REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA *EB* NO. 1520** (CTA Case No. 8653)
-versus-	Present: **DEL ROSARIO,** *P.J.,* **CASTAÑEDA, JR.,** **BAUTISTA,** **UY,** **CASANOVA,** **FABON-VICTORINO,** **MINDARO-GRULLA,** **RINGPIS-LIBAN,** *and* **MANAHAN,** *JJ.*
TOENEC PHILIPPINES, INC., *Respondent.*	Promulgated: OCT 23 2017 2:45 p.m.

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D E C I S I O N

MANAHAN, J.:

Before the Court *En Banc* is a Petition for Review seeking the reversal and setting aside of the Decision and Resolution, dated January 27, 2016 and September 2, 2016, respectively, of the Court's First Division (Court in Division). The assailed Decision and Resolution cancelled the assessments for alleged deficiency donor's tax in the total amount of Php13,217,671.23 for taxable year 2010.

The Facts

Petitioner is the Commissioner of Internal Revenue (CIR), who is the Chief of the Bureau of Internal Revenue (BIR), the government agency charged with the assessment and collection of all internal revenue taxes, fees and charges, and enforcement of all forfeitures, penalties and fines connected therewith.[1]

Respondent Toenec Philippines, Inc. (Toenec) is a domestic corporation duly organized and existing under the laws of the Philippines with principal office address at Unit 802 Greenbelt Mansion Condominium, 106 Perea St., Legaspi Village, Makati City, Philippines.[2] Toenec is engaged in construction activities related to power generation, transformer, transmission, distribution, process equipment installation, and other consulting services, such as surveying, design, and supervision of said construction activities.[3]

The facts[4] as found by the Court in Division are as follows:

> Toenec Corporation (Toenec Japan), a corporation organized and existing under the laws of Japan, owns seven thousand two hundred (7,200) shares of stock of petitioner.
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> On May 24, 2010, [Toenec] and Toenec Japan executed a Capital Infusion Agreement, wherein Toenec Japan contributed Php30,000,000.00 as additional paid-in capital (APIC) to [Toenec] purportedly to sustain the viability of its operations and to protect its original capital investment therein.
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> Thereafter, as a requirement for [Toenec]'s application for license, [Toenec] submitted with the Philippine Contractor's Accreditation Board (PCAB) its audited financial statement as of June 30, 2010.
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> In a letter dated January 31, 2011, the PCAB sought the advice of Revenue District Officer Gerry O. Dumayas of Revenue District Office No. 47, East Makati whether the APIC of Php30,000,000.00 reflected in the audited financial statement of [Toenec] is subject to payment of donor's tax.
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> In a letter dated February 21, 2011, the BIR informed [Toenec] that the infusion of additional capital is subject to donor's tax.

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[1] *Rollo*, CTA EB No. 1520, Decision dated January 27, 2016, p. 23.
[2] *Rollo*, Decision, p. 22.
[3] *Rollo*, Decision, p. 23.
[4] *Rollo*, Decision, pp. 23-25.

On March 17, 2011, [Toenec] replied to BIR's February 21, 2011 letter submitting its position that the additional capital infusion made by Toenec Japan does not fall within the purview of the concept of donation; hence, not subject to donor's tax.

In a letter dated March 28, 2011, the BIR informed [Toenec] that it has referred to the BIR's Legal Division the issue of taxability of its Php30,000,000.00 APIC.

On August 9, 2011, [Toenec] received a Notice of Informal Conference. On October 20, 2011, [Toenec], through its representative, Punongbayan & Araullo, submitted its supplemental position paper.

As a result of the BIR's investigation, [Toenec] received on November 24, 2011 a Preliminary Assessment Notice (PAN) dated November 23, 2011, with attached annex described as "Details of Discrepancies" issued by [the CIR]. On December 9, 2011, [Toenec]'s representative, Punongbayan & Araullo, filed its reply thereto, insisting that the capital infusion is not subject to donor's tax.

On June 25, 2012, [Toenec] received the FAN dated June 22, 2012 with the attached Assessment Notice Nos. MC-ONETT001-10-12-0578 and DN-ONETT001-10-12-0578 assessing and demanding from [Toenec] the payment of deficiency donor's tax relative to the Capital Infusion Agreement, xxx.

xxx

On July 24, 2012, [Toenec], through its representative, Punongbayan & Araullo, filed its protest against said FAN, pursuant to Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended.

On April 12, 2013, [Toenec] received the FDDA dated April 11, 2013 finding [Toenec] liable for deficiency donor's tax and compromise penalty, computed as follows:

DONOR'S TAX		
Additional Paid-In Capital	Php	30,000,000.00
Tax Rate		30%
Basic Deficiency Tax		9,000,000.00
Add: 25% Surcharge		2,250,000.00
Interest (06-24-11 to 5-17-13)		5,217,534.25
Total amount due	Php	16,467,534.25
Compromise Penalty	Php	50,000.00

The case proceeded to trial, after which the Court in Division rendered the assailed Decision which disposed of the case as follows:

> WHEREFORE, premises considered, the instant Petition for Review is hereby GRANTED. The Final Decision on Disputed Assessment dated April 11, 2013 is hereby SET ASIDE. Accordingly, the Final Assessment Notice dated June 22, 2012 and the attached Assessment Notice Nos. MC-ONETT001-10-12-0578 and DN-ONETT001-10-12-0578 assessing and demanding from [Toenec] the payment of deficiency donor's tax in the total amount of Php13,217,671.23 for taxable year 2010 are hereby CANCELLED and WITHDRAWN.[5]

The CIR's Motion for Reconsideration was denied in the Court in Division's Resolution[6] dated September 2, 2016.

On October 12, 2016, the Court received the subject Petition for Review[7] filed through registered mail on October 5, 2016. After notice and within the extended period granted,[8] Toenec filed its Comment (to Petitioner's Petition for Review dated October 3, 2016)[9] on February 1, 2017.

On February 23, 2017, the Court *En Banc* required the submission of memoranda.[10] The CIR failed to file his memorandum per Records Verification dated May 9, 2017.[11] On the other hand, Toenec filed its Memorandum[12] on May 8, 2017.

Thus, on May 23, 2017, the instant case was deemed submitted for decision.[13]

Issue

The CIR raises the sole issue of:

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[5] *Rollo*, Decision, p. 34.
[6] *Rollo*, pp. 36-39.
[7] *Rollo*, Petition for Review, pp. 5-16.
[8] *Rollo*, pp. 50-51, in relation to p. 57-A.
[9] *Rollo*, pp. 58-76.
[10] *Rollo*, pp. 78-79.
[11] *Rollo*, p. 107.
[12] *Rollo*, pp. 85-106.
[13] *Rollo*, pp. 109-110.

> Whether or not the First Division of this Honorable Court erred in cancelling and setting aside the BIR Final Assessment Notice (FAN) dated June 22, 2013 and Final Decision on Disputed Assessment (FDDA) dated April 11, 2013, bearing the deficiency donor's tax assessment of respondent for taxable year 2010 for alleged want of legal moorings.[14]

CIR's Arguments[15]

The CIR argues that he is not prevented from authorizing the examination of any taxpayer; and for this purpose, the term "taxpayer" has been defined as any person subject to tax, or such party having sufficient legal interest to bring suit for refund of taxes.

In relation to this definition of a "taxpayer", the CIR states that "whenever one party to the taxable document enjoys exemption from the tax herein imposed, the other party thereto who is not exempt shall be the one directly liable for the tax." Thus, in the instant case, the CIR believes that Toenec, a party to the Capital Infusion Agreement (Agreement) dated May 24, 2010 with Toenec Japan, is the instituted agent here in the Philippines for tax payments that may arise in relation to said Agreement. The CIR states that considering Toenec Japan is a non-resident foreign corporation, and pursuant to the inherent limitation rule that taxation may be exercised only within the territorial jurisdiction of the taxing authority, then Toenec, despite being the donee in the transaction, is the one liable for the donor's tax due on the said Agreement.

The CIR further argues that Toenec's Audited Financial Statements (AFS) for the period ending June 30, 2010, disclosing the amount of Php30,000,000.00 APIC as proceeds from donation, have more probative value than the Agreement executed between Toenec and Toenec Japan which states that the APIC contribution shall not be construed as a donation.

Finally, the CIR contends that tax assessments by tax examiners are presumed correct and made in good faith.

[14] *Rollo*, Petition for Review, p. 8.
[15] *Rollo*, Petition for Review, pp. 8-14.

Toenec's Counter-Arguments[16]

Toenec argues that the Decision dated January 27, 2016 has already become final and executory since the CIR's motion for reconsideration, filed on February 22, 2016, was filed beyond the reglementary period. Furthermore, Toenec states that the CIR's second motion for reconsideration dated April 12, 2016 is a prohibited motion which did not suspend the period to appeal.

Toenec argues that the additional capital contribution is not a donation and should not be subject to donor's tax; and, assuming only for the sake of argument, even if the additional capital contribution is a donation, Toenec as the donee cannot be made liable for donor's tax. Neither can Toenec Japan be held liable since it is a foreign corporation which is outside the CIR's taxing jurisdiction.

Finally, Toenec reiterates its argument that the assessment is void due to: (1) absence of a Letter of Authority (LOA); and, (2) failure to correctly state the law on which the assessment is based.

Ruling of the Court

The petition lacks merit.

The Court *En Banc* has jurisdiction over the present petition.

The Court in Division issued the assailed Resolution denying CIR's Motion for Reconsideration on September 2, 2016, which the CIR received on September 6, 2016.

Pursuant to Rule 4, Section 2(a)(1)[17], in relation to Rule 8, Section 3(b) of the RRCTA, the CIR had fifteen (15) days or

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[16] *Rollo*, Comment (to Petitioner's Petition for Review dated October 3, 2016), pp. 59-72.

[17] Rule 4 Jurisdiction of the Court

Sec. 2. Cases within the jurisdiction of the Court *en banc*. – The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:

(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:

(1) Cases arising from administrative agencies – Bureau of Internal Revenue, Bureau of Customs, xxx

until September 21, 2016 within which to file his petition for review.

On September 19, 2016, the CIR filed a motion for extension of time to file petition for review, praying for an additional fifteen (15) days from said date, or until October 6, 2016.[18] The Court *En Banc* granted the extension[19], and on October 5, 2016, the CIR filed the instant petition through registered mail, which was received by this Court on October 12, 2016. Hence, the Court *En Banc* has jurisdiction.

There is no compelling reason to reverse or modify the Court in Division's Decision and Resolution.

The Court *En* Banc finds that the CIR merely reiterated its arguments before the Court in Division which have already been considered and resolved in the assailed Decision.

The Court *En Banc* agrees with the Court in Division that the liability for donor's tax falls upon the donor and not the donee. Relying on Sections 98,[20] 99,[21] and 103[22] of the 1997 National Internal Revenue Code, as amended (NIRC), it is clear that the person or entity liable to pay donor's tax is the donor, or the person or entity transferring the property to another. Moreover, if the donor is a non-resident, there is no mention that the donor's return and tax shall be filed and paid by the donee. Instead, it is provided that the return must be filed with the Philippine Embassy or Consulate in the country

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[18] *Rollo*, Motion for Extension of Time to File Petition for Review, p. 1-3.
[19] *Rollo*, p. 4.
[20] Sec. 98. Imposition of Tax. –
(A) There shall be levied, assessed, collected and paid upon **the transfer by any person, resident or nonresident**, of the property by gift, a tax, computed as provided in Section 99.
xxx xxx xxx (*Emphasis supplied*)
[21] Sec. 99. Rates of Tax Payable by Donor. –
xxx xxx xxx
(B) Tax Payable by Donor if Donee is a Stranger. – When the donee or beneficiary is a stranger, the tax payable by the donor shall be thirty percent (30%) of the net gifts.
xxx xxx xxx
[22] Sec. 103. Filing of Return and Payment of Tax. –
xxx xxx xxx
(B) xxx In the case of gifts made by a nonresident, the return may be filed with the Philippine Embassy or Consulate in the country where he is domiciled at the time of the transfer, or directly with the Office of the Commissioner.

where the donor is domiciled at the time of transfer, or directly with the Office of the Commissioner.

In *Maceda v. Macaraig*,[23] the Supreme Court *En Banc* classified donor's tax as a direct tax or one where the person supposed to pay the tax really pays it without transferring the burden to someone else.

Considering that the liability for donor's tax under the NIRC falls upon the donor, and that the donor's tax is a direct tax which cannot be transferred to the donee, the Court in Division correctly ruled that the assessment for deficiency donor's tax against Toenec is without basis. Thus:

> Evidently, [Toenec] is the entity that received the Php30,000,000.00 cash and, thus, considered as the donee. Consequently, as the donee, [Toenec] is not liable to pay donor's tax, pursuant to Section 98 of the NIRC of 1997, as amended.
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> The liability to pay donor's tax is not transferable. The burden to pay donor's tax is imposed upon the donor and not upon the donee. While the imposition of tax is a matter of law, mere exigency and convenience may not be used as an excuse to collect donor's tax from a donee simply because the latter is located in the Philippines. Basic is the rule that laws imposing tax are strictly construed against the taxing authority and in favor of the taxpayer.[24]

The Court *En Banc* disagrees with the CIR's theory that Toenec is the one liable for donor's tax because it is the party in the Philippines and instituted agent of Toenec Japan. The Court in Division concisely reasoned:

> After carefully evaluating [the CIR]'s contentions as presented in its Motion, the Court finds that they are mere reiteration or amplification of the arguments raised in [the CIR]'s Answer dated June 28, 2013, all of which were duly considered in arriving at the assailed Decision. am

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[23] G.R. No. 88291, June 8, 1993; also cited in Abakada Guro Partylist (formerly AAJAS) officers Samson S. Alcantara and Ed Vincent S. Albano v. Executive Secretary Eduardo Ermita, G.R. No. 168056, September 1, 2005.
[24] *Rollo*, Decision dated January 27, 2016, p. 33.

> As to the question of whether the Php30,000,000.00 APIC is a donation, suffice it to say that any determination thereon is irrelevant. Even if the Court determines that it is a donation, [Toenec], the donee in the transaction, is not liable to pay donor's tax pursuant to Section 98 of the NIRC of 1997, as amended. In passing upon the issue, this Court declared in its assailed Decision that it is the donor and not the donee who is liable for Donor's tax. To reiterate:
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> xxx xxx xxx
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> On [the CIR]'s theory that [Toenec] is liable for Donor's Tax being Toenec Corporation-Japan's instituted agent in the Philippines, the same is bereft of merit.
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> A perusal of BIR Ruling No. 007-2000 relied upon by [the CIR] discloses that it involves the application of the provision on Documentary Stamp Tax (DST) under Section 173 of the NIRC of 1997, which provides "[t]hat whenever one party to the taxable document enjoys exemption from the tax herein imposed, the other party who is not exempt shall be the one directly liable for the tax." The aforesaid DST provision could not be extended by implication to justify the assessment of Donor's Tax against the donee since the NIRC clearly imposes donor's tax on the donor of the property.[25]

In view of the foregoing, the Court *En Banc* finds no cogent reason to reverse or modify the findings of the Court in Division.

WHEREFORE, the instant Petition for Review is hereby **DENIED** for lack of merit.

SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

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[25] *Rollo*, Resolution dated September 2, 2016, pp. 37-38.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above 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