REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

3M PHILIPPINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NOS. 9213 & 9214

Members:

CASTAÑEDA, JR., *Chairperson, and*
MANAHAN, *JJ.*

Promulgated:

AUG 2 7 2019 2:45 pm

x - x

RESOLUTION

CASTAÑEDA, JR., *J.*:

For resolution are:

1. petitioner's **Motion for Reconsideration**, filed on July 4, 2019, without respondent's comment despite notice as per Records Verification dated July 31, 2019; and

2. respondent's **Motion for Partial Reconsideration [re: Amended Decision dated June 19, 2019]**, filed on July 4, 2019, with petitioner's **Comment/Opposition (To Respondent's Motion for Partial Reconsideration dated July 4, 2019)**, filed on July 26, 2019.

The parties move for reconsideration of the Court's Amended Decision dated June 19, 2019, the dispositive portion of which reads:

"**WHEREFORE**, premises considered, respondent's **Motion for Partial Reconsideration [re: Decision dated January 31, 2019]** is **DENIED** for lack of merit. On the other hand, petitioner's **Motion for Partial Reconsideration** is **PARTIALLY GRANTED.** Accordingly, the dispositive portion of this Court's Decision dated January 30, 2019, is amended to read as follows:

'**WHEREFORE**, premises considered, the instant Petitions for Review are **PARTIALLY GRANTED**. The assessments issued by respondent against petitioner covering deficiency income tax and FWT for TY 2011 are **CANCELLED AND WITHDRAWN**. Likewise, respondent is **ORDERED TO REFUND** in favor of petitioner the amount of **₱1,606,068.49**, representing the latter's erroneous payment under protest for deficiency income tax. On the other hand, the assessments for deficiency VAT, EWT, and WTC for TY 2011 are **UPHELD IN PART**. Accordingly, petitioner is **ORDERED TO PAY** respondent the aggregate amount of **TWENTY MILLION FIVE HUNDRED THIRTY THOUSAND TWO HUNDRED EIGHTY-ONE PESOS AND THIRTY-EIGHT CENTAVOS (₱20,530,281.38)**, inclusive of the 25% surcharge, 20% deficiency interest and 20% delinquency interest imposed under Sections 248(A)(3), 249(B) and (C) of the NIRC of 1997, as amended, respectively, computed until December 31, 2017, as follows:

	VAT	EWT	WTC	Total
Basic	₱ 4,849,804.66	₱ 1,523,108.93	₱ 2,094,229.35	₱ 8,467,142.94
Add: 25% Surcharge	1,212,451.17	380,777.23	523,557.34	2,116,785.74
20% Deficiency Interest				
VAT: From Jan. 26, 2015 to Nov. 5, 2015 *[₱4,849,804.66 x 20% x 1380/365 days]*	3,667,249.55			3,667,249.55
EWT: From Jan. 17, 2012 to Nov. 5, 2015 *[₱1,523,108.93 x 20% x 1389/365 days]*		1,159,231.95		1,159,231.95
WTC: From Jan. 17, 2012 to Nov. 5, 2015 *[₱2,094,229.35 x 20% x 1389/365 days]*			1,593,909.35	1,593,909.35
Total Amount Due, Nov. 5, 2015	**₱ 9,729,505.38**	**₱3,063,118.11**	**₱4,211,696.04**	**₱17,004,319.53**
Add: 20% Deficiency Interest from Nov. 6, 2015 to Nov. 28, 2015				
VAT: *[₱4,849,804.66 x 20% x 23/365 days]*	61,120.83			61,120.83
EWT: *[₱1,523,108.93 x 20% x 23/365 days]*		19,195.35		19,195.35
WTC: *[₱2,094,229.35 x 20% x 23/365 days]*			26,393.03	26,393.03
20% Delinquency interest from Nov. 6, 2015 to Nov. 28, 2015				
VAT: *[₱9,729,505.38 x 20% x 23/365 days]*	122,618.42			122,618.42
EWT: *[₱3,063,118.11 x 20% x 23/365 days]*		38,603.68		38,603.68
WTC: *[₱4,211,696.04 x 20% x 23/365 days]*			53,078.91	53,078.91
Total Amount Due, Nov. 28, 2015	**₱ 9,913,244.63**	**₱3,120,917.14**	**₱4,291,167.98**	**₱17,325,329.75**
Less: Payments made under protest	-	1,523,108.93	2,666,738.17	4,189,847.10
Amount Still Due, Nov. 28, 2015	**₱ 9,913,244.63**	**₱1,597,808.21**	**₱1,624,429.81**	**₱13,135,482.65**
Add: 20% Deficiency interest from Nov. 29, 2015 to Dec. 31, 2017 *(₱4,849,804.66 x 20% x 764/365 days)*	2,030,274.39			2,030,274.39
20% Delinquency interest from Nov.				

