REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

LUDO & LUYM CORPORATION, *Petitioner,*	**CTA CASE NO. 8613**
	Members: **BAUTISTA,** *Chairperson,* **FABON-VICTORINO,** *and* **RINGPIS-LIBAN,** *JJ.*
- versus -	
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: NOV 10 2016 3:05 p.m.

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RESOLUTION

BAUTISTA, J:

For resolution is respondent's Motion for Partial Reconsideration filed on August 31, 2016 with petitioner's Opposition (To Motion for Partial Reconsideration) filed by registered mail on October 7, 2016 and by courier on October 13, 2016.

On August 8, 2016, the Court promulgated a Decision (the "Assailed Decision") wherein the Court granted the Petition for Review, and cancelled and withdrew the deficiency income tax and value-added tax ("VAT") assessments issued by respondent against petitioner for calendar year ("CY") 2007 in the aggregate amount of Php57,863,909.86, inclusive of interest and surcharge. The dispositive portion of the Assailed Decision reads:

> **WHEREFORE**, premises considered, the instant Petition for Review is hereby **GRANTED**. Audit Result/Assessment Notice under Assessment No. VT-123-LA 7074-07-13-07 issued by respondent against petitioner for deficiency VAT for CY 2007 and Audit Result/Assessment Notice under Assessment No. IT-123-LA 7074-07-13-06 issued by respondent against

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petitioner for deficiency income tax for CY 2007 are hereby **CANCELLED** and **WITHDRAWN**.

SO ORDERED.

In his Motion for Partial Reconsideration, respondent argues that petitioner failed to overturn the presumption of correctness of the assessment, particularly in the disallowed interest expense. According to respondent, the corresponding interest expense of petitioner is not legally due and demandable considering banks were not allowed to recognize interest receivable/income on non-performing loans, such as those of petitioner's, according to *Bangko Sentral ng Pilipinas ("BSP") Circular No. 202, series of 1999*[1]. Respondent further posits that the disallowance of petitioner's unrecorded purchases from the discrepancy arising on income payments after comparing amounts per Financial Statements ("FS") as against the Alphalist has factual and legal basis; that the disallowance of input tax credited against output tax must be upheld as the expenses with no supporting documents must be allowed; that the fictitious expenses arising from bank overdrafts in China Banking Corporation ("Chinabank") and the Land Bank of the Philippines ("LBP") must be treated as unexplained source of cash as petitioner's cash overdrafts were unaccounted and violative of generally accepted accounting principles; that the 50% surcharge is clear as petitioner filed a false return; and that the VAT assessment was within the ten-year period within which to assess cases of false or fraudulent returns as the discovery of the fraud arose only after the investigation of petitioner's deficiency tax liabilities in CY 2011.

On the other hand, in its Opposition, petitioner counters that *BSP Circular No. 202, series of 1999* does not excuse petitioner from paying interest on its defaulted loans; that the assessment on unreported income should be based on facts and not on presumptions or inferences; that the assessment on the alleged deficiency VAT for CY 2007 was not found in the Preliminary Assessment Notice ("PAN") and Final Assessment Notice ("FAN") served on petitioner, but was introduced only when the Final Decision on Disputed Assessment ("FDDA") was issued; respondent's claim that the prescriptive period should be ten years is fallacious as the FDDA never made a finding that petitioner filed a false or fraudulent VAT return in CY 2007; and that the imposition of the 50% surcharge was clearly a whimsical afterthought in the absence of a finding in the PAN, the FAN, and the FDDA that petitioner submitted a false return.

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[1] May 27, 1999.

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After a careful review of the grounds raised in the Motion for Partial Reconsideration and the corresponding Opposition thereto, the Court finds no new matters or arguments which were not considered in the Assailed Decision. Respondent failed to raise any new or substantial matter, or any compelling reason to justify the reversal or modification of the Court's findings in the Assailed Decision. Consequently, the Court finds the Motion for Partial Reconsideration devoid of merit. Nevertheless, the Court will expound on some of the issues raised, if only to reinforce the discussion in the Assailed Decision.

With regard to the disallowed interest expense, the Court maintains its finding that *BSP Circular No. 202, series of 1999* is not applicable to petitioner. The *New Central Bank Act*[2] specifically provides that the BSP shall have supervisory and regulatory powers over banks, quasi-banks, and institutions performing similar functions. *Section 3 of the New Central Bank Act* provides:

> **Sec. 3.** ***Responsibility and Primary Objective.*** — The *Bangko Sentral* shall provide policy directions in the areas of money, banking, and credit. <u>It shall have supervision over the operations of banks and exercise such regulatory powers as provided in this Act and other pertinent laws over the operations of finance companies and non-bank financial institutions performing quasi-banking functions, hereafter referred to as quasi-banks, and institutions performing similar functions</u>.
>
> The primary objective of the Bangko Sentral is to maintain price ability conducive to a balanced and sustainable growth of the economy. It shall also promote and maintain monetary stability and the convertibility of the peso.[3]

Accordingly, it is clear that *BSP Circular No. 202, series of 1999* finds no application on petitioner as the BSP's jurisdiction is over banks and quasi-banks, and not entities engaged in the business of processing and selling coconut oil and other products (such as petitioner).

With regard to the disallowed unrecorded income, the Court maintains that respondent's argument lacks factual basis. The

[2] Republic Act No. 7653 (1993).
[3] Underscoring ours.

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deficiency income tax assessment pertaining to the alleged additional gross income on unrecorded purchases of Php180,250.45 should be cancelled as the same was based merely on respondent's assumption that the discrepancy between petitioner's FS and Alphalist yields unrecorded income.

With regard to the alleged prescription of the VAT assessment, the Court holds that respondent failed to indicate his basis for stating that petitioner filed a false VAT Return for CY 2007. As indicated in the Final Decision on Disputed Assessment ("FDDA")[4], respondent disallowed input tax credits because the same was not supported by evidentiary documents. Such findings do not constitute the filing of a false return. Considering the FAN was served on petitioner on April 11, 2011, it is clear that respondent's right to assess petitioner for deficiency VAT for CY 2007 had already prescribed.

With regard to the disallowed fictitious expenses arising from bank overdrafts, the Court likewise maintains that the assessments should be cancelled based on its findings that there were no overdrafts in petitioner's China Banking Corporation and Land Bank of the Philippines accounts in CY 2007 that may have resulted in the alleged fictitious expense.

Lastly, this Court firmly asserts its position that the imposition of 50% surcharge should not prosper as respondent failed to indicate the law and the facts on which the assessment was based.

From the foregoing, the Court maintains its findings in the Assailed Decision. The assessments against petitioner for income tax and VAT for CY 2007 in the aggregate amount of Php57,863,909.86, inclusive of interest and surcharge, should be cancelled and withdrawn.

WHEREFORE, premises considered, respondent's Motion for Partial Reconsideration filed on August 31, 2016 is hereby **DENIED** for lack of merit.

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[4] *Records, Vol. 1, JSFI,* p. 314; *Records, Vol. 2, Exhibit* "P-4," *Final Decision on Disputed Assessment ("FDDA"),* pp. 498-503; *BIR Records, Exhibit* "R-6," *FDDA,* pp. 867-872.

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SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

(On Leave)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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