REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

COMMISSION ON ELECTIONS, represented by ATTY. MARIA NORINA S. TANGARO-CASINGAL, Acting Director IV of the Law Department,	**CTA CASE NO. 8929**
Petitioner,	Members:
	CASTAÑEDA, JR., *Chairperson, and* **CASANOVA,** *JJ.*
- versus -	
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: MAY 09 2017 9:14 AM

x- -x

RESOLUTION

CASTAÑEDA, JR., *J.*:

For this Court's resolution is respondent's **Motion for Reconsideration (Re: Amended Decision dated 03 January 2017)**, filed on January 19, 2017, with petitioner's **Comment (on Respondent's Motion for Reconsideration)**, filed on February 9, 2017.

Respondent seeks reconsideration of the Court's Amended Decision (assailed Decision)[1] promulgated on January 3, 2017, the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, petitioner's **Motion for Reconsideration** is **PARTIALLY GRANTED**. Accordingly, the dispositive portion of the

[1] Docket, pp. 341-348.

assailed Decision dated August 2, 2016 is hereby amended to read, as follows:

> '**WHEREFORE**, the instant Petition for Review is hereby **PARTIALLY GRANTED**.
>
> Finding that petitioner COMELEC has the duty to withhold and remit the expanded withholding tax from its payments to its suppliers, the assessment for such failure to withhold and remit the withholding taxes is **UPHELD** with respect to the basic deficiency expanded withholding tax assessment. Accordingly, petitioner COMELEC is **ORDERED TO PAY** the respondent the amount of ₱30,645,542.62 as deficiency expanded withholding tax for taxable year 2008.
>
> However, petitioner shall not be held liable for the interests in addition to the basic tax due, pursuant to Sections 247(b) and 249 of the NIRC of 1997, as amended.
>
> **SO ORDERED**.'
>
> **SO ORDERED**."[2]

Respondent argues that COMELEC is liable for deficiency expanded withholding tax (EWT) for taxable year 2008 in the total amount of ₱49,082,867.69.

According to respondent, Section 247(b) of the National Internal Revenue Code (NIRC) of 1997, as amended, is not applicable in this case since the COMELEC, as a constitutional commission is not included in the enumeration provided by law. Thus, respondent contends that COMELEC should be made liable not only for the basic deficiency expanded withholding tax for taxable year 2008 but also for the accrued interest, deficiency interest and/or delinquency

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[2] Docket, pp. 346-347.

interest thereon, pursuant to Section 249 of the NIRC of 1997,a s amended.

Moreover, respondent claims that assuming, without admitting, that Section 247(b) of the NIRC of 1997, as amended, is applicable in the instant case, then the responsible officer for the withholding and remittance of the EWT for taxable year 2008 must be ordered to pay respondent the accrued interest on the COMELEC's deficiency EWT. Respondent contends that it is imperative to amend the dispositive portion of the Amended Decision in order to conform to the finding of the Court that COMELEC's responsible officer for the withholding and remittance of the EWT shall be personally liable for the accrued interest on the deficiency EWT.

Petitioner agrees with respondent's claim that the Court erred in partially granting COMELEC's Motion for Reconsideration. It maintains that the Court should have granted in full its Motion for Reconsideration. Petitioner argues that the procurement of all automated election system-related goods and services are tax-exempt. It also contends that assuming but not necessarily admitting liability, respondent used erroneous tax rates in the assessment of tax liability. Thus, petitioner prays that the Amended Decision be reversed and set aside and that the Assessment Notice dated January 13, 2012 by the BIR Revenue Region No. 6 be nullified.

Respondent's Motion for Reconsideration is bereft of merit.

First, contrary to respondent's claim, Section 247(b) of the NIRC of 1997, as amended, is applicable in this case. The provision reads as follows:

"SEC. 247. **General Provisions**. –

(a) The additions to the tax or deficiency tax prescribed in this Chapter shall apply to all taxes, fees and charges imposed in this Code. The amount so added to the tax shall be collected at the same time, in the same manner and as part of the tax.

(b) <u>If the withholding agent is the Government or any of its agencies</u>, political subdivisions or instrumentalities, or a government-owned or-controlled corporation,

> the employee thereof responsible for the withholding and remittance of the tax shall be personally liable for the additions to the tax prescribed herein.
>
> (c) The term '*person*', as used in this Chapter, includes an officer or employee of a corporation who as such officer, employee or member is under a duty to perform the act in respect of which the violation occurs." (*Underscoring ours*)

While constitutional commissions were not specifically enumerated in Section 247(b), the provision is still applicable considering that constitutional commissions are part of the Government. Since petitioner is a constitutional commission and part of the Government, its employee responsible for the withholding and remittance of the tax is the one personally liable for the accrued interest, deficiency interest and/ or delinquency interest on the deficiency tax imposed on petitioner and not petitioner itself. Thus, petitioner is liable only for the basic EWT due.

Second, there is no merit in respondent's contention that the dispositive portion of the Amended Decision should be amended in order to conform to the finding of the Court that COMELEC's responsible officer for the withholding and remittance of the EWT shall be personally liable for the accrued interest on the deficiency EWT. The Court cannot require petitioner's responsible officer to pay the accrued interest and penalty amounting to ₱18,437,325.07. It would be prejudicial to the responsible officer considering that he is not a party to the proceedings.

It must be noted that in the case of *Guy vs. Gacott*[3], the Supreme Court held that a decision rendered in a civil action or proceeding does not bind or prejudice a person not impleaded therein, to wit:

> "In relation to the rules of civil procedure, it is elementary that a judgment of a court is conclusive and binding only upon the parties and their successors-in-interest after the commencement of the action in court. **A decision rendered on a complaint in a civil action or proceeding does not bind or prejudice a person not impleaded therein, for no person shall be**

[3] G.R. No. 206147, January 13, 2016.

> **adversely affected by the outcome of a civil action or proceeding in which he is not a party**. The principle that a person cannot be prejudiced by a ruling rendered in an action or proceeding in which he has not been made a party conforms to the constitutional guarantee of due process of law." (*Emphasis ours*)

Considering the foregoing, the Court finds no cogent reason to reverse or modify the assailed Decision promulgated on January 3, 2017.

WHEREFORE, premises considered, respondent's **Motion for Reconsideration** is **DENIED** for lack of merit.

SO ORDERED.

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

I CONCUR:

CAESAR A. CASANOVA
Associate Justice