REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

BANGKO SENTRAL NG PILIPINAS,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10278

Members:

RINGPIS-LIBAN, *Chairperson,*
MODESTO-SAN PEDRO, and,
FERRER-FLORES, *JJ.*

Promulgated:

JUN 18 2024 3:20 p.m.

x -- x

RESOLUTION

RINGPIS-LIBAN, J.:

Before the Court is respondent's **Motion for Reconsideration (Re: Decision promulgated on 11 January 2024)** filed on February 1, 2024, with petitioner's **Comment/Opposition (Re: Respondent's Motion for Reconsideration dated 25 January 2024)** filed through registered mail on March 11, 2024, and received by the Court on March 21, 2024.

On January 11, 2024, the Court promulgated a Decision granting the petitioner's claim of refund of expanded withholding tax (EWT) on the ground that it is a government instrumentality and no creditable withholding tax may be imposed on income payments thereto, the dispositive portion of which states as follows:

> "**WHEREFORE**, in light of the foregoing considerations, the present *Petition for Review* is **GRANTED**. Accordingly, respondent is hereby **ORDERED** to **REFUND** to petitioner the amount of **₱1,525,954.63**, representing surcharge, interest, and compromise penalty, on the alleged late payment of EWT erroneously paid or collected the BIR.
>
> **SO ORDERED.**"

In his Motion, petitioner moves for reconsideration of the above Decision arguing that (i) the Court erred in ruling that petitioner is exempt from the payment of creditable withholding taxes; and (ii) the Court erred in ruling that petitioner's claim was duly substantiated.

Respondent claims that the Court's reliance on the ruling in *BSP v. COA, G.R. 177131, June 7, 2011,* is misplaced since the government instrumentality referred therein is Boy Scouts of the Philippines and not petitioner Bangko Sentral ng Pilipinas. Respondent continues that the two have their own charters and are separate and distinct from each other.

Granted that petitioner is indeed an instrumentality of the National Government, respondent asserts that petitioner offered no proof that its sale of real properties is exempt from payment of EWT. Respondent maintains that the Court did not consider the fact that the real properties that petitioner sold were classified as ordinary assets which are consequently subject to EWT. He expounds that petitioner offered no evidence to prove that the sale of its properties were not ordinary assets. In fact, petitioner even admitted that said sold properties were obtained through ordinary course of its trade and business by way of *dacion en pago.*

In any case, respondent submits that petitioner is still the one statutorily liable to pay the tax since the buyer is only an agent. Respondent stresses that petitioner as a withholding agent merely holds in trust the amount of tax it withheld and as trustee, it is duty bound to remit to the government the proper amount of tax withheld and this duty is imprescriptible. As such, petitioner is ultimately liable for the late payment of EWT arising from the sale of its real properties.

Lastly, respondent points out that it is consistently held that tax exemption must be proven in clear and convincing manner with no doubt of the intention of the legislature to grant such exemption. Thus, respondent maintains that petitioner failed to introduce any evidence to overthrow the validity of the Bureau of Internal Revenue (BIR)'s assessment which ultimately leads to the fact that petitioner is not entitled to refund the amount of ₱1,525,954.63 on its late payment of EWT for the sale of its real properties.

On the other hand, in its Comment, petitioner asserts that the Court correctly ruled that it was improper to impose surcharge, interest and compromise penalty on the alleged payment of EWT against petitioner as income payments made to it, being a government instrumentality, are exempt from EWT. Furthermore, petitioner insists that, assuming *arguendo*, petitioner's income on the subject sale is subject to EWT, it is the income payor/buyer who is liable to pay the penalties for late payment of EWT. Lastly, petitioner avers that its claim for refund is duly substantiated and that tax refunds based on erroneous payment should be construed strictly against the government and liberally in favor of the taxpayer.

After due consideration, the Court finds respondent's Motion for Reconsideration bereft of merit.

At the outset, the Court is not unaware that the crux of the controversy in the case of *Boy Scouts of the Philippines v. Commission on Audit,*[1] was whether the Commission on Audit has jurisdiction over Boy Scouts of the Philippines. However, respondent remised the point that it was in this case that the Supreme Court defined the term "government instrumentality", to wit:

> "The existence of public or government corporate or juridical entities or chartered institutions by legislative fiat distinct from private corporations and government owned or controlled corporation is best exemplified by the 1987 Administrative Code cited above, which we quote in part:
>
> > Sec. 2. General Terms Defined. — Unless the specific words of the text, or the context as a whole, or a particular statute, shall require a different meaning:
> >
> > x x x
> >
> > (10) **'Instrumentality' refers to any agency of the National Government, not integrated within the department framework, vested with special functions or jurisdiction by law, endowed with some if not all corporate powers, administering special funds, and enjoying operational autonomy, usually through a charter**. This term includes regulatory agencies, chartered institutions and government-owned or controlled corporations." *(Emphasis supplied)*

Similar to the *Boy Scouts of the Philippines*, such definition was applied herein to show that petitioner is a government instrumentality — an agency of the National Government vested with special functions and enjoying operational autonomy. Being as such, petitioner is therefore exempt from creditable withholding tax pursuant to Section 2.57.5(A)[2] of Revenue Regulations No. 2-98,[3] as amended.

---

1 G.R. 177131, June 7, 2011.

2 "*SECTION 2.57.5. Exemption from Withholding.* — The withholding of creditable withholding tax prescribed in these Regulations shall not apply to income payments made to the following:

(A) National government and its instrumentalities, including provincial, city or municipal governments;"

3 "SUBJECT: Implementing Republic Act No. 8424, "An Act Amending the National Internal Revenue Code, as Amended" Relative to the Withholding on Income Subject to the Expanded Withholding Tax and

Moreover, the fact that petitioner is a government instrumentality was further admitted by respondent in the parties' *Joint Stipulation of Facts and Issues* filed on December 1, 2021,[4] which was adopted in the *Pre-Trial Order* promulgated on February 15, 2022.[5] Accordingly, the Court cannot lightly set aside a judicial admission especially when the opposing party relied upon the same and had dispensed with further proof of the fact already admitted. An admission made by a party in the course of the proceedings does not require proof.[6]

Aside from the above contention of respondent, the other arguments raised in his Motion are mere rehash of the same facts and issues, which have already been thoroughly considered, weighed, and resolved in the Decision it assails. Given that respondent's arguments have already been threshed out and judiciously resolved in the Decision dated January 11, 2024, the Court finds no compelling reason to reverse or modify the findings and conclusions reached therein. Accordingly, nothing is left for this Court but to deny the present Motion for Reconsideration.

WHEREFORE, premises considered, respondent's Motion for Reconsideration (Re: Decision promulgated on 11 January 2024) is **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

We Concur:

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

(With all due respect, I reiterate my D.O.)
CORAZON G. FERRER-FLORES
Associate Justice

Final Withholding Tax, Withholding of Income Tax on Compensation, Withholding of Creditable Value-Added Tax and Other Percentage Taxes," dated April 17, 1998.

4 Docket (Vol. I), pp. 333 to 340.
5 Id., pp. 345 to 354.
6 *See* page 13 of the Decision, Docket (Vol. I), p. 535