REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

YI WINE CLUB, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8809

Members:

DEL ROSARIO, *P.J., Chairperson*
UY, *and*
MINDARO-GRULLA, *JJ.*

Promulgated:

DEC 15 2017 : 8:43 am

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RESOLUTION

MINDARO-GRULLA, *J.*:

For this Court's resolution is respondent's **Motion for Reconsideration Re: Decision Promulgated on August 4, 2017**, filed on August 22, 2017, with petitioner's **Comment (on the Respondent's Motion for Reconsideration dated August 18, 2017)**, filed on September 29, 2017, pursuant to the Resolution dated October 3, 2017.

Respondent seeks reconsideration of the Court's Decision dated August 4, 2017 (assailed Decision)[1], the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is **PARTIALLY GRANTED**. The

[1] Docket vol. II, pp. 621-650.

assessment issued by respondent against petitioner for taxable year 2007 covering compromise penalties is **CANCELLED**. On the other hand, the deficiency income tax and EWT assessments are **AFFIRMED but with modifications**. Accordingly, petitioner is **ORDERED TO PAY** the amount **ONE HUNDRED FORTY-FIVE THOUSAND FIVE HUNDRED FORTY-SIX PESOS (₱145,546.00)** representing basic deficiency taxes, inclusive of the twenty-five (25%) surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended:

Tax Type	Basic Tax	Surcharge	Total
Income Tax	₱ 61,769.80	₱ 15,442.45	₱ 77,212.25
Expanded Withholding Tax	54,667.00	13,666.75	68,333.75
TOTAL	**₱ 116,436.80**	**₱ 29,109.20**	**₱ 145,546.00**

In addition, petitioner is **ORDERED TO PAY**:

a) Deficiency interest at the rate of twenty (20%) per annum on the basic deficiency income tax in the amount of ₱61,769.80 computed from April 15, 2008 and January 15, 2008, respectively, until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended; and,

b) Delinquency interest at the rate of 20% per annum on the total amount of ₱145,546.00 and on the 20% deficiency interest which have accrued as afore-stated in (a), computed from April 25, 2014 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.

SO ORDERED."[2]

Respondent moves for partial modification of assailed Decision on the ground that the Court erred in ruling that respondent's imputation of interest income on petitioner's non-interest bearing loans to affiliates lacks legal and factual bases.

[2] Docket vol. II. p. 649.

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According to respondent, petitioner was assessed interest income from non-interest bearing loans it extended to its affiliates pursuant to Section 50 of the National Internal Revenue Code of 1997, as amended.

Respondent contends that petitioner's bare allegations that advances were merely financial assistance to sustain its affiliates' operation and capital expenditures deserve scant consideration. He argues that in the absence of any evidence categorically showing that such advances were indeed capital contributions, the funds extended to its affiliates are covered by RMO No. 63-99 and shall be subject to imputed interest.

On the other hand, petitioner contends that respondent's argument is misplaced. It argues that in the assailed Decision, pursuant to the Supreme Court case of *Commissioner of Internal Revenue vs. Filinvest Development Corporation*[3], the Court struck down the imputation of interest because Section 50 of the NIRC of 1997, as amended, does not include the power to impute theoretical interest. Petitioner alleges that the invalidity of the interest is due to the fact that the Bureau of Internal Revenue cannot just create income out of thin air. The income must be realized by the taxpayer and should not be merely imaginary.

The Motion for Reconsideration is bereft of merit.

The arguments raised by respondent in his Motion for Reconsideration are a mere rehash of his previous arguments raised in his Answer[4], which have been duly considered and adequately discussed by the Court in the assailed Decision, the pertinent portions of which reads:

> "Indeed, in the afore-cited *Filinvest case*, the Supreme Court ruled with finality that the CIR's powers of distribution, apportionment or allocation of gross income and deductions under Section 43 of the 1993 NIRC and Section 179 of Revenue Regulations No. 2 do not include the power to impute 'theoretical interests' to the controlled taxpayer's transactions.

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[3] G.R. Nos. 163653 and 167689, July 19, 2011.
[4] Docket vol. I, pp. 133-142.

Further, the Supreme Court clarified that:

> 'xxx More so, when it is borne in mind that, pursuant to Article 1956 of the *Civil Code of the Philippines*, no interest shall be due unless it has been expressly stipulated in writing. Considering that taxes, being burdens, are not to be presumed beyond what the applicable statute expressly and clearly declares, the rule is likewise settled that tax statutes must be construed strictly against the government and liberally in favor of the taxpayer. Accordingly, the general rule of requiring adherence to the letter in construing statutes applies with peculiar strictness to tax laws and the provisions of a taxing act are not to be extended by implication. While it is true that taxes are the lifeblood of the government, it has been held that their assessment and collection should be in accordance with law as any arbitrariness will negate the very reason for government itself.'

In this case, there was no evidence on record showing any agreement on interest between petitioner and its affiliates as to the former's loans or advances to the latter. Neither did respondent show that petitioner received cash from the alleged interest as it merely based its assessment on the account description and amount presented in petitioner's audited balance sheet and nothing else.

With this in mind, the Court finds that respondent's imputation of interest income on petitioner's non-interest bearing loans to affiliates lacks legal and factual bases and must be removed from the deficiency income tax assessment.

In sum, petitioner is found liable for basic deficiency income tax but in the reduced amount of ₱61,769.80, as computed below:

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Taxable net income per return	₱ 2,038,957.00
Undeclared revenue	1,224,159.00
Taxable income per audit	₱ 3,263,116.00
Income tax due 5%	163,155.80
Less: Tax paid & tax credits	₱ 101,386.00
Basic Deficiency Income Tax	**₱ 61,769.80**

The Court need not belabor to address the error ascribed by respondent in his motion as the conclusions of law in the assailed Decision were reached after the Court made a judicious study of the parties' respective arguments and of the relevant laws and jurisprudence on the matter.

Considering the foregoing, the Court finds no cogent reason to reverse or modify the assailed Decision.

WHEREFORE, premises considered, respondent's **Motion for Reconsideration Re: Decision Promulgated on August 4, 2017** is **DENIED** for lack of merit.

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice