

THIRD DIVISION

[G.R. No. 197117, April 10, 2013]

**FIRST LEPANTO TAISHO INSURANCE CORPORATION,
PETITIONER, VS. COMMISSIONER OF INTERNAL
REVENUE, RESPONDENT.**

D E C I S I O N

MENDOZA, J.:

Before the Court is a petition for review on *certiorari*^[1] under Rule 45 of the 1997 Rules of Civil Procedure filed by First Lepanto Taisho Corporation, *now* FLT Prime Insurance Corporation (*petitioner*), assailing the March 1, 2011 Decision^[2] and the May 27, 2011 Resolution^[3] of the Court of Tax Appeals (CTA) *En Banc*, in CTA E.B. No. 563, which affirmed the May 21, 2009 Decision of the CTA-Second Division.

The Facts:

Petitioner is a non-life insurance corporation and considered as a "Large Taxpayer under Revenue Regulations No. 6-85, as amended by Revenue Regulations No. 12-94 effective 1994."^[4] After submitting its corporate income tax return for taxable year ending December 31, 1997, petitioner received a Letter of Authority, dated October 30, 1998, from respondent Commissioner of Internal Revenue (CIR) to allow it to examine their books of account and other accounting records for 1997 and other unverified prior years.

On December 29, 1999, CIR issued internal revenue tax assessments for deficiency income, withholding, expanded withholding, final withholding, value-added, and documentary stamp taxes for taxable year 1997.

On February 24, 2000, petitioner protested the said tax assessments.

During the pendency of the case, particularly on February 15, 2008, petitioner filed its Motion for Partial Withdrawal of Petition for Review of Assessment Notice Nos. ST-INC-97-0220-99; ST-VAT-97-0222-99 and ST-DST-97-0217-00, in view of the tax amnesty program it had availed. The CTA Second Division granted the said motion in a Resolution,^[5] dated March 31, 2008.

Consequently, on May 21, 2009, the CTA Second Division partially granted the petition.^[6] It directed petitioner to pay CIR a reduced tax liability of P1,994,390.86. The dispositive portion reads:

WHEREFORE, in view of the foregoing considerations, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, petitioner is hereby **ORDERED TO PAY** deficiency withholding tax on compensation, expanded withholding tax and final tax in the reduced amount of P1,994,390.86, computed as follows:

| | Basic Tax | Surcharges | Interest | Total |
|---|---------------|-------------|-------------|---------------|
| Deficiency Withholding Tax on Compensation ST-WC-97-0221-99 | P774,200.55 | P193,550.14 | P312,227.34 | P1,279,978.03 |
| Deficiency Expanded Withholding Tax ST-EWT-97-0218-99 | 132,724.02 | 33,181.01 | 53,526.27 | 219,431.30 |
| Deficiency Final Withholding Tax ST-FT-97-0219-99 | 299,391.84 | 74,847.96 | 120,741.73 | 494,981.53 |
| TOTALS | P1,206,316.41 | P301,579.11 | P486,495.34 | P1,994,390.86 |

Petitioner's Motion for Partial Reconsideration^[7] was likewise denied by the CTA Second Division in its October 29, 2009 Resolution.^[8]

Unsatisfied, petitioner filed a Petition for Review before the CTA *En Banc*.^[9]

On March 1, 2011, the CTA *En Banc* affirmed the decision of the CTA Second Division.^[10]

Petitioner contended that it was not liable to pay Withholding Tax on Compensation on the P500,000.00 Director's Bonus to their directors, specifically, Rodolfo Bausa, Voltaire Gonzales, Felipe Yap, and Catalino Macaraig, Jr., because they were not employees and the amount was already subjected to Expanded Withholding Tax. The CTA *En Banc*, however, ruled that Section 5 of Revenue Regulation No. 12-86 expressly identified a director to be an employee.

As to transportation, subsistence and lodging, and representation expenses, the expenses would not be subject to withholding tax only if the same were reimbursement for actual expenses of the company. In the present case, the CTA *En Banc* declared that petitioner failed to prove that they were so.

As to deficiency expanded withholding taxes on compensation, petitioner failed to substantiate that the commissions earned totaling P905,428.36, came from reinsurance activities and should not be subject to withholding tax. Petitioner likewise failed to prove its direct loss expense, occupancy cost and service/contractors and purchases.

As to deficiency final withholding taxes, “petitioner failed to present proof of remittance to establish that it had remitted the final tax on dividends paid as well as the payments for services rendered by the Malaysian entity.”^[11]

As to the imposition of delinquency interest under Section 249 (c) (3) of the 1997 National Internal Revenue Code (*NIRC*), records reveal that petitioner failed to pay the deficiency taxes within thirty (30) days from receipt of the demand letter, thus, delinquency interest accrued from such non-payment.

Petitioner moved for partial reconsideration, but the CTA En Banc denied the same in its May 27, 2011 Resolution.^[12]

Hence, this petition.^[13]

The principal issue in this case is whether the CTA En Banc erred in holding petitioner liable for:

- a. deficiency withholding taxes on compensation on directors’ bonuses under Assessment No. ST-WC-97-0021-99;**
- b. deficiency expanded withholding taxes on transportation, subsistence and lodging, and representation expense; commission expense; direct loss expense; occupancy cost; and service/contractor and purchases under Assessment No. ST-EWT-97-0218-99;**
- c. deficiency final withholding taxes on payment of dividends and computerization expenses to foreign entities under Assessment No. ST-FT-97-0219-99; and**
- d. delinquency interest under Section 249 (c) (3) of the NIRC.**

The Court finds no merit in the petition.

For taxation purposes, a director is considered an employee under Section 5 of Revenue Regulation No. 12-86,^[14] to wit:

An individual, performing services for a corporation, whether as an officer and director or merely as a director whose duties are confined to attendance at and participation in the meetings of the Board of Directors, is an employee.

The non-inclusion of the names of some of petitioner’s directors in the company’s Alpha List does not *ipso facto* create a presumption that they are not employees of the corporation, because the imposition of withholding tax on compensation hinges upon the nature of work performed by such individuals in the company. Moreover, contrary to petitioner’s attestations, Revenue Regulation No. 2-98,^[15] specifically, Section 2.57.2. A (9) thereof,^[16] cannot be applied to this case as the latter is a later regulation while the accounting books examined were for taxable year 1997.

As to the deficiency withholding tax assessment on transportation, subsistence and lodging, and representation expense, commission expense, direct loss expense, occupancy cost, service/contractor and purchases, the Court finds no cogent reason to deviate from the findings of the CTA *En Banc*. As correctly observed by the CTA Second Division and the CTA *En Banc*, petitioner was not able to sufficiently establish that the transportation expenses reflected in their books were reimbursement from actual transportation expenses incurred by its employees in connection with their duties as the only document presented was a Schedule of Transportation Expenses without pertinent supporting documents. Without said documents, such as but not limited to, receipts, transportation-related vouchers and/or invoices, there is no way of ascertaining whether the amounts reflected in the schedule of expenses were disbursed for transportation.

With regard to commission expense, no additional documentary evidence, like the reinsurance agreements contracts, was presented to support petitioner's allegation that the expenditure originated from reinsurance activities that gave rise to reinsurance commissions, not subject to withholding tax. As to occupancy costs, records reveal that petitioner failed to compute the correct total occupancy cost that should be subjected to withholding tax, hence, petitioner is liable for the deficiency.

As to service/contractors and purchases, petitioner contends that both parties already stipulated that it correctly withheld the taxes due. Thus, petitioner is of the belief that it is no longer required to present evidence to prove the correct payment of taxes withheld. As correctly ruled by the CTA Second Division and *En Banc*, however, stipulations cannot defeat the right of the State to collect the correct taxes due on an individual or juridical person because taxes are the lifeblood of our nation so its collection should be actively pursued without unnecessary impediment.

As to the deficiency final withholding tax assessments for payments of dividends and computerization expenses incurred by petitioner to foreign entities, particularly Matsui Marine & Fire Insurance Co. Ltd. (*Matsui*),^[17] the Court agrees with CIR that petitioner failed to present evidence to show the supposed remittance to Matsui.

The Court likewise holds the imposition of delinquency interest under Section 249 (c) (3) of the 1997 NIRC to be proper, because failure to pay the deficiency tax assessed within the time prescribed for its payment justifies the imposition of interest at the rate of twenty percent (20%) per annum, which interest shall be assessed and collected from the date prescribed for its payment until full payment is made.

It is worthy to note that tax revenue statutes are not generally intended to be liberally construed.^[18] Moreover, the CTA being a highly specialized court particularly created for the purpose of reviewing tax and customs cases, it is settled that its findings and conclusions are accorded great respect and are generally upheld by this Court, unless there is a clear showing of a reversible error or an improvident exercise of authority.^[19] Absent such errors, the challenged decision should be maintained.

WHEREFORE, the petition is **DENIED**. The March 1, 2011 Decision and the May 27, 2011 Resolution of the Court of Tax Appeals *En Banc*, in CTA E.B. No. 563, are **AFFIRMED**.

SO ORDERED.

Velasco, Jr., (Chairperson), Peralta, Abad, and Leonen, JJ., concur.

[1] *Rollo*, pp. 12-51.

[2] *Id.* at 52-82. Penned by Associate Justice Esperanza R. Fabon-Victorino, with Presiding Justice Ernesto D. Acosta and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Olga Palanca-Enriquez, Cielito N. Mindaro-Grulla and Amelia R. Cotangco-Manak concurring.

[3] *Id.* at 84-86.

[4] *Id.* at 53.

[5] *Id.* at 125-126.

[6] *Id.* at 128-152. Penned by Associate Justice Erlinda P. Uy, with Associate Justices Juanito C. Castañeda, Jr. and Olga Palanca-Enriquez, concurring.

[7] *Id.* at 157-170.

[8] *Id.* at 172-178.

[9] *Id.* at 109-123.

[10] *Id.* at 52-82. Penned by Associate Justice Esperanza R. Fabon-Victorino, with Presiding Justice Ernesto D. Acosta and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Olga Palanca-Enriquez, Cielito N. Mindaro-Grulla and Amelia R. Cotangco-Manak concurring.

[11] *Id.* at 77.

[12] *Id.* at 84-86.

[13] *Id.* at 12-51.

[14] Dated August 1, 1986.

[15] Dated April 17, 1998.

[16] (9) Fees of directors who are not employees of the company paying such fees, whose duties are confined to attendance at and participation in the meetings of the board of directors.

[17] Petitioner's Non-Resident Foreign corporation stockholder.

[18] *Commissioner of Internal Revenue v. Acosta*, G.R. No. 154068, August 3, 2007, 529 SCRA 177, 186.

[19] *Chevron Philippines, Inc. v. Commissioner of the Bureau of Customs*, G.R. No. 178759, August 11, 2008, 561 SCRA 710, 742.
