REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

AGM PACKAGING SYSTEM LTD. CORP.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8947

Members:

CASTAÑEDA, JR., *Chairperson,*
CASANOVA, *and*
MANAHAN, *JJ.*

Promulgated:
OCT 2 0 2017 2:35 pm

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RESOLUTION

CASANOVA, J.:

For the Court's resolution are the following:

1. petitioner's **Motion for Partial Reconsideration [To the Decision dated June 9, 2017]**, filed on June 29, 2017, with respondent's **Opposition (Re: Motion for Partial Reconsideration)**, filed on July 21, 2017; and

2. respondent's **Motion for Partial Reconsideration (Re: Decision promulgated on 9 June 2017**, filed through registered mail on June 29, 2017 and received by the Court on July 5, 2017, with petitioner's **Comment/Opposition [To Respondent's Motion for Partial Reconsideration to the Decision dated June 9, 2017]**, filed on July 14, 2017.

Both parties move for reconsideration of the Decision promulgated on June 9, 2017, the dispositive portion of which reads:

"**WHEREFORE**, premises considered, the Petition for Review is **PARTIALLY GRANTED**. The assessments issued by respondent against petitioner for taxable year 2009 covering deficiency Income Tax, Value-Added Tax, Expanded Withholding Tax, Improperly Accumulated Earnings Tax and Documentary Stamp Tax are **PARTIALLY UPHELD**. Accordingly, petitioner is ordered to pay respondent the amount of **TWO MILLION NINE HUNDRED NINETY TWO THOUSAND THREE HUNDRED NINETY FOUR PESOS AND NINETY THREE CENTAVOS (₱2,992,394.93)**, representing basic deficiency Income tax, Value-Added Tax, Expanded Withholding Tax, Improperly Accumulated Earnings Tax and Documentary Stamp Tax and the 25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, computed as follows:

Tax Type	**Basic**	**25% Surcharge**	**Total**
Income Tax	₱ 424,026.41	₱ 106,006.60	₱ 530,033.01
Value-Added Tax	128,838.72	32,209.68	161,048.40
Expanded Withholding Tax	17,802.03	4,450.51	22,252.54
Improperly Accumulated Earnings Tax	1,822,470.28	455,617.57	2,278,087.85
Documentary Stamp Tax	778.50	194.63	973.13
Total	**₱ 2,393,915.94**	**₱ 598,478.99**	**₱ 2,992,394.93**

In addition, petitioner is ordered to pay:

(a) Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency income tax, VAT, EWT and IAET computed from the dates indicated below until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended:

Tax Type	Basic Tax	Deficiency Interest Computed From
Income Tax	₱ 424,026.41	April 15, 2010
Value-Added Tax	128,838.72	January 25, 2010
Expanded Withholding Tax	17,802.03	January 15, 2010
Improperly Accumulated Earnings Tax	1,822,470.28	January 15, 2011
Documentary Stamp Tax	778.50	January 5, 2010

(b) Delinquency interest at the rate of twenty percent (20%) per annum on the total amount of ₱2,992,394.93, and on the 20% deficiency interest which have accrued as aforestated in (a), computed from November 17, 2014 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.

SO ORDERED."

Petitioner's Motion for Partial Reconsideration

Petitioner prays for reconsideration of the assailed Decision on the ground that the Court seriously erred in upholding respondent's assessment on income tax and improperly accumulated earnings tax (IAET) against it based on respondent's determination that it is in violation of its PEZA Registration Agreement.

Respondent, however, asserts that the Court correctly ruled that he has the power and duty to assess national internal revenue taxes and that petitioner is not entitled to the exemption from internal revenue tax because it is not qualified to avail of the income tax holiday (ITH).

Petitioner's motion has no merit.

Petitioner contends that it is not within the power of the Bureau of Internal Revenue (BIR) to categorically declare that it violated its PEZA Registration Agreement and is not qualified to avail of its tax and fiscal incentives provided for under Republic Act (RA) No. 7916, otherwise known as The Special Economic Zone Act of 1995. It further argues that the sub-contracting between petitioner and AGM

Ventures Enterprises, Inc., does not constitute "trading" of wooden pallets.

After a thorough examination of petitioner's motion, it is readily apparent that no new issues are raised and the arguments presented are mere rehash of what had been discussed in its pleadings, all of which had already been considered, weighed and resolved in the assailed Decision.

It must be stressed that the power and duty to assess national internal revenue taxes are vested upon the respondent as provided under Sections 2 and 6 of the National Internal Revenue Code (NIRC) of 1997, as amended. Moreover, Revenue Regulations (RR) No. 27-2002 provides the authority of respondent to assess the five percent (5%) special income tax under RA No. 7916, as amended by RA No. 8748. Therefore, respondent's power to assess necessarily includes the power to determine whether petitioner is qualified to avail of the preferential income tax rate granted to PEZA registered entities.

Consequently, in the exercise of his power to assess, respondent may also declare whether petitioner violated its PEZA Registration Agreement and whether it is qualified to avail of the tax and fiscal incentives provided under RA No. 7916.

Also, the Court had already ruled that the sub-contracting between petitioner and AGM Ventures Enterprises, Inc, in 2009 is not in accord with its registration agreement with PEZA, as follows:

> "The primary purpose of the company is to engage in manufacturing of wooden pallets, crates or other packaging materials like plastic sheets, bubble sheets, foams and cartons which are used in packaging products produced, assembled and manufactured inside CEPZAs, while its secondary purpose is to engage in the trading activity.
>
> Petitioner, as approved by PEZA, sub-contracted the services of AGM Ventures Enterprises, Inc. for the manufacture of wooden pallets. However, examination of the Letters of Authority, particularly No. CEZ-SC-10-155, discloses that the sub-contracting was approved only on July 13, 2010, which was valid for a period of six (6) months and subject to renewal for another six (6)

months. Apparently, the sub-contracting in 2009 is not in accord with its registration agreement with PEZA. Hence, the assessments founded on this ground shall be upheld."

Considering that petitioner's activity is outside the registered activity with the PEZA, it is, therefore, not qualified to enjoy ITH or five percent (5%) preferential tax rate under RA No. 7916 and is also not exempt from any national internal revenue taxes. Hence, petitioner's accumulation of earnings in excess of 100% of paid-up capital shall be considered determinative of the purpose to avoid the tax upon its shareholders and, accordingly, the finding that it is subject to IAET pursuant to Section 29 of the NIRC of 1997, as amended, as implemented by RR No. 2-2001 should also be upheld.

For petitioner's failure to substantiate errors that are claimed to have been committed by the respondent in making the assessments, the assessments therefore stand. It must be stressed that "all presumptions are in favor of the correctness of tax assessments. The good faith of tax assessors and the validity of their actions are presumed. They will be presumed to have taken into consideration all the facts to which their attention was called. No presumption can be indulged that all of the public officials of the state in the various countries who have to do with the assessment of property for taxation will knowingly violate the duties imposed upon them by law."[1]

All presumptions are in favor of the correctness of tax assessments. The burden of proof is on the taxpayer to show the contrary. This, however, petitioner failed to do.

Respondent's Motion for Partial Reconsideration

Respondent claims that petitioner should be held liable for the compromise penalties. He contends that the compromise penalties were imposed in lieu of the filing of a criminal case against petitioner. Respondent further claims that when he imposed the penalties to petitioner, it effectively put on hold the prosecution of a criminal case against it.

[1] *Commissioner of Internal Revenue vs. Construction Resources of Asia, Inc., et* al., G.R. No. L-68230, November 25, 1986 citing the case of *Collector of Internal Revenue vs. Bohol Land Trans. Co.* G.R. Nos. L-13099 & L-13462, April 29, 1960.

On the other hand, petitioner argues that since it did not agree to the suggested compromise penalty, respondent cannot thus unilaterally impose the same against it.

Respondent's motion lacks basis.

The Court had already ruled on this matter in the assailed Decision. To emphasize, compromise penalty is imposed to avoid prosecution for violation of the provisions of the Tax Code.[2] Pursuant to Revenue Memorandum Order (RMO) No. 01-90, as amended by RMO No. 19-07, compromise penalties are only suggested in settlement of criminal liability, and may not be imposed or exacted on a taxpayer in the event that a taxpayer refuses to pay the same. Clearly, the compromise penalty implies a mutual agreement between the parties in respect to the thing or subject matter which is so compromised. The imposition of the same without the conformity of the taxpayer is illegal and unauthorized.[3]

WHEREFORE, finding no cogent reason to reverse the assailed Decision, petitioner's **Motion for Partial Reconsideration [To the Decision dated June 9, 2017]** and respondent's **Motion for Partial Reconsideration (Re: Decision promulgated on 9 June 2017**, are both **DENIED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

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[2] *The Philippines International Fair, Inc. vs. The Collector of Internal Revenue, et al.*, G.R. Nos. L-12928 and L-12932, March 31, 1962.
[3] *Commissioner of Internal Revenue vs. Lianga Bay Logging Co., Inc. et al.*, G.R. No. L-35266, January 21, 1991.