REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-*versus*-

TOENEC PHILIPPINES, INC.,
Respondent.

CTA *EB* NO. 1520
(CTA Case No. 8653)

Present:

DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, *and*
MANAHAN, *JJ.*

Promulgated:
MAR 05 2018 3:29 p.m.

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RESOLUTION

MANAHAN, J.:

For resolution is the Motion for Reconsideration[1] filed by the Commissioner of Internal Revenue (CIR), through registered mail on November 17, 2017 and received by the Court on November 24, 2017. The CIR assails the Decision dated October 23, 2017, which disposed of his petition for review, as follows:

> WHEREFORE, the instant Petition for Review is hereby DENIED for lack of merit.
>
> SO ORDERED.[2]

In his motion, the CIR reiterates his argument that Toenec Philippines, Inc. (Toenec) is a party to the Capital Infusion Agreement (Agreement) dated May 24, 2010, and is

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[1] *Rollo*, pp. 138-147.
[2] *Rollo*, p. 120.

therefore the instituted agent of Toenec Corporation – Japan (Toenec Japan) in the Philippines for tax payments that may arise in relation to said Agreement. The CIR states that considering Toenec Japan is a non-resident foreign corporation, and pursuant to the inherent limitation rule that taxation may be exercised only within the territorial jurisdiction of the taxing authority, then Toenec, despite being the donee in the transaction, is the one liable for the donor's tax due on the Agreement.

The CIR also argues that Toenec's Audited Financial Statements (AFS) for the period ending June 30, 2010, disclosing the amount of Php30,000,000.00 additional paid-in capital (APIC) as proceeds from donation, have more probative value than the Agreement executed between Toenec and Toenec Japan which states that the APIC contribution shall not be construed as a donation.

In its Comment (to Petitioner's Motion for Reconsideration dated November 16, 2017), filed on January 29, 2018, respondent Toenec states that the points raised by petitioner are the same points raised in his Petition for Review which have been resolved by the Court. Toenec reiterates that there is no law requiring the donee to pay the donor's tax when the donor is a non-resident, instead, what the law provides is that the return must be filed with the Philippine Embassy or Consulate in the country where the donor is domiciled at the time of the transfer or directly with the Office of the Commissioner. Toenec also argues that the provision cited by petitioner thus: "whenever one party to the taxable document enjoys exemption from the tax herein imposed, the other party thereto who is not exempt shall be the one directly liable for the tax" is applicable to documentary stamp tax and not donor's tax.

Toenec also reiterates that the assessment is void due to absence of a Letter of Authority (LOA) and for failure to correctly state the law on which the assessment is based.

The Court reiterates that the liability for donor's tax falls upon the donor and not the donee. Under the 1997 National Internal Revenue Code, as amended (NIRC), it is clear that the person or entity liable to pay donor's tax is the donor, or the person or entity transferring the property to another. Moreover, if the donor is a non-resident, there is no mention that the donor's return and tax shall be filed and paid by the donee. Instead, it is provided that the return must be filed with the Philippine Embassy or Consulate in the country where the donor is domiciled at the time of transfer, or directly with the Office of the Commissioner. Thus, the following NIRC provisions state:

> Sec. 98. Imposition of Tax. –
> (A) There shall be levied, assessed, collected and paid upon the transfer by any person, resident or non-resident, of the property by gift, a tax, computed as provided in Section 99.
> xxx xxx xxx
>
> Sec. 99. Rates of Tax Payable by Donor. –
> xxx xxx xxx
> (B) Tax Payable by Donor if Donee is a Stranger. – When the donee or beneficiary is a stranger, the tax payable by the donor shall be thirty percent (30%) of the net gifts.
> xxx xxx xxx
>
> Sec. 103. Filing of Return and Payment of Tax. –
> xxx xxx xxx
> (B) xxx In the case of gifts made by a nonresident, the return may be filed with the Philippine Embassy or Consulate in the country where he is domiciled at the time of the transfer, or directly with the Office of the Commissioner.

In the instant case, it is clear that Toenec is the recipient of the capital infusion. Whether there is a donation or not, the same is irrelevant with respect to Toenec which cannot be classified as the donor, and therefore, not liable for donor's tax.

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

SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice