REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

SOLID VIDEO CORPORATION, Petitioner,	**CTA CASE NO. 9051**
	Members:
- versus -	**FABON-VICTORINO,** *and* **RINGPIS-LIBAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: NOV 14 2019 2:26 p.m.

x -x

RESOLUTION

RINGPIS-LIBAN, *J*.:

For this Court's resolution are the following:

1. petitioner's **Motion for Partial Reconsideration (Re: Amended Decision dated May 02, 2019)**, filed on May 24, 2019, without respondent's comment despite notice as per Records Verification dated August 5, 2019; and

2. respondent's **Motion for Reconsideration**, filed through registered mail on May 24, 2019, and received by this Court on May 30, 2019, with petitioner's **Comment/Opposition (Re: Respondents' Motion for Reconsideration dated May 24, 2019)**, filed on July 24, 2019.

Both parties seek reconsideration of the Court's Amended Decision dated May 2, 2019 (assailed Decision)[1], the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, petitioner's **Motion for Partial Reconsideration (Re: Decision dated**

[1] Docket vol. 3, pp. 1213-1232.

October 25, 2018) is **PARTIALLY GRANTED**. Accordingly, the Decision dated October 25, 2018, is hereby amended to read as follows:

> "**WHEREFORE**, premises considered, the instant Petition for Review is **PARTIALLY GRANTED**. The assessments issued by respondent against petitioner covering deficiency income tax and VAT for CY 2010 are **AFFIRMED WITH MODIFICATIONS**. Accordingly, petitioner is **ORDERED TO PAY** respondent the aggregate amount of **TWO MILLION FIVE HUNDRED FIVE THOUSAND SIX HUNDRED EIGHTY-THREE PESOS AND SIXTY-NINE CENTAVOS (P2,505,683.69)**, inclusive of the twenty-five percent (25%) surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, and deficiency and delinquency interests imposed under Sections 249(B) and (C) of the same Code, until December 31, 2017, computed as follows:

	Income Tax	VAT	Total
Basic Tax Due	₱ 590,891.50	₱ 88,033.64	₱ 678,925.14
Add: 25% Surcharge	147,722.87	22,008.41	169,371.28
20% Deficiency Interest from April 16, 2011 to May 15, 2015 *[₱590,891.50 x 20% x 1,491/365 days]*	482,750.26	-	482,750.26
20% Deficiency Interest from Jan. 26, 2011 to May 15, 2015 *[₱88,033.64 x 20% x 1,571/365 days]*		75,781.29	75,781.29
Total Amount Due, May 15, 2015	**₱ 1,221,364.63**	**₱ 185,823.34**	**₱ 1,407,187.97**
Add: 20% Deficiency Interest from May 16, 2015 to Dec. 31, 2017 *[₱590,891.50 x 20% x 961/365 days]*	311,148.89		311,148.89
[₱88,033.64 x 20% x 961/365 days]		46,356.34	46,356.34
20% Delinquency Interest from May 16, 2015 to Dec. 31, 2017 *[₱1,221,364.63 x 20% x 961/365 days]*	643,140.50		643,140.50
[₱185,823.34 x 20% x 961/365 days]		97,849.99	97,849.99
Total Amount Due, December 31, 2017	**₱2,175,654.02**	**₱330,029.67**	**₱2,505,683.69**

> In addition, petitioner is **ORDERED TO PAY** respondent delinquency interest at the rate of twelve percent (12%) on the total amount due as of May 15, 2015 in the amount of **₱1,407,187.97** as determined above, computed from January 1, 2018 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended by Republic Act (RA) No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN), as implemented by RR No. 21-2018.

SO ORDERED."

SO ORDERED."[2]

Petitioner's Motion for Partial Reconsideration

Petitioner assails the Amended Decision on the following grounds:

I. The Court erred in its conclusion that petitioner had "undeclared service income" in the amount of Php1,324,742.53 in CY 2010;

II. Assuming arguendo that there is basis for respondent's deficiency tax assessments, petitioner respectfully moves this Court to reconsider the manner of computation of the deficiency and delinquency interest due on petitioner's deficiency taxes; and

III. The imposition of a 25% surcharge violated petitioner's right to due process.

Petitioner's Motion for Partial Reconsideration is bereft of merit.

