20-000015-0075

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

CTA CASE NO. 10247

TYC TRADING & MANUFACTURING PHILIPPINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

NOTICE OF RESOLUTION

To:

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

ATTY. SHERYL P. CACAYURAN
ATTY. APRILYN T. POBAR
Bureau of Internal Revenue - Revenue Region No. 8B, South NCR
2nd Floor, Legal Division, BIR Regional Office Building
No. 313 Sen. Gil Puyat Avenue
Makati City

PAR BENIGNO LAW FIRM (BENLAW)
Unit 1905, 19th Floor, One Park Drive
11th Drive corner 9th Avenue
Bonifacio Global City
1635 Taguig City

GREETINGS:

You are hereby notified by these presents that on **August 5, 2024,** a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **August 6, 2024.**

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

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

TYC TRADING & MANUFACTURING PHILIPPINES, INC.,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 10247

Members:

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

Promulgated:

AUG 0 5 2024 ; 2:20PM

x- x

R E S O L U T I O N

MANAHAN, *J.:*

For this Court's resolution is respondent's *Motion for Partial Reconsideration (of the Decision dated 18 April 2024)* posted on May 10, 2024 and received by the Court on May 20, 2024, with petitioner's *Comment/Opposition (Re: Respondents' Partial Motion for Reconsideration)* filed on May 27, 2024.

Respondent prays for the partial modification of the Court's Decision dated April 18, 2024, the dispositive portion of which, reads as follows:

> "**WHEREFORE**, in view of the foregoing, the instant Petition for Review is **PARTIALLY GRANTED**. The assessment issued by respondent against petitioner for TY 2015 covering the deficiency VAT and WTC are **CANCELLED** and **SET ASIDE**, while the assessments for deficiency **Income Tax** and **EWT** are **UPHELD**, but with modification.
>
> Accordingly, petitioner is **ORDERED TO PAY** respondent the amount of **₱1,686,035.63**, representing deficiency **Income Tax** and **EWT** for TY 2015, inclusive of surcharge and deficiency interest imposed under Sections 248(A)(3) and 249(B) of the 1997 NIRC, as amended by RA No. 10963, also known as Tax Reform for Acceleration and

> Inclusion ("TRAIN") Law, respectively, computed until January 21, 2019, as shown below:
>
> xxx xxx xxx
>
> In addition, petitioner is **ORDERED TO PAY** respondent delinquency interest at the rate of twelve percent (12%) per annum on the total amount due of **₱1,686,035.63** as of January 21, 2019, as determined above, or equivalent to ₱554.31 per day, computed from January 22, 2019 until full payment thereof pursuant to Section 249(C) of the 1997 NIRC, as amended by RA No. 10963, also known as TRAIN Law, as implemented by RR No. 21-2018.
>
> **SO ORDERED**."

Respondent requests the Court to re-evaluate and revisit the assailed Decision on the following grounds:

1, The extraordinary period of ten (10) years should be applied in the assessment of petitioner's deficiency value-added tax (VAT), expanded withholding tax (EWT) and withholding tax on compensation (WTC) for taxable year (TY) 2015;

2. Petitioner failed to substantiate its purchases from Manila Hemp Trading Corporation and Catanduanes Agro-Business and Development Corporation;

3. Petitioner failed to prove that professional fees it incurred were paid to duly registered general professional partnerships (GPPs); and,

4. The Bank Certification on Dollar Remittance for taxable year 2015 dated May 17, 2016 is hearsay evidence, thus, has no probative value.

In its *Comment/Opposition*, petitioner asserts that the right of respondent to assess for deficiency VAT and WTC for TY 2015 has already prescribed and that the Court correctly applied the three (3)-year instead of the ten (10)-year period to assess.

As to the factual allegations on non-substantiation of purchases and payments made, petitioner acknowledges that the Court has reviewed and examined the documents presented during trial and need not belabor to do it again.

Petitioner also contravenes the contention of respondent and argues that the bank passbooks, application and declaration for remittance, bank certifications and debit memos are sufficient to prove that its export sales were paid for in foreign currencies and duly remitted to the Philippines. Contrary to the claim of respondent, petitioner insists that the hearsay rule is not applicable, hence, it need not present the bank officers in Court.

RULING OF THE COURT

We first resolve the timeliness of the filing of respondent's Motion for Partial Reconsideration.

On April 18, 2024, the Court issued a Decision in the above-captioned case, partially granting petitioner's Petition for Review. A copy of the Decision was received by respondent on April 25, 2024.[1] Pursuant to Section 1 of Rule 15 of the Revised Rules of the Court of Tax Appeals (RRCTA), a party dissatisfied with a decision of the Court must file a motion for reconsideration or new trial within fifteen (15) days from receipt thereof, and we quote:

> **Rule 15**
>
> **Motion for Reconsideration or New Trial**
>
> **Section 1**. *Who may and when to file motion.* – Any aggrieved party may seek a reconsideration or new trial of any decision, resolution or order of the Court by filing a motion for reconsideration or new trial within fifteen days from the date of receipt of notice of the decision, resolution or order of the Court in question.

Counting from receipt of the Decision on April 25, 2024, respondent had until May 10, 2024 to file his Motion for Reconsideration.

Records show that respondent posted the present *Motion for Partial Reconsideration* on May 10, 2024 which is within the

---

[1] Court Docket, Volume II, page 717.

fifteen (15)-day period prescribed under the afore-quoted Section 1, Rule 15 of the RRCTA, thus, timely filed.

As to the substantive merits of respondent's motion, the Court finds no compelling reason to modify or reverse the assailed Decision.

This Court finds the same arguments submitted by respondent that have already been weighed, considered and resolved in the assailed Decision, particularly on the factual allegations concerning petitioner's alleged failure to substantiate its purchases from Manila Hemp Trading Corporation and Catanduanes-Agro Business and Development Corporation; that professional fees incurred were paid to duly registered general GPPs; and, the lack of probative value of the Bank Certification on Dollar Remittance. The Court conducted an astute examination of the evidence presented by both parties and on that basis, formed a conclusion found in various portions of the assailed Decision. Absent any convincing arguments and empirical evidence to contravene these findings, there is nothing left for the Court to reconsider. However, for emphasis, we reiterate the Court's conclusion on the non-application of the ten (10)-year extraordinary period to assess the alleged deficiency taxes of petitioner.

Respondent insists that the Court should have applied the ten (10)-year period in the assessment of petitioner's deficiency taxes for TY 2015 and not the three (3)-year period because of the presumption of falsity of tax returns considering that more than thirty percent (30%) of petitioner's receipts were not subjected to VAT or not properly reported as sales in the quarterly VAT returns.

This Court rules that such factual allegation should have been communicated to the taxpayer by respondent. The allegation of fraud and/or falsity justifying the application of the extraordinary period to assess under Section 222 (a) of the 1997 National Internal Revenue Code (NIRC), as amended, should have been indicated in the assessment notice as ruled by the

Supreme Court in the case of *Commissioner of Internal Revenue vs. Fitness by Design,*[2] and we quote:

> "xxx xxx xxx Fraud entails corresponding sanctions under the tax law. Therefore, it is indispensable for the Commissioner of Internal Revenue to include the basis for its allegations of fraud in the assessment notice."

The records show that neither the Final Assessment Notices nor the Final Decision on Disputed Assessment (FDDA) provide that the ten (10)-year period shall apply because of the existence of fraud and/or falsity in this case. We subscribe to the Court's conclusion in the assailed Decision when it stated, thus:

> "xxx xxx xxx We therefore find that the extraordinary prescriptive period cannot be made to apply to petitioner as it was not sufficiently informed that the extraordinary period laid down in Section 222 of the 1997 NIRC, as amended, would apply."

The Court finds no cogent reason to reverse the conclusions reached in the assailed Decision dated April 18, 2024.

WHEREFORE, premises considered, respondent's *Motion for Partial Reconsideration (of the Decision dated 18 April 2024)* is hereby **DENIED**.

SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

---

[2] G.R. No. 215957, November 9, 2016.

(on leave)
MARIAN IVY F. REYES-FAJARDO
Associate Justice