

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FORMER SECOND DIVISION

TUTUBAN PROPERTIES, INC.,
Petitioner,

C.T.A. CASE NO. 7634

Members:

- versus -

CASTAÑEDA, JR., *Chairperson*
UY, *and*
PALANCA-ENRIQUEZ, *JJ.*

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

Promulgated:

MAY 11 2010

x-----x

2:27 p.m.

AMENDED DECISION

CASTAÑEDA, JR., *J.*:

For resolution is petitioner's *Motion for Reconsideration* filed on February 3, 2010, praying for the reconsideration of this Court's *Decision* dated January 8, 2010 and for the refund or issuance of tax credit certificate in favor of petitioner in the amount of P984,375.00, representing the Expanded Withholding Taxes (EWT) erroneously remitted to the Bureau of Internal Revenue.

After taking into consideration the arguments of petitioner and after verifying the records of the case, this Court finds merit in petitioner's motion.

Petitioner was able to present the original copies and the faithful reproductions of the certified true copies of Philippine National Railways' *R*

(PNR) Annual Income Tax Return (BIR Form No. 1702) for calendar years 2005 and 2006.¹ From said evidence, this Court was able to validate that fact that there was no double utilization of the claimed EWT.

However, as ruled by this Court in the assailed *Decision*, the amount of double remittance is P953,230.31 only, as against petitioner's claim of P984,375.00, computed as follows:

	January 2005	February 2005	March 2005	April 2005	Total
Due to PNR					
Fixed Charges	P6,562,500.00	P6,562,500.00	P6,562,500.00	P6,562,500.00	P 26,250,000.00
Add: 2% share	733,554.94	721,219.92	755,636.88	816,998.10	3,027,409.84
Total Charges	P7,296,054.94	P7,283,719.92	P7,318,136.88	P7,379,498.10	P 29,277,409.84
x EWT Rate	5%	5%	5%	5%	
Total EWT Due	P 364,802.75	P 364,186.00	P 365,906.84	P 368,974.90	P 1,463,870.49
Less: EWT Remitted	371,807.69	364,186.00	328,125.00	1,352,982.11	2,417,100.80
Under (Over) Remittance	P (7,004.94)	-	P 37,781.84	P (984,007.21)	P (953,230.31)

While petitioner had over-remitted the EWT on the fixed component portion of the rental due to PNR by P984,375.00, it has under-remitted the EWT on the variable component of the rental (*i.e.*, 2% share in gross income) by P31,144.69, detailed as follows:

	January 2005	February 2005	March 2005	April 2005	Total
Variable per CPA's findings	P 733,554.94	P 721,219.92	P 755,636.88	P 816,998.10	P3,027,409.84
Variable per Return	873,653.70	721,220.00		809,642.20	2,404,515.90
	(140,098.76)	(0.08)	755,636.88	7,355.90	622,893.94
x EWT Rate	5%	5%	5%	5%	
Under (Over) Remittance	P (7,004.94)	P (0.00)	P 37,781.84	P 367.79	P 31,144.69

Thus, petitioner is only entitled to a refund or issuance of tax credit certificate in the reduced amount of P953,230.31.

WHEREFORE, premises considered, petitioner's *Motion for Reconsideration* is hereby **PARTIALLY GRANTED** and the *Decision* dated 

¹ Exhibits "AA", "AA-I", "BB", and "BB-I"

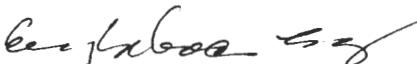
January 8, 2010 is hereby **MODIFIED**. Accordingly, respondent is hereby **ORDERED TO REFUND or TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of **NINE HUNDRED FIFTY-THREE THOUSAND TWO HUNDRED THIRTY PESOS AND 31/100 (P953,230.31)**, representing the Expanded Withholding Taxes erroneously remitted by petitioner.

SO ORDERED.


JUANITO C. CASTANEDA, JR.
Associate Justice

WE CONCUR:


ERLINDA P. UY
Associate Justice


OLGA PALANCA-ENRIQUEZ
Associate Justice

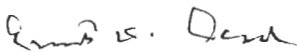
ATTESTATION

I attest that the conclusions in the above Amended Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


JUANITO C. CASTANEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Amended Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.


ERNESTO D. ACOSTA
Presiding Justice