REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PREMIUM TOBACCO REDRYING & FLUECURING CORPORATION, Petitioner,	**CTA CASE NO. 8897**
	Members:
- versus -	**DEL ROSARIO,** *P.J., Chairperson,* **UY,** *and* **MINDARO-GRULLA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: NOV 24 2017 ; 10:10 am

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RESOLUTION

MINDARO-GRULLA, *J*.:

For this Court's resolution is respondent's **Motion for Reconsideration Re: Decision dated 18 July 2017**, filed on August 2, 2017, with petitioner's **Comment *(To the Respondent's Motion for Reconsideration)***, filed on August 14, 2017, pursuant to the Resolution dated August 24, 2017.

Respondent seeks reconsideration of the Court's Decision dated July 18, 2017 (assailed Decision)[1], the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, the assessments issued by respondent against petitioner

[1] Docket, vol. II, pp. 869-911.

for taxable year 2009 covering deficiency income tax, value-added tax, and documentary stamp tax are hereby **CANCELLED AND WITHDRAWN**.

SO ORDERED."[2]

Respondent alleges that the Court erred in ruling that petitioner is not required to secure ruling from the Bureau of Internal Revenue (BIR) for the transaction to be considered a tax-free exchange. According to respondent, petitioner is liable for the assessed deficiency income tax, value-added tax, and documentary stamp tax for taxable year 2009.

Petitioner contends that respondent merely reiterated his arguments. It argues that respondent is mistaken in requiring compliance with Revenue Regulations (RR) No. 18-2001 as a condition before a tax-free merger could take place. Petitioner avers that it is not subject to the assessed taxes and that respondent's motion for reconsideration should be denied and the assailed Decision be maintained *in toto*.

The Motion for Reconsideration is bereft of merit.

The arguments raised by respondent in his Motion for Reconsideration are a mere rehash of his previous arguments raised in his Answer[3], which have been duly considered and adequately discussed by the Court in the assailed Decision. The Court need not address the errors ascribed by respondent in his motion as the conclusions of law in the assailed Decision were reached after the Court made a judicious study of the parties' respective arguments and of the relevant laws and jurisprudence on the matter.

Nonetheless, the Court shall reiterate some points to fully settle the issue in this case.

There is no merit in respondent's claim that a tax-free exchange ruling must be secured as required under RR No. 18-2001 before petitioner can avail of the tax exemption under Section 40(C)(2) of the NIRC of 1997, as amended. RR No. 18-2001 merely

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[2] Docket, vol. II. p. 910.
[3] Docket, vol. I, pp. 205-219.

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serves as guideline for the proper monitoring and investigation of the basis of the properties transferred pursuant to a tax-free exchange.

The significant portions of RR No. 18-2001 states as follows:

> "REVENUE REGULATIONS No. 18-2001
>
> SUBJECT: **Guidelines on the Monitoring of the Basis of Property Transferred and Shares Received, Pursuant to a Tax-Free Exchange of Property for Shares under Section 40(C)(2) of the National Internal Revenue Code of 1997**, Prescribing the Penalties for Failure to Comply with Such Guidelines, and Authorizing the Imposition of Fees for the Monitoring Thereof." (*Emphasis supplied*)

In fact, the Court *En Banc*, in the case of *Commissioner of Internal Revenue vs. Dakudao & Sons, Inc.*[4], mentioned that RR No. 18-2001 merely provides for guidelines in monitoring tax-free exchange of property and in determining the gain or loss on a subsequent sale or disposition of property. The relevant portion of the said decision is quoted below:

> "As so aptly worded by the Court in Division:
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> 'xxx Moreover, RR 18-2001 merely provides for guidelines in monitoring tax-free exchange of property. The BIR ruling required thereon is for the monitoring of tax-free properties in order that in cases of subsequent sales of said properties, they shall be taxed accordingly. Stated differently, the BIR ruling/certification required under RR No. 18-2001 is for determining gain or loss on a subsequent sale or disposition of property subject of the tax-free exchange, and **not as a precondition for availment of a tax exemption**.'
>
> Furthermore, **RR No. 18-2001** which petitioner relies on for the denial of the claim for refund by respondent **merely provides for guidelines in the**

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[4] CTA EB No. 1150 (CTA Case No. 8501), May 12, 2015.

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> **monitoring of the properties** as well as shares of stocks, which are **involved in a tax-free exchange under Section 40 (C)(2) of the NIRC**. The Revenue Regulation does not deal with a requirement to apply for a ruling as a prerequisite for the entitlement of the exemption. **RR No. 18-2001 shows nothing therein explicitly requiring a party, in exchanging property for shares of stocks, to first secure a BIR confirmatory certification or tax ruling before it can avail itself of tax exemption or tax refund**." (*Emphasis supplied*)

Thus, petitioner's transfer of substantial assets to Fortune Tobacco Corporation in exchange of the latter's shares of capital stock and additional paid-in-capital constitutes a de facto merger, a tax-free exchange under Section 40(C)(2) and (6)(b) of the NIRC of 1997, as amended, even if it failed to comply with the provisions of RR No. 18-2001.

Considering the foregoing, the Court finds no cogent reason to reverse or modify the assailed Decision date July 18, 2017.

WHEREFORE, premises considered, respondent's **Motion for Reconsideration Re: Decision dated 18 July 2017** is **DENIED** for lack of merit.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ON LEAVE
ERLINDA P. UY
Associate Justice