**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

***EN BANC***

**COMMISSIONER OF INTERNAL REVENUE,**
*Petitioner,*

-versus-

**JERRY OCIER,**
*Respondent.*

**CTA *EB* NO. 491**
(CTA Case No. 6831)

*Present:*

**DEL ROSARIO,** *P.J.*,
**RINGPIS-LIBAN,**
**MANAHAN,**
**BACORRO-VILLENA,**
**MODESTO-SAN PEDRO,**
**REYES-FAJARDO,**
**CUI-DAVID,**
**FERRER-FLORES,** *and*
**ANGELES,** *JJ.*

Promulgated:
OCT 03 2025 10:55

x- - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - -x

# RESOLUTION

***CUI-DAVID, J.:***

This resolves respondent's *Motion for Reconsideration* filed on May 9, 2025, with petitioner's *Comment/Opposition (Re: Respondent's Motion for Reconsideration dated 08 May 2025)* filed on June 23, 2025.

Respondent seeks reconsideration of the Court of Tax Appeals (CTA) *En Banc*'s Amended Decision dated March 31, 2025, which ordered him to pay ₱100,464,919.38 in deficiency capital gains tax (CGT) for taxable year (TY) 1999, inclusive of surcharge and interest.

Respondent argues that the CGT liability cannot be determined from the records because the documents relied upon were either unverified or not formally offered in evidence. He avers that he consistently protested the assessment, both administratively and judicially, contrary to the Court's finding that he failed to challenge the computation. He further claims a violation of due process, alleging that the assessment was based on presumptions and unverified documents. He contends that the Supreme Court's remand required this Court to determine the amount due based on competent and relevant evidence, which he claims is lacking. He also manifests that he lacks financial capacity to pay the assessed amount; and so, should he be ultimately adjudged liable to pay the CGT deficiency, he will be unable to settle the same.

Petitioner maintains that the Supreme Court has already affirmed the validity of the CGT assessment, and that the remand was solely for the determination of the correct amount, not for reassessing tax liability. Petitioner argues that the Bureau of Internal Revenue (BIR) records are part of the judicial record, and the Court may rely on them even if not formally offered, as supported by jurisprudence. According to petitioner, respondent never disputed the computation of the CGT in his protest letters, focusing instead on the taxability of the transaction. Petitioner asserts that respondent's admissions, BIR records, and Philippine Stock Exchange (PSE) data are sufficient for recomputation.

At the outset, the Supreme Court, in *Commissioner of Internal Revenue v. Ocier* (*Ocier*),[1] unequivocally declared that the subject transfer of shares constituted a taxable disposition, thereby affirming the existence and validity of the CGT liability. The remand to this Court was solely for the purpose of determining the correct amount of CGT due, not for a new determination of whether any tax liability exists.

Respondent's reliance on the absence of formally offered evidence and on the reversed CTA *En Banc* Decision dated February 2, 2010, is unavailing. The Supreme Court has held that a taxpayer's admissions, whether in pleadings and correspondence, may suffice to establish taxability.[2] In this case, respondent admitted to the transfer of shares, and his own letters corroborate this fact, even if the BIR failed to formally offer its internal memoranda. As such, the factual basis for the transfer of shares arises directly from respondent's own statements and admissions.

---

1 G.R. No. 192023, November 21, 2018 [Per J. Bersamin, First Division].
2 See *id.*

As the Supreme Court held in *Ocier*, "[e]very court has the positive duty to consider and give due regard to everything on record that is relevant and competent to its resolution of the ultimate issue presented for its adjudication." The records, including respondent's admissions and documents submitted to the BIR, provide ample basis for determining his tax liability. His main argument, **that the transfer was a loan and not a sale**, was already rejected by the Supreme Court. Having found the transfer to be taxable, the burden shifted to respondent to prove that no gain was realized, which he failed to do. Instead, respondent admitted the transfer in his letters to the BIR and did not specifically contest the cost or selling price in a manner that would preclude the Court from determining these values from the available records.

Further, even if respondent now disputes the computation of the assessment, the burden remained on him to present contrary evidence as to the actual consideration or cost basis of the transferred shares. His failure to do so justified the Court in relying on the best available evidence to arrive at a reasonable computation of the tax due.

Respondent's claim that he received no consideration for the transfer is immaterial under Section 24I of the National Internal Revenue Code (NIRC) if 1997, as amended, which considers the actual or deemed selling price. This may be inferred from surrounding facts (*e.g.,* market value, par value), particularly when the taxpayer fails to present clear evidence of the value of the transferred shares. Respondent did not deny receipt of the assessment or challenge the market value used therein. Nor did he dispute the BIR's valuation of the shares or the computation method (*e.g.,* use of FIFO method or fair market value) at any meaningful point. His silence on these points, which constitutes implied acceptance of the figures, was significant and duly considered by this Court in computing the liability. He cannot now claim unfamiliarity with the facts used in the computation, especially as he himself referenced the same in his correspondence with the BIR.

The Supreme Court, in *Ocier*, acknowledged the validity of the assessment figures and stated:

> We must note, however, that **the CIR determined the respondent's CGT liability by computing the net capital gains on the transaction in accordance with** the guidelines set in **Revenue Regulations No. 2-82** dated March 29, 1982. **Although the basis of the computation of the net capital gains was explained in the Memorandum of the CIR dated November 21, 2000, which the CIR failed to formally offer as evidence, such fact should not disturb the CTA *En Banc*'s conclusion that the transfer of the shares remained uncontroverted.** (Emphasis supplied)

This affirms that the computation followed the proper regulatory basis (*i.e.*, Revenue Regulations No. 2-82). Thus, the CTA, in faithful compliance with the Supreme Court's directive, must compute the CGT based on facts, admissions, and existing records, even absent any formal offer of evidence from the CIR.

While respondent did not expressly agree to the computation, his failure to raise specific issues and objections on computation, despite receiving detailed assessments and multiple opportunities to do so constitutes tacit admission and operates as an admission by silence under Section 33,[3] Rule 130 of the Rules on Evidence. Silence or inaction in the face of a declaration that naturally calls for a response may be taken as an admission.

Tax assessments enjoy a presumption of correctness, and the burden to discharge the same rests with the taxpayer.[4] Respondent's admission of the transfer of shares, coupled with his failure to contest the amount or basis of the CGT assessment, is sufficient to uphold the assessment.

Given that the Supreme Court has already declared the CGT payable, this Court cannot now rule otherwise. To do so would contravene the hierarchy of courts and the principle of finality of Supreme Court decisions. Once the Supreme Court has settled the issue of taxability, the only remaining task is to determine the liability based on the best available evidence, not to exonerate the taxpayer from liability.

Finally, while the Court takes note of respondent's claimed financial incapacity, such circumstance does not extinguish a tax liability that has been judicially affirmed.

---

[3] SEC. 33. *Admission by silence.* - An act or declaration made in the presence and within the hearing or observation of a party who does or says nothing when the act or declaration is such as naturally to call for action or comment if not true, and when proper and possible for him or her to do so, may be given in evidence against him or her.

[4] *AFP General Insurance Corporation v. Commissioner of Internal Revenue*, G.R. No. 222133, November 4, 2020 [Per J. Inting, Third Division].

All told, the *Motion for Reconsideration* fails to raise any new or compelling arguments that would warrant a reversal or modification of the Amended Decision.

**WHEREFORE,** in light of the foregoing considerations, the instant *Motion for Reconsideration* is hereby **DENIED** for lack of merit.

**SO ORDERED.**

**LANEE S. CUI-DAVID**
Associate Justice

*WE CONCUR:*

*(With due respect, I reiterate my Dissenting Opinion)*
**ROMAN G. DEL ROSARIO**
Presiding Justice

**MA. BELEN M. RINGPIS-LIBAN**
Associate Justice

**CATHERINE T. MANAHAN**
Associate Justice

*(With due respect, I reiterate my Dissenting Opinion)*
**JEAN MARIE A. BACORRO-VILLENA**
Associate Justice

*(With due respect, I reiterate my Dissenting and Concurring Opinion)*
**MARIA ROWENA MODESTO-SAN PEDRO**
Associate Justice

**MARIAN IVY F. REYES-FAJARDO**
Associate Justice

**CORAZON G. FERRER-FLORES**
Associate Justice

**HENRY S. ANGELES**
Associate Justice