After a careful evaluation of the arguments raised by petitioner in its Motion for Partial Reconsideration, the Court finds that the same are a mere rehash of its arguments raised in its previous Motion for Reconsideration, which have already been thoroughly discussed and addressed in the assailed Amended Decision.

Thus, the Court reiterates its findings that petitioner has undeclared service income amounting to ₱1,324,742.53 pertaining to sales of goods erroneously considered as sales of services by the BIR, to wit:

> "• *Sales of goods erroneously considered as sales of services by the BIR - ₱1,642,308.54*
>
> In the assailed Decision, his Court cancelled the deficiency income tax assessment to the extent of ₱325,004.35 since only the said amount pertains to sales of goods which were verified to have been included in the service income reflected per BIR Forms No. 2307 upon which the respondent's assessment was based.

[2] Docket vol. 3, pp. 1230-1231.

Consequently, the assessed undeclared service income of ₱1,642,308.54, out of the ₱1,967,312.89 claimed as pertaining to sales of goods erroneously considered as sales of services by respondent remains.

Petitioner observed that the Court only considered the sales of goods as valid if the amount of sales shown in the BIR Form No. 2307 matches the total sales of goods and services reported in its books of accounts for CY 2010. It posits that the Court erred in disregarding the other sales of goods merely because there were discrepancies between the amount of income payments that were subjected to creditable withholding tax (CWT) per BIR Forms No. 2307 and the amount of sales recorded in petitioner's books of accounts for CY 2010.

Petitioner points out that the amounts shown in the BIR Forms No. 2307 and the amounts of sales recorded in its books do not always match due to timing difference. It avers that it uses the accrual method in recording its revenues for income tax purposes, while its withholding agents use the cash method for the withholding of CWT on their income payments. Petitioner allegedly records the sales of goods in its books upon issuance of sales invoice, regardless of whether payment has been made whereas its withholding agents withhold the CWT and issue the CWT Certificate upon payment. Thus, it submits that such difference in accounting periods results to discrepancies between the amounts reported in the ITR and the amounts reflected in the BIR Forms No. 2307.

Petitioner further alleges that notwithstanding the discrepancies, it can be gleaned that the amount of ₱1,651,156.49 pertains to sales of goods while the balance pertains to sales of services. In any case, the ICPA was able to verify that the sales of goods and services in the amount of ₱1,967,312.89 was reported as part of petitioner's gross income in ITR and was, therefore, subjected to 30% regular corporate income tax in CY 2010.

However, petitioner's assertion is unfounded. It only stated that the discrepancies were due to timing difference but failed to establish the veracity of the same. Merely stating a reason without giving proof to that effect does not hold water. Mere allegation and speculation is not evidence, and is not equivalent to proof.

Even if the ICPA was able to determine that the amount of ₱1,651,156.49 refers to sales of goods, out of the ₱1,967,312.89 subject sales reported in petitioner's ITR, still, petitioner failed to prove that the entire amount is included in respondent's computation of the assessed income. Thus this Court reiterates its findings in the assailed Decision, to wit:

> "Based on this Court's review and validation, of the ₱1,651,156.49 sales of goods, only the amount of ₱325,004.35 was verified to have been included in the service income reflected per BIR Forms No. 2307 upon which the respondent's assessment was based, as shown below: xxx
>
> The Court observed that the ₱31,577.32 sale to Cardinal Santos Medical Center has no corresponding BIR Form No. 2307 and was not included in respondent's computation. Moreover, the remaining ₱1,294,574.82 (₱1,651,156.49 less ₱325,004.35 and ₱31,577.32) sales of goods cannot be ascertained as forming part of the amounts indicated in the BIR Forms No. 2307, hence, it cannot be determined whether the same were actually part of the assessed income.
>
> In fine, the Court cancels the deficiency income tax assessment only on the amount of ₱325,004.35 representing sales of goods erroneously considered as sales of services per BIR Forms No. 2307."

