REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

OCÉ HOLDING B.V., Petitioner,	**CTA CASE NO. 8930**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson, and* **CASANOVA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: APR 1 9 2017 9:00 Am

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RESOLUTION

CASANOVA, *J.*:

For resolution is respondent's **Motion for Reconsideration (Decision of 28 November 2016)**, filed on December 14, 2016, with petitioner's **Opposition**, filed through registered mail on January 3, 2017.

In this motion, respondent seeks reconsideration of this Court's Decision dated November 28, 2016, the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, this Petition for Review is **GRANTED**. Accordingly, respondent is **ORDERED TO REFUND** in favor of petitioner the amount of **₱14,586,827.10** representing the capital gains tax paid by it on November 22, 2012 in connection with the Deed of Transfer dated November 15, 2012.
>
> **SO ORDERED.**"

Respondent assails the aforesaid Decision on the sole ground that this Court erred in ruling that petitioner is entitled to a refund in the amount of ₱14,586,827.10.

Allegedly, it is not proper to allow the refund of ₱14,586,827.10 because there was a Certification stating that the gains from sale or transfer of shares of stock of Canon Business Process Services, Philippines, Inc. between petitioner and Océ Business Services, Inc. are not subject to capital gains tax pursuant to Article 14 of the RP-Netherlands Tax Treaty. Respondent claims that the said Certification does not state the amount of the capital gains tax which the petitioner is not subject to and that it merely states the name of the seller as Océ N.V. and not Océ Holding B.V. Respondent disputes the certificate proving that Océ N.V. and Océ Holding B.V. are the same, on the ground that it was issued by a prospective civil-law notary who relied only on information provided by the trade register and without having conducted any further investigation on the matter.

On the other hand, petitioner contends that the Certification pertains to the transfer of the subject shares and it was issued by respondent on the basis of the documents submitted by the former. Petitioner also claims that it does not matter if said Certification does not state the precise amount of the capital gains tax because petitioner is exempt from paying the said tax.

Petitioner further avers that the original of the Deed of Conversion and Amendment that proves Océ N.V. is the former corporate name of petitioner, as well as the English translation of the same were presented to this Court. Also, Atty. Cynthia L. dela Paz has testified that Océ N.V. is the former corporate name of petitioner, and that respondent did not discredit the same during the cross-examination of Atty. dela Paz. Petitioner points out that respondent did not even raise any objection to the admissibility of the petitioner's evidence or present any witnesses.

The Court finds respondent's arguments bereft of merit.

The Certification[1] dated May 9, 2013 was issued by respondent specifically stating that the sale of shares of stock between Océ N.V.

[1] Exhibit "P-12"

(now Océ B.V.) and OCÉ Business Services, Inc. was not subject to capital gains tax, *viz*:

"THIS IS TO CERTIFY that, on the basis of the representations and documents submitted, particularly the Application For Relief from Double Taxation ***(Gains from Sale or Transfer of Shares of Stock in Philippine Corporation*) BIR Form No. 0901-C***, original copy of which is attached hereto and made an integral part hereof, the sale or transfer of shares of stock of ***OCÉ Business Services Philippines, Inc.*** by and between:

Name of Seller	Address	Type of Entity
OCÉ N.V.	*Sint Urbanusweg 43, 5914 CA Venlo, The Netherlands*	Corporation

Name of Buyer	Address	Type of Entity
OCÉ Business Services, Inc.	*460 West, 34th Street, New York, New York, United States of America*	Corporation

in accordance with the attached ***Deed of Transfer*** dated November 15, 2012, which forms an integral part of this Certification, are ***not* subject to capital gains tax**, pursuant to Article 14 of the Philippines – Netherland tax treaty. The transaction is, however, **subject to documentary stamp tax** as follows:

Transaction	Tax Base	Tax Rate	Amount Due
Sale of 100,374 shares of stock with a par value of ₱100.00 per share in OCE' Business	Php100,374,000.00	Php0.75 on each ₱200 or fractional part thereof, if with par value	Php376,402.50

Services Philippines, Inc. by OCE' N.V.			

No transfer of shares shall be effected in the Stock and Transfer Book of OCÉ Business Services Philippines, Inc. without the necessary Certificate Authorizing Registration (CAR) issued by Revenue District Office No. 39 South, Quezon

This Certification shall be valid unless revoked by this Office for misrepresentation. Any erasure or alteration made on this certification shall render the same void.

The processing and certification fees in the amount of ***₱5,000.00*** has been paid on **November 15, 2012** under **BTR-BIR Account No. 0405-027020-080 (Development Bank of the Philippines)**."

Apparently, the corresponding capital gains tax due on the sale or transfer of shares of stock of Océ N.V. is not required to be paid in the Philippines in accordance with Article 14 of the Philippines-Netherlands Tax Treaty.

Since the said sale or transfer of shares of stock is not subject to capital gains tax, it is of no importance whether the above-mentioned Certification states the exact amount of the capital gains tax to which petitioner is exempted to pay.

With respect to the Deed of Conversion and Amendment of the Articles of Association[2] and its English Translation[3], the Court finds the same sufficient to prove that Océ N.V. and Océ Holding B.V. are one and the same.

The Court emphasizes that during the Commissioner's Hearing on June 1, 2015, petitioner indicated in its Table of Exhibits that the said documents will prove, among others, that: a) Petitioner Océ was

[2] Exhibit "P-1"
[3] Exhibit "P-1-A"

formerly named "Océ N.V.", and (b) Petitioners Océ and "Océ N.V." are one and the same entity. Respondent's counsel even confirmed that the same were faithful reproductions of the originals.[4]

Records also show that Atty. Cynthia L. Dela Paz testified that the name Océ N.V. and Océ Holding B.V. are one and the same entity, to wit:

> "Q29: Now, I have noticed that in the *Deed of Transfer*, the entity that is indicated as transferor is Océ N.V. instead of Océ Holding B.V. Why is that so, if you know?
>
> A29: Océ N.V. is the former corporate name of Océ Holding B.V. After the execution of the *Deed of Transfer*, Océ N.V. was changed to Océ Holding B.V. In other words, 'Océ N.V.' and 'Océ Holding B.V.' are actually one and the same entity.
>
> Q30: What, if any, is your proof that Océ N.V. was changed to Océ Holding B.V.?
>
> A30: I have the *Deed of Conversion and Amendment of the Articles of Association of Océ N.V.* dated 1 July 2013 ('***Deed of Conversion and Amendment***'), pursuant to which the Articles of Association of Océ N.V. was amended to change, among others, its corporate name from 'Océ N.V.' to 'Océ Holding B.V.' The *Deed of Conversion and Amendment* was executed in the Dutch language, but I also have an English translation of the said *Deed of Conversion and Amendment*."[5]

During the cross-examination, Atty. Dela Paz testified that the English Translation of the Deed of Conversion and Amendment was made by a civil Notary in Amsterdam, to wit:

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[4] Docket, (Vol. III), pp. 1115 and 1117

[5] Exhibit "P-15"

"Q In relation to page 8 and 9, who made the English translation of the Deed of Conversion and Amendment?

A I think that one was made by civil Notary in Amsterdam, it is part of the documents that we asked them to send to us and that the Oce was the one who took care of the processing of the consularization, the notarization in the Netherlands.

Q So the translation and conversion to English is official?

A I actually do not know if that is official, I do not know what do you mean by official but it was submitted together with the Articles of Association because it has to be translated. They were in Dutch language and they had to be translated. So it is part of the documents that were notarized and consularized before the Philippine Embassy."[6]

Further, respondent has neither made any objection/opposition to petitioner's formal offer of evidence,[7] nor presented any witnesses or documentary evidence to controvert the material facts proven by petitioner's evidence which, therefore, remain undisputed.[8]

Also, invoking the above arguments only at this stage of the proceedings appears to be a mere after thought of the respondent in trying to seek for a reconsideration of the assailed Decision.

Based on the foregoing, the Court finds no cogent reason or overwhelming justification to disturb the ruling in the assailed Decision.

WHEREFORE, premises considered, respondent's **Motion for Reconsideration (Decision of 28 November 2016)** filed on December 14, 2016 is **DENIED** for lack of merit.

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[6] Transcript of Stenographic Notes (TSN) dated June 15, 2015, pp 8 to 9
[7] Records Verification dated July 15, 2015, Docket, (Vol. III), p. 1417
[8] Resolution dated October 5, 2015, Docket, (Vol. III), p. 1428

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

I CONCUR:

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