22-000031-0057

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NO. 10741

DMCI HOLDINGS, INC.,
Petitioner,

- versus -

NOTICE OF RESOLUTION

COMMISSIONER OF INTERNAL REVENUE ,
Respondent.

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street, Legazpi Village
Makati City

ATTY. SYLVIA R. ALMA JOSE
ATTY. AYESHA HANIA B. GUILING-MATANOG
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Bureau of Internal Revenue
Room 703, Litigation Division, BIR National Office Building
Sen. Miriam P. Defensor-Santiago Avenue
Diliman, Quezon City

CASTILLO LAMAN TAN PANTALEON & SAN JOSE
2nd to 5th and 9th Floors, The Valero Tower
122 Valero Street, Salcedo Village, Makati City

GREETINGS:

You are hereby notified by these presents that on **January 28, 2025,** a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **January 30, 2025.**

Atty. Maria Johoanna F. Chan-Te
Executive Clerk of Court II

REPUBLIC OF THE PHILIPPINES
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DMCI HOLDINGS, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. **10741**

Members:

DEL ROSARIO, *P.J., Chairperson,*
BACORRO-VILLENA, *and*
CUI-DAVID, *JJ.*

Promulgated:
JAN 28 2025 10:00 AM

x - x

RESOLUTION

BACORRO-VILLENA, J.:

For the Court's resolution is respondent Commissioner of Internal Revenue's (**respondent**'s/**CIR**'s) "Motion for Reconsideration (Re: Decision dated 20 September 2024)"[1] (**MR**) filed on 09 October 2024, with "Opposition (to the Motion for Reconsideration dated October 8, 2024)"[2] (**Opposition**) filed by petitioner DMCI Holdings, Inc. (**petitioner**) on 21 October 2024.

The MR contests the cancellation of the deficiency income tax liability assessed against petitioner for calendar year (**CY**) 2014 as ruled in the Decision of 20 September 2024[3] (**assailed Decision**). The dispositive part states –

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1 Division Docket, Volume II, pp. 1290-1308.
2 Id., pp. 1310-1325.
3 Id., pp. 1256-1289.

> ...
>
> **WHEREFORE,** premises considered, the instant Petition for Review filed by petitioner DMCI Holdings, Inc. on 02 February 2022 is hereby **GRANTED.** Finding that petitioner has no more deficiency income tax liability for calendar year 2014, the Formal Letter of Demand dated 01 September 2020 and the Final Decision on Disputed Assessment dated 27 December 2021 are **CANCELLED** and **SET ASIDE.**
>
> Accordingly, respondent Commissioner of Internal Revenue or any person duly acting on his or her behalf is **ENJOINED** and **PROHIBITED** from collecting the tax deficiency amount against petitioner.
>
> **SO ORDERED.**
>
> ...

In the MR, respondent argues that the Court erred in using the taxable loss as the base amount for the computation of the deficiency assessment. He or she argues that it is correct to use zero (0) as the starting taxable base as the net loss that became part of the Net Operating Loss Carry Over (**NOLCO**) may not be claimed as a deduction from the year where it originated.

Respondent adds that the nature of the NOLCO is akin to the irrevocability nature of Creditable Withholding Tax (**CWT**) under Section 76[4] of the National Internal Revenue Code (**NIRC**) of 1997, as amended. Thus, when petitioner opted to carry-over the NOLCO to the succeeding years, it ought to be barred from using the same for CY 2014 to prevent double benefit to the taxpayer.

Moreover, citing the case of *Bureau of Internal Revenue v. Court of Appeals, et al.*[5], respondent avers that even the Supreme Court permitted the government in using the expenditure method (like in the instant case) in the conduct of its audit.

As for the disallowed prior period expenses of ₱1,279,664.60, respondent maintains that the same should be upheld since petitioner failed to provide the necessary invoices and official receipts (**ORs**) to prove that these expenses were incurred in relation to the revenues

[4] **SEC. 76.** - *Final Adjustment Return.* – ...
[5] G.R. No. 197590, 24 November 2014.

earned in CY 2014. He or she adds the acknowledgment receipts (**ARs**) are not sufficient to refute the said disallowance.

Relative thereto, respondent forwards the cases of *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*[6] and *Commissioner of Internal Revenue v. Univation Motor Philippines, Inc.*[7] and submits that petitioner should not be permitted to submit documents (in support of its judicial appeal) which were not even introduced at the administrative level. Similarly, respondent opines that while this Court may conduct the proceedings as *trial de novo*, it should confine itself to whether respondent's findings are consistent with the law based solely on the documents submitted before the Bureau of Internal Revenue (**BIR**).

Lastly, on the disallowed stock issuance costs of ₱92,922,746.00, respondent claims that petitioner is not allowed to use BIR Ruling DA-(C-061) 212-08 as its basis to deduct the same as part of its ordinary and necessary costs. The BIR Rulings are effective only as between the parties to the said issuance and not to third persons such as petitioner pursuant to Revenue Memorandum Order (**RMO**) No. 09-2014.[8] With the foregoing, respondent vehemently insists on the reversal of the assailed Decision.

As opposed thereto, petitioner argues that there is no logic in respondent's claim in using zero (0) as the taxable base when clearly, based on the records, the Annual Income Tax Return (**ITR**) for CY 2014 reflected a net loss of ₱159,048,709. Petitioner adds that even this Court permits the use of net loss (as stated in the ITR) for the computation of the adjusted taxable base.[9]

Petitioner also alleges that respondent have, in several cases[10], issued assessments using the taxpayer's net loss as stated in the Annual

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6 G.R. No. 207112, 08 December 2015.

7 G.R. No. 231581, 10 April 2019.

8 Requests for Rulings with the Law and Legislative Division.

9 See *Commissioner of Internal Revenue v. BPI Capital Corporation*, CTA EB Case No. 1614, 31 July 2018.

10 Petitioner enumerates the cases of: *Shinko Electric Industries Co., Ltd. vs. Commissioner of Internal Revenue*, CTA Case No. 8213, 10 February 2014; *AR Realty Holdings Co., Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 8239, 01 April 2014; *Phil Foods Properties, Inc. vs. Commissioner of Internal Revenue*, CTA Case Nos. 8185 and 8238, 03 December 2014; *FSM Cinemas, Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 8551, 02 October 2015; *Acer Philippines, Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 8372, 31 March 2016; *UPS-Delbros Transport, Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 9063, 22 May

ITR. Thus, respondent cannot disguise the mistake he or she committed in the said computation on the pretense that BIR assessments enjoy the presumption of validity.

As regards respondent's observation that NOLCO is similar to CWT, petitioner counters that unlike CWT (which has two [2] options of whether to refund or carry-over), NOLCO is only limited to the option of carry-over. Thus, the danger that is sought to be prevented under Section 76 of the NIRC of 1997, as amended, is not present in its case.

On the disallowed expenses of ₱1,279,664.60, petitioner contends that the amount was a payment for services rendered to it in 2014 in relation to the preparation of its Annual Report for the year ended 31 December 2013 (that was subsequently filed before Securities and Exchange Commission [**SEC**]). It also emphasizes that it had substantially complied and submitted supporting documents such as ORs and ARs to show that these were incurred and paid in 2014.

Furthermore, petitioner insists that the stock issuance cost of ₱92,922,746.00 can be claimed as deductible expenses under Section 34(A)(1)(a)[11] of the NIRC of 1997, as amended. In BIR Ruling DA-(C-061) 212-08 dated 12 September 2008, BIR ruled that transaction costs (consisting of PSE listing fees, SEC registration fees, underwriter's fees, commissions, and professional fees) qualify as the issuer's ordinary and necessary expenses that are deductible for income tax purposes.

We resolve.

After an assiduous review of the parties' arguments, We do not find any novel matter or issue that warrants the modification of Our assailed Decision.

It is evident that the arguments raised in the MR are mere rehash of those raised in CIR's Answer and Memorandum which were fully taken into consideration in passing the assailed Decision. However, for

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2018; *Viricson Corporation vs. Commissioner of Internal Revenue*, CTA EB Case No. 1647, 30 July 2018.

11 **SEC. 34.** *Deductions from Gross Income.* – ...
(A) *Expenses.* –
(1) *Ordinary and Necessary Trade, Business or Professional Expenses.* –
(a) *In General.* – ...

emphasis, We reiterate Our disquisition on the use of taxable base as this has the most crucial impact on the subject assessment.

In the assailed Decision, We have exhaustively explained that the use of zero (0) as taxable base results to a double reduction as respondent had seemingly disallowed all of petitioner's claimed deduction for CY 2014 *sans* any valid basis. The relevant parts provide –

> ...
>
> *First*, there is no factual basis for respondent to determine and set petitioner's taxable income *per* ITR as zero (0) when the records indicate clearly that petitioner suffered a net loss of ₱159,048,709.00.
>
> *Second*, respondent's action is bereft of any legal mooring. Section 76 of the NIRC of 1997, as amended, outlines the option of carry-over or refund of excess CWT but, unfortunately, it is inapplicable to the instant case (since there really is no option to refund the present net loss).
>
> *Third*, as petitioner argued correctly, the BIR's method of computation will result in double disallowance. To illustrate, based on the ICPA Report, petitioner arrived at a net loss of ₱159,048,709.00 in this wise –

Particulars	Amount	
Revenues:		
Dividend Income	4,869,458,060.00	
Finance Income	108,877,740.00	
Management Fee	4,200,000.00	
Gain on sale of property and equipment	692,880.00	
Pension income	298,268.00	₱4,983,526,948.00
Less: Expenses		
Salaries, wages and employee benefits	17,526,472.00	
Professional fees	15,516,847.00	
Transportation and travel	8,760,081.00	
Entertainment, amusement and recreation	5,354,662.00	
Taxes and licenses	4,546,528.00	
Advertising and promotions	4,398,057.00	
Rent	2,809,337.00	
Repairs and Maintenance	2,483,193.00	
Contribution and donation	2,013,000.00	
Depreciation	2,001,576.00	
Supplies	1,235,461.00	
Communication, light and water	1,150,100.00	
Contracted expenses	782,041.00	
Fuel and oil	777,900.00	
Miscellaneous	1,812,105.00	
Finance cost	5,263.00	
Foreign exchange loss-net	11,321,631.00	₱82,494,254.00

Income before income tax		₱4,901,032,694.00
Add: Non-deductible expenses		
Entertainment, amusement or recreation	5,312,662.00	
Others	5,864,481.00	11,177,143.00
Total Income		₱4,912,209,837.00
Less: Non-taxable income and income subjected to final withholding tax		
Dividend Income	4,869,458,060.00	
Interest Income	108,877,740.00	4,978,335,800.00
Net Loss		**(₱66,125,963.00)**
Less: Stock Issuance Costs		92,922,746.00
Net Operating Loss Carry Over (NOLCO)		**(₱159,048,709.00)**

From the foregoing, petitioner claimed the stock issuance costs of ₱92,922,746.00 as part of its other deductions, thus arriving at the net loss of ₱159,048,709.00.

Assuming We uphold the disallowance of the stock issuance costs using the actual net loss as the taxable income *per* ITR, the disallowed stock issuance costs would only decrease petitioner's claimed expenses, thus, reducing the amount of net loss to ₱66,125,963.00. Nonetheless, it will not result into any taxable income that will be assessed for IT deficiency. On the contrary, using respondent's method, the same shall derive a taxable income equivalent to the amount of the stock issuance costs of ₱92,922,746.00 and will result in a deficiency IT liability of ₱27,876,823.80. This tax liability is expectedly arrived at since respondent used zero (0) as the tax base, and again deduct the same expense based on the finding of his or her disallowance. However, in this method, respondent had seemingly disallowed all the expenses that petitioner had claimed as deductions for CY 2014 without any evidence to support its action. Simply put, this transgresses petitioner's right to due process.

In the case of *Spouses Emmanuel D. Pacquiao and Jinkee J. Pacquiao v. The Court of Tax Appeals-First Division, et al.*, the Supreme Court ruled emphatically that a taxpayer should be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment is void. Nothing is more settled but that an assessment, in order to stand judicial scrutiny, must be based on facts. **The presumption of the correctness of an assessment, being a mere presumption, cannot be made to rest on another presumption**. Here, based on the records, respondent has no factual evidence to prove or at least bolster the disallowances of the previously claimed deductions for CY 2014.

In view of the above circumstances, We could not uphold respondent's starting or reckoning point for the assessment. Instead, We use the net loss *per* Annual ITR for CY 2014 of ₱159,048,709.00."[12]

[12] Citations omitted, emphasis and italics in the original text.

...

As for the disallowed prior period expenses of ₱1,279,664.60 and disallowed stock issuance costs of ₱92,922,746.00, although We have upheld the said findings in the assailed Decision, We still determined that there is no deficiency tax liability to speak of –

...

En totale, the adjusted IT assessment is presented in this manner:

Particulars	**Amount**	
Net taxable income (loss) *per* ITR for CY 2014		(₱159,048,709.00)
Add:		
Disallowed prior period expenses	1,034,597.04	
Non-deductible donation	50,000.00	
Disallowed depreciation expense	700,908.34	
Disallowed stock issuance cost	92,922,746.00	94,708,251.38
Adjusted Taxable Income (Loss) for CY 2014		**(₱64,340,457.62)**
Income Tax Due (30%)		-

As shown, the total disallowance of ₱94,708,251.38 (previously deducted as expenses) is added back to the net loss, resulting thus in a decreased net loss of ₱64,340,457.62 for CY 2014. In any case, as it appears from petitioner's AFS for CY 2017 that it did not utilize the NOLCO arising from CY 2014, no tax benefit has accrued to it or may accrue to it with the reduction of its net loss in CY 2014.

...

WHEREFORE, the foregoing premises considered, respondent Commissioner of Internal Revenue's "Motion for Reconsideration (Re: Decision dated 20 September 2024)" filed on 09 October 2024 is hereby **DENIED** for lack of merit.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ON LEAVE
ROMAN G. DEL ROSARIO
Presiding Justice

LANEE S. CUI-DAVID
Associate Justice