Accordingly, the assessed service income in the amount of ₱1,642,308.54 (₱1,967,312.89 less ₱325,004.35) shall remain.

In sum, the assessed undeclared service income is reduced to ₱1,324,742.53, computed as follows:

Undeclared service income per assailed Decision	₱9,872,088.83
Less: Reconsidered sales of goods erroneously considered by petitioner's customer as sales of services	8,547,346.30
Undeclared Service Income as Adjusted	**₱1,324,742.53**

Thus, the Court finds no merit in petitioner's Motion for Partial Reconsideration.

Respondent's Motion for Reconsideration

Respondent argues that the exhibits of petitioner should not have been given any probative value for being hearsay evidence. He contends that any probative weight given to the testimony of petitioner's witness, Ms. Irenea Caisip-Torres, should have been limited only to those facts which she has personal knowledge.

Respondent contends that petitioner failed to present the signatories of its returns or any person who had a hand in the preparation thereof. Thus, he submits that any other attempt on the part of petitioner to pass as absolute truth the contents of the returns shall be considered hearsay evidence.

On the other hand, petitioner argues that respondent's motion is a *pro forma* motion for reconsideration as it failed to point out the specific findings of the Court which are allegedly not supported by evidence as required under Section 2, Rule 37 of the Rules of Court. Thus, it avers that respondent's motion for reconsideration should be treated as a mere scrap of paper that does not toll the reglementary period of appeal.

Moreover, petitioner contends that there is no merit to respondent's allegation that the contents of petitioner's returns are "hearsay" because petitioner failed to present "the signatories of the subject returns or any of the person who had a hand in the preparation thereof."

Petitioner submits that respondent's argument are clearly misplaced and without basis in fact and law because respondent failed to explain how petitioner's tax returns have "erroneously affected" the Court's findings in the Amended Decision. It also contends that even if respondent was able to explain the causal relation between petitioner's tax returns and the Amended Decision, respondent failed to identify which particular returns should be considered hearsay evidence. Petitioner also states that respondent's argument is purely speculative because it is anchored on respondent's assumption that Ms. Caisip-Torres did not have a hand in the preparation of petitioner's tax returns. Lastly, petitioner alleges that it was able to establish the authenticity and due execution of its tax returns in accordance with Section 20 of Rule 132 of the Rules of Court.

Respondent's Motion for Reconsideration is bereft of merit.

Paragraph 2 of Section 2 of Rule 37 of the Rules of Court provides:

> "A motion for reconsideration shall point out specifically the findings or conclusions of the judgment of final order which are not supported by the evidence or which are contrary to law, making express reference to the testimonial or documentary evidence or to the provisions of law alleged to be contrary to such findings or conclusions."

The Court notes that respondent's motion for reconsideration relies mainly on a general and sweeping statement that any probative weight given to the testimony of Ms. Caisip-Torres should have been limited only to those facts which she has personal knowledge. While, respondent pointed out specifically which exhibits should be excluded under the hearsay rule, he failed to show how the exclusion of these documentary evidence affect the findings of the Court in the assailed Amended Decision.

Moreover, the Court finds no merit to respondent's argument that petitioner's returns should be considered hearsay because petitioner failed to present "the signatories of the subject returns or any person who had a hand in the preparation thereof".

First, it should be recalled that respondent failed to comment in petitioner's Formal Offer of Evidence. He also failed to question the competence of Ms. Caisip-Torres regarding the contents of the subject returns during the trial. All objections to petitioner's evidence should have been raised during trial when the opportunity presented itself. Respondent failed to do so until now.

Second, petitioner's witness, Ms. Caisip-Torres, is competent to testify on the due execution and authenticity of the returns as she had a hand in their preparation, as provided in Section of Rules 132 of the Rules of Court, which reads:

> "**Section 20.** *Proof of private document.* — Before any private document offered as authentic is received in evidence, its due execution and authenticity must be proved either:
>
> (a) By anyone who saw the document executed or written; or
>
> (b) By evidence of the genuineness of the signature or handwriting of the maker.
>
> Any other private document need only be identified as that which it is claimed to be."

In the Sworn Statement of Ms. Caisip-Torres, she testified that she supervised the preparation and review of these returns and that she had custody thereof, to wit:

> "**Q3. What are your duties and responsibilities as Finance & Admin. Manager of the Company?**
>
> A: As Finance & Admin. Manager, I am responsible for the entire administrative, finance and accounting operations of the Company, including the tax compliance aspect of the business. In this regard, I oversee the proper recording of transactions in the Company's books of accounts. I also

> **supervise the preparation of the Company's** financial reports and **tax returns, and review the same before filing with government agencies such as the Bureau of Internal Revenue (BIR)** and the Securities and Exchange Commission (SEC). Furthermore, **I have custody of, and am responsible for the safekeeping of**, the Company's tax and accounting records, including **copies of the Company's tax returns**."[3] (*Emphasis supplied*)

Ms. Caisip-Torres also identified these returns in her Sworn Statement, to wit:

> "***III. Tax Returns***
>
> **Q31. Ms. Torres, you earlier mentioned that you have custody of the Company's tax and accounting records, including copies of the Company's tax returns. Is that correct?**
>
> A: Yes, that is correct.
>
> **Q32. In this regard, will you be able to identify the tax returns of the Company for CY 2010?**
>
> A: Yes.
>
> **Q33. Ms. Torres, I am showing you a document captioned as Annual Income Tax Return (ITR) marked as Exhibit "P-9." with sub-markings "P-9-1" and "P-9-2." Can you please identify this document?**
>
> A: Exhibit "P-9" is the Company's Annual ITR [BIR Form No.1702) for CY 2010, which was filed with the BIR through the Electronic Filing and Payment System [EFPS] on April 15, 2011, with Filing Reference No. 121100004691949.
>
> Exhibit "P-9-1" is the Company's manually-filed Annual ITR (BIR Form No. 1702) for CY 2010, stamped as received by the BIR on April 29, 2011.
>
> Exhibit "P-9-2" is the Company's audited financial statements for CY 2010, stamped as received by the BIR on April 29, 2011.

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[3] Exhibit "P-14", Sworn Statement of Ms. Irenea Caisip-Torres to Questions Propounded by Atty. Mardomeo N. Raymundo, Jr., docket vol. 1, p. 366.

Q34. On page 2 of the manually-filed Annual ITR (Exhibit "P-9-1") appears two signatures above the printed names Vincent S. Lim and Ma. Cecilia C. Mison. Can you please identify these signatures?

A: Yes. The signature on the left hand side belongs to the Company's SVP-Chief Financing Officer, Mr. Vincent Lim, while the signature on the right hand side belongs to the Company's General Manager, Ms. Ma. Ceclia C. Mison.

Q35. How did you become familiar with the signatures of Mr. Lim and Ms. Mison?

A: I became familiar with Mr. Lim's and Ms. Mison's signatures because I often see them sign documents.

Q36. If shown copies of the Company's Quarterly VAT Returns for CY 2010, would you be able to identify the same?

A: Yes.

Q37. Ms. Torres, I am showing you four documents which were pre-marked as **Exhibits "P-10" "P-11" "P-12" and "P-13"**. What is the relation of these documents to your earlier statement?

A: These are the Quarterly VAT Returns of the Company for CY 2010, particularly:"[4]

Based on the foregoing, it is clear that petitioner's witness was able to sufficiently identify the returns alleged by respondent to be hearsay evidence.

Hence, the Court finds no cogent reason to reverse or modify the assailed Amended Decision promulgated on May 2, 2019.

WHEREFORE, premises considered, petitioner's **Motion for Partial Reconsideration (Re: Amended Decision dated May 02, 2019)** and respondent's **Motion for Reconsideration** are **DENIED** for lack of merit.

[4] Exhibit "P-14", Sworn Statement of Ms. Irenea Caisip-Torres to Questions Propounded by Atty. Mardomeo N. Raymundo, Jr., docket vol. 1, pp. 373-374.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice