REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

ICONIC BEVERAGES, INC.,
Petitioner,

CTA *EB* No. 1563
(CTA Case No. 8813)

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

x- x

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA *EB* No. 1564
(CTA Case No. 8813)

Present:

DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, *and*
MANAHAN, *JJ.*

-versus-

ICONIC BEVERAGES, INC.,
Respondent.

Promulgated:
APR 17 2019 10:41 a.m.

x- x

R E S O L U T I O N

MANAHAN, J.:

This resolves the following motions:

1) *Motion for Partial Reconsideration (Re: Decision promulgated on 18 September 2018)* filed on October 10, 2018 by the Commissioner of Internal Revenue (CIR), with Iconic Beverages, Inc.'s *Comment/Opposition [To Commissioner of Internal*

Revenue's Motion for Partial Reconsideration dated October 8, 2018] filed on November 23, 2018; and

2) *Motion for Reconsideration [of the Decision dated September 18, 2018]* filed by Iconic Beverages, Inc. (Iconic) on October 24, 2018, without the CIR's comment.

CIR's Motion for Partial Reconsideration

In his motion,[1] the CIR argues that his right to assess Iconic for deficiency value added tax (VAT) has not prescribed. The CIR states that Iconic failed to pay the right VAT and that the applicable prescriptive period is ten (10) years from date of discovery of the false return filed by Iconic.

The CIR further argues that the assessment for deficiency VAT has become final and executory due to the failure of Iconic to protest the said assessment. The CIR states that based on Iconic's protest to the Formal Letter of Demand (FLD), Iconic protested only the assessment for deficiency income tax. However, as far as the assessments for VAT and penalties are concerned, no protest was filed by Iconic.

Finally, the CIR argues that all presumptions are in favor of the correctness of tax assessments.

Iconic, in its comment, states that the CIR's motion raises arguments which are a mere rehash of the arguments raised in the CIR's Motion for Partial Reconsideration filed before the Court in Division. Thus, Iconic argues that the CIR's motion should be denied outright.

Iconic further states that the CIR failed to prove that the VAT returns filed by Iconic were false or fraudulent, or that Iconic filed its returns with intent to evade the payment of the correct VAT. It is also undisputed that Iconic timely filed its VAT returns. Iconic also states that it presented sufficient evidence for the cancellation of the FLD/FAN.

After reviewing the arguments raised by the CIR and Iconic, the Court finds no merit in the CIR's *Motion for Partial Reconsideration (Re: Decision promulgated on 18 September*

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[1] *Rollo*, Vol. 2, pp. 712-719.

2018). The Court agrees that the arguments raised therein are a mere rehash of arguments already raised before and which fail to persuade the Court to modify nor reverse its findings. Thus, the Court will no longer belabor to repeat its discussions thereon.

Iconic's Motion for Reconsideration

In its motion, Iconic argues that the Court erred in finding that Iconic's income arising out of its intellectual property rights for taxable year 2010 is not passive income subject to final withholding tax. Iconic also states that the Court erred in not applying the Optional Standard Deduction (OSD) in the computation of Iconic's taxable income. It is also alleged that the Court erred in finding that Iconic failed to sufficiently explain the royalty variance of Php82,544.20 and variance in Taxes and Licenses amounting to Php72,264.02. Iconic also opposes the imposition of two sets of interest for the same unpaid tax.

In addition, Iconic argues that the FLD and Final Assessment Notices (FAN) failed to state a fixed or definite period within which Iconic must pay the assessed deficiency tax liabilities, thus, said FLD/FAN should be cancelled and set aside for being void.

Finally, Iconic stated that it paid the basic deficiency tax of Php110,437,717.46 on August 31, 2017. Iconic submits certified true copies of its Letter-Application for Abatement dated August 31, 2017; Supplemental Letter dated October 5, 2017; BIR Form No. 0605 with Filing Reference No. 291700021391459 dated August 31, 2017; Payment Transaction Number 179180492 dated August 31, 2017; Payment Confirmation Notice dated August 31, 2017; and Payment Instruction Notice dated August 31, 2017. However, Iconic states that it is yet to receive the CIR's action on its application for abatement.

Upon review of Iconic's arguments, the Court finds that the same are also mere reiterations of its arguments previously considered and ruled upon in the assailed Decisions and Resolution before the Court *En Banc* and in Division. The Court finds no reason to modify nor reverse its findings that Iconic's royalty income is subject to regular corporate income tax. Further, the Court reiterates that Iconic is not entitled to the 40% optional standard deduction considering that Iconic did not opt to use OSD in its annual income tax return.

However, the Court finds merit in Iconic's submission of the certified true copies of its Letter-Application for Abatement dated August 31, 2017; Supplemental Letter dated October 5, 2017; BIR Form No. 0605 with Filing Reference No. 291700021391459 dated August 31, 2017; Payment Transaction Number 179180492 dated August 31, 2017; Payment Confirmation Notice dated August 31, 2017; and Payment Instruction Notice dated August 31, 2017. While the Iconic's application for abatement has not yet been acted upon by respondent CIR, there is sufficient basis to consider said payment in the computation of Iconic's remaining tax liability.

WHEREFORE, the *Motion for Partial Reconsideration (Re: Decision promulgated on 18 September 2018)* filed by the Commissioner of Internal Revenue is **DENIED** for lack of merit.

The *Motion for Reconsideration [of the Decision dated September 18, 2018]* filed by Iconic Beverages, Inc. is **PARTIALLY GRANTED**.

Accordingly, let Iconic's previous payment of Php110,437,717.46 be **DEDUCTED** from its entire tax liability upon full payment thereof.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

(I maintain my Concurring and Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice