	
Delinquency Interest 01/16/14-12/31/17 (283,888.322x20%x3.959yrs)	224,782.773			**227,521.214**
01/16/14-12/31/17 (1,447.4215x20%x3.959yrs)		1,146.06834		

[2] 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. I 0963 or the "Tax Reform for Acceleration and Inclusion (TRAIN Law)

[3] Section 6 of Revenue Regulations No. 21-2018 dated September 14,2018.

01/16/14-12/31/17 (2,011.0795x20%x3.959yrs)			1,592.37275	
Total Amount Due as of December 31, 2017	**Php 633,508.801**	**Php 3,212.98624**	**Php 4,464.19428**	**Php 641,185.99**[4]

In addition, petitioner is liable to pay delinquency interest at the rate of 12%[5] on the total unpaid basic deficiency tax, surcharge and deficiency interest as of January 15, 2014 amounting to Php283,888.322 for IT, Php1,447.4215 for WTC and P2,011.0795 for EWT, or in the aggregate amount of Php287,346.823, computed from January 1, 2018 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended by Republic Act No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN).

SO ORDERED."

The instant motion insists that transfer of land to NTRCI is not exempt from tax for failure to comply with the administrative requirements issued by the BIR. Furthermore, the CIR contends that the assessments relating to VAT for the 1st to 3rd quarters of taxable year 2010, as well as the EWT and WTC for the months of January to November of the same taxable year have not yet prescribed.

After a careful consideration of the Motion for Reconsideration filed by the CIR, the Court finds that the issues and arguments raised therein are mostly the same ones raised before this Court and have been sufficiently passed upon and discussed in the assailed Decision.

NTRCI was able to sufficiently prove that the subject exchange transactions are tax-free pursuant to Section 40 (C)(2)[6] of the NIRC of 1997, as amended.

---

[4] Rounded off
[5] Section 2 of Revenue Regulations No. 21-2018 dated September 14, 2018.
[6] "SEC. 40. Determination of Amount and Recognition of Gain or Loss. -

xxx xxx xxx

(C) Exchange of Property. -

(1) General Rule. - Except as herein provided, upon the sale or exchange of property, the entire amount of the gain or loss, as the case may be, shall be recognized.

(2) Exception. - No gain or loss shall be recognized if in pursuance of a plan of merger or consolidation -

We reiterate the requisites for the non-recognition of gain under or loss under Section 40(C)(2) of the 1997 NIRC, to wit:

(1) The transferee is a corporation;

(2) The transferee exchanges its shares of stock for properties of the transferor;

(3) The transfer is made by a person, acting alone or together with others, not exceeding four (4) persons; and,

(4) As a result of the exchange the transferor, alone or together with others not exceeding four (4), gains control of the transferee.[7] The term "control" is defined as 'ownership of stocks in a corporation possessing at least fifty-one percent (51%) of the total voting power of all classes of stocks entitled to vote.'[8]

In relation to the above-stated requirements, the Court found that all the foregoing requirements were met, to wit:

1. It is undisputed that FLRI is a domestic corporation;

2. It is likewise undisputed that on February 25, 2010, NTRCI and FLRI into a Deed of Transfer whereby the former agreed to transfer ownership over certain parcels of land in exchange for a total of 5,722 (4,292 additional subscription and 1,430 unpaid original subscription) common shares in FLRI;

(a) A corporation, which is a party to a merger or consolidation, exchanged property solely for stock in a corporation, which is a party to the merger or consolidation; or

(b) A shareholder exchanges stock in a corporation, which is a party to the merger or consolidation, solely for the stock of another corporation also a party to the merger or consolidation; or

(c) A security holder of a corporation, which is a party to the merger or consolidation, exchanges his securities in such a corporation, solely for stock or securities in another corporation, a party to the merger or consolidation.

No gain or loss shall also be recognized if property is transferred to a corporation by a person in exchange for stock or unit of participation in such corporation of which as a result of such exchange said person, alone or together with others, not exceeding four (4) persons, gains control of said corporation: Provided, That stocks issued for services shall not be considered as issued in return for property." (Emphasis supplied)

[7] Commissioner of Internal Revenue v. Filinvest Development Corporation, G.R. Nos. 163653 and 167689, July 19, 2011.
[8] Section 40(C)(6)(c) of the 1997 NIRC.

h

3. NTRCI and (4) four other companies, namely: Fortune Tobacco Corporation ("FTC"), Dominium Realty and Construction Co. ("DRCC"), Parity Packaging Corporation ("PPC") and Orecla Realty, Inc. ("ORI") entered into an exchange of properties with FLRI;

4. After the transfer, the combined ownership of petitioner (along with FTC, DRCC, PPC and ORI) went up to 99.99%, which shows that it gained control over FLRI.

Notably, the Court stresses the fact that the subject transactions are in the nature of stock subscription and not sales of assets.

In the instant case, NTRCI entered into an exchange transaction with FLRI, whose shares of stocks were, thereafter, assigned to NTRCI. Thus, there was no sale since NTRCI's assets were only transformed into another form of asset. The assets merely changed from land, building, etc. to one of an intangible asset- shares of stock. Since the subject transactions do not constitute sales, it necessarily follows that the same are not subject to income tax.

As to the CIR's claim that this Court, in effect, invalidated Revenue Regulations (RR) No.18-2001[9] regarding the need to secure a BIR Ruling is a taxpayer can avail the benefits under Section 40(C) of the 1997 NIRC, the Court finds no basis therefor. The Court merely interpreted what was explicitly stated under the RR.

A careful perusal of the RR that the CIR relied upon merely provides the guidelines in monitoring tax-free exchanges of property, and in order that, in cases of subsequent sales of said property, they shall be taxed accordingly.

---

[9] Subject: Guidelines on the Monitoring of the Basis of Property Transferred and Shares received, Pursuant to a Tax-Free Exchange of Property for Shares under Section 40(C)(2) of the National Internal Revenue Code of 1997, Prescribing the Penalties for Failure to Comply with such Guidelines, and Authorizing the Imposition of Fees for the Monitoring Thereof.

xxx xxx xxx

Section 1. Scope. -Pursuant to Section 244, in relation to Sections 40(C)(2), 58(E), 269, and 275 of the National Internal Revenue Code of 1997 (Tax Code of 1997), these Regulations are hereby promulgated for the **purpose of providing the guidelines in the proper monitoring of the basis of properties transferred, and shares received, pursuant to a tax-free exchange under Section 40(C)(2) of the Tax Code of 1997**, and to establish the policies governing the imposition of fees for the monitoring thereof.'

ℓ

The BIR Ruling or Certification required under RR No. 18-01 is for determining gain or loss on a subsequent sale or disposition of property subject of the tax-free exchange, and **NOT** a precondition for a taxpayer to be entitled to an exemption. There is nothing therein explicitly requiring a party, in exchanging property for shares of stocks, to first secure a BIR confirmatory certification or tax ruling before it can avail itself of tax exemption.

Lastly, anent the insistence on the applicability of the ten-year prescriptive period of the CIR's right to assess NTRCI, the Court is not convinced.

In order to warrant a ten (10)-year period to assess under Section 222[10] of the NIRC of 1997, as amended, the CIR must not only clearly state his basis, he must also present substantial evidence in support thereto. Mere allegations in the pleadings that the case falls under the exception will not suffice.[11] In the instant case however, there is nothing on record that can substantiate the CIR's allegation that NTRCI filed false returns. Thus, absent such evidence, the general rule of three (3) years under Section 203[12] of the NIRC of 1997, as amended, applies.

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

WHEREFORE, premises considered, the CIR's "Motion for Partial Reconsideration (Re: Decision dated February 2, 2019) (sic) is hereby **DENIED** for lack of merit.

---

[10] SECTION 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes. -

(a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission: Provided, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.

[11] Commissioner of Internal Revenue v. Next Mobile, Inc., G.R. No. 212825, December 5, 2015, affirming the CTA's findings in Next Mobile, Inc. v. Commissioner of Internal Revenue, CTA Case No. 7965, December 11, 2012.

[12] SECTION 203. Period of Limitation Upon Assessment and Collection. –

Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: Provided, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.

L

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

(I reiterate my Concurring and Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

ON OFFICIAL LEAVE
MA. BELEN M. RINGPIS LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

(Took no part)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

(Took no part)
MARIA ROWENA G. MODESTO-SAN PEDRO
Associate Justice