REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

CEBU AIR, INC., Petitioner,	**CTA CASE NO. 9106**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson, and* **MANAHAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JAN 2 3 2019 4:20 pm

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RESOLUTION

CASTAÑEDA, JR., *J.*:

This addresses respondent's **Motion for Reconsideration Re: Amended Decision dated 27 September 2018**, filed on October 16, 2018, with petitioner's **Comment/Opposition (To Respondent's Motion for Reconsideration Re: Amended Decision dated 27 September 2018)**, filed on November 5, 2018.

Respondent seeks reconsideration of the Court's Amended Decision dated September 27, 2018, the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, respondent's **Motion for Partial Reconsideration Re: Decision dated 11 January 2018** is **DENIED** for lack of merit. On the other hand, petitioner's **Motion for Reconsideration (of the Decision dated 11 January 2018)** is **GRANTED**. Accordingly, the dispositive portion of this Court's Decision dated January 11, 2018 is hereby amended to read as follows:

'**WHEREFORE**, premises considered, the assessment issued by respondent against petitioner for deficiency improperly accumulated earnings tax for taxable year 2010 in the amount of ₱1,876,885,725.76 is **CANCELLED** and **WITHDRAWN**.

SO ORDERED.'

SO ORDERED."

In assailing the aforesaid Amended Decision, respondent has raised the following grounds:

I. Petitioner failed to prove that it declared and paid cash dividends to its shareholders;

II. To consider the retained earnings reasonable for the needs of business, the amount retained should only be up to 100% of the paid-up capital or the amount contributed to the corporation representing the par value of the shares of stocks;

III. Additional paid-in capital is considered as excess capital over and above the par and is excluded from paid-up capital of petitioner;

IV. Revenue Memorandum Circular (RMC) No. 35-2011 merely called for strict application of Section 29 of the Tax Code and Revenue Regulations (RR) No. 2-2001, which were already in force the moment the Tax Code and RR No. 2-2001 were enacted; and

V. Compromise penalty should properly be imposed.

Respondent contends that the documents submitted by petitioner did not prove the latter's declaration and payment of the cash dividends to its shareholders. Respondent likewise continuously objects the presentation of the said documents as petitioner's additional evidence. The alleged additional documents introduced by petitioners after this Court rendered the Decision on January 11, 2018, are forgotten evidence that should not have been considered by the Court. Even assuming that the said documents could be considered, respondent argues that they did not show the actual declaration and payment of the cash dividend; thus, petitioner failed to prove that it actually paid cash dividends of ₱1,833,709,650.00 to its shareholders.

According to respondent, shareholders has paid 100% of the paid-up capital to petitioner which was equivalent to, but not more than the par value of the subscribed or outstanding capital stocks. Respondent alleges that the retained earnings of petitioner exceeded the 100% of paid-up capital. Respondent also claims that the excess was unreasonable for the needs of the business and penalty tax of improperly accumulated earnings tax (IAET) should apply. Respondent insists that 100% of the paid-up capital cannot exceed ₱613,236,550.00 representing the par value of petitioner's issued and outstanding shares.

Respondent asserts that RMC No. 35-2011 provides that "xxx the amount that may be retained xxx shall be 100% of the paid-up capital or the amount contributed to the corporation representing the par value of the shares of stock, hence, any excess capital over and above the par shall be excluded." Respondent avers that since RMC No. 35-2011 has not been declared void and remains valid and effective, the same should be applied in this case. Respondent also points out that the non-retroactivity of rulings under Section 246 of the Tax Code is not applicable in the present case considering that RMC No. 35-2011 is a mere clarification of RR No. 2-2001. It is respondent's stand that RMC No. 35-2011 is an internal issuance that interprets and clarifies a previous regulation and does not go beyond mere internal administration. Being so, petitioner's paid-up capital cannot allegedly include the additional paid-in capital. Respondent stresses that petitioner's capital paid in excess of par value amounting to ₱8,405,568,120.00 considered as premium or surplus should not be part of the paid-up capital and should be excluded. Respondent alleges that if the definition of "paid-up capital" includes additional paid-in capital, the purpose for which IAET is imposed would have been defeated, that is, IAET is being imposed in the nature of a penalty to the corporation for the improper accumulation of its earnings, and as a form of deterrent to the avoidance of tax upon shareholders who are supposed to pay dividends tax on the earnings distributed to them by the corporation. *rv*

Respondent also maintains that he correctly imposed compromise penalty against petitioner. Respondent asserts that for failure of petitioner to file return and pay the tax due, the latter was liable to pay the compromise penalty.

On the other hand, petitioner opposes respondent's motion for reconsideration because the said motion merely rehashes the arguments that the latter raised before this Court. Petitioner likewise states that those arguments had already been addressed and ruled upon in the Decision dated January 11, 2018 and Amended Decision dated September 27, 2018. As such, petitioner claims that the instant motion must be denied outright for being *pro forma*.

As correctly observed by petitioner, the arguments raised in respondent's Motion for Reconsideration are a mere rehash of the same facts and issues which have already been passed upon and extensively discussed in the assailed Amended Decision as well as in the Decision dated January 11, 2018.

Considering the foregoing, there is no cogent reason to disturb the assailed Amended Decision.

WHEREFORE, premises considered, respondent's **Motion for Reconsideration Re: Amended Decision dated 27 September 2018** is **DENIED** for lack of merit.

SO ORDERED.

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

I concur:

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice