REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	CTA EB No. 1755 (CTA Case No. 8897)
	Present:
-versus-	DEL ROSARIO, *PJ*; CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, and MODESTO-SAN PEDRO, *JJ*.
PREMIUM TOBACCO REDRYING & FLUECURING CORPORATION, Respondent.	Promulgated: SEP 16 2019

x- 2:37 p.m. - - - - - x

RESOLUTION

Fabon-Victorino, J.:

Challenged in petitioner's *Motion for Reconsideration* dated May 15, 2019 is the Decision of April 22, 2019, promulgated by the Court *En Banc*, the dispositive portion of which reads as follows:

> **WHEREFORE**, the Petition for Review dated January 3, 2018 filed by the Commissioner of Internal Revenue is **DENIED**. The assailed Decision and Resolution dated July 18, 2017 and November 24, 2017, respectively, both rendered by the Court in Division are **AFFIRMED**.
>
> **SO ORDERED**.

Petitioner finds erroneous respondent's failure to comply with the requirements under Revenue Regulations (RR) No. 18-2001. Allegedly, respondent was unable to attach in its ITR and AFS, an application for ruling on such matter, as well as the BIR Certification validating the same in violation of the cited RR. For this reason, its transfer of net assets in exchange for FTC's shares of stock and additional paid-in capital (APIC) does not qualify for a tax-free exchange under Section 40(C)(2) of the NIRC, as amended.

Petitioner also insists that the *first* transfer between respondent and FTC was without a *bona fide* business purpose as mandated by Section 40(C)(6)(b) of the NIRC, as amended, for failure to attain a degree of permanence required in Revenue Memorandum Ruling (RMR) No. 1-2002 given that after four (4) months from the *first* transfer, FTC subsequently conveyed to PFMTC, Inc., a part of properties received from respondent. That being the case, the first transfer between respondent and FTC was for the purpose of merely skirting payment of taxes due.

Further, by allowing respondent to deduct tax credits on its tax liability in TY 2009 and at the same time carry-over the same amount in the succeeding years is tantamount to claiming for said tax credits twice which is unlawful. Respondent likewise benefited not only on the succeeding taxable years but also in TY 2009 since it is entitled to claim such credits to lessen the tax due on the latter period. From the foregoing, the disallowance of respondent's excess tax credits carry-over reflected in its 2009 Annual ITR is justified.

Finally, since respondent failed to qualify for a tax-free exchange under Section 40(C)(2) of the NIRC, as amended, he believes that it is likewise liable for deficiency VAT and DST for TY 2009, concludes petitioner.

In its Comment dated July 2, 2019, respondent counters that it need not obtain a BIR ruling validating the subject transfer as tax-free as it is not required under

Section 40(C)(2) and (6)(b) of the NIRC, as amended. Further, the bulk of assets it conveyed to FTC in exchange for the latter's shares of stock and that APIC was not returned to FTC after the plan of *de facto* merger was effected, *a fortiori*, the transfer is deemed permanent and not temporary pursuant to RMR No. 1-2002. In addition, its corporate restructuring satisfied the requirement of *bona fide* business purpose under Section 40(C)(2) and (6)(b) of the NIRC, as amended.

Besides, FTC's subsequent act of conveying its net assets to PMFTC, Inc. is legally permissible considering that it was merely exercising its right of ownership allowed both under mercantile and civil laws, argues respondent.

Respondent further asserts that petitioner erroneously disallowed its excess tax credits carry-over of ₱8,619,317.54 in his 2009 assessment as any tax benefit it derived therefrom redounds to TY 2010, hence, could only be assessed in the latter period.

Finally, since the respondent's transfer of its net assets to FTC in exchange for the latter's shares of stock and APIC is a tax-free exchange, it is likewise absolved from VAT and DST imposition.

Treading over the challenged Decision of April 22, 2019, as well as the arguments put forward in the Motion for Reconsideration and the corresponding Comment thereto reveals that the contentions set forth therein are mere replica of the parties' respective stance in their previously filed pleadings, all of which have been determined and passed upon by the Court *En Banc*. There being no novel or significant matter justifying reversal, much less modification of the challenged Decision of April 22, 2019, petitioner's Motion for Reconsideration dated May 15, 2019 is **DENIED**, for lack of merit.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

(On Leave)
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

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice