REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

REX CHUA CO HO,
No. 952 Ongpin Street, Sta. Cruz, Manila,
Accused.

CTA Crim. Case Nos. O-287, O-288, O-289, O-290, and O-291

For: Violation of Section 255 of the NIRC of 1997, as amended.

Members:

UY, *Chairperson,*
RINGPIS-LIBAN, *and*
MODESTO-SAN PEDRO, JJ.

Promulgated:

JUN 19 2020
3:45 p.m.

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RESOLUTION

UY, J.:

For resolution is plaintiff's ***MOTION FOR RECONSIDERATION (of the Amended Decision Promulgated on October 21, 2019)***[1] filed on November 14, 2019, with accused's ***COMMENT/OPPOSITION (To BIR's Motion for Reconsideration dated 14 November 2019)***[2] filed on December 26, 2019. In said Motion, plaintiff prays to set aside this Court's Amended Decision dated October 21, 2019, the dispositive portion of which reads:

> "**WHEREFORE**, in light of the foregoing considerations, the instant Motion for Reconsideration is **PARTIALLY GRANTED**. The dispositive portion of the Decision dated January 17, 2019 is hereby **AMENDED** to read as follows:

[1] Docket (Vol. 17), pp. 8850 to 8860.
[2] Docket (Vol. 17), pp. __.

'**WHEREFORE**, in light of the foregoing, accused Rex Chua Co Ho is hereby found **GUILTY BEYOND REASONABLE DOUBT** of violating Section 255 of the NIRC of 1997, as amended, in **CTA Crim. Cases Nos. O-287, O-288, O-289, O-290, and O-291.** For each of the consolidated criminal cases, he is hereby sentenced to an indeterminate penalty of one (1) year, as minimum, to two (2) years as maximum term of imprisonment, and to pay a fine in the amount of ₱ 10,000.00, with subsidiary imprisonment pursuant to Section 280 of the NIRC of 1997, as amended, in the event that accused Co Ho has no property with which to meet the fines imposed upon him, or is unable to pay such fines.

With regard to the civil liability, Accused Rex Chua Co Ho, is hereby **ORDERED TO PAY** the total amount of **₱4,167,196,761.50**, for taxable years 2005 to 2009, inclusive of the 50% penalty imposed under Section 248 (B) of the NIRC of 1997, as amended, and twenty percent (20%) deficiency interest and delinquency interest imposed under Sections 248(A) and 249(B) and (C), of the NIRC of 1997, as amended, respectively, computed until December 31, 2017, as follows:

	Taxable Year					**Total**
	2005	**2006**	**2007**	**2008**	**2009**	
Gold Delivered and Sold to BSP	**₱207,945,323.17**	**₱414,228,805.17**	**₱1,240,686,746.34**	**₱1,145,350,719.77**	**₱1,932,757,566.50**	**₱4,940,969,160.95**
Less: Costs and Expenses: 50% of Gold Delivered and Sold to the BSP						
50% x ₱207,945,323.17	103,972,661.59					103,972,661.59
50% x ₱414,228,805.17		207,114,402.59				207,114,402.59
50% x ₱1,240,686,746.34			620,343,373.17			620,343,373.17
50% x ₱1,145,350,719.77				572,675,359.89		572,675,359.89
50% x ₱1,932,757,566.50					966,378,783.25	966,378,783.25
Gross Income	103,972,661.58	207,114,402.58	620,343,373.17	572,675,359.88	966,378,783.25	2,470,484,580.46
Add: Income Declared Per Return	1,591,797.32	1,895,501.46	1,819,934.40	1,869,879.11	1,217,212.01	8,394,324.30
Total	105,564,458.90	209,009,904.04	622,163,307.57	574,545,238.99	967,595,995.26	2,478,878,904.76
Less: Personal Deduction	32,000.00	32,000.00	32,000.00	41,000.00	50,000.00	187,000.00
Net Taxable Income	**105,532,458.90**	**208,977,904.04**	**622,131,307.57**	**574,504,238.99**	**967,545,995.26**	**2,478,691,904.76**

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Tax Due:						
On the First 500,000.00	125,000.00	125,000.00	125,000.00	125,000.00	125,000.00	625,000.00
32% in Excess Thereof						
32% x (105,532,458.90 less 500,000.00)	33,610,386.85					33,610,386.85
32% x (208,977,904.04 less 500,000.00)		66,712,929.29				66,712,929.29
32% x (622,131,307.57 less 500,000.00)			198,922,018.42			198,922,018.42
32% x (574,504,238.99 less 500,000.00)				183,681,356.48		183,681,356.48
32% x (967,545,995.26 less 500,000.00)					309,454,718.48	309,454,718.48
Total Tax Due	33,735,386.85	66,837,929.29	199,047,018.42	183,806,356.48	309,579,718.48	793,006,409.52
Less: Tax Due Per Return	1,234.42	5,281.76	428.66	-	-	6,944.84
Basic Income Tax Due	**33,734,152.43**	**66,832,647.53**	**199,046,589.76**	**183,806,356.48**	**309,579,718.48**	**792,999,464.68**
50% Surcharge	16,867,076.22	33,416,323.77	99,523,294.88	91,903,178.24	154,789,859.24	396,499,732.34
Sub-Total	50,601,228.65	100,248,971.30	298,569,884.64	275,709,534.72	464,369,577.72	1,189,499,197.03
Add: 20% Deficiency Interest						
From April 16, 2006 to January 1, 2014 (₱33,734,152.43 x 20% x 2818/365)	52,089,228.28					52,089,228.28
From April 16, 2007 to January 1, 2014 (₱66,382,647.53 x 20% x 2453/365)		89,830,402.43				89,830,402.43
From April 16, 2008 to January 1, 2014 (₱199,046,589.76 x 20% x 2087/365)			227,622,045.37			227,622,045.37
From April 16, 2009 to January 1, 2014 (₱183,806,356.48 x 20% x 1722/365)				173,432,627.89		173,432,627.89
From April 16, 2010 to January 1, 2014 (₱309,579,718.48 x 20% x 1357/365)					230,191,604.39	230,191,604.39
Total Amount Due, January 1, 2014	**102,690,456.93**	**190,079,373.73**	**526,191,930.01**	**449,142,162.61**	**694,561,182.11**	**1,962,665,105.39**
Add: 20% Deficiency Interest From January 2, 2014 to December 31, 2017 (1,460 days)						
(₱33,734,152.43 x 20% x 1460/365)	26,987,321.96					26,987,321.96
(₱66,832,647.53 x 20% x 1460/365)		53,466,118.04				53,466,118.04
(₱199,046,589.76 x 20% x 1460/365)			159,237,271.80			159,237,271.80
(₱183,806,356.48 x 20% x 1460/365)				147,045,085.20		147,045,085.20
(₱309,579,718.48 x 20% x 1460/365)					247,663,774.80	247,663,774.80
Add: 20% Delinquency Interest From January 2, 2014 to December 31, 2017 (1460 days)						
(₱102,690,456.93	82,152,365.56					82,152,365.56

x 20% x 1460/365)						
(₱190,079,373.73 x 20% x 1460/365)		152,063,498.98				152,063,498.98
(₱526,191,930.01 x 20% x 1460/365)			420,953,544.01			420,953,544.01
(₱449,142,162.61 x 20% x 1460/365)				359,313,730.08		359,313,730.08
(₱694,561,182.11 x 20% x 1460/365)					555,648,945.68	555,648,945.68
Total Amount Due on December 31, 2017	**₱211,830,144.45**	**₱395,608,990.75**	**₱1,106,382,745.82**	**₱955,500,977.89**	**₱1,497,873,902.59**	**₱4,167,196,761.50**

In addition, accused Rex Chua Co Ho is **ORDERED TO PAY** the delinquency interest at the rate of twelve percent (12%), on the total unpaid amount as of January 1, 2014 in the amount of **₱1,962,665,105.39**, as determined above, computed from January 1, 2018 until full payment thereof pursuant to Section 249(C) of the Tax Code, as amended by RA No. 10963 and implemented by RR No. 21-2018.

SO ORDERED.'

SO ORDERED."

In its Motion, plaintiff argues that the Court erred in reducing the civil liability to ₱4,167,196,761.50 for taxable years 2005 to 2009 and delinquency interest at the rate of 12% on the total unpaid amount as of January 2014 in the amount of ₱1,962,665,105.39, computed from January 1, 2018 until full payment thereof.

In his Comment/Opposition, accused counters that:

1. The Court correctly applied the 50% rule as it acknowledged accused's incurred expenses during his sale of gold to BSP.

2. Moreover, Revenue Memorandum Circular No. 23-00 is applicable to this case.

3. Besides Section 24 (c), Section 24 (d) of RMC No. 23-00 is likewise applicable to this case, and it allows the reduced of assessment based on the records of taxpayers engaged in the same line of business.

4. The Court should have considered the testimonies of the Court Appointed ICPA Enrico Pizarro and accused's witness Atty.

Clifford Chua, CPA, as to the actual costs incurred by accused in his gold trade business.

5. The Court should not rely on BIR's computation of the accused's alleged deficiency tax liability based on the BSP Certification, since it only represents the alleged annual gold sales of the accused, and not his taxable income. Thus, the assessment was based purely on the mathematical computation of accused's supposed tax liability.

THE COURT'S RULING

Plaintiff's Motion lacks merit.

As discussed in the Amended Decision dated October 21, 2019, Revenue Memorandum Circular No. 23-00 finds application in cases where deficiency taxes are assessed, based on the "Best Evidence Obtainable." Logically, the application of this method of assessment stems from "the ***absence*** of accounting records or other documents necessary for the proper determination of the taxpayer's internal revenue tax liability." [3]

Corollary thereto, an assessment based on estimates is sanctioned by the subject RMC, where the "50% Rule" is applied, "***in the absence of receipts to prove actual amount of expense deduction.***" For easy reference, Section 2.4 of RMC No. 23-00 is quoted hereunder, to wit:

> "**2.4** ***Existing Revenue Procedures and Jurisprudence Governing Assessment Based on the Best Evidence Obtainable***. — Provided hereunder are the existing revenue procedures and jurisprudence governing issuance of a deficiency tax assessment based on the best evidence obtainable:
>
> xxx xxx xxx
>
> **(c)** ***Assessment Based on Estimate; 50% Rule, in the Absence of Receipts to Prove Actual Amount of Expense Deduction***. — The Court held in the Mariano Zamora case that, <u>if there is a showing that expenses have been incurred but the exact amount thereof cannot be ascertained due to absence of documentary evidence,</u>

[3] Section 1, RMC No. 23-00.

it is the duty of the BIR to make an estimate of the deduction that may be allowable in computing the taxpayer's taxable income, bearing heavily against the taxpayer whose inexactitude is of his own making. That disallowance of 50% of the taxpayer's claimed deduction is valid.

"It is alleged by Mariano Zamora that the CTA erred in disallowing P10,478.50 as promotion expenses incurred by his wife for the promotion of the Bay View Hotel and Farmacia Zamora. He contends that the whole amount of P20,957.00, as promotion expenses in his 1951 income tax returns, should be allowed and not merely one-half of it or P10,478.50, on the ground that, while not all the itemized expenses are supported by receipts, the absence of some supporting receipts has been sufficiently and satisfactorily established. For, as alleged, the said amount of P20,957.00 was spent by Mrs. Esperanza A. Zamora (wife of Mariano),during her travel to Japan and the United States to purchase machinery for a new Tiki-Tiki plant, and to observe hotel management in modern hotels. The CTA, however, found that for said trip, Mrs. Zamora obtained only the sum of P5,000.00 from the Central Bank and that in her application for dollar allocation, she stated that she was going abroad on a combined medical and business trip, which facts were not denied by Mariano Zamora. No evidence had been submitted as to where Mariano had obtained the amount in excess of P5,000.00 given to his wife which she spent abroad. No explanation had been made either that the statement contained in Mrs. Zamora's application for dollar allocation that she was going abroad on a combined medical and business trip, was not correct. **The alleged expenses were not supported by receipts.** Mrs. Zamora could not even remember how much money she had when she left abroad in 1951, and how the alleged amount of P20,957.00 was spent.

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> Section 30 of the Tax Code provides that in computing net income, there shall be allowed as deductions all the ordinary and necessary expenses paid or incurred during the taxable year, in carrying on any trade or business *(Vol. 4, Mertens, Law of Federal Income Taxation, sec. 25.03, p.307)*. Since promotion expenses constitute one of the deductions in conducting a business, same must satisfy these requirements. Claims for the deduction of promotion expenses or entertainment expenses must also be substantiated or supported by record showing in detail the amount and nature of the expense incurred (*N.H. Van Sicklen, Jr. vs. Comm. of Int. Rev., 33 BTA 544*). Considering, as heretofore stated, that the application of Mrs. Zamora for dollar allocation shows that she went abroad on a combined medical and business trip, not all of her expenses came under the category of ordinary and necessary expenses; part thereof constituted her personal expenses. There having been no means by which to ascertain which expense was incurred by her in connection with the business of Mariano Zamora and which was incurred for her personal benefit, the Collector and the CTA in their decisions, considered 50% of the said amount of P20,957.00 as business expense and the other 50%, as her personal expense. **We hold that said allocation is very fair to Mariano Zamora, there having been no receipt whatsoever, submitted to explain the alleged business expenses, or proof of the connection which said expenses had to the business or the reasonableness of the said amount of P20,957.00**. While in situations like the present, absolute certainty is usually not possible, the CTA should make as close an approximate as it can, bearing heavily, if it chooses, upon the taxpayer whose inexactness is of his own making." *(Underscoring supplied.)*

From the foregoing, it is clear that where there is a showing that expenses have been incurred, but the amount cannot be ascertained due to the absence of documentary evidence (*i.e.,* receipts), the BIR is allowed to make an estimate of the allowable deduction at the rate of 50%.

In this case, there were no accounting records or receipts presented by accused to substantiate his expenses relating to the sale of gold to the BSP.

However, considering that accused is a *gold trader*, and not a miner, it is reasonable to acknowledge that accused incurred expenses in the conduct of his business, despite the absence of any receipts to substantiate the expenses.

On that basis, Section 2.4 (c) of RMC No. 23-00, otherwise known as the "50% Rule," can be applied, even in the absence of any receipt to justify the expenses incurred by the accused.

At this juncture, it should be emphasized that the application of Section 2.4 (c) of RMC No. 23-00 is not contingent on the presentation of receipts and/or accounting records, as the subject RMC specifically deals with the assessment of taxpayers that are unwilling or unable to present the requisite accounting records and/or other documents necessary for the determination of their tax liability. Consequently, to rule that the application of the subject RMC is absolutely dependent on the taxpayer's presentation of sufficient documents and/or accounting records, would run counter to the purpose for which the subject RMC was issued in the first place. Thus, this Court finds no merit in plaintiff's contention that accused should have presented proper supporting documents for the alleged business expense or cost of sale, or other pertinent records which are required in claiming deductions.

WHEREFORE, in light of the foregoing considerations, the instant Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice