REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

ROCA SECURITY AND INVESTIGATION AGENCY, INC.,
Petitioner,

- versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8718

Members:

Castañeda, Jr., *Chairperson and*
Casanova, *JJ.*

Promulgated:
SEP 1 6 2016 9:30 Am

x- x

RESOLUTION

For resolution is petitioner's *Motion for Reconsideration* filed on August 5, 2016 with respondent's *Comment/Opposition (Re: Petitioner's Motion for Reconsideration of the Decision dated 21 July 2016)* filed on September 5, 2016.

Petitioner moves for the reconsideration of this Court's Decision, promulgated on July 21, 2016, the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, the deficiency income tax and improperly accumulated earnings tax assessments for taxable year 2009 are **AFFIRMED** with **MODIFICATIONS** and petitioner is **ORDERED TO PAY** the modified amount of **₱2,082,763.36**, inclusive of the twenty-five percent (25%) surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, computed as follows:

Tax Type	Basic Tax	25% Surcharge	Total
Income Tax	₱ 1,577,522.93	₱ 394,380.73	₱ 1,971,903.66
Improperly Accumulated Earnings Tax	88,687.76	22,171.94	110,859.70
Total	**₱1,666,210.69**	**₱416,552.67**	**₱2,082,763.36**

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 and improperly accumulated earnings tax 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	₱1,577,522.93	April 15, 2010
Improperly Accumulated Earnings Tax	₱ 88,687.76	January 15, 2011

(b) Delinquency interest at the rate of 20% per annum on the total amount of ₱2,082,763.36 and on the 20% deficiency interest which have accrued as afore-stated in (a), computed from September 25, 2013 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.

SO ORDERED."

Petitioner moves that the portion of the deficiency assessment upheld by the Court be reconsidered, *to wit*:

1. Disallowance of petitioner's operating expense for being unsupported: ₱196,147.59

2. Disallowance of petitioner's expenses in the aggregate amount of ₱5,062,262.18, broken down as follows:

Cost of services	₱ 4,948,562.33
Ammunition and training	15,255.38
Utilities	82,736.95
Repair and maintenance	15,707.52
Total	**₱5,062,262.18**

3. Improperly Accumulated Taxable Income of ₱886,877.56.

Petitioner argues that Revenue Memorandum Circular (RMC) No. 23-2000, used as basis in the disallowance of 50%

of petitioner's operating expenses for allegedly being unsupported/no schedule, is void and unenforceable. RMC No. 23-2000 merely interprets the case of Zamora vs. Collector of Internal Revenue. Respondent failed to indicate whether RMC No. 23-2000 complied with the requirement laid down under the Administrative Code of 1987, which requires that every rule issued by a government agency, such as the Bureau of Internal Revenue (BIR), must be publicized and submitted to a hearing. Likewise, memoranda, circulars and office orders emanating from bureaus, such as RMC No. 23-2000, are mere guidelines for internal functioning of their offices. They are not official acts of the legislative, executive or judicial departments, as such, they have no binding effect upon the courts. Moreover, petitioner was never afforded sufficient amount of time to produce the documents required by the revenue examiners to refute the disallowance.

As to the disallowed cost of sales in the amount of ₱4,948,562.33, petitioner argues that it is not obligated to withhold on this compensation for they were paid to security guards who are minimum wage earners.

With respect to the other items disallowed by respondent, namely, ammunition and training, utilities, and repair and maintenance, due to non-withholding, petitioner contends that the assessment did not establish whether the income payments made by petitioner under the foregoing items are subject to the expanded withholding tax. Unless duly notified in writing by respondent that petitioner is obligated to withhold income payment to its local suppliers, the duty to withhold cannot be compelled.

Petitioner also argues that it is not liable to pay improperly accumulated earnings tax (IAET). Respondent failed to recognize that petitioner is entitled to retain earnings for corporate expansion projects and/or programs requiring considerable capital expenditure. Likewise, respondent failed to acknowledge the nature of petitioner's business as a security agency, which is required to keep a substantial amount of contingency funds.

On the other hand, respondent counters that petitioner failed to note the settled rule that administrative issuances partake of the nature of statute and are just as binding as if they have been written in the statute itself, thus, they have the force and effect of law and are entitled to respect. Accordingly, RMC No. 23-200, which was issued for the implementation and interpretation of the National Internal Revenue Code (NIRC), has the force of law and shall be made applicable in the performance of BIR's mandate to assess and collect the correct tax liability of taxpayers. Moreover, in a litany of case, the Supreme Court held that administrative issuances enjoy the presumption of constitutionality and legality until they are set aside with finality in an appropriate case by a competent court.

Respondent emphasizes that petitioner did not refute the finding of the Court against its assertion that it was not given the opportunity to produce documents. Also, petitioner did not present during the trial the alleged documents to support its operating expenses despite its manifestation to do so. Thus, petitioner cannot claim that it was not given the opportunity to refute the result of the investigation.

With respect to the disallowance of cost of services, respondent asserts that the Court's finding is clear that not all of petitioner's security guards are paid at or below the statutory minimum wage as shown in the Revised Report of the Court-commissioned independent certified public accountant (ICPA).

As to the IAET assessment, respondent stresses that petitioner failed to adduce evidence in support of its bare assertion that it is entitled to retain earnings for corporate expansion projects and/or programs requiring considerable capital expenditure.

After weighing the arguments of the parties, the Court finds no merit in the instant motion.

A perusal of the instant motion for reconsideration reveals that the grounds relied upon are matters that were already considered, thoroughly discussed and passed upon in the assailed Decision.

Anent the argument that RMC No. 23-2000 is void and unenforceable, the Court is not persuaded.

Administrative issuances have the force and effect of law. They benefit from the same presumption of validity and constitutionality enjoyed by statutes. These two precepts place a heavy burden upon any party assailing governmental regulations. The burden of proving unconstitutionality rests on such party.[1] Hence, petitioner has the burden of proving that RMC No. 23-2000 is void. Unfortunately, apart from its bare assertion, petitioner did not present any evidence to overcome the presumption of validity of RMC No. 23-2000.

Moreover, the application of the 50% disallowance actually benefits the petitioner. A careful reading of the 50% rule of approximation provided under Section 2.4(c) of RMC No. 23-2000, citing the case of Mariano Zamora vs. Collector of Internal Revenue, shows that it is applied when there is a showing that the taxpayer incurred expenses but the exact amount thereof cannot be ascertained due to the absence of documentary evidence, hence, the BIR makes an estimate of the allowable deduction, bearing heavily, if it chooses, upon the taxpayer whose inexactness is of his own making.

Considering that petitioner failed to present supporting documents for these operating expenses, respondent could have disallowance 100% of these expenses pursuant to Section 34(A)(1)(b)[2] of the NIRC of 1997, as amended, however, respondent reasonably applied the 50% rule of approximation and disallowed only 50% of petitioner's claimed operating expenses that were unsupported.

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

SO ORDERED.

JUANITO C. CASTAÑEDA, JR. Associate Justice	**CAESAR A. CASANOVA** Associate Justice

[1] *Mirasol vs. DPWH*, G.R. No. 158793, June 8, 2006.

[2] "SEC. 34. *Deductions from Gross Income.* — . . .

(A) Expenses. —

(1) Ordinary and Necessary Trade, Business or Professional Expenses.—

xxx xxx xxx

(a) *In General.* — There shall be allowed as deduction from gross income all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on or which are directly attributable to, the development, management, operation and/or conduct of the trade, business or exercise of a profession, including:

xxx xxx xxx

(b) *Substantiation Requirements.* — No deduction from gross income shall be allowed under Subsection (A) hereof unless the taxpayer shall substantiate with sufficient evidence, such as official receipts or adequate records: (i) the amount of the expense being deducted, and (ii) the direct connection or relation of the expense being deducted to the development, management, operation and/or conduct of the trade, business or profession of the taxpayer."