REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PARITY PACKAGING CORPORATION, Petitioner,	**CTA CASE NO. 9318**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson,* **CASANOVA,** *and* **MANAHAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: SEP 06 2018 2:55 p.m.

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RESOLUTION

CASANOVA, *J.*:

For resolution are the following:

1. petitioner's **Motion for Partial Reconsideration [of the Decision promulgated on June 20, 2018]**, filed on July 5, 2018, without respondent's comment as per Records Verification dated August 6, 2018; and

2. respondent's **Motion for Partial Reconsideration RE: Decision dated June 20, 2018**, filed on July 6, 2018, with petitioner's **Comment (on Respondent's Motion for Partial Reconsideration)**, filed on July 23, 2018.

Both parties seek partial reconsideration of the Court's Decision dated June 20, 2018 (assailed Decision), the dispositive portion of which reads:

"**WHEREFORE**, premises considered, the assessment issued by respondent against petitioner for CY 2011 covering deficiency income tax is **CANCELLED**, while the deficiency VAT and WTC assessments are **AFFIRMED** but with modifications. Accordingly, petitioner is **ORDERED TO PAY** the aggregate amount of **₱7,999,517.87** for the taxable year 2011, inclusive of the 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 NIRC of 1997, as amended, until December 31, 2017, computed as follows:

	VAT	WTC	Total
Basic Tax Due	₱ 2,428,086.68	₱ 1,779.96	₱ 2,429,866.64
Surcharge (25%)	607,021.67	444.99	607,466.66
Subtotal	₱ 3,035,108.35	₱ 2,224.95	₱ 3,037,333.30
Deficiency Interest *(1-25-2012[1] / 1-11-2012[2] to 12-31-2017)*			
(₱2,428,086.68 x 20% x 2,167 days/365)	2,883,103.47		2,883,103.47
(₱1,779.96 x 20% x 2,181 days/365)		2,127.17	2,127.17
Subtotal	₱ 5,918,211.82	₱ 4,352.12	₱ 5,922,563.94
Delinquency Interest *(3-31-2016[3] to 12-31-2017)*			
(₱5,918,211.82 x 20% x 640 days/365)	2,075,427.71		2,075,427.71
(₱4,352.12 x 20% x 640 days/365)		1,526.22	1,526.22
TOTAL	**₱ 7,993,639.53**	**₱ 5,878.34**	**₱ 7,999,517.87**

In addition, petitioner is liable to pay delinquency interest at the rate of 12% on the unpaid VAT of ₱3,035,108.35 and WTC of ₱2,224.95, representing basic deficiency tax and surcharge, 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 No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN).

SO ORDERED."

Petitioner's Motion for Partial Reconsideration

[1] Section 4.114-1(A) of RR No. 16-05.
[2] Section 2 of RR No. 26-02.
[3] Exhibits "P-1-2" to "P-1-4".

In its motion for partial reconsideration, petitioner asserts that it takes exception to the findings of the Court as to the sustained assessments.

In the assailed Decision, petitioner avers that the Court left out as unsupported creditable withholding taxes (CWT) the amount of ₱495,581.64. However, petitioner stresses that the entire amount are all supported by Summary Alphalist of Withholding Taxes (SAWT) and Creditable Withholding Tax Certificates (BIR Form No. 2307).

Petitioner further posits that the sales allegedly not subjected to value-added tax (VAT) per Accounts Receivable Analysis amounting to ₱20,251,715.60 were actually VAT-paid. Petitioner maintains that the Court-commissioned Independent Certified Public Accountant (ICPA) reported that the sale of goods, collection for services and sale of plant, property and equipment were all properly accounted for VAT purposes. Petitioner also stresses that the ICPA made a reconciliation that is definite and clear in showing that all the accounts receivable were fully accounted for, therefore, concluding that there should be no VAT liability arising from this assessment.

Moreover, petitioner submits that, contrary to the Court's ruling reducing the amount of deficiency withholding tax on compensation (WTC), the ICPA found that there is an over-withholding of tax in the amount of ₱822.64.

Lastly, petitioner maintains that for failure of respondent to assess its VAT or WTC on a quarterly or monthly basis, as the case may be, the assessment is null and void. Petitioner argues that the law itself says that examination to be done by the Bureau of Internal Revenue (BIR) examiners is on a per tax return basis. Thus, petitioner contends that any deficiency VAT not computed on a quarterly basis, and deficiency WTC not computed on a monthly basis, is contrary to law, thereby making the assessments null and void.

The Court shall address each factual arguments raised by petitioner.

Every piece of evidence submitted by petitioner relative to the disallowed certificate of withholding tax from prior years amounting to ₱495,581.64 has been considered by the Court. Petitioner maintains that the disallowed amount are all duly supported by SAWT, and BIR Form No. 2307, offered by petitioner during trial and admitted by the Court as Exhibits "P-27-025" to "P-27-042".

The Court notes that the amount was recorded in petitioner's journal entries (JE). However, such can only show that the amount was reflected in petitioner's books in the prior years and is therefore, insufficient. Petitioner failed to submit proof that such amount was declared as part of the gross income in 2009 and 2010. To reiterate, the Court ruled:

> "While the BIR Form No. 2307 satisfies the fact of withholding as stated in Section 2.58.3 of RR. No. 2-98, the official receipts and sales invoices, however, are not sufficient to prove that the income arising from such withholding was recorded and reported as income in prior years. Petitioner did not furnish this Court its GL, audited financial statements (AFS), and AITR for CYs 2009 and 2010 to ascertain that indeed the income payments upon which the taxes were withheld had been declared as part of the gross income in the said years."[4]

Likewise, the Court has already passed upon the factual issue in relation to the alleged sale of services not subjected to VAT in the amount of ₱20,251,715.60. While the ICPA reconciled the discrepancies and respondent failed to controvert said reconciliation, the Court has already noted that petitioner failed to present the related VAT Returns and summary lists of sales and other documents in which the remittance of the subject output VAT can be traced or verified. The general ledgers (GL), JE and registers presented by petitioner are insufficient to prove that the corresponding output VAT on sales made by petitioner was indeed remitted in 2008 and 2009.[5]

As regards petitioner's claim that, based on the examination of the ICPA, there is in fact an over-withholding of tax from compensation and therefore it has no deficiency WTC as assessed by respondent, the Court is not convinced. The Court is not bound by the findings of the ICPA. The report submitted by the ICPA is but a tool or guide to aid the Court in the resolution of the case. The determination of the merit or the probative value of such report is still within the province of the Court. In addition, the Court is free to adapt or disregard, completely or partially, the findings of the ICPA,

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[4] Assailed Decision, Docket, (Vol. III), p. 1048.
[5] Assailed Decision, Docket, (Vol. III), p. 1053.

It can even make its own audit and evaluation of the documents pertinent to the case presented during the trial in order to intelligently resolve the conflict before it.[6] Thus, the Court maintains its findings relative to this assessment.

The Court also finds no merit in petitioner's arguments that it is respondent's duty to assess petitioner's VAT and WTC on a quarterly or monthly basis, as the case may be, and that assuming *arguendo*, it is liable for any deficiency VAT and WTC, there must be a prorating of the deficiency taxes, *i.e.*, divide the sustained deficiency VAT assessment into four quarters, and the deficiency WTC into twelve months.

In support of this argument, petitioner cites Section 6(A) of the National Internal Revenue Code (NIRC) of 1997, as amended, which provides:

> "SEC. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* —
>
> (A) *Examination of Returns and Determination of Tax Due.* — **After a return has been filed** as required under the provisions of this Code, the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax; *Provided, however,* That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer." (*Emphasis supplied*)

However, the Court does not agree with petitioner's reading of the above-quoted provision to mean that the examination to be done by the BIR examiners is on a per tax return basis. Rather, what the provision merely states is when an examination may be authorized, *i.e.*, "after a return has been filed as required under the provisions of this Code". As explained in the Supreme Court case of *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*[7], an LOA is premised on the fact that the examination of a taxpayer **who has already filed his tax returns** is a power that statutorily belongs only to the CIR himself or his duly authorized representatives.

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[6] *First Lepanto Taisho Insurance Corporation vs. Commissioner of Internal Revenue*, CTA E.B. Case No. 563, March 1, 2011.

[7] G.R. No. 222743, April 5, 2017.

Also, when Section 6(A) of the NIRC pf 1997, as amended, is read together with Section 203[8] of the same code, it shows that the Commissioner or his duly authorized representative may authorize the examination of any taxpayer "after a return has been filed" because, in general, prescription starts to run from the filing of the tax return.

Hence, Section 6(A) of the NIRC of 1997, as amended, does not limit the authority to conduct the examination on a per return basis. In fact, the issuance of a Letter of Authority (LOA) for the conduct of the examination of petitioner's books of accounts and other accounting records covering the calendar year (CY) 2011 is consistent with the guideline in Revenue Memorandum Order (RMO) No. 43-90[9] dated September 20, 1990, that an LOA should cover a taxable period not exceeding one taxable year.

Pursuant to the LOA issued in this case, the revenue officers, in computing the deficiency VAT and WTC assessments in an annual basis, acted within the authority given to them for the conduct of the examination of petitioner's books of accounts and other accounting records for all internal revenue taxes for taxable year 2011.

Moreover, tax assessments by tax examiners are presumed correct and made in good faith. The taxpayer has the duty to prove otherwise. In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a Bureau of Internal Revenue examiner and approved by his superior officers will not be disturbed. All presumptions are in favor of the correctness of tax assessments.[10]

Under Section 8[11] of Republic Act (RA) No. 1125, as amended, the Court of Tax Appeals (CTA) is categorically described as a court

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[8] SEC. 203. *Period of Limitation Upon Assessment and Collection.* – Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided*, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.

[9] SUBJECT: Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit.

[10] *Commissioner of Internal Revenue vs. Traders Royal Bank*, G.R. No. 167134, March 18, 2015, citing *Sy Po vs. Court of Tax Appeals*, 247 Phil. 487 (1988).

[11] Section 8. *Court of record; seal; proceedings.* - The Court of Tax Appeals shall be a court of record and shall have a seal which shall be judicially noticed. It shall prescribe the form of its writs and other processes. It shall have the power to promulgate rules and regulations for the

of record. Being a court of record, the cases filed before it are litigated *de novo* and party-litigants should prove every minute aspect of their cases.[12]

In the case of *Commissioner of Internal Revenue vs. Philippine National Bank*[13], the Supreme Court reiterated this principle, to wit:

> "More importantly, the Court of Tax Appeals is not precluded from accepting respondent's evidence assuming these were not presented at the administrative level. Cases filed before the Court of Tax Appeals are litigated *de novo*. Thus, respondent 'should prove every minute aspect of its case by presenting, formally offering and submitting... to the Court of Tax Appeals [all evidence]... required for the successful prosecution of [its] administrative claim.'"

Consequently, only the portion which petitioner was able to prove based on evidence formally offered, presented and submitted to the Court shall be considered. The Court cannot grant or deny more than what was actually proven during trial.

Considering that petitioner was unable to prove which portion of the deficiency tax assessments pertain to the prescribed quarter/months, then the whole amount of the assessed item shall be considered as referring to the unprescribed portion of CY 2011.

Respondent's Motion for Partial Reconsideration

On the other hand, in his motion for partial reconsideration, respondent argues that the Court erred in (1) giving credence to the Secretary's Certificate and Certifications dated January 6, 2011 in support of the advances totaling to ₱30,000,000.00 and further cancelling the VAT pertaining to undeclared sales; (2) ruling that there was no unsupported CWT; (3) ruling that respondent failed to provide the factual and legal factual bases in disallowing petitioner's tax credits over to succeeding tax quarters in the amount of

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conduct of the business of the Court, and as may be needful for the uniformity of decisions within its jurisdiction as conferred by law, but such proceedings shall not be governed strictly by technical rules of evidence.

[12] *Rafael Arsenio S. Dizon vs. Court of Tax Appeals, et al.*, G.R. No. 140944, April 30, 2008.

[13] G.R. No. 180290, September 29, 2014.

₱29,098,638.87; (4) cancelling the deficiency VAT pertaining to the disallowed tax credits of ₱2,119.18; and (5) ruling that the employee's share should have been considered in computing the non-taxable compensation.

Petitioner counters the abovementioned arguments and agrees with the decision of the Court.

It must be noted that all the grounds raised by respondent in his motion are a mere rehash of his arguments raised in his Answer and had already been passed upon and resolved by the Court in the assailed Decision.

In view of the foregoing, the Court finds no cogent reason to disturb the ruling in the assailed Decision.

WHEREFORE, premises considered, petitioner's **Motion for Partial Reconsideration [of the Decision promulgated on June 20, 2018]** and respondent's **Motion for Partial Reconsideration Re: Decision dated June 20, 2018** are **DENIED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice