REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

MT. BLANC MOTORS, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8588

Members:

BAUTISTA, *Chairperson*
FABON-VICTORINO, *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:

MAY 24 2017
2:00 p.m.

x - x

RESOLUTION

RINGPIS-LIBAN, *J.*:

For the Court's resolution is respondent's **Motion for Reconsideration (Decision of 04 January 2017)**, filed on January 24, 2017, with petitioner's **Comment (To: Respondent's Motion for Reconsideration Dated 24 January 2017)**, filed on February 24, 2017.

Respondent moves for the reconsideration of the Court's Decision dated January 04, 2017, the dispositive portion of which reads:

> "**WHEREFORE,** premises considered, the instant Petition for Review filed by Mt. Blanc Motors, Inc. is **PARTIALLY GRANTED**. The assessment covering the alleged deficiency income tax for taxable year 2008 in the amount of ₱165,472.01, inclusive of interest, is **CANCELLED AND WITHDRAWN**. However, the

assessments for deficiency VAT and withholding tax on compensation for taxable year 2008 shall be **UPHELD** but in the reduced amount of ₱279,700.05, inclusive of the twenty-five percent (25%) surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended. Accordingly, petitioner is **ORDERED TO PAY** the amount of ₱279,700.05, inclusive of surcharge, computed as follows:

Type of Tax	Basic	25% Surcharge	Total
Value-added Tax	₱ 113,290.81	₱ 28,322.70	₱ 141,613.51
Withholding Tax on Compensation	110,469.23	₱ 27,617.31	138,086.54
Total Deficiency Taxes	**₱ 223,760.04**	**₱ 55,940.01**	**₱279,700.05**

In addition, petitioner is **ORDERED TO PAY**:

(a) deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency VAT of ₱113,290.81 and on the basic deficiency withholding tax on compensation of ₱110,469.23, computed from January 25, 2009 and January 13, 2009, respectively, until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended; and

(b) delinquency interest at the rate of 20% per annum on the total amount of ₱279,700.05, and on the 20% deficiency interest which have accrued as afore-stated in (a), computed from November 16, 2012 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.

SO ORDERED."

Respondent seeks to modify the assailed Decision based on the following grounds:

1. The Court erred in cancelling the deficiency income tax on the alleged additional taxable income of ₱282,515.26.

2. The Court erred in cancelling the deficiency income tax assessment arising from petitioner's alleged undeclared

income from unaccounted source of cash of ₱23,123.55.

3. The Court erred in cancelling the deficiency income tax assessment arising from the disallowance of the excess tax credits of ₱292,551.60.

4. The Court erred in cancelling the deficiency Value-Added Tax (VAT) arising from the undeclared sales and unaccounted source of cash.

On the other hand, petitioner seeks the denial of respondent's motion based on the following arguments;

1. The Court did not err in cancelling the deficiency income tax assessment on the basis of the alleged additional taxable sales of petitioner on account of the discrepancy of ₱5,068,152.52 between the purchases of petitioner from Ford Group Philippines, Inc. per summary list of purchases vis-à-vis third-party information.

2. The Court did not err in cancelling the imposition of deficiency income tax on the alleged unaccounted source of cash in the amount of ₱23,123.55.

3. The Court did not err when it held that it was improper for the respondent to have disallowed the excess tax credits of petitioner in the amount of ₱292,551.60.

4. The Court did not err when it cancelled the imposition of deficiency VAT arising from the alleged undeclared sales and unaccounted source of cash of petitioner.

At the outset, it must be noted that the foregoing grounds had been extensively discussed and passed upon by the Court in the assailed Decision. Nevertheless, the Court reiterates the relevant portions of the Decision for emphasis.

In essence, respondent basically argues that the discrepancy/undeclared purchase/unaccounted source of cash constitutes an undeclared income because the source of the under-declared purchase is an inflow of wealth which is considered gain and therefore taxable. In the assailed Decision, the Court had already ruled that there is in fact no under-declared purchase that may result in additional taxable and even so, the same is of no consequence, as follows:

"I. Deficiency Income Tax - ₱165,472.01

xxx xxx xxx

a. Additional taxable income

xxx xxx xxx

Considering that petitioner's total amount of purchases from FGPI per SLP of ₱335,646,484.09 is more than FGPI's total sales to petitioner per SLS of ₱334,764,228.76, there is no under-declared purchase that may result in additional taxable income.

But even granting that there was under-declaration of purchase on the part of petitioner, the same is of no consequence. As held in the case of *Commissioner of Internal Revenue vs. Agrinurture, Inc.*, a finding of under-declaration of purchase does not by itself result in the imposition of income tax and VAT. (*Emphasis supplied*)

The three (3) elements in the imposition of income tax are: (1) there must be gain or profit; (2) the gain or profit is realized or received, actually or constructively; and (3) it is not exempted by law or treaty from income tax. Income tax is assessed on income received from any property, activity or service that produced the income.

Hence, it is not when there is an under-declared purchase, but only when there is an income, and such income was received or realized by the taxpayer, that an imposition or assessment of income tax is proper.

In this case, said elements are not present. Respondent merely presumed that the alleged discrepancy /under-declared purchase constitutes an undeclared income. Hence, respondent's assessment was not based on undeclared income actually received by petitioner.

Moreover, it must be emphasized that for income tax purposes, a taxpayer is free to deduct from its gross income a lesser amount, or not claim any deduction at all. What is prohibited by the income tax law is to claim a deduction beyond the amount authorized therein. Hence, even granting that there is an undeclared purchase, the same is not prohibited by law.

Therefore, respondent's deficiency income tax on the alleged additional taxable income of ₱282,515.26 should be cancelled.

b. Unaccounted source of cash

xxx xxx xxx

Respondent compared petitioner's income payments, as reported in its alphalist, with its expenses, as reported in its ITR and FS. He found that the former was greater than the latter by ₱23,123.55. Based on this difference, respondent concluded that, since there are undeclared expenses, there must be an unaccounted source of cash or undeclared income in the same amount. Consequently, he assessed petitioner for the said amount.

Respondent's conclusion is untenable. Apart from the comparison of the alphalist with the ITR and FS, respondent has no other basis to support his conclusion that petitioner has an unaccounted source of cash or undeclared income in the amount of ₱23,123.55. Indeed, the amount claimed by respondent as petitioner's undeclared income would be offset by deducting the same amount, as it corresponds to income payments reflected in the alphalist. This results in no taxable income.

While it is axiomatic that all presumptions are in favor of the correctness of tax assessments, the assessment itself should not be based on presumptions no matter how logical the presumption might be. In order to stand the test of judicial scrutiny, the assessment must be based on actual facts.

For lack of factual basis, the deficiency income tax assessment arising from petitioner's alleged undeclared income from unaccounted source of cash of ₱23,123.55 should be cancelled.

xxx xxx xxx

II. Deficiency value-added tax - ₱1,205,555.63

xxx xxx xxx

a. Additional taxable sales

xxx xxx xxx

What is critical to be shown in the imposition or assessment of VAT in the sale of goods or properties is that the taxpayer is paid or ought to be paid in an amount of money or its equivalent, in consideration of such sale, and not when said taxpayer purchases or disburses an amount of money to purchase goods or properties. Simply put, the VAT is imposed when one sells, not when one purchases.

Thus, considering that petitioner had no undeclared sales, the imputed deficiency VAT thereon should be cancelled.

b. Unaccounted source of cash

This assessment was based on the same finding under the deficiency income tax assessment that, since there were expenses per petitioner's alphalist, the sources of which were not accounted for in its ITR/FS, it had earned income which it failed to declare.

As discussed above, the assessment is bereft of merit as it was based merely on respondent's inference that the difference between the expenses reflected per petitioner's alphalist vis-a-vis the amounts reported in its ITR and FS represents petitioner's alleged undeclared income.

Even if these alleged unaccounted expenses/ costs are to be treated as unaccounted sources of income, which are subject to output VAT, the same will be offset by recording the equivalent payments as expenses or purchases from which input tax credits may be claimed.

Hence, no additional VAT will result from the said transactions."

Respondent also asserts that the deficiency income tax assessment arising from the disallowance of the excess tax credits of ₱292,551.60 should not be cancelled. He claims that petitioner should attach the 2007 Annual Income Tax Return (ITR) to prove the carry-over, otherwise, there is no source for the credit. All items claimed in the ITR must be supported during the audit. For failure to substantiate, respondent's concludes that the disallowance is proper. This, however, had also been resolved by the Court in the assailed Decision, as follows:

> "Respondent disallowed the excess tax credits of ₱292,551.60 reflected in petitioner's 2008 Annual ITR. Respondent, however, did not explain the basis for the disallowance of the excess tax credit, thus, pursuant to Section 228 of the NIRC of 1997, as amended, this item of assessment shall be considered void.
>
> Furthermore, it was improper for respondent to disallow the said excess tax credits because any tax benefit derived by petitioner from the carry-over of the said amounts redounds to the succeeding year 2009. Since the tax benefit will be in the succeeding year, at most, petitioner may only be assessed in the said succeeding year.
>
> In fine, petitioner is not liable for any deficiency income tax."

It is thus clear that the grounds cited by the respondent in his motion had already been passed upon and resolved by this Court. Respondent did not make any new substantial arguments in his motion to warrant a reconsideration of the aforesaid Decision.

In the case of *Shangri-La International Hotel Management, Ltd., et al. vs. Developers Group of Companies, Inc.*[1], the Supreme Court denied the Motion for Reconsideration for being mere reiteration of previous arguments and for failure to raise any new matters that will justify the reconsideration sought, as follows:

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[1] G.R. No. 159938, January 22, 2007.

"The bulk of the aforementioned grounds is a mere rehash of movant's previous arguments. While DGCI is correct in stating that a motion for reconsideration, by its very nature, may tend to dwell on issues already resolved in the decision sought to be reconsidered and that this should not be an obstacle for a reconsideration, the hard reality is that movant has failed to raise matters substantially plausible or compellingly persuasive to warrant the desired course of action.

Considering that the grounds presently raised have been sufficiently considered, if not squarely addressed, in the subject Decision, it behooves movant to convince the Court that certain findings or conclusions in the Decision are contrary to law. **As it is, however, the instant motion does not raise any new or substantial legitimate ground or reason to justify the reconsideration sought**." (*Emphasis supplied*)

The Court therefore finds respondent's motion to be without merit, as not being of sufficient weight to warrant a modification of the assailed Decision.

WHEREFORE, premises considered, **Motion for Reconsideration (Decision of 04 January 2017)** is hereby **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice