REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

OCEANAGOLD (PHILIPPINES), INC.
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE
Respondent.

CTA CASE NO. 9594
For: Assessment

Members:
CASTAÑEDA, JR., *Chairperson,*
MINDARO-GRULLA, and
BACORRO-VILLENA, *JJ.*

Promulgated:
JAN 06 2020 9:02 am

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RESOLUTION

MINDARO-GRULLA, J.:

Before the Court is a Motion for Reconsideration filed by petitioner Oceanagold (Philipines), Inc.,[1] seeking to set aside the Decision promulgated on October 21, 2019,[2] the dispositive portion of the assailed Decision reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is **PARTLY GRANTED**. Accordingly, the assessment against petitioner for alleged deficiency excise tax for taxable year 2014 is hereby **PARTLY UPHELD** and hereby computed as follows:

Basic Excise Tax	₱ 119,518,333.29
25% surcharge	29,879,583.32
20% Deficiency Interest up to November 30, 2016	45,711,669.39

[1] Dockets, Vol. V, filed on November 7, 2019.
[2] *Ibid.*

Total Amount Due, November 30, 2016	195,109,586.00
20% Deficiency Interest from December 1, 2016 to December 31, 2017 (396 days) (basic tax x .20 x 1.0849 years)	25,933,087.96
20% Delinquency Interest from December 1, 2016 to December 31, 2017 (396 days) (total amount due as of November 30, 2016 x .20 x 1.0849 years)	42,334,877.97
Total Amount Due as of December 31, 2017	₱ 263,377,551.93

Petitioner is **ORDERED** to pay deficiency excise tax for the year 2014 in the amount of **₱263,377,551.93**, inclusive of the 25% surcharge and deficiency and delinquency interests imposed under Sections 248(A)(1)(3) and 249(B) and (C) of the NIRC of 1997, as amended, respectively computed until December 31, 2017.[3]

In addition, petitioner is liable to pay delinquency interest at the rate of 12% on the total unpaid basic deficiency tax, surcharge and deficiency interest as of November 30, 2016 amounting to ₱195,109,586.00, computed from January 1, 2018 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended by Republic Act No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN).

SO ORDERED."

In its motion, petitioner asserts that it was able to prove its pre-operating expenses by presenting and offering official receipts, sales invoices, billing statements, contracts, provisional invoices and general ledgers. Also, it raises that the Financial or Technical Assistance Agreement (FTAA) was entered into prior to Department of Energy and Natural Resources (DENR) Department Administrative Order (DAO) No. 99-56, hence the pre-operating expenses do not need the approval of the DENR Secretary. It also argues that the assessment for taxable year (TY) 2014 is very well within the 5-year recovery period ending on March 31, 2018 and

[3] Section 6 of Revenue Regulations No. 21-2018 dated September 14, 2018.

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even assuming that it was made beyond the said period, Republic Act 7942[4] does not provide a time limit to recover the pre-operating expenses. Lastly, it argues that it was only in DAO No. 1996-40 which provided a time limit to recover, must be struck down for being contrary to RA 7942.

In his Opposition,[5] the CIR reiterates that OGPI is being assessed after the 5-year recovery period, reckoned either on the date of commencement or date indicated in the feasibility study approved by the DENR Secretary, whichever comes first. Since petitioner's feasibility study was approved in 2005, the assessment for TY 2014 was clearly made after the 5-year period.

The Court finds petitioner's motion bereft of merit.

It must be recalled that the present Petition for Review involves a claim for an exemption from payment of taxes that should be construed strictly against the taxpayer. This power of taxation being a high prerogative of sovereignty, its relinquishment is never presumed.[6]

Petitioner argues that its FTAA, which was entered into prior to the issuance of DAO No. 99-56, does not explicitly require approval by the DENR of the pre-operating expenses.

It should be emphasized that considering that the FTAA was executed in 1994 and the Philippine Mining Act was enacted in 1995, the transitory provision of the said law (R.A. No. 7942) applies:

> "CHAPTER XX
> TRANSITORY AND MISCELLANEOUS PROVISIONS
>
> Section 112. <u>Non-impairment of Existing Mining/Quarrying Rights.-All valid and existing mining lease contracts, permits/licenses, leases pending renewal, mineral production-sharing agreements</u>

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[4] The Philippine Mining Act of 1995.
[5] *Ibid.*, filed on December 9, 2019.
[6] *Nestle Philippines, Inc. (formerly Filipro, Inc.) vs. Honorable Court of Appeals, et. al..*, G.R. No. 134114, July 6, 2001, 360 SCRA 583.

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> granted under Executive Order No. 279, at the date of effectivity of this Act, shall remain valid, shall not be impaired, and shall be recognized by the Government: *Provided*, That the provisions of Chapter XIV on government share in mineral production-sharing agreement and of Chapter XVI on incentives of this Act shall immediately govern and apply to a mining lessee or contractor unless the mining lessee or contractor indicates his intention to the secretary, in writing, not to avail of said provisions: *Provided, further,* That no renewal of mining lease contracts shall be made after the expiration of its term: *Provided, finally*, That such leases, production sharing agreements, financial or technical assistance agreements shall comply with the applicable provisions of this Act and its implementing rules and regulations." (Underlining supplied)

Thus, DAO No. 99-56 is applicable to petitioner.

Moreover, when petitioner partially declared mining feasibility on March 15, 2005, it stated:

> "That the Corporation is committed to complying with all the requirements of the FTAA and the rules and regulations of the Philippines [sic] Mining Act and other related laws;" (Underlining supplied.)

Petitioner also avers that its pre-operating expenses have been proven through presentation of documents and examination by its independent CPA. Be that as it may, this Court has already ruled that despite submission of pertinent documents to prove pre-operating expenses, no amount of ICPA examination would matter without such recommendation and approval.[7] Considering that petitioner was not able to prove it was still in its recovery period at the time of assessment, the said assessment must be upheld.

All other issues raised in the Motion for Reconsideration have already been extensively ruled upon in the assailed Decision.

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[7] *Oceanagold (Philippines) Inc., vs. Commissioner of Internal Revenue,* CTA EB No. 1904, August 16, 2019.

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WHEREFORE, premises considered, petitioner's Motion for Reconsideration is **DENIED** for lack of merit.

SO ORDERED.

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

WE CONCUR:

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

JEAN MARIE A. BACORRO-VILLENA
Associate Justice