REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

FORTUNE TOBACCO CORPORATION, *Petitioner,*	CTA CASE NO. 9105 For: Assessment
-versus-	Members: DEL ROSARIO, P.J., *Chairperson* UY, and MINDARO-GRULLA, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: NOV 14 2018 · 2:30 pm

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RESOLUTION

MINDARO-GRULLA, J.:

Before the Court is a Motion for Reconsideration filed by the Commissioner of Internal Revenue (CIR)[1] seeking to set aside the Decision promulgated on August 15, 2018,[2] the dispositive portion of the assailed Decision reads:

> "**WHEREFORE**, premises considered, the assessment issued by respondent Commissioner of Internal Revenue against petitioner Fortune Tobacco Corporation for the calendar year 2009 as to Improperly Accumulated Earning Tax is hereby **CANCELLED and SET ASIDE.**
>
> **SO ORDERED."**

In his motion, the CIR insists that the existence of the syndicated loan justifying the accumulation of earnings on the

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[1] Dockets, Vol. II, filed on September 3, 2018.
[2] Dockets, Vol. II.

part of Fortune Tobacco Corporation (FTC) was raised for the first time only before this Court and not during the administrative level, thus, FTC is deemed estopped to raise the same; that FTC is liable for the improperly accumulated earnings tax (IAET) for taxable year 2009 in the amount of ₱2,602,478,844.21 for the reason that it is not among those exempted corporations to pay IAET; that it was able to declare dividends in the year 2013; that having accumulated ₱14.3 billion as standby capital for its anticipated investments, it gave an impression that there is no necessity to observe the required financial ratios indicated in the syndicated loan agreement; that FTC's ₱18 billion equities for the year ended December 31, 2009 was way below the equity it needed to retain, while its assets for the year 2009 amounting to ₱35 billion was below the assets it needed to maintain as stated in the syndicated loan agreement.

FTC filed its Opposition[3] on September 26, 2018.

The motion is bereft of merit.

As to the issue of raising an argument for the first time before this Court, it must be emphasized that Section 8 of Republic Act No. 1125 (An Act Creating the Court of Tax Appeals) provides categorically that the Court of Tax Appeals shall be a court of record and as such it is required to conduct a formal trial (*trial de novo*) where the parties must present their evidence accordingly if they desire the Court to take such evidence into consideration.[4]

Moreover, even on the assumption that the syndicated loan agreement was not presented before the administrative level, in the case of *Commissioner of Internal Revenue vs. Philippine Bank of Communications,*[5] citing the case of *Commissioner of Internal Revenue vs. Philippine Airlines, Inc.,*[6] the Court *En Banc* ruled that the failure to submit documents in support of the taxpayer's administrative claim is not fatal to the judicial claim, as judicial claims are litigated *de novo* and

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[3] *Ibid.*
[4] *Commissioner of Internal Revenue vs. Union Cement Corporation*, CTA EB Case No. 895, March 22, 2013.
[5] CTA EB Case No. 933 (CTA Case No. 7915), October 7, 2013.
[6] CTA EB Case No. 775 (CTA Case No. 7828), July 24, 2012.

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decided based on what has been presented and formally offered by the parties during the trial.

As to the CIR's argument that FTC is liable for the IAET because it is not among those exempted corporations to pay IAET, the Court had already extensively discussed the matter. Although it is not among the exempted corporations to pay IAET, it was able to substantiate fully its exemption based on other reasons, i.e., no other than R.R. 02-01 is explicit that compliance with covenants of loan agreements is considered as reasonable needs to accumulate earnings.

As to the CIR's allegation that non-declaration of dividends by FTC in year 2009 was refuted by its declaration of dividends in 2013, the Judicial Affidavit[7] of Ms. Evita M. Pantaleon, which was admitted in Court through a Resolution[8] dated November 24, 2016, exclaims that when FTC declared dividends in 2013, FTC and Philip Morris Phils. Inc. (PMPI) had already joined operations and the cash utilized for the declaration of dividends came from the new company formed by FTC and PMPI.

As to the appropriation of FTC of the amount of ₱14.3 billion that allegedly gave an impression that there was no necessity to observe the required financial ratios indicated in the syndicated loan agreement, the appropriation referred to was merely for "standby capital" and "to enable the Corporation to pursue its anticipated investments" and as of date of the Board Resolution, petitioner had current assets amounting to ₱35.6 billion. Mr. Nestor C. Mendones, through his Judicial Affidavit[9] admitted in Court also through the November 24, 2016 Resolution,[10] stated that FTC's outstanding loan of ₱19 billion was already assumed by the new company formed by FTC and PMPI, thus, petitioner did not have to raise additional funds to pay off the syndicated loan. Mr. Mendones further testified that while providing for aforementioned appropriation of ₱14.3 billion, petitioner was at the time considering joining operations with PMPI.

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[7] Dockets, Vol. I, pp. 452-463.
[8] Dockets, Vol. II, pp. 986-987.
[9] Dockets, Vol. I, pp. 311-321.
[10] Dockets, Vol. II, pp. 986-987.

Such statements should be given credence, considering that the CIR was given an opportunity to cross-examine the witnesses on their judicial affidavits.[11]

Lastly, as to the contention that FTC's ₱18 billion equities for the year ended December 31, 2009 was way below the equity it needed to retain, while its assets for the year 2009 amounting to ₱35 billion was below the assets it needed to maintain, Mr. Mendones, through his Judicial Affidavit,[12] as well as the Memorandum to the FTC Board of Directors dated January 15, 2010,[13] clearly indicate that FTC's ₱18 billion equities for the year ended December 31, 2009 was way within the needed ₱10.1 billion equity it needed to retain, while its assets for the year 2009 amounting to ₱35 billion was well within the ₱6.5 billion assets it needed to maintain.

WHEREFORE, premises considered, the Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

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[11] Section 7 of A.M. No. 12-8-8-SC or the Judicial Affidavit Rule.
[12] *Supra,* note 9, no. 21.
[13] Dockets, Vol. I, pp. 322-324, no. 6 thereof.