REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
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:

SEP 02 2016 ; 9:40 a.m.

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RESOLUTION

DEL ROSARIO, P.J.:

This resolves respondent's "**MOTION FOR RECONSIDERATION**" posted through registered mail on February 15, 2016.[1]

In its Motion, respondent prays that the Court reconsider and set aside the assailed Decision promulgated on January 27, 2016 and render another Decision ordering petitioner to pay the amounts of Php16,467,534.25 (inclusive of surcharges and interests), and Php50,000.00, as deficiency donor's tax and compromise penalty, respectively, for taxable year 2010, plus the accrued 25% surcharge for the late payment and 20% annual interest from July 23, 2012 until fully paid pursuant to Sections 248 and 249 of the Tax Code.

The dispositive portion of the assailed Decision reads:

> "**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

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[1] Motion for Reconsideration, *CTA Docket*, p. 1065-1073; Resolution dated June 29, 2016.

> and DN-ONETT001-10-12-0578 assessing and demanding from petitioner the payment of deficiency donor's tax in the total amount of P 13,217,671.23 for taxable year 2010 are hereby **CANCELLED** and **WITHDRAWN**.
>
> **SO ORDERED.**"

Citing BIR Ruling No. 007-2000 dated January 5, 2000, respondent postulates that the National Internal Revenue Code (NIRC) of 1997 clearly provides that "whenever one party to the taxable document enjoys exemption from the tax imposed therein, the other party thereto who is not exempt shall be the one directly liable for the tax." Respondent then claims that petitioner, a party to the Capital Infusion Agreement dated 24 May 2010 with Toenec Corporation-Japan, is the instituted agent in the Philippines for tax payments that may arise in relation to said Agreement as Toenec Corporation-Japan is a non-resident foreign corporation. Respondent insists that pursuant to the inherent limitation rule that taxation may be exercised only within the territorial jurisdiction of the taxing authority, petitioner, the donee in the transaction, is the one liable to pay the donor's tax due on the said Capital Infusion Agreement made by Toenec Corporation of Japan in the amount of Php30,000,000.00.

Respondent further contends that petitioner's Audited Financial Statements for the period ending June 30, 2010 disclosing the amount of P30,000,000.00 Additional Paid-In Capital (APIC) as proceeds from donation have more probative value than the Capital Infusion Agreement executed between petitioner and Toenec Corporation of Japan which states that APIC Contribution shall not be construed as a donation.

After carefully evaluating respondent's contentions as presented in its Motion, the Court finds that they are mere reiteration or amplification of the arguments raised in respondent's Answer[2] dated June 28, 2013, all of which were duly considered in arriving at the assailed Decision.

As to the question of whether the P30,000,000.00 APIC is a donation, suffice it to say that any determination thereon is irrelevant. Even if the Court determines that it is a donation, petitioner, the donee in the transaction, is not liable to pay donor's tax pursuant to Section 98 of the NIRC of 1997, as amended. In passing upon the

[2] *CTA Docket*, pp. 163-170.

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issue, this Court declared in its assailed Decision that it is the donor and not the donee who is liable for Donor's Tax. To reiterate:

> "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.[3]" (*Boldfacing supplied*)

On respondent's theory that petitioner is liable for Donor's Tax being Toenec Corporation-Japan's instituted agent in the Philippines, the same is bereft of merit.

A perusal of BIR Ruling No. 007-2000 relied upon by respondent discloses that it involves the application of the provision on Documentary Stamp Tax (DST) under Section 173 of the NIRC of 1997,[4] which provides "[t]hat whenever one party to the taxable document enjoys exemption from the tax herein imposed, the other party who is not exempt shall be the one directly liable for the tax." The aforesaid DST provision could not be extended by implication to justify the assessment of Donor's Tax against the donee since the NIRC clearly imposes donor's tax on the donor of the property.[5]

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[3] Decision dated January 27, 2016, *CTA Docket*, pp. 1052-1064, 1063.

[4] **TITLE VII**
DOCUMENTARY STAMP TAX

SEC. 173. Stamp Taxes Upon Documents, Loan Agreements, Instruments and Papers. - Upon documents, instruments, loan agreements and papers, and upon acceptances, assignments, sales and transfers of the obligation, right or property incident thereto, there shall be levied, collected and paid for, and in respect of the transaction so had or accomplished, the corresponding documentary stamp taxes prescribed in the following Sections of this Title, by the person making, signing, issuing, accepting, or transferring the same wherever the document is made, signed, issued, accepted or transferred when the obligation or right arises from Philippine sources or the property is situated in the Philippines, and the same time such act is done or transaction had: Provided, That whenever one party to the taxable document enjoys exemption from the tax herein imposed, the other party who is not exempt shall be the one directly liable for the tax.

[5] 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.

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

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

xxx xxx xxx

It has been said that a tax cannot be imposed without clear and express words for that purpose. The general rule of requiring adherence to the letter in construing statutes applies with peculiar strictness to tax laws and the provisions of a taxing act are not to be extended by implication.[6]

WHEREFORE, premises considered, respondent's "**Motion for Reconsideration**" is **DENIED** for lack of merit.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

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

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(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.**

[6]*Marinduque Iron Mines Agents, Inc. vs. The Municipal Council of the Municipality of Hinabangan, Province of Samar, et al.*, G.R. No. L-18924, June 30, 1964.