REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

GE CONSUMER FINANCE, INC., *Petitioner,*	**CTA Case No. 9144**
	Members:
-versus-	**CASTAÑEDA, JR.**, *Chairperson* **CASANOVA**, *and* **MANAHAN**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JAN 12 2018 10:10 AM

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RESOLUTION

MANAHAN, *J.*:

This resolves respondent's Motion for Reconsideration filed on November 10, 2017, with petitioner's Comment/Opposition (to the Motion for Reconsideration filed by the Commissioner of Internal Revenue), filed through registered mail on December 22, 2017 and received by the Court on January 4, 2018.

Respondent assails this Court's Decision dated October 25, 2017, the dispositive portion of which states:

> WHEREFORE, the instant Petition for Review is hereby GRANTED. Respondent Commissioner of Internal Revenue is ORDERED TO REFUND in favor of petitioner GE Consumer Finance, Inc. the amount of Php54,243,781.00, representing erroneously paid capital gains tax on the transfer by petitioner of its shares of stock in GEC RF Global Services Philippines, Inc.
>
> SO ORDERED.

In his Motion, respondent argues that the Court erred in ruling that the capital gains derived by petitioner GE Consumer

Finance, Inc. from the transfer of its shares of stock in GEC RF Global Services Philippines, Inc. (GECRF PH) are exempt from capital gains tax (CGT). Respondent states that an unaudited financial statement is not the financial statement required under Revenue Regulations No. 4-86 and that the same is self-serving and unreliable for not disclosing actual facts. Respondent also argues that petitioner failed to establish that the real property interests are located in the Philippines; that the real property interest ratio was not adjusted to reflect the transactions after the date of the financial statements to the date of the sale; and, that tax exemptions are to be construed *strictissimi juris* against the petitioner.

In its Comment/Opposition, petitioner argues that respondent's arguments are bereft of merit and misleading. Petitioner argues that RR No. 4-86 states that "the most recent financial statement may be used" as a basis for determining the composition of petitioner's assets "in case the financial statement as of the date of sale is not available"; that petitioner presented its most recent financial statement which is the statement of financial position as of July 31, 2013 in compliance with RR No. 4-86; and, that respondent did not question the petitioner's witnesses nor submit controverting evidence regarding the veracity of the financial statements. Petitioner further states that, contrary to respondent's argument, it is illogical to relate the consideration for the transfer of shares to the total asset of GECRF PH since such shares may be sold at higher than the original book value contained in the financial statements. Petitioner also argues that the Court correctly computed the real property interest of GECRF PH from the financial statements; and that even assuming that petitioner failed to prove that the real property interests are located in the Philippines, the fact is that the ratio did not exceed 50% of the entire assets in terms of value.

The motion should be denied.

A perusal of the subject motion reveals that it does not have complete proof of service for failing to attach the affidavit of service in compliance with Section 13, Rule 13 of the Revised Rules of Court, which states:

> Sec. 13. Proof of Service. – Proof of personal service shall consist of a written admission of the party served, or the official return of the server, or the affidavit of the

> party serving, containing a full statement of the date, place and manner of service. If the service is by ordinary mail, proof thereof shall consist of an affidavit of the person mailing of facts showing compliance with Section 7 of this Rule. If service is made by registered mail, proof shall be made by such affidavit and the registry receipt issued by the mailing office. The registry return card shall be filed immediately upon its receipt by the sender, or in lieu thereof the unclaimed letter together with the certified or sworn copy of the notice given by the postmaster to the addressee.

The absence of such affidavit of service is sufficient for the denial of the instant motion, pursuant to Section 6, Rule 15 of the Revised Rules of Court which states "No written motion set for hearing shall be acted upon by the court without proof of service thereof."

Notwithstanding the foregoing, the Court clarifies the 2013 values reflected in the computation of the real property interest. Reference to the July 31, 2013 financial statements would show that the values stated therein are in thousands, therefore, Php865,162 actually means Php865,162,000.00.[1] However, such change does not affect the computation of the real property interest ratio, to wit:

	July 31, 2013 (unaudited)	December 31, 2012	December 31, 2011 (restated)
Property and equipment – net	Php 141,654,000	Php 157,198,206	Php 6,147,384
Total Assets	865,162,000	777,766,697	657,675,196
Real Property Interest Ratio	**16.37%**	**20.21%**	**00.93%**

WHEREFORE, the instant Motion for Reconsideration is **DENIED**.

SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

[1] Docket, Exhibit "P-10", p. 591.

WE CONCUR:

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

CAESAR A. CASANOVA
Associate Justice