REPUBLIC OF THE PHILIPPINES
# *Court of Tax Appeals*
QUEZON CITY

## *Third Division*

**HERBALIFE INTERNATIONAL PHILIPPINES, INC.,**
*Petitioner,*

- *versus* -

**COMMISSIONER OF INTERNAL REVENUE,**
*Respondent.*

**CTA CASE NO. 8478**

Members:
***Bautista,*** *Chairperson*
***Fabon-Victorino,*** *and*
***Ringpis-Liban, JJ.***

Promulgated:
MAR 14 2017
11:18 a.m.

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# *RESOLUTION*

*BAUTISTA, J:*

For resolution are the following:

1. Petitioner's Motion for Partial Reconsideration (To: Decision dated November 3, 2016) ("Petitioner's MPR") filed by registered mail on November 23, 2016, *sans* comment from respondent despite notice; and

2. Respondent's Motion for Partial Reconsideration ("Respondent's MPR") filed on December 6, 2016; with petitioner's Comment/Opposition (To: Motion for Partial Reconsideration dated December 5, 2016) ("Comment") filed by registered mail on January 19, 2017.

On November 3, 2016, the Court promulgated a Decision[1] ("Assailed Decision"), the dispositive portion of which states:[2]

> **WHEREFORE,** premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. The assessment

[1] *Records, Vol. 3, CTA Case No. 8478,* pp. 1304-1358.
[2] *Id.,* pp. 1357-1358.

issued by respondent for CY 2007 covering deficiency IT, VAT, EWT, WTC, FWT, FWT-VAT, DST and penalties is hereby **UPHELD WITH MODIFICATIONS.**

Accordingly, petitioner is hereby **ORDERED TO PAY** the total amount of **Eleven Million Two Hundred Seventy Five Thousand Two Hundred Eighty-Eight and 19/100 Pesos (Php11,275,288.19)**, inclusive of the 25% surcharge imposed under *Section 248(A)(3) of the 1997 NIRC*, as amended, broken down as follows:

| TAX TYPE | | BASIC TAX | | 25% SURCHARGE | | TOTAL |
|---|---|---|---|---|---|---|
| Income Tax | Php | 3,957,558.71 | Php | 989,389.68 | Php | 4,946,948.39 |
| Value Added Tax | | 84,338.10 | | 21,084.53 | | 105,422.63 |
| Expanded Withholding Tax | | 47,605.95 | | 11,901.49 | | 59,507.44 |
| Withholding Tax on Compensation | | 60,789.04 | | 15,197.26 | | 75,986.30 |
| Final Withholding Tax | | 1,570,668.71 | | 392,667.18 | | 1,963,335.89 |
| Final Withholding of VAT | | 3,286,658.04 | | 821,664.51 | | 4,108,322.55 |
| Documentary Stamp Tax | | 10,212.00 | | 2,553.00 | | 12,765.00 |
| **Total** | **Php** | **9,017,830.56** | **Php** | **2,254,457.64** | **Php** | **11,272,288.19** |
| Penalty | | | | | | 3,000.00 |
| GRAND TOTAL | | | | | **PHP** | **11,275,288.19** |

In addition, petitioner is also **ORDERED TO PAY**:

1. Deficiency interest at the rate of twenty percent (20%) *per* annum on the basic deficiency IT, VAT, EWT, WTC, FWT, FWT-VAT, DST, computed from dates indicated below until full payment thereof pursuant to *Section 249(B) of the 1997 NIRC*, as amended:

| TAX TYPE | | BASIC TAX | DEFICIENCY INTEREST COMPUTED FROM |
|---|---|---|---|
| Income Tax | Php | 3,957,558.71 | April 16, 2008 |
| Value Added Tax | | 84,338.10 | January 26, 2008 |
| Expanded Withholding Tax | | 47,605.95 | January 16, 2008 |
| Withholding Tax on Compensation | | 60,789.04 | January 16, 2008 |
| Final Withholding Tax | | 1,570,668.71 | January 16, 2008 |
| Final Withholding of VAT | | 3,286,658.04 | January 11, 2008 |
| Documentary Stamp Tax | | 10,212.00 | January 06, 2008 |

2. Delinquency interest at the rate of twenty percent (20%) per annum on the amount of Php11,272,288.19, representing the basic deficiency IT, VAT, EWT, WTC, FWT, FWT-VAT, DST, and the corresponding twenty five percent (25%) surcharge; and the twenty percent (20%) deficiency interest which have accrued as aforestated in Item (1), computed from August 27, 2011 until full payment thereof pursuant to Section 249(C) of the 1997 NIRC, as amended.

**SO ORDERED.**

**Petitioner's MPR**

In its MPR, petitioner states that the Court misappreciated its evidence substantiating the following items: (1) Payments to Affiliates (Management Fees) - Php2,463,604.53; (2) Interest Expense - Php223,236.10; and (3) Final Withholding VAT - Php3,286,658.04; thus, it prays that the deficiency assessment based on these items be reconsidered and nullified.

Petitioner insists that the payments to management services to Herbalife Singapore Pte. Ltd. ("Herbalife Singapore") were properly substantiated; that the Court failed to state the reason why it is upholding the assessment for the additional five percent (5%) on its interest expenses; that in failing to do so, the Court failed to pass upon petitioner's argument for cancellation; and that the evidence it submitted were sufficient to show that the production bonuses and royalty overrides were received outside the Philippines.

**Respondent's MPR**

On the other hand, respondent want the Court "to review, re-evaluate, revisit and take a second look on its Decision date November 3, 2016 because it erred in partially granting the Petition for Review" insofar as it partly cancelled and set aside certain assessments issued to petitioner. Respondent anchors his MPR on petitioner's failure to submit evidence that would support its claim that the assessment was erroneous.

Respondent also maintains that assessments made by tax examiners should be given full weight and credit in the absence of proof submitted by the taxpayer to the contrary; and that tax assessments by tax examiners are presumed correct and made in good faith; and that all presumptions are in favor of the correctness of tax assessments.

In its Comment, petitioner counter-argues that the issues raised in Respondent's MPR are identical arguments he raised in the resolution of the Petition for Review, which have been passed upon by the Court in the Assailed Decision; that respondent's MPR primarily relies on the presumption of correctness of the respondent's deficiency assessment; and that it failed to set forth with particularity the errors of fact and law in the Assailed Decision that warrants the reconsideration and reversal of the same; that it should be denied for being a *pro forma* motion.

## The Ruling of the Court

Anent petitioner's MPR, the Court *En Banc* holds that the same is *pro forma,* hence, it deserves scant consideration.

A perusal of petitioner's MPR reveal that it did not set the date, time and place of hearing on the motion which is required under *Sections 4* and *5, Rule 15* of the *1997 Rules of Civil Procedure.*

*Sections 4* and *5, Rule 15* of the *1997 Rules of Civil Procedure* read as follows:

> **Section 4.** *Hearing of motion.* — Except for motions which the court may act upon without prejudicing the rights of the adverse party, <u>every written motion shall be set for hearing by the applicant.</u>[3]
>
> Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice.
>
> **Section 5.** *Notice of hearing.* — The notice of hearing shall be addressed to all parties concerned, and shall specify the time and date of the hearing which must not be later than ten (10) days after the filing of the motion.

Pursuant to the above-quoted provisions, every written motion should have a notice of hearing addressed to all parties concerned

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[3] Underscoring ours.

which shall specify the time and date of hearing. Petitioner's MPR is totally lacking a notice of hearing.

A motion which does not meet the requirements of *Sections 4* and *5, Rule 15 of the 1997 Rules of Civil Procedure* is considered *pro forma;* it is nothing but a worthless piece of paper which the clerk has no right to receive and the court has no authority to act upon.[4] The service of a copy of a motion containing notice of the time and place of hearing of said motion is a <u>mandatory requirement</u> <u>and the failure of the movant to comply with the said requirements renders his motion fatally defective</u>.[5] Without such notice, the motion is *pro forma* which does not suspend the running of the period to appeal,[6] which therefore made the Assailed Decision final and executory for petitioner's failure to file the appeal.

Since petitioner's MPR does not contain a notice of hearing, the motion is nothing but a useless scrap of paper, and should be denied.

Anent respondent's MPR, the Court notes that the arguments raised by the respondent in his MPR are the same arguments he raised in his Answer. Moreover, these are also the reasons given in the Details of Discrepancies that was attached to the Formal Assessment Notice[7] dated August 26, 2011, and the same have been considered and exhaustively discussed by the Court in the Assailed Decision.

The Court has carefully scrutinized all the pieces of evidence that were submitted to it; it has discussed point by point the assessments made *vis-à-vis* the supporting documents submitted by the petitioner. On the other hand, in questioning the Assailed Decision, respondent failed to point out the specific findings or conclusions in the Assailed Decision which are not supported by evidence or which are contrary to law, neither did respondent's MPR provide evidence that would convince the Court that it made an error.

Party litigants are reminded that among the ends to which a motion for reconsideration is addressed, is to convince the court that

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[4] *Pedro G. Resurreccion, et al. vs. People of the Philippines,* G.R. No. 192866, July 9, 2014, 729 SCRA 508.
[5] *Id.*
[6] *Sembrano vs. Judge Ramirez,* G.R. No. 192866, July 9, 2014, 248 Phil. 260.
[7] *Records, Box 1, Petitioner's FOE, Exhibit "A;" BIR Records, Exhibit "R-1."*

its ruling is erroneous and improper, contrary to the law or the evidence.[8] Thus, having failed to convince the court, the respondent's MPR must necessarily fail.

**WHEREFORE,** premises considered, Petitioner's Motion for Partial Reconsideration (To: Decision dated November 3, 2016) and Respondent's Motion for Partial Reconsideration are hereby **DENIED** for lack of merit. Accordingly, the Assailed Decision dated November 3, 2016 is hereby **AFFIRMED** and **UPHELD.**

**SO ORDERED.**

**LOVELL R. BAUTISTA**
Associate Justice

**WE CONCUR:**

**ESPERANZA R. FABON-VICTORINO**
Associate Justice

**MA. BELEN M. RINGPIS-LIBAN**
Associate Justice

[8] *Guerra Enterprises Company, Inc. vs. Court of First Instance of Lanao del Sur,* G.R. No. L-28310, April 17, 1970, 32 SCRA 314.