29, 2015 to Dec. 31, 2017				
VAT: *[₱9,729,505.38 x 20% x 764/365 days]*	4,073,064.17			4,073,064.17
EWT: *[(₱3,063,118.11-1,523,108.93) x 20% x 764/365 days]*		644,694.25		644,694.25
WTC: *[(₱4,211,696.04-2,666,738.17) x 20% x 764/365 days]*			646,765.92	646,765.92
Total Amount Still Due as of Dec. 31, 2017	**₱16,016,583.19**	**₱2,242,502.46**	**₱2,271,195.73**	**₱20,530,281.38**

In addition, petitioner is **ORDERED TO PAY** respondent delinquency interest at the rate of twelve percent (12%) on the total unpaid amount of **₱12,814,472.43**[1] representing basic deficiency VAT, EWT, and WTC plus the corresponding 25% surcharge and deficiency interest as of November 5, 2015, 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 Republic Act (RA) No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN), as implemented by RR No. 21-2018.

SO ORDERED.'

SO ORDERED."

Petitioner's Motion for Reconsideration

Petitioner assails the Amended Decision on the following grounds:

A. The Formal Letter of Demand (FLD) and Final Decision on Disputed Assessment (FDDA) are jeopardy assessments, having been issued by the Bureau of Internal Revenue (BIR) without the benefit of a proper audit;

B. The FLD and FDDA are void for having been issued pursuant to an expired Letter of Authority (LOA);

C. Petitioner is not liable for deficiency value-added tax (VAT) on Additional Taxable Income per Amended Income Tax Return (ITR) - ₱3,100,000.00;

D. Petitioner is not liable for deficiency VAT on Disallowed Input Tax Due on Invoicing Requirements - ₱4,477,804.66;

[1] Total amount due as of November 5, 2015 of ₱17,004,319.53 less payments of ₱4,189,847.10.

E. Petitioner is not liable for deficiency withholding tax – expanded;

F. Petitioner is not liable for deficiency withholding tax – compensation;

G. Petitioner is not liable for twenty-five percent (25%) surcharge on the deficiency taxes assessed; and

H. Petitioner is not liable for twenty percent (20%) deficiency interest on the deficiency taxes assessed.

Petitioner contends that the FLD and FDDA are jeopardy assessments because they had been issued by the BIR without the benefit of a proper audit. Petitioner claims that Revenue Officer (RO) Monforte took more than one and a half year to issue the Preliminary Assessment Notice (PAN). Petitioner likewise states that RO Monforte admitted he hastily issued the Final Assessment Notice (FAN) and FLD because the period for prescription was running out and petitioner refused to execute a waiver. Due to respondent's hasty issuance of the FLD, he did not allegedly consider petitioner's Reply to the PAN. Accordingly to petitioner, this was tantamount to a denial of its right to due process. Petitioner argues that had the BIR fully examined the former's arguments and supporting documents in its Reply, the FLD would have been issued with the assessment amount much lower than it had and much closer to the ending assessment under the FDDA. Petitioner insists that the subject assessments were based on mere presumptions, thus, should be declared void.

Petitioner also posits that a LOA only has a validity period of 120 days and the failure of the revenue officer to complete an audit within the said period invalidates any subsequent assessment. Petitioner avers that the LOA was served against it on April 8, 2013 and was valid until August 6, 2013. According to petitioner, the LOA had already expired when the PAN, FLD, and FDDA were issued. Thus, the revenue officers had allegedly no continuing authority to conduct the tax audit against petitioner. Consequently, the PAN, FLD, and FDDA were allegedly void and should be cancelled.

Petitioner claims that it is not liable for deficiency VAT on additional taxable income per Amended ITR in the amount of ₱3,100,000.00 for lack of factual and legal basis. As explained by petitioner, the "Other taxable income" is allegedly composed of the following items:

Other Taxable Income		4,960,000.00
Restatement of available-for-sale financial assets	2,100,000.00	
Miscellaneous income	2,860,000.00	
Proceeds from PPE retirement		240,000.00
TOTAL		5,200,000.00

Petitioner believes that the ₱240,000.00 proceeds from PPE retirement are not considered transactions in the ordinary course of business, hence, not subject to VAT. On the other hand, the ₱2,860,000.00 miscellaneous income had already formed part of petitioner's VATable sales declared in its 2011 VAT Returns.

With respect to the deficiency VAT on disallowed input tax due on invoicing requirements amounting to ₱4,477,804.66, petitioner argues that RO Monforte only examined the official receipts/invoices appearing under pages 769-806 of the BIR Records. As such, petitioner assumes that the assessment of deficiency VAT on disallowed input VAT of ₱16,903,230.64 was allegedly based on an incomplete audit.

Petitioner declares that it is not likewise liable for deficiency expanded withholding tax (EWT) since it had no income payments on which it failed to withhold the required 2% EWT on regular suppliers of services. Petitioner allegedly reconciled, as shown in the BIR's own schedule, the discrepancies stated in the FLD. Moreover, the BIR allegedly ignored the schedules which petitioner submitted showing the correct purchases declared and expense per 1604E and the details of these purchases. As to the deficiency withholding tax – compensation (WTC), petitioner asserts that it lacked factual basis and should be cancelled.

Petitioner alleges that since the BIR did not assess any surcharges on the assessed deficiency taxes in the FLD and FDDA, the imposition of the 25% surcharge is void. Petitioner further argues that the 12% interest rate should be imposed as deficiency interest and delinquency interest rate in accordance with the Tax Reform for Acceleration and Inclusion (TRAIN) Law.

Respondent's Motion for Partial Reconsideration

Respondent anchors his arguments on the following grounds:

I. The Court erred in ruling that petitioner is entitled to a claim for refund for its alleged erroneously paid income taxes;

II. The Court erred in ruling that withholding taxes may be barred by prescription;

III. The Court erred in ruling that the deficiency VAT assessment arising from disallowed discrepancy on beginning and ending balances of deferred input tax should be cancelled and withdrawn; and

IV. The Court erred in using an effective rate in computing the deficiency withholding tax on compensation.

Respondent avers that the Court erroneously considered petitioner's alleged overpayment of taxes even if it was raised for the first time in petitioner's Motion for Partial Reconsideration (filed on February 15, 2019). According to respondent, had this factual issue been raised during trial, he could have rebutted such matter. To permit petitioner to change its theory and raise a new factual issue at this late stage would allegedly be unfair to respondent and would offend the basic rules of fair play, justice and due process.

As regards the assessment for withholding taxes, respondent maintains that the said assessments are imprescriptible. Respondent avers that the withholding tax assessments are not for petitioner's personal tax liabilities. They are allegedly an assessment of penalties for failure of petitioner to withhold and remit the taxes it is duty bound to collect as agent. Thus, respondent asserts that being penalties, they are not covered by the prescriptive period in Section 203 of the National Internal Revenue Code of 1997, as amended, thus, imprescriptible.

Respondent also claims that petitioner had excessive deferred input VAT. As allegedly shown in the FDDA, petitioner's ending balance of deferred input VAT per its Audited Financial Statements is higher than the reported deferred input VAT per the 4th Quarterly VAT return. By deducting the lower amount in the return for taxable year (TY) 2011, petitioner has purportedly carried over to the next period a higher amount of deferred input tax. Respondent explains that this higher deferred input tax in the succeeding period clearly resulted to a lower output VAT liability, thus, taxes should allegedly be imposed from such benefit realized in the succeeding quarter.

According to respondent, the Court has erroneously applied the effective tax rate of 25.1300776% instead of the maximum tax rate of 32% assessed by respondent in computing petitioner's deficiency WTC. Respondent claims that petitioner was given every opportunity to present the list of its employees so that the correct tax could be computed but the latter failed to do so. Respondent argues that failure to present proof of error in the assessment will justify judicial affirmation of said assessment. As such, since the employees to whom the compensation pertained to were not individually identified, respondent insists that the maximum tax rate of 32% must be used.

On the other hand, petitioner counter-argues that the fact of overpayment of income taxes was subsumed and included in the stipulated main issue. Petitioner points out that it presented its Annual ITR that proved the overpayment of income tax. Petitioner likewise alleges that its Annual ITR was filed with the BIR as part of its tax compliance and the BIR ought to know the records of the taxpayers.

Petitioner avers that the three-year prescriptive period applies also to withholding tax assessments. The said prescriptive period is for the benefit of both the government and the taxpayer and any exceptions extending the period to assess must be strictly construed.

As to the cancellation of the ₱2,694,853.74 disallowed input tax assessment, petitioner agrees with the Court's finding that there is no discrepancy in the deferred input VAT declarations between petitioner's Audited Financial Statement *vis-à-vis* its 4th Quarterly VAT Return. Petitioner also argues that the imposed effective rate of 25.1300776% was based on documentary evidence which should prevail over the BIR's assumption that the maximum withholding tax rate should apply.

After a careful and thorough evaluation of the arguments raised by petitioner and respondent, the Court finds the same a mere rehash of the same facts and issues which have already been passed upon extensively in the assailed Amended Decision.

Contrary to respondent's argument that the Court cannot consider petitioner's overpayment of taxes, Section 1, Rule 14 of the Revised Rules of the Court of Tax Appeals (RRCTA) provides:

> "SECTION 1. *Rendition of judgment.* – xxx
>
> In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case."

In this case, the issue on petitioner's overpayment of income taxes is necessarily related to the determination of the stipulated issue of whether petitioner is liable for deficiency internal revenue taxes for TY 2011. Considering that respondent assessed petitioner for deficiency income tax, the Court has to determine whether there is indeed a deficiency income tax. It is necessary to consider any payments made by petitioner and offset the same with any tax liabilities. Thus, the Court reiterates its ruling in the Amended Decision, *viz*:

> Further, the Court still finds petitioner liable for deficiency income tax assessments; nevertheless, the Court considers petitioner's overpayment that could sufficiently cover the said deficiency income tax.
>
> To recall, respondent had taken into consideration petitioner's Amended AITR for TY 2011 when the former excluded the amount of ₱7,017,000.00 in the FDDA as adjustment to taxable income and just imposed deficiency interest on the related income tax due of ₱2,105,100.00 from April 15, 2012 up to the filing of the Amended AITR on April 18, 2013 in the amount of ₱424,480.44, to wit:
>
> > "As per your protest, the additional taxable income per amended returns should no longer form part of adjustments to taxable income per audit since this would mean taxing the same income twice. As such, only the interest thereon until the date of filing of amended returns is being assessed as per table below;"
>
> Based on the foregoing, respondent considered the petitioner's Amended AITR for TY 2011 as proof of payment of the income taxes due for TY 2011, including the additional taxable income not reported in the original return but excluding the assessed sales discrepancy and disallowances discussed above, ge

without questioning the other adjustments incorporated thereto that resulted to an overpayment of ₱6,553,105.97. On this premise, the Court finds the tax overpayment of ₱6,553,105.97 worthy of consideration.

Further, petitioner's Amended Annual ITR for TY 2011, showing the overpayment of income taxes, was offered in evidence, and respondent was given an opportunity to file his comment thereto and to present evidence to rebut the same. Moreover, as found in the assailed Amended Decision, this same document was considered by respondent as proof of payment of the income taxes due for TY 2011. Hence, respondent cannot argue that it was deprived of the right to present evidence against the alleged overpayment of income taxes or that it was deprived of fair play, justice and due process.

Considering the foregoing, there is no cogent reason to disturb the assailed Amended Decision.

WHEREFORE, premises considered, petitioner's **Motion for Reconsideration** and respondent's **Motion for Partial Reconsideration [re: Amended Decision dated June 19, 2019]** are **DENIED** for lack of merit.

SO ORDERED.

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

I concur:

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice