REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

VIRICSON CORPORATION,
Respondent.

CTA EB NO. 1647
(CTA Case No. 8709)

Present:
Del Rosario, *P.J.,*
Castañeda, Jr.,
Uy,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban, ***and***
Manahan, *JJ.*

Promulgated:

MAR 04 2019
3:38 p.m.

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AMENDED DECISION

RINGPIS-LIBAN, J.:

For resolution is the petitioner's "Motion for Reconsideration" filed on September 4, 2018, with respondent's Comment, filed on November 8, 2018.

The petitioner's motion is based on the following grounds:

1. The protest letter dated January 10, 2013 is fatally defective and void, hence, the assessment issued to respondent has become final, executory and demandable; and

2. The exhibits of respondent should not be given any probative value for being hearsay evidence.

Petitioner argues that the protest letter dated January 10, 2013 from the respondent's counsel was invalid and defective, hence, it is as if no protest was filed by respondent to the Formal Assessment Notice (FAN) issued on December 10, 2012. The subject protest letter relates to a FAN covering an amount involving "One Million Two Hundred Thirty Five Thousand Five Hundred Twenty One Pesos and Eighty Three Centavos (Php595,443.03)." The deficiency Income Tax, Value-Added Tax and Expanded Withholding Tax as shown in the FAN involved the amounts of 352,813.04, 233,707.69 and 8,922.30 and not One Million Two Hundred Thirty Five Thousand Five Hundred Twenty One Pesos and Eighty Three Centavos as stated in respondent's supposed protest letter; that the defect in the amount cannot be simply set aside by the Court since it affects the validity of the protest; that the Court should give credence only on the testimony of Ms. Racquel Singson-Jugo on which she has personal knowledge only; that the mere presentation of Amended Articles of Partnership and Withdrawal of Partner with Amended Articles of Partnership does not operate to give credence to the contents indicated in these documents; and that the Contract of Lease entered into with Mr. Hitoshi Sakamoto, the BIR Form Nos. 1601-E and 1604-E were never identified and testified to by a credible witness.

On the other hand, respondent counter-argues that petitioner raises no new arguments that would merit a reversal of the Court's Decision dated July 30, 2018; that the Court *En Banc* has already ruled that respondent's protest letter dated January 10, 2013 is not fatally defective and void, hence, the assessment issued has not become final, executory and demandable; that the body of the protest letter correctly cites the amounts protested and provides in detail the reason and legal basis therefor; that mere *lapsus calami* should not prejudice respondent if by reading the whole document, the true amount referred to could be easily seen; that the petitioner's claim that respondent's exhibits should not have been given any probative value for being hearsay evidence is not only futile rehash of past arguments, but is also misplaced.

After consideration, the Court *En Banc* resolves to deny the motion for reconsideration. The Court *En Banc* reviewed the grounds relied upon by petitioner in support of his "Motion for Reconsideration" but finds no cogent reason to grant the same. The issues raised and the arguments contended in the instant "Motion for Reconsideration" are the same issues and arguments presented in the Motion for Reconsideration before the Court in Division, and in the present Petition for Review which have already been passed upon, discussed and judiciously resolved in the assailed Decision dated July 30, 2018.

It must be stressed that among the ends to which a motion for reconsideration is addressed, one is precisely to convince the Court that its ruling is erroneous and improper, contrary to law or the evidence.[1] If the movant failed to do so, the motion for reconsideration must necessarily fail.

Considering that the issues and arguments presented in the instant motion are the very same arguments which petitioner stated in his Petition for Review, the Court finds it needless to reiterate the discussions made in the assailed Decision. However, the Court finds the necessity of modifying the dispositive portion of the assailed Decision, with regard to the imposition of the relevant interest on the final amount adjudged to be payable in this case in order to conform to the new provisions of Republic Act (RA) No. 10963, or more commonly known as the "Tax Reform for Acceleration and Inclusion (TRAIN) Law", which took effect on January 1, 2018, as implemented by Revenue Regulations No. 21-2018.

WHEREFORE, premises considered, the "Motion for Reconsideration" is **DENIED for lack of merit**. The **assailed Decision** dated September 26, 2018 is **AFFIRMED with MODIFICATION**.

Accordingly, Viricson Corporation is **ORDERED TO PAY TWO HUNDRED FORTY-NINE THOUSAND NINE HUNDRED SIXTY FOUR AND 96/100 PESOS (₱249,964.96)** representing deficiency taxes for taxable year 2005, inclusive of twenty-five percent (25%) surcharge imposed under Section 248(A)(3) of the Tax Code, as amended, and twenty percent (20%) deficiency interest and 20% delinquency interest imposed under Section 249(A) and (B), respectively, of the same Code, computed until December 31, 2017, which is prior to its amendment under RA No. 10963, thus:

Basic Tax Due	₱55,131.63
Add: 25% Surcharge	13,782.91
20% Deficiency Interest from January 26, 2010 to September 20, 2013	
[₱55,131.63 x 20% x 1334/365 days]	40,298.96
Total Amount Due, September 20, 2013	**₱109,213.49**
Add: 20% Deficiency Interest from September 21, 2013 to December 31, 2017	
[₱55,131.63 x 20% x 1563/365 days]	47,216.84
20% Delinquency Interest from September 21, 2013 to December 31, 2017	
[₱109,213.49 x 20% x 1563/365 days]	93,534.62

[1] *Teodulo M. Coquilla vs. The Hon. Commission on Elections and Mr. Neil M. Alvarez,* G.R. No. 151914, July 31, 2002.

Total Amount Due, December 31, 2017	**₱249,964.96**

In addition, Viricson Corporation is **ORDERED TO PAY** delinquency interest at the rate of twelve percent (12%), which is double the legal interest rate for loans or forbearance of any money, on the total amount due as of September 20, 2013 in the amount of **₱109,213.49**, as determined above, computed from January 01, 2018 until full payment thereof pursuant to Section 249(C) of the Tax Code, as amended by RA No. 10963 and implemented by Revenue Regulations No. 21-2018.

SO ORDERED.

Ma. Belen G. L.
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

with concurring & dissenting opinion
ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Amended Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

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- versus -

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Present:
DEL ROSARIO, *PJ*,
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MINDARO-GRULLA,
RINGPIS-LIBAN, and
MANAHAN, *JJ.*

Promulgated:

MAR 04 2019 3:38 p.m.

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CONCURRING AND DISSENTING OPINION

DEL ROSARIO, PJ.:

I concur with the *ponencia* in denying petitioner's Motion for Reconsideration filed on September 4, 2018, thereby affirming the assailed Decision dated July 30, 2018, albeit with *modification* in the computation of deficiency and delinquency interests in view of the effectivity of Republic Act (RA) No. 10963, otherwise known as the Tax Reform for Acceleration and Inclusion (TRAIN) Law, and as implemented by Revenue Regulations (RR) No. 21-2018.

With due respect, however, I differ in the computation of the deficiency and delinquency interests. Applying the amendments under the TRAIN Law, as implemented by RR No. 21-2018, I submit that the 20% deficiency interest (which shall in turn be subjected to 20% delinquency interest) shall be computed from the date prescribed for payment until January 10, 2013, **the due date for payment as indicated in Assessment Notice** No. VT-LA582-09-12-0919 issued on December 10, 2012, and not until September 20, 2013, which is the due date for payment as appearing in the Final Decision on Disputed Assessment.

All told, I **VOTE** to: (i) **DENY** petitioner's Motion for Reconsideration for lack of merit; (ii) **AFFIRM** with **MODIFICATION** the assailed Decision of the Court *En Banc*; (iii) **ORDER** Viricson Corporation to **PAY** the Bureau of Internal Revenue the amount of **TWO HUNDRED FIFTY-SEVEN THOUSAND FIVE HUNDRED and 03/100 (₱257,500.03)** representing deficiency VAT for taxable year 2009, inclusive of twenty-five percent (25%) surcharge imposed under Section 248(A)(3) of the National Internal Revenue Code (NIRC) of 1997, as amended, and twenty percent (20%) deficiency interest and 20% delinquency interest imposed under Section 249 (A) and (B), respectively, of the same Code, computed until December 31, 2017, which is prior to its amendment under RA No. 10963, thus:

Basic Deficiency VAT	₱ 55,131.63
Add: 25% Surcharge	13,782.91
Deficiency Interest from 01/26/2010 to 01/10/2013 (₱55,131.63 X 20% for 1,081/365 days)	32,656.05
Total Amount Due, January 10, 2013	**₱ 101,570.59**
Deficiency Interest	
From 1/11/2013 to 12/31/2017 (₱55,131.63 x 20% x 1,816/365 days)	54,859.75
Delinquency Interest	
From 1/11/2013 to 12/31/2017 (₱101,570.59 x 20% x 1,816/365 days)	101,069.69
Total Amount Due, December 31, 2017	**₱ 257,500.03**

In addition, Viricson Corporation is **ORDERED** to **PAY** delinquency interest at the rate of twelve percent (12%), which is double the legal interest rate for loans or forbearance of any money, on the total amount due as of January 10, 2013, which is ₱101,570.59, as determined above, computed from January 1, 2018 until full payment thereof pursuant to Section 249 (C) of the NIRC of 1997, as amended by RA No. 10963 and implemented by RR No. 21-2018.

ROMAN G. DEL ROSARIO
Presiding Justice