REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CLASSIC FINE FOODS PHILIPPINES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9391

Members:

DEL ROSARIO, *P.J., Chairperson,*
MANAHAN, *and*
REYES-FAJARDO, *JJ.*

Promulgated:

SEP 27 2021, 2:10 p.m.

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RESOLUTION

MANAHAN, J.:

This resolves respondent's *Motion for Reconsideration*, posted on February 8, 2021, and received by the Court on February 18, 2021.

The *Motion* assails the Decision dated December 17, 2020, which disposed of the case, as follows:

> "**WHEREFORE**, in light of the foregoing considerations, the *Petition for Review* is **GRANTED**.
>
> The assessment items for deficiency income tax are **PARTIALLY UPHELD**. Nevertheless, petitioner has no deficiency income tax liability and even incurred income tax overpayment as computed above. Accordingly, the assessment issued by respondent against petitioner for the taxable year 2006, covering deficiency income tax in the amount of P9,529,413.91, inclusive of interest, is **CANCELLED** and **SET ASIDE**.
>
> **SO ORDERED**."

Respondent states that the Court is already divested of jurisdiction considering that the Formal Assessment Notice (FAN) with the attached Details of Discrepancies dated

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January 15, 2010 was received by petitioner on January 20, 2010, however, per BIR Records, petitioner filed a letter dated April 20, 2010 in protest of the FAN and submitted the accompanying documents. The filing of said letter on April 20, 2010 is clearly beyond the thirty (30)-day period to protest the FAN, therefore, the judicial appeal before this Court has prescribed.

On the specific assessment items, respondent further argues that petitioner failed to substantiate its claim that it made a reconciliation of its allowance for obsolescence on the audited financial statements (AFS) for years 2002 to 2005, to determine the treatment of such reconciliation; that the excess credit carried-over per income tax return (ITR) cannot be credited against deficiency income tax since said amount was already carried forward to the succeeding fiscal year; and, that the minimum corporate income tax (MCIT) is not allowed as tax credit against the deficiency income tax, since the MCIT should be carried over and credited against the normal income tax for the three (3) immediately succeeding taxable years.

Petitioner posted its *Comment/Opposition (Re: Respondent's Motion for Reconsideration dated 8 February 2021)* on March 24, 2021, which was received by the Court on May 21, 2021.

In its *Comment*, petitioner states that it duly filed its administrative protest on February 19, 2010, as evidenced by the originally-stamped receiving copy, which was admitted in evidence as Exhibit "P-5" with sub-markings. Thus, the Court has jurisdiction. Even assuming that the FAN dated January 15, 2010 became final due to non-filing of a timely protest, petitioner argues that the period for collection of said taxes has already prescribed considering that the Final Decision on Disputed Assessment (FDDA) was only issued on June 17, 2016, or more than six (6) years from the issuance of the FAN.

Petitioner further argues that the Court correctly ruled that the disallowance for inventory obsolescence was not proper since the same was not deducted from gross income for purposes of computing taxable income per ITR; that the disallowance of the excess income tax credit carried forward to succeeding years was not proper; and, that the disallowance of the MCIT was untenable.

The *Motion* lacks merit.

Contrary to respondent's assertion, the records show that petitioner filed its protest letter[1] on February 19, 2010, which is within the thirty-day period to validly file a protest. The April 20, 2010 letter[2] referred to by respondent is actually petitioner's submission of supporting documents to complete its protest, within sixty (60) days from the submission of the protest on February 18, 2010. Thus, with the validly filed protest, the assessment did <u>not</u> become final and executory. Consequently, the Court has jurisdiction.

As to respondent's arguments regarding the disallowance of the allowance for inventory obsolescence, the disallowance of petitioner's excess credits carried forward to succeeding year, and disallowance of excess MCIT, the Court finds the same to be mere rehash of respondent's bases found in the Details of Discrepancies[3] attached to the assessments. Respondent does not point to any specific error made by the Court with respect to the computation of each item.

Nevertheless, the Court reiterates that the provisions for inventory obsolescence were considered non-deductible expenses for computing the taxable income, and had no impact on the taxable income, *to wit*:

> As indicated in the petitioner's AFS for years 2004, 2005, 2006, its inventories were valued at the lower of cost and net realizable value (NRV) in accordance with the applicable financial reporting standards in such years. Pursuant to its accounting policies, petitioner set up a provision for inventory obsolescence and presented its ending inventories at NRV at the end of the accounting period. These provisions for inventory obsolescence were only taken into account in the AFS and were considered as non-deductible expenses for computing the taxable income per ITR. Accordingly, petitioner properly reflected in its Annual ITR for taxable years 2004, 2005, and 2006 the said provisions as reconciling items. Consequently, upon recovery of the provision for inventory obsolescence in a subsequent period, the same has no effect on the taxable income reported in the Annual ITR because the same is only a reversal of the provision made in the previous year/s.

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[1] Docket, Vol. II, Exhibits "P-5" and "R-4", pp. 998-1008.
[2] Docket, Vol II, Exhibits "P-6" and "R-5", pp. 1009-1020.
[3] BIR Records, Exhibit "R-7-B", p. 580.

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> Furthermore, it is erroneous to disallow the allowance for inventory obsolescence sold in 2006 in the amount of P6,003,499.00 pursuant to Section 34(A)(1)(b) of the NIRC of 1997, as amended, because the same was not claimed as deduction to gross income in the Annual ITR in the first place. Thus, the substantiation requirement is not applicable.[4] (*Citations omitted*)

The Court also finds no merit on respondent's arguments that petitioner's excess credits of Php1,793,055.00 and excess MCIT in the amount of Php996,948.00 should be disallowed in computing the deficiency assessment since the same have been carried over and credited to the succeeding taxable year.

As discussed in the assailed Decision, these disallowances are improper because any tax benefit derived by petitioner from the carry-over of the said amounts redounds to the succeeding year or years. Since the tax benefit will be in the succeeding year or years, petitioner may only be assessed for the said succeeding year/s.[5]

WHEREFORE, respondent's *Motion for Reconsideration* is **DENIED** for lack of merit.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

(no part)
MARIAN IVY F. REYES-FAJARDO
Associate Justice

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[4] Decision dated December 17, 2020, pp. 15-16, and 17.
[5] Decision dated December 17, 2020, p. 18 and 21.