REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

First Division

TITANIUM CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9515

Members:

DEL ROSARIO, *P.J., Chairperson*,
FABON-VICTORINO, *and*
MANAHAN, *JJ.*

Promulgated:
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RESOLUTION

DEL ROSARIO, P.J.:

For resolution is petitioner's "**Motion for Partial Reconsideration (of the Decision dated October 03, 2019)**" filed on October 24, 2019, with respondent's comment thereon by way of "**Manifestation & Motion**" filed through registered mail on December 9, 2019, and received by the Court on December 17, 2019.

In its Motion, petitioner prays that the Court reconsider and set aside the assailed Decision dated October 3, 2019, and order the cancellation of the following: (i) Final Decision on Disputed Assessment (FDDA) dated December 7, 2019; (ii) Amended Assessment for Income Tax covering taxable year 2008 (Assessment Notice No. IT-LA72677-08-16-1226); and, (iii) Original Assessment Notice (Assessment Notice No. IT-LA72677-08-12-0165) dated January 11, 2012 for Income Tax covering taxable year 2008 and/or the modification of the deficiency value-added tax (VAT) and expanded withholding tax (EWT) both for taxable year 2008 in the amount of ₱485,995.89 and ₱120,597.38, respectively, inclusive of the 25% surcharge, 20% delinquency interest imposed under Section 249(C) of the National Internal Revenue Code (NIRC) of 1997, as amended.

Petitioner's Arguments

Petitioner contends that its administrative protest dated January 25, 2012 is a request for reconsideration and not a request for reinvestigation. Petitioner posits that the submission of documents when it filed its protest does not necessarily mean that the protest was a request for reinvestigation. Petitioner cites the Final Decision on Disputed Assessment (FDDA) dated December 7, 2016,[1] where it was stated that "no new evidence were submitted and the copies of the documents that you have presented were already considered in the original investigation hence the assessment is hereby reiterated." Thus, petitioner insists that respondent's right to collect taxes was not suspended. Respondent's right to collect commenced on January 16, 2012 (date when petitioner received the Assessment Notices) until January 15, 2017, and since no warrant of distraint and/or levy was served on petitioner, nor any judicial proceedings instituted within the said period, respondent's right to collect taxes has prescribed.

Petitioner also argues that the taxes and licenses are valid deductible expenses that were duly substantiated in accordance with Section 34(A)(1)(B) of the NIRC of 1997, as amended.

Petitioner likewise posits that its VAT exempt sales for taxable year 2008 were duly supported and substantiated; and, that its Certificate of Registration issued by the Bureau of Internal Revenue (BIR) is conclusive proof that its gross receipts were sourced from its business of renting out dormitory facilities or boarding houses. Hence, petitioner insists that its gross receipts should be treated as VAT-exempt

Petitioner finally maintains that the deficiency VAT and deficiency EWT are not subject to deficiency interest as the interest imposed under Section 249(B) of the NIRC of 1997, as amended pertains only to three (3) types of internal revenue taxes, namely, income tax, estate tax and donor's tax, pursuant to Sections 56(b), 93, and 104.

Respondent's Counter-Arguments

Respondent, on the other hand, adopts the factual findings and conclusions of the Court as enunciated in the assailed Decision.

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[1] Exhibit "P-10", CTA Docket Vol. I, pp. 396-397.

Respondent avers that petitioner's Motion for Partial Reconsideration is a mere *pro-forma* motion, and that the arguments raised therein are mere reiterations of arguments which were exhaustively discussed and passed upon by the Court in the assailed Decision.

He further argues that the assessments against petitioner for deficiency income tax, VAT and EWT for taxable year 2018, are *prima facie* presumed correct and were made in good faith, and that petitioner has the duty of proving otherwise. In the absence of proof of any irregularities in the performance of official duties, the assessments will not be disturbed. Hence, all presumptions are in favor of the correctness of the subject deficiency income tax, VAT, and EWT assessments.

THE COURT'S RULING

After careful consideration of the parties' respective contentions, the Court finds that petitioner's arguments in its Motion are mostly mere amplification of those raised in its "Petition for Review"[2] filed on January 11, 2017 and "Memorandum"[3] filed on August 31, 2018, all of which were duly passed upon in the assailed Decision, particularly in pages 11 to 16, 21 to 28, and 36 to 41 thereof.

The only **new matters** raised by petitioner in its Motion are as follows: (i) petitioner's BIR Certificate of Registration is conclusive proof that its gross receipts were sourced from its business of renting out dormitory facilities or boarding houses; hence, said gross receipts should be treated as VAT-exempt; and, (ii) the deficiency VAT and EWT assessments are not subject to deficiency interest.

The Court shall accordingly proceed to address the aforestated new matters raised by petitioner.

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[2] CTA Docket, Vol. I, pp. 10-28.
[3] CTA Docket, Vol. II, pp. 536-565.

BIR Certificate of Registration is not sufficient to prove that petitioner's gross receipts were sourced from its business of renting out dormitory facilities and boarding houses

Petitioner submits that its gross receipts from its dormitory business totaling ₱20,283,266.00 are properly substantiated and that its BIR Certificate of Registration is conclusive proof that its gross receipts were sourced from its business of renting out dormitory facilities or boarding houses. Petitioner concludes that aforesaid gross receipts should be treated as VAT-exempt.

The Court finds the same erroneous.

As oft-repeated, the assailed Decision has extensively passed upon the issue on petitioner's failure to comply with the invoicing requirements under Section 113 (B) (2) of the NIRC of 1997, as amended, and Section 4.113.1 (B) (2) (b) of RR No. 16-2005, specifically, that the term "VAT-exempt sale" was not written or printed prominently on the subject VAT official receipts.

Assuming *arguendo* that the proper stamping of the words "VAT exempt sale" were made in the VAT official receipts, petitioner failed to present proof that the amounts indicated therein represented rental income for lease of petitioner's dormitory facilities. Contrary to petitioner's claim, the Court finds that there is nothing in its BIR Certificate of Registration that may reasonably give rise to a conclusive presumption that its gross receipts were derived from its business of renting out dormitory facilities or boarding houses.

Verily, records show that petitioner's business is not limited to the rental of dormitory facilities or boarding houses. Petitioner's BIR Certificate of Registration lists down another line of business, namely **"Hotels and Motels"**, which casts doubt on the truthfulness of petitioner's claim that its alleged VAT-exempt sales were solely derived from its dormitory facilities or boarding house rental business.

To reiterate the ruling in the assailed Decision, petitioner failed to present proof that its gross receipts represented rental income from the lease of its dormitory facilities. No evidence of the actual lease agreements were presented, which shows the conformity of the lessees to be bound under a contract of lease of residential unit with rent of ₱10,000.00 and below that falls under Section 109(1)(Q) of the NIRC of 1997, as amended.

For petitioner's failure to properly substantiate its alleged VAT-exempt sales, the Court finds that respondent was correct in treating the same as subject to VAT pursuant to Section 113(D)(2) of the NIRC of 1997, as amended.

Deficiency Interest Applies to VAT and EWT

Petitioner contends that deficiency VAT and EWT is not subject to deficiency interest imposed under Section 249(B) of the NIRC of 1997, as amended. Petitioner argues that "deficiency" only pertains to three (3) types of national internal revenue taxes, namely, income tax, estate tax, and donor's tax pursuant to Sections 56(b), 93 and 104 of the NIRC of 1997, as amended. Petitioner cites *Liquigaz Philippines Corporation vs. Commissioner of Internal Revenue* promulgated on September 21, 2015,[4] where the Court *En Banc* ruled that deficiency interest only applies to deficiency income tax, estate tax, and donor's tax.

The Court finds petitioner's arguments bereft of merit.

The Court *En Banc* has in fact promulgated an Amended Decision dated June 3, 2016 modifying its earlier decision in *Liquigaz*.[5] In the said case, the Court *En Banc* held that deficiency interest may be imposed on deficiency VAT and EWT. While the aforesaid Amended Decision was only rendered by the majority of the members of the Court *En Banc*, the Concurring and Dissenting Opinions therein may not be considered as doctrinal which may be relied upon as judicial precedent.

On the basis of the foregoing disquisition, the Court finds no sufficient basis to modify the assailed Decision.

WHEREFORE, premises considered, petitioner's "**Motion for Partial Reconsideration (of the Decision dated October 03, 2019)**" is hereby **DENIED** for lack of merit.

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[4] CTA EB Case Nos. 1117 and 1119, September 21, 2015.
[5] CTA EB Case Nos. 1117 and 1119, June 3, 2016.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

CATHERINE T. MANAHAN
Associate Justice