REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

MAERSK GLOBAL SERVICE CENTRES (PHILIPPINES) LTD., *Petitioner,*	**CTA CASE NO. 8934**
- *versus* -	Members: **BAUTISTA**, *Chairperson,* **FABON-VICTORINO**, *and* **RINGPIS-LIBAN**, *JJ.*
THE COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JAN 26 2018 9:21 a.m.

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R E S O L U T I O N

BAUTISTA, J:

For resolution is respondent's Motion for Reconsideration (on the Decision of the Honorable Court dated 11 October 2017) filed on November 8, 2011 with petitioner's Comment (To Motion for Reconsideration dated 7 November 2017) filed on December 8, 2017.

On October 11, 2017, the Court promulgated a Decision (the "Assailed Decision") cancelling the assessments issued by respondent against petitioner for deficiency income tax and final withholding tax ("FWT") for calendar year ("CY") 2010. The dispositive portion of the Assailed Decision reads:

> **WHEREFORE**, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, the assessments covering income tax and final withholding tax for calendar year 2010 in the total amount of Php49,469,186.64, inclusive of interest and compromise penalty, are hereby **CANCELLED** and **SET ASIDE**.
>
> **SO ORDERED.**

Aggrieved, respondent filed the present Motion for Reconsideration wherein he argues that he had valid and legal grounds for disallowing petitioner's bad debt expense as an item of deduction, and that the Court erred in holding that the assessment for FWT on branch profit remittance was improper. According to respondent, petitioner failed to satisfy the requirements for the deductibility of an expense and/or loss as well as to establish the existence of the transactions which brought about the alleged excess input value-added tax ("VAT"). Moreover, assuming petitioner had purchases of goods and services, said purchases were incurred in CY 2006, and not in CY 2010. Respondent likewise argues that insofar as the branch profit remittance tax ("BPRT") is concerned, petitioner was merely booking the transactions in the Philippines, but no amount was being remitted. Thus, respondent prays that the Court reverse the Assailed Decision and find petitioner liable for deficiency income tax and FWT for CY 2010.

In its Comment, petitioner counters that it was only notified of the Department of Finance's ("DOF") denial of its claim for refund on March 11, 2010, and could not have known in CYs 2006 and 2009 of the denial of the same; that respondent already ruled in *BIR Ruling [DA-(VAT-021) 121-10]*[1] that a taxpayer's unutilized input VAT which has been denied as a refund or credit may be recognized as a deduction from gross income upon its denial; and that respondent merely reiterated its bare allegation that petitioner remitted profits to its head office.

After a careful review of the grounds raised in the Motion for Reconsideration as well as the counter-arguments raised in the Comment, the Court finds that petitioner failed to raise a new or substantial matter, or a compelling reason to justify the reversal or modification of the Court's findings in the Assailed Decision. Nevertheless, the Court will expound on the arguments raised by the parties to reinforce the discussion in the Assailed Decision.

The Court notes that respondent merely made bare allegations in its Motion for Reconsideration; respondent did not provide supporting evidence to substantiate the same.

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[1] Dated July 9, 2010.

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Insofar as the assessment for deficiency income tax is concerned, the Court affirms that the denied VAT refund claim is properly categorized as a loss deductible from petitioner's gross income on the year it received the DOF's denial of the same (*i.e.*, CY 2010). The denied VAT refund claim cannot be categorized as a bad debt especially considering a bad debt expense presupposes the existence of a debt wherein the debtor has an obligation to pay the debtor a sum of money - a situation which is not present in the case at bar. Further, as a loss, the denied VAT refund claim arose upon petitioner's receipt of the DOF's denial. Such receipt of the DOF's denial marks the event when the transaction was closed and completed. Prior to such date, it cannot be said that the loss has already been sustained by petitioner; hence, petitioner properly claimed the same as a deduction from gross income in CY 2010 - the year it received the DOF's denial of the VAT refund claim.

On the other hand, insofar as the assessment for FWT is concerned, suffice it to say that respondent's allegation is without factual or legal support especially in light of the Court's finding in the Assailed Decision that petitioner neither actually remitted or earmarked for remittance its net income for CY 2010. Absent actual remittance or earmarking for remittance, petitioner's income cannot be subjected to BPRT.

WHEREFORE, premises considered, respondent's Motion for Reconsideration (on the Decision of the Honorable Court dated 11 October 2017) is hereby **DENIED** for lack of merit. The Decision promulgated on October 11, 2017 is **AFFIRMED**.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

(I maintain my position in the Concurring and Dissenting Opinion dated October 11, 2017)

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice