REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

NORTHERN TOBACCO REDRYING CO. INC., *Petitioner,*	**CTA CASE NO. 8866**
-versus-	Members: ***Bautista,*** *Chairperson* ***Fabon-Victorino,*** *and* ***Ringpis-Liban,*** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: MAY 18 2017 10:20 a.m.

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RESOLUTION

BAUTISTA, J:

For resolution is respondent's Motion for Partial Reconsideration (Re: Decision Promulgated 23 February 2017) ("Motion for Reconsideration") filed by registered mail on March 17, 2017; with petitioner's Comment (To the Respondent's Motion for Partial Reconsideration) ("Comment") filed on May 4, 2017.

On February 23, 2017, the Court promulgated the assailed Decision, disposing of the case in the following manner:

> In view of the foregoing, the present Petition for Review is hereby **PARTIALLY GRANTED**. Petitioner is hereby **ORDERED TO PAY** deficiency IT, WTC and EWT in the reduced amount of Php199,415.80, inclusive of the twenty five percent (25%) surcharge imposed under *Section 248(A)(3) of the 1997 NIRC,* computed as follows:

TAX TYPE		BASIC		25% SURCHARGE		TOTAL
IT	Php	157,663.18	Php	39,415.80	Php	197,078.98
WTC		782.39		195.60		977.99

EWT		1,087.07		271.77		1,358.84
TOTAL	**Php**	**159,532.64**	**Php**	**39,883.16**	**Php**	**199,415.80**

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

1. Deficiency interest at the rate of twenty percent (20%) *per annum* on the basic deficiency IT, WTC and EWT computed from the dates indicated below until full payment thereof, pursuant to *Section 249(B) of the 1997 NIRC;* and

TAX TYPE	**BASIC**	**DEFICIENCY INTEREST COMPUTED FROM**
IT	Php 157,663.18	April 15, 2011
WTC	782.39	January 15, 2011
EWT	1,087.07	January 15, 2011

2. Delinquency interest at the rate of twenty percent (20%) *per annum* on the amount of Php199,415.80, representing the basic deficiency IT, WTC and EWT and the corresponding twenty five percent (25%) surcharge, and on the twenty percent (20%) deficiency interest which have accrued as aforestated in item (1), computed from December 16, 2013 until full payment thereof, pursuant to *Section 249(C) of the 1997 NIRC.*

SO ORDERED.[1]

In the assailed Decision, the Court held that petitioner's transfer of land to Fortune Landequities and Resources Inc. ("FLRI") is a tax-free exchange transaction under *Section 40(c)(2) of the 1997 National Internal Revenue Code ("NIRC")*, and a tax ruling is not a condition precedent for the application thereof; that petitioner complied with the requisites for the non-recognition of gain or loss under *Section 40(C)(2) of the 1997 NIRC*, to wit: *(1)* FLRI is a domestic corporation; *(2)* on February 25, 2010, petitioner and FLRI entered into a Deed of Transfer whereby petitioner agreed to transfer ownership over certain parcels of land in exchange for common shares in FLRI; *(3)* petitioner and four other companies entered into an exchange of properties with FLRI; and *(4)* after the transfer, the combined ownership of petitioner (along with the other companies) went up to 99.99%, which shows that they gained control over FLRI.

As to the assessments relating to the 2010 value-added tax ("VAT") for the first to third quarters, expanded withholding tax ("EWT") for January to November, and withholding tax on

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[1] Emphases retained.

compensation ("WTC") for January to November, the Court found that these already prescribed; that, citing *Sections 203 and 222(a) of the 1997 NIRC*, the Court declared that respondent failed to provide any proof relating to his claim if falsity; that his sole witness never mentioned that petitioner filed a false return in his Judicial Affidavit as well as during his cross, re-direct and re-cross examinations, hence, the general rule of three (3) years prescription to assess applies and not the ten (10) year period being claimed by respondent.

With regard to the remaining assessments, the Court proclaimed that petitioner is liable to pay deficiency income tax, EWT, and WTC, in reduced amounts. Lastly, the Court ruled that the imposition of compromise penalties should be deleted.

On one hand, respondent claims that petitioner's transfer of land to FLRI is not exempt from tax for failure to comply with the administrative requirements issued by the BIR; that the assessments relating to VAT for the first to third quarters, EWT for January to November, and WTC for January to November, have not prescribed since petitioner filed a false return; and that petitioner is liable to pay deficiency income tax, VAT, DST, and improperly-accumulated earnings tax ("IAET"). As to the specific taxes covered by the assessment, respondent argued as follows: *(1) income tax (Disallowed Expenses/Income Payments)* - petitioner must show compliance with *Revenue Regulations ("RR") No. 2-1998* and other relevant BIR issuances to show that it is indubitably entitled to claim such deductions and income payments, and tax assessments by tax examiners are presumed correct and made in good faith; *(2) income tax (Gain on Exchange of Assets)* - tax-free exchange transactions are tax exemptions and the taxpayer must prove compliance with all statutory and administrative requirements to be entitled thereto; *(3) VAT* - the basis of the VAT should be the gross value of the property sold, bartered or exchanged, and the list in *Section 106 of the 1997 NIRC* is not exclusive; *(4) DST* - advances to or from stockholders' exception from DST is only applicable to a taxpayer who sought a ruling; *(5) IAET* - all income, including those exempt, subject to final withholding tax, and excluded from the gross income, are included in the computation of IAET.

On the other hand, petitioner counters that the Court was correct in rendering its Decision; that the same was based on evidence presented during trial and consistent with laws and applicable jurisprudence; that a BIR Ruling is not a *condicio sine qua non* before petitioner can avail the benefits under *Section 40(C) of the 1997 NIRC*;

and that respondent failed to present any convincing proof that there was fraud to warrant the application of the ten (10)-year prescriptive period. As to the particular taxes involved in the assessment, petitioner counters that: *(1) income tax (Disallowed Expenses/Income Payments)* - such generalized pleading does not give justice to the detailed review of the Court, and while the burden is on petitioner, it was able to shift the same by competent evidence, which respondent failed to shift back; *(2) income tax (Gain on Exchange of Assets)* - there was no gain on the exchange, having complied with the requirements under the *1997 NIRC*, hence, tax-free; *(3) VAT* - closely related to gain on exchange, the gain is tax free, hence no VAT liability exists; *(4) DST* - petitioner submitted proof of DST payments; *(5) IAET - Section 5 of SEC Memorandum Circular No. 11* states that actual earnings or profits, net of unrealized items, shall be considered for a corporation to declare dividends.

After a careful consideration of the Motion for Reconsideration filed by respondent, the Court finds that the issues and arguments raised therein are mostly the same ones raised in the Memorandum, and have been sufficiently passed upon and discussed in the assailed Decision. For reference, below are respondent's arguments in his Memorandum, as summarized in the assailed Decision:

> ***Respondent's Counter-Arguments***
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> Respondent counters that petitioner filed a false return, giving respondent ten (10) years from discovery of such falsity to assess petitioner, pursuant to *Section 222 of the 1997 NIRC*; and that petitioner is liable to pay deficiency IT, VAT, WTC, EWT, DST, and IAET.[2]

Moreover, the Court finds no cogent reason to reverse its findings as to the individual taxes assessed. As to income tax on Disallowed Expenses/Income Payments, respondent's general averment of non-compliance with *RR No. 2-1998* and other relevant BIR issuances, and its broaching of the presumption that assessments are presumed correct, cannot prevail over the findings of the Court, which sifted through every line item in the assessment to determine the exact amount of tax due based on law and evidence. On the assessment for income tax arising from the Gain on Exchange of Assets, the Court already discussed in detail that petitioner's exchange of assets is tax-free under *Section 40(C) of the 1997 NIRC*. Consequently,

[2] Emphases ours.

the tax relative to this was cancelled. Related thereto is the VAT assessment, which arose purely from petitioner's transfer of property, which was already settled by this Court as a tax-free transaction. The DST assessments resulted from Advances from Stockholders and Exchange of Assets, the Court found that the former was already paid, and the latter pertains to the tax-free transaction under *Section 40(C) of the 1997 NIRC* and is likewise declared exempt in *Section 199(m) of the 1997 NIRC.* Lastly, the Court finds no basis to reverse its reliance on *Section 5 of SEC Memorandum Circular No. 11,* which states that actual earnings or profits, net of unrealized items, shall be considered for a corporation to declare dividends. Accordingly, petitioner is not liable to pay deficiency IAET.

WHEREFORE, respondent's Motion for Partial Reconsideration (Re: Decision Promulgated 23 February 2017) is hereby **DENIED** for lack of merit.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice