REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

****

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 1054** (CTA Case No. 8345)
	Present:
- versus -	**DEL ROSARIO,** P.J., **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS,** and **RINGPIS-LIBAN,** JJ.
AGRINURTURE, INC., Respondent.	***Promulgated:*** JUN 24 2015

x - 11:32 a.m. x

RESOLUTION

UY, ***J.:***

For resolution is petitioner's **"MOTION FOR RECONSIDERATION"** filed on February 4, 2015, with respondent's **"COMMENT/OPPOSITION (Re: *Motion for Reconsideration* dated 3 February 2015)"** filed on March 2, 2015, praying for the reversal and setting aside of the Court *En Banc*'s Decision promulgated on January 13, 2015, the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the Petition for Review is hereby **DENIED** for lack of merit. The Decision dated May 29, 2013 and the Resolution dated August 5, 2013, issued by the Court in Division in CTA Case No. 8345 is hereby **AFFIRMED**.
>
> **SO ORDERED.**"

In the Motion, petitioner asserts that respondent failed to refute the findings of the revenue officer of petitioner; that since the purchase of merchandise did not appear in respondent's returns, nor reflected in its inventory or capital expenditures, there can only be one necessary conclusion – that this undeclared purchase of merchandise from a food manufacturing company was eventually sold; that while respondent presented its witness, Rafaelito Soliza, who testified that the said purchase represents a capital expenditure, no proof of this purported sale of equipment was offered except for photographs which actually do not prove the matter at hand; and that the self-serving allegation that this was a sale of equipment stated in the letter of the Florence Foods Corporation (FFC) marked as Exhibit "27" for petitioner should not be taken on its face value because the author of the letter, Mr. Henson Laurel, FFC's President, was never presented in court, and thus, no truth can be derived from the contents thereof to favor respondent.

On the other hand, respondent, in its Comment/Opposition, argues that the Court *En Banc* correctly upheld the cancellation of the subject tax assessments against respondent for being without factual and legal basis; and that petitioner's Motion for Reconsideration should be denied for being *pro forma*.

THE COURT *EN BANC*'S RULING

The instant Motion for Reconsideration lacks merit.

After a careful examination and comparison of the Petition for Review and the said Motion for Reconsideration, it is here noted that the reasons and arguments raised in the latter are substantially the same which have already been considered, weighed and resolved in the assailed Decision. However, We cannot declare the said Motion as *pro forma* and deny the same outright, because the rule against *pro forma* motions should not be very strictly applied in tax cases before this Court.[1] After all, a rehash of arguments may not necessarily be *pro forma* per se.[2]

Thus, We shall again address the arguments raised by petitioner in the instant Motion for Reconsideration.

[1] *Collector of Internal Revenue vs. Court of Tax Appeals, et al.*, G.R. No. L-14902, October 31, 1960.
[2] *Department of Agrarian Reform vs. Uy*, G.R. No. 169277, February 9, 2007.

As We have pointed out in the assailed Decision, the credibility of respondent's witness, Rafaelito Soliza, who testified that the amount of ₱14,000,000.00, representing the purchase price for the filling and canning equipment from FFC, is included in the *"Additions"* to *"Machinery and Equipment"* of respondent for the year 2007 as reflected in its Financial Statements for the year 2007,[3] was not at all destroyed by petitioner at the proceedings in the Court *a quo*. Furthermore, as We noted, petitioner's counsel chose not to cross examine Mr. Soliza on the subject testimony.[4]

Moreover, the purchase of equipment by respondent representing the amount of ₱14,000,000.00 was confirmed by FFC, *i.e.*, from whom the BIR obtained the information regarding the supposed "undeclared purchase", through the letter dated July12, 2011, which was marked and offered in evidence by petitioner herself as Exhibit "27".[5] Thus, it is baffling that herein petitioner is assailing the said documentary evidence, which she presented in the Court *a quo,* as respondent therein. Be that as it may, the said evidence is binding upon the Commissioner of Internal Revenue.

But more importantly, even granting that there was an under-declaration of purchase on the part of herein respondent, the same is of no moment, and the imposition of deficiency income tax and value-added tax (VAT) is not warranted as a matter of law and jurisprudence.

To reiterate, the three (3) elements on the imposition of income tax are: (1) there must be gain or profit, (2) that the gain or profit is realized or received, actually or constructively, and (3) it is not exempted by law or treaty from income tax.[6] Income tax is assessed on income received from any property, activity or service.[7] Such being the case, in the imposition or assessment of income tax, it is not when there is an undeclared purchase, but only when there was an income, and such income was received or realized by the taxpayer.

In this case, none of the said elements is present.

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[3] Exhibit "J", Docket (CTA Case No. 8345), pp. 307 to 310.
[4] Minutes of the hearing in CTA Case No. 8345 held on November 28, 2012, Division Docket (CTA Case No. 8345), p. 357; and Transcript of Stenographic Notes for the said hearing, pp. 8 and 9.
[5] BIR Records, p. 157.
[6] *Commissioner of Internal Revenue vs. Court of Appeals, et al.*, G.R. No. 108576, January 20, 1999.
[7] *Supra.*

Furthermore, 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.[8]

In the same vein, as We have already stated in the assailed Decision, no deficiency VAT assessment should arise from the said *"under-declared purchase"* because under Section 105 of the NIRC of 1997,[9] VAT is imposed on the seller of the goods, not on the purchaser thereof.

WHEREFORE, premises considered, the instant Motion for Reconsideration is **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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8 *Commissioner of Internal Revenue vs. Phoenix Assurance Co. Ltd.*, G.R. No. L-19727, May 20, 1965.

9 "SEC. 105. *Persons Liable.* — **Any person who, in the course of trade or business, sells,** barters, exchanges, leases **goods or properties**, renders services, and any person who imports goods shall be subject to the value-added tax (VAT) imposed in Sections 106 to 108 of the Code.
xxx xxx xxx." *(Emphases supplied)*

CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice