REPUBLIC OF THE PHILIPPINES
COURT OF TAXAPPEALS
QUEZON CITY

FIRST DIVISION

TOENEC PHILIPPINES, INC.,
Petitioner,

- *versus* -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8653

Members:

DEL ROSARIO, *Chairperson,*
UY, *and*
MINDARO-GRULLA, *JJ.*

Promulgated:
JAN 27 2016 ; 2:45 p.m.

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DECISION

DEL ROSARIO, P.J.:

This is a Petition for Review filed on May 10, 2013 by petitioner Toenec Philippines, Inc. seeking to set aside the Final Decision on Disputed Assessment (FDDA) of respondent Commissioner of Internal Revenue (CIR) finding petitioner liable for deficiency donor's tax with surcharge, interest and compromise penalty in the total amount of **SIXTEEN MILLION FIVE HUNDRED SEVENTEEN THOUSAND FIVE HUNDRED THIRTY FOUR PESOS and 25/100** (₱16,517,534.25).

THE PARTIES

Petitioner is a domestic corporation duly organized and existing under the laws of the Philippines with principal office address at Unit 802 Greenbelt Mansion Condominium, 106 Perea St., Legaspi Village, Makati City, Philippines. It may be served with notices, pleadings and other processes of the court through its counsel at the 20th Floor, Chatham House, Rufino corner Valero Streets, Salcedo Village, Makati City.[1]

Respondent CIR is the Chief of the Bureau of Internal Revenue (BIR), the government agency charged with the assessment and collection of all internal revenue taxes, fees and charges, and enforcement of all forfeitures, penalties and fines connected therewith.[2] Respondent is represented by the legal officers of the Legal Division, Revenue Region 8, Makati City, with office address at 2/F Legal Division, BIR Bldg., No. 313 Sen. Gil Puyat Ave., Makati City, where summons, pleadings, notices and other processes may be served.

THE FACTS

Petitioner is engaged in construction activities related to power generation, transformer, transmission, distribution, process equipment installation, and other consulting services, such as surveying, design, and supervision of said construction activities.[3]

Toenec Corporation (Toenec Japan), a corporation organized and existing under the laws of Japan, owns seven thousand two hundred (7,200) shares of stock of petitioner.[4]

On May 24, 2010, petitioner and Toenec Japan executed a Capital Infusion Agreement, wherein Toenec Japan contributed ₱30,000,000.00 as additional paid-in capital (APIC) to petitioner purportedly to sustain the viability of its operations and to protect its original capital investment therein.[5]

Thereafter, as a requirement for petitioner's application for license, petitioner submitted with the Philippine Contractor's Accreditation Board (PCAB) its audited financial statement as of June 30, 2010.[6]

In a letter dated January 31, 2011, the PCAB sought the advice of Revenue District Officer Gerry O. Dumayas of Revenue District Office No.

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[1] Par. 2, Summary of Admitted Facts, Joint Stipulation of Facts and Issues (JSFI); CTA Docket, p. 534.
[2] Par.3, Summary of Admitted Facts, JSFI; CTA Docket, p. 535.
[3] Par.8, Summary of Admitted Facts, JSFI; CTA Docket, p. 535.
[4] Par.10, Summary of Admitted Facts, JSFI; CTA Docket, p. 536.
[5] Exhibit "P-8", CTA Docket, p. 732.
[6] Par.11, Summary of Admitted Facts, JSFI; CTA Docket, p. 536.

47, East Makati whether the APIC of ₱30,000,000.00 reflected in the audited financial statement of petitioner is subject to payment of donor's tax.[7]

In a letter dated February 21, 2011,[8] the BIR informed petitioner that the infusion of additional capital is subject to donor's tax.

On March 17, 2011, petitioner replied to BIR's February 21, 2011 letter submitting its position that the additional capital infusion made by Toenec Japan does not fall within the purview of the concept of donation; hence, not subject to donor's tax.[9]

In a letter dated March 28, 2011,[10] the BIR informed petitioner that it has referred to the BIR's Legal Division the issue of taxability of its ₱30,000,000.00 APIC.

On August 9, 2011, petitioner received a Notice of Informal Conference. On October 20, 2011, petitioner, through its representative, Punongbayan & Araullo, submitted its supplemental position paper.[11]

As a result of the BIR's investigation, petitioner received on November 24, 2011 a Preliminary Assessment Notice (PAN) dated November 23, 2011, with attached annex described as "Details of Discrepancies"[12] issued by respondent. On December 9, 2011, petitioner's representative, Punongbayan & Araullo, filed its reply[13] thereto, insisting that the capital infusion is not subject to donor's tax.

On June 25, 2012, petitioner received the FAN[14] dated June 22, 2012 with the attached Assessment Notice Nos. MC-ONETT001-10-12-0578 and DN-ONETT001-10-12-0578 assessing and demanding from petitioner the payment of deficiency donor's tax relative to the Capital Infusion Agreement, as follows:

DONOR'S TAX	
Additional Paid-in Capital	₱ 30,000,000.00

[7] Exhibit "R-3", BIR Records, p. 36.
[8] Exhibit "R-7", BIR Records, p. 60.
[9] BIR Records, p. 69.
[10] Exhibit "R-8", BIR Records, p. 113.
[11] Par. 14, Summary of Admitted Facts, JSFI; CTA Docket, p. 536.
[12] Par. 15, Summary of Admitted Facts, JSFI; CTA Docket, p. 536.
[13] *Id.*
[14] Exhibit "P-5", CTA Docket, pp. 713 to 717.

Tax Rate	30%
Basic Deficiency Tax	9,000,000.00
Add: 25% Surcharge	2,250,000.00
Interest (06-24-11 to 7-27-12)	1,967,671.23
Total amount due	**₱ 13,217,671.23**
Compromise Penalty	**₱ 50,000.00**[15]

On July 24, 2012, petitioner, through its representative, Punongbayan & Araullo, filed its protest[16] against the said FAN, pursuant to Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended.[17]

On April 12, 2013, petitioner received the FDDA[18] dated April 11, 2013 finding petitioner liable for deficiency donor's tax and compromise penalty, computed as follows:

DONOR'S TAX	
Additional Paid-in Capital	₱ 30,000,000.00
Tax Rate	30%
Basic Deficiency Tax	9,000,000.00
Add: 25% Surcharge	2,250,000.00
Interest (06-24-11 to 5-17-13)	5,217,534.25
Total amount due	**₱ 16,467,534.25**
Compromise Penalty	**₱ 50,000.00**[19]

On May 10, 2013, petitioner filed the instant Petition for Review.

In her Answer,[20] respondent CIR raised the following special and affirmative defenses:

> a) Pursuant to Section 6 of the NIRC of 1997, as amended, and Revenue Memorandum Order (RMO) No. 15-2003, the issuance of any Tax Verification Notice or Letters of Authority is not required since the Capital Infusion Agreement entered in by petitioner is covered under the One-Time Transaction (ONETT);

[15] Par.4, Summary of Admitted Facts, JSFI; CTA Docket, p. 535.
[16] Exhibit "P-16", CTA Docket, pp. 812 to 820.
[17] Par.5, Summary of Admitted Facts, JSFI; CTA Docket, p. 535.
[18] Exhibit "P-6", CTA Docket, pp. 721 to 724.
[19] Par.6, Summary of Admitted Facts, JSFI; CTA Docket, p. 535.
[20] CTA Docket, pp.163 to 170.

b) Although the Capital Infusion Agreement states that the APIC contribution shall not be construed as a donation, petitioner's Audited Financial Statements for the period ending June 30, 2010 disclosed that the amount of ₱30,000,000.00 are proceeds from donation;

c) The Audited Financial Statements with an Independent Auditor's Report have more probative value that the Capital Infusion Agreement;

d) The Notes to Financial Statements of petitioner reveals that the ₱30,000,000.00 APIC is entered as proceeds from donation stating that, "in May 2010, the stockholders donated a capital amounting to thirty million pesos (₱30,000,000.00) to support the Company's operations." This unmistakenly indicates that the transaction of petitioner is a donation and not an investment;

e) The additional documents submitted by petitioner, more particularly the alleged Audited Financial Statements for the year ended 31 December 2010 did not outweigh the probative value of the Audited Financial Statements for the period ending June 30, 2010 submitted by petitioner to PCAB which clearly shows that the ₱30,000,000.00 is a donation;

f) Donor's tax shall apply whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal, tangible or intangible;

g) Petitioner failed to substantiate or submit controverting evidence against the BIR findings;

h) Respondent fully complied with the due process requirement mandated under Section 228 of the NIRC of 1997, as amended, as implemented by Revenue Regulations No. 12-99;

i) Petitioner failed to file the donor's tax return and pay .the donor's tax due pursuant to Section 103 of the NIRC of 1997, as amended, in relation to Section 255 of the same code; hence, in lieu of instituting a criminal action for the said violation, petitioner has to pay a compromise penalty of ₱50,000.00, pursuant to RMO 19-2007;

j) The assessments issued against petitioner for deficiency donor's tax and compromise penalty for taxable year 2010 were made in accordance with law and regulations; and,

k) All presumptions are in favor of the correctness of tax assessments.

After the Pre-Trial Conference on October 11, 2013,[21] the parties filed their Joint Stipulations of Facts and Issues[22] on November 7, 2013. Upon approval of the parties' Joint Stipulations of Facts and Issues, the Court issued the Pre-Trial Order[23] on November 26, 2013.

Trial ensued, wherein the parties presented their respective evidence. Petitioner presented Estrella Datu;[24] Delio Samulde;[25] Benjamin P. Valdez;[26] and Atty. Carla B. Manto-Delgado [27] as witnesses, and documentary evidence marked as Exhibits "P-1" to "P-15a", "P-16", "P-17" to "P-29-1", and "P-32" to "P-35-A", inclusive of sub-markings, which the Court admitted in the Resolution dated September 29, 2014.[28]

Respondent presented BIR Revenue Officer, Maria Lina M. Aficial,[29] as her witness and documentary evidence marked as Exhibits "R-1" to "R-18-A", inclusive of sub-markings, which the Court admitted in the Resolution dated July 24, 2015.[30]

Petitioner timely filed its memorandum on September 28, 2015.[31] Respondent, on the other hand, filed a Manifestation and Motion[32] on September 10, 2015 manifesting that she is adopting all the factual and legal arguments found in the special and affirmative defenses of her Answer dated June 28, 2013, including the purposes for which respondent's evidence were offered as part of her memorandum. On October 5, 2015, the case was deemed submitted for decision.[33]

ISSUES

As stipulated by the parties, the principal issue to be resolved is:

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[21] CTA Docket, pp. 522 to 525.
[22] CTA Docket, pp. 534 to 541.
[23] CTA Docket, pp. 556 to 566.
[24] Minutes of Hearing dated November 26, 2013, CTA Docket pp. 551 to 552.
[25] Minutes of Hearing dated February 4, 2014, CTA Docket pp. 571 to 572.
[26] Minutes of Hearing dated March 4, 2014, CTA Docket pp. 598 to 599.
[27] Minutes of Hearing dated March 25, 2014, CTA Docket pp. 605 to 608.
[28] CTA Docket, pp. 942 to 943.
[29] Minutes of Hearing dated March 31, 2015, CTA Docket pp. 969 to 973.
[30] CTA Docket, pp. 999 to 1000.
[31] CTA Docket, pp. 1011 to 1045.
[32] CTA Docket, pp. 1007 to 1009.
[33] CTA Docket, p. 1047.

> Whether or not petitioner is liable to pay the amount of ₱16,467,534.25 and ₱50,000.00 (inclusive of surcharges and interest), as deficiency donor's tax and compromise penalty relative to its Capital Infusion Agreement with Toenec Japan executed on May 24, 2010.

with the following additional issues:

1. The assessment is void as no Letter of Authority (LOA) was issued by respondent;

2. The assessment failed to correctly state the law on which the assessment is based;

3. The infusion of additional capital is not considered a donation;

4. Assuming arguendo that the capital infusion is considered a donation, petitioner, being the recipient, cannot be made liable for donor's tax;

5. Assuming arguendo that the capital infusion is considered a donation, the donor which is a foreign corporation, cannot be made liable for donor's tax;

6. Petitioner is not liable to pay the alleged deficiency donor's tax, its surcharge and interest, as well as the compromise penalty; and,

7. Whether or not the subject transactions entered into by petitioner and Toenec Japan on May 24, 2010 are One-Time Transactions (ONETT) under RMO No. 15-2003.

THE COURT'S RULING

The Court deems it necessary to first resolve the issue of who is liable to pay donor's tax.

In this regard, Sections 98, 99 and 103 of the NIRC of 1997, as amended, provide the relevant provisions on the imposition of donor's tax, rates of tax payable by the donor, filing of return and payment of donor's tax, *viz*:

"SEC. 98. Imposition of Tax. —

(A) There shall be levied, assessed, collected and paid upon **the transfer by any person, resident or nonresident**, of the property by gift, a tax, computed as provided in Section 99.

(B) The tax shall apply whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal, tangible or intangible.

SEC. 99. **Rates of Tax Payable by Donor**. --

xxx xxx xxx

(B) Tax Payable by Donor if Donee is a Stranger. – When the donee or beneficiary is a stranger, the tax payable by the donor shall be thirty percent (30%) of the net gifts. xxx

SEC. 103. Filing of Return and Payment of Tax. –

xxx xxx xxx

(B) xxx **In the case of gifts made by a nonresident, the return may be filed with the Philippine Embassy or Consulate in the country where he is domiciled at the time of the transfer, or directly with the Office of the Commissioner**." (Emphases supplied)

Corrolary thereto, Sections 10 and 13 of Revenue Regulations No. 2-2003,[34] provide:

"SEC. 10. RATES OF DONOR'S TAX. –

xxx xxx xxx

(B) Tax payable by the donor if donee is a stranger. - When the donee or beneficiary is a stranger, the tax payable by the **donor** shall be thirty per cent (30%) of the net gifts. For purposes of the donor's tax, a "stranger" is a person who is not a: (1) Brother, sister (whether by whole or half blood), spouse, ancestor, and lineal descendant; or (2) Relative by consanguinity in the collateral line within the fourth degree of relationship.

xxx xxx xxx

Donation made between business organizations and those made between an individual and a business organization shall be considered as donation made to a stranger.

xxx xxx xxx

[34] Dated December 16, 2002.

SEC. 13. FILING OF RETURNS AND PAYMENT OF DONOR'S TAX. –

(A) Requirements. – **Any person making a donation** (whether direct or indirect), unless the donation is specifically exempt under the Code or other special laws, **is required, for every donation, to accomplish under oath a donor's tax return in duplicate**. The return shall set forth:

(1) Each gift made during the calendar year which is to be included in computing net gifts;
(2) The deductions claimed and allowable;
(3) Any previous net gifts made during the same calendar year;
(4) The name of the donee;
(5) Relationship of the donor to the donee; and,
(6) Such further information as the Commissioner may require.

(B) Time and place of filing and payment. – The donor's tax return shall be filed within thirty (30) days after the date the gift is made or completed and the tax due thereon shall be paid at the same time that the return is filed. Unless the Commissioner otherwise permits, the return shall be filed and the tax paid to an authorized agent bank, the Revenue District Officer, Revenue Collection Officer or duly authorized Treasurer of the city or municipality where the donor was domiciled at the time of the transfer, or if there be no legal residence in the Philippines, with the Office of the Commissioner. **In the case of gifts made by a non-resident, the return may be filed with the Philippine Embassy or Consulate in the country where he is domiciled at the time of the transfer, or directly with the Office of the Commissioner**. For this purpose, the term "OFFICE OF THE COMMISSIONER" shall refer to the Revenue District Office (RDO) having jurisdiction over the BIR-National Office Building which houses the Office of the Commissioner, or presently, to the Revenue District Office No. 39 – South Quezon City.

xxx xxx xxx" (Emphases supplied)

Prescinding from the foregoing, it is clear that the person or entity liable to pay donor's tax is the donor, or the person or entity transferring the property to another. Moreover, if the donor is a non-resident, the return must be filed with the Philippine Embassy or with the Office of the Commissioner, particularly with the Revenue District Office (RDO) No. 39.

The gift tax or donor's tax is a tax on the privilege of transmitting one's property or property rights to another or others without adequate and full valuable consideration.[35] In fact, no less than the Supreme Court has

[35] Jose C. Vitug and Ernesto D. Acosta, *Tax Law and Jurisprudence*, *Second Edition,* p. 225.

classified donor's tax as "direct tax."[36] It has been said that a direct tax is a tax for which a taxpayer is directly liable on the transaction or business it engages in, without transferring the burden to someone else.[37]

In the case at bar, even assuming *arguendo* that the capital infusion is a donation, petitioner, as the recipient of the ₱30,000,000.00 cash from Toenec Japan, is considered as the donee in the said transaction.

On cross-examination, respondent's witness, Maria Lina M. Aficial, a Group Supervisor assigned at RDO 47, East Makati, testified that indeed **Toenec Japan is the donor and petitioner is the donee**, to wit:

> "ATTY. NIDEA:
>
> Q. A donor is a person or an entity that gives money or property to another with no consideration. Am I correct?
>
> MS. AFICIAL:
>
> A. Yes, sir.
>
> ATTY. ARPON[NIDEA]:
>
> Q. A donee is the person or entity who receives or accepts such gift. Am I correct?
>
> MS. AFICIAL:
>
> A. Yes, sir.
>
> ATTY. NIDEA:
>
> Q. In this case, Toenec Corporation Japan was the one that remitted the P30,000,000.00 infusion. Am I correct?
>
> MS. AFICIAL:
>
> A. Toenec Japan gave the P30,000,000.00..... .(interrupted)
>
> ATTY. NIDEA:
>
> Q. Can you please answer yes or no, please?
>
> MS. AFICIAL:

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[36] *Maceda vs. Macaraig, Jr.,* G.R. No. 88291, June 8, 1993; *Abakada Guro Partylist (formerly AAJAS) officers Samson S. Alcantara and Ed Vincent S. Albano vs. Executive Secretary Eduardo Ermita,* G.R. No. 168056, September 1, 2005.
[37] *Id.*

A. Yes, sir.

ATTY. NIDEA:

Q. And Toenec Philippines was the one who accepted the remittance. Am I correct?

MS. AFICIAL:

A. Yes, sir.

ATTY. NIDEA:

Q. So, Toenec Japan, assuming your assessment is correct, is the donor and Toenec Philippines is the donee?

MS. AFICIAL:

A. The donee

ATTY. NIDEA:

Q. Am I correct?

MS. AFICIAL:

A. Yes, sir."[38]

Upon further clarification from the Court, Ms. Aficial was even categorical in admitting that a donor's tax is indeed a liability of the donor, *viz*:

"JUSTICE DEL ROSARIO:

Kindly clarify the point being raised by the petitioner? Did I hear you right when you said that a Donor's Tax is always paid or is the liability of the donor?

MS. AFICIAL:

When we are making assessments on Donor's Tax, Your Honors, we assess the Donor's Tax and give it to the taxpayer, whoever is making representation with us.

JUSTICE DEL ROSARIO:

Yes, there was a point being raised being an official of the BIR, is the Donor's Tax a liability of the donor or the donee?

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[38] Transcript of Stenographic Notes, dated March 31, 2015, pp. 11-13.

MS. AFICIAL:

Of the donor.

JUSTICE DEL ROSARIO:

Then, Toenec Philippines actually a donee. Is it not?

MS. AFICIAL:

Yes, Your Honors.

JUSTICE DEL ROSARIO:

So, what is your basis in saying that Toenec Philippines is liable for a Donor's Tax when Toenec Philippines is donee?

MS. AFICIAL:

Well, because it is the Toenec Philippines that is here in the Philippines."[39]

Evidently, petitioner is the entity that received the ₱30,000,000.00 cash and, thus, considered as the donee. Consequently, as the donee, petitioner is not liable to pay donor's tax, pursuant to Section 98 of the NIRC of 1997, as amended.

The liability to pay donor's tax is not transferable. The burden to pay the donor's tax is imposed upon the donor and not upon the donee. While the imposition of tax is a matter of law, mere exigency and convenience may not be used as an excuse to collect donor's tax from a donee simply because the latter is located in the Philippines. Basic is the rule that laws imposing tax are strictly construed against the taxing authority and in favor of the taxpayer.[40]

All told, the assessment for deficiency donor's tax issued by respondent against petitioner is wanting of legal moorings.

With the above conclusion thus reached, the Court finds no need to discuss the other issues raised by the parties for being academic.

[39] Transcript of Stenographic Notes, dated March 31, 2015, pp. 23-24.
[40] *SMI-ED Philippines Technology, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 175410, November 12, 2014.

WHEREFORE, premises considered, the instant Petition for Review is hereby **GRANTED**. The Final Decision on Disputed Assessment dated April 11, 2013 is hereby **SET ASIDE**. Accordingly, the Final Assessment Notice dated June 22, 2012 and the attached Assessment Notice Nos. MC-ONETT001-10-12-0578 and DN-ONETT001-10-12-0578 assessing and demanding from petitioner the payment of deficiency donor's tax in the total amount of ₱13,217,671.23 for taxable year 2010 are hereby **CANCELLED** and **WITHDRAWN**.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

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

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice