REPUBLIC OF THE PHILIPPINES

Court of Tax Appeals

QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE; OFFICE OF THE REGIONAL DIRECTOR, BUREAU OF INTERNAL REVENUE, REVENUE REGION NO. 7 - QUEZON CITY; BUREAU OF INTERNAL REVENUE, REVENUE DISTRICT OFFICE NO. 43A, EAST PASIG, *Petitioners,*	**CTA *EB* NO. 1393** *(CTA Case No. 8704)*
-versus-	
GLOBAL QUICKSERVICE RESTAURANT, INC., *Respondent.*	

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GLOBAL QUICKSERVICE RESTAURANT, INC., *Petitioner,*	**CTA *EB* NO. 1405** *(CTA Case No. 8704)*
-versus-	Present: ***Del Rosario, P.J., Castañeda, Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, Ringpis-Liban,*** *and* ***Manahan, JJ.***
COMMISSIONER OF INTERNAL REVENUE; OFFICE OF THE REGIONAL DIRECTOR, BUREAU OF INTERNAL REVENUE, REVENUE REGION NO. 7 - QUEZON CITY; BUREAU OF INTERNAL REVENUE, REVENUE DISTRICT OFFICE NO. 43A, EAST PASIG, *Respondents.*	**Promulgated:** AUG 04 2017 4:02 p.m.

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R E S O L U T I O N

BAUTISTA, J:

For resolution is Global Quickservice Restaurant, Inc.'s[1] ("GQRI") Motion for Reconsideration filed on April 18, 2017; with Comment/Opposition (Respondent-Petitioner's Motion for Reconsideration dated 17 April 2017) ("Comment/Opposition") from Commissioner of Internal Revenue ("CIR"); Office of the Regional Director, Bureau of Internal Revenue ("BIR") Revenue Region No. 7 - Quezon City; BIR Revenue District Office No. 43A - East Pasig[2] (collectively referred to herein as "CIR, *et. al.*"), filed on June 1, 2017.

On March 15, 2017, the Court *En Banc* promulgated a Decision[3] ("Assailed Decision"), the dispositive portion of which states:[4]

> **WHEREFORE,** premises considered, the present consolidated Petitions for Review are hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**

In its Motion for Reconsideration, GQRI begs the Court *En Banc*'s indulgence to reconsider and re-examine its documentary evidence and testimony of witnesses presented which would show that it is not liable for deficiency income tax ("IT") and value-added tax ("VAT").

GQRI avers that: *(1)* for the alleged undeclared deemed sale transaction amounting to Php282,620.82, the Global Restaurants Concepts Inc. ("GRCI") Memo on Importation of Supplies ("GRCI Memo") is sufficient proof that no income was derived from the transfer of stocks with its parent company, GRCI, because of the existing policy of reimbursement or replenishment of stocks; that the memo was supported by the testimony of Mr. Fernando Bulante ("Mr. Bulante") which was never controverted by CIR, *et. al.*; *(2)* for the service charges, the testimony of Mr. Bulante and the twenty-four (24) Payroll Registers were not considered; that the Sales Reports for January 1 to December 31, 2009, and Service Charge Payroll Summary for the Period of January 1-December 31, 2009 should be revisited; *(3)* for the Php100,000.00 rental deposit, the affidavit of GQRI's President, Mr. Armando C. Rodriguez ("Mr. Rodriguez"), is

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[1] Petitioner in CTA EB No. 1405, entitled, *"Global Quickservice Restaurant, Inc., vs. Commissioner of Internal Revenue, et al."*
[2] Petitioners in CTA EB No. 1393, entitled, *"Commissioner of Internal Revenue, et al., vs. Global Quickservice Restaurant, Inc."*
[3] *Rollo, CTA EB No. 1393,* pp. 121-139.
[4] *Id.,* p. 133.

sufficient to justify the cancellation and writing off of the amount in its books, being a necessary consequence of a failed concession agreement.

Anent certain income payments which were not subjected to withholding tax on compensation ("WTC"), GQRI maintains that these are not subject to withholding tax. According to GQRI, the payment for "Cellphone," "Training allowance," and "Training and Seminars" are ordinary and necessary expenses; that the "Employee Meals" are given to employees free-of-charge for GQRI's convenience, hence, do not form part of employees' compensation; that the "Health and Accidental Insurance," and "Uniforms" are in the nature of a *de minimis* benefit; that even if the payment for "Uniforms" are not considered *de minimis* benefit, it is given in-kind to the employees, and a necessary expense of GQRI; that for "Scholarships," it is also an ordinary and necessary expense in connection with GQRI's trade and business because it is intended to further uplift and enhance the skills and technical knowledge of its valued employees.

Further, GQRI posits that the subsequent payment of the withholding taxes and submission of Alphabetical List of Employees ("Alphalist") for taxable year ("TY") 2009 attached to its Annual Information Return of Income Taxes Withheld on Compensation and Final Withholding Taxes (BIR Form No. 1604-CF) of the same year should have caused the BIR to allow said income payments as deductions from gross income having complied with *Section 2.79 of Revenue Regulations ("RR") No. 2-1998*[5]*, as amended by RR No. 10-2008*[6].

With regard to the assessment for deficiency VAT, GQRI asserts that the testimony of Ms. Marissa R. Tagle ("Ms. Tagle"), who clarified that the "Trade Receivables" in the Audited Financial Statements ("AFS") pertain to sales transactions paid and concluded through the use of accredited credit cards, should be given greater weight than the findings of the BIR; that these were reported under "Trade Receivables" account considering that the same are yet to be

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[5] Implementing Republic Act No. 8424, "An Act Amending the National Internal Revenue Code, as Amended" Relative to the Withholding of Income Subject to the Expanded Withholding Tax and Final Withholding Tax, Withholding of Income Tax on Compensation, Withholding of Creditable Value-Added Tax and Other Percentage Taxes, April 17, 1998.

[6] Implementing Pertinent Provisions of Republic Act No. 9504, "An Act Amending Sections 22, 24, 34, 35, 51, and 79 of Republic Act No. 8424, as Amended, Otherwise Known as The National Internal Revenue Code" Relative to the Withholding of Income Tax on Compensation and Other Concerns, July 8, 2008.

received from banks; that despite not having received the amounts, GQRI already paid the VAT thereon; that when it filed its 2009 Annual Income Tax Return ("ITR") and the corresponding AFS for TY 2009, the VAT liability pertaining to its "Trade Receivables" for the years 2008 and 2009 were all paid; and that to assess GQRI for the same VATable sales would amount to double taxation.

Finally, GQRI claims that deficiency interest may not be imposed on the deficiency VAT following the Concurring and Dissenting Opinion of Presiding Justice Roman G. Del Rosario in the Assailed Decision, which, citing the case of *Paper Industries Corporation of the Philippines v. Court of Appeals, Commissioner of Internal Revenue and Court of Tax Appeals,*[7] opined that the doctrinal precedent stating that deficiency interest may be imposed only on tax specifically covered by the relevant provision of the *1997 National Internal Revenue Code*[8]*, as amended ("1997 NIRC")*, finds relevance and application in the present case.

In its Comment/Opposition, CIR, *et. al.* counter-argues that the allegations of GQRI should not be given weight for its failure to substantiate its claim, in violation of *Section 2*[9]*, Rule 130 of the Rules of Evidence,* and as ruled in the case of *MOF Company, Inc. v. Shin Yang Brokerage Corporation*[10]; and that *Sections 247 and 249 of the 1997 NIRC* are clear that surcharges and/or interest prescribed under the *1997 NIRC* shall apply to all taxes, fees, and charges imposed under the Code, which shall be collected at the same time, in the same manner, and as part of the tax. Hence, the imposition of twenty percent (20%) interest on deficiency VAT is in order considering that said tax is one of the taxes imposed under the *1997 NIRC.*

The Court *En Banc* will now resolve.

After a careful review of the arguments raised in the Motion for Reconsideration, as well as the Comment/Opposition filed by CIR, *et. al.*, the Court *En Banc* finds no new matters or arguments which were not considered in the Assailed Decision. GQRI failed to present any new and/or compelling argument to justify the reversal or

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[7] G.R. Nos. 106949-50, December 1, 1995, 250 SCRA 434.
[8] Republic Act No. 8424, January 1, 1998.
[9] SEC. 2. *Documentary Evidence.* - Documents as evidence consist of writing or any material containing letters, words, numbers, figures, symbols or other modes of written expressions offered as proof of their contents.
[10] G.R. No. 172822, December 18, 2009, 608 SCRA 521.

modification of the Court *En Banc*'s findings in the Assailed Decision. Consequently, the Court *En Banc* finds GQRI's Motion for Reconsideration devoid of merit. Nevertheless, the Court *En Banc* will expound on the arguments raised, if only to reinforce the discussion in the Assailed Decision.

GQRI is liable for deficiency income tax

1. *Deemed sale transaction, service charges, rental deposit*

GQRI attempted to prove that the transfer of stocks with GRCI is not a deemed sale transaction by presenting in evidence the GRCI Memo, as well as the testimony of Mr. Bulante, asserting that the same are sufficient proof to dispel the finding that no income was derived from the transfer.

As regards service charges, GQRI appeals to the Court *En Banc* to revisit the Payroll Registers (*Exhibits* "P-26" to "P-26-W"), Sales Reports for January 1 to December 31, 2009 (*Exhibit* "P-28"), and Service Charge Payroll Summary for the Period of January 1-December 31, 2009 (*Exhibit* "P-27"), as well as the testimony of Mr. Bulante.

Anent the rental deposit, GQRI asserts that the affidavit of Mr. Rodriguez, where he attested that the deposit of Php100,000.00 was returned, is enough to justify the writing off.

The Court *En Banc* is not persuaded.

Other than the above allegations, GQRI failed to substantiate its claim by presenting other evidence. The rule is well-settled that he who alleges a fact has the burden of proving it[11] and a mere allegation is not evidence.[12] Bare allegations which are not supported by any evidence, documentary or otherwise, sufficient to support a claim, fall short to satisfy the degree of proof needed.[13] They do not constitute substantial evidence and, thus, have no probative value.[14]

[11] *Fernandez v. Amagna*, G.R. No. 152614, September 30, 2009, 601 SCRA 330, 348.
[12] *Spouses Guidangen v. Wooden*, G.R. No. 174445, February 15, 2012, 666 SCRA 119.
[13] *Cuizon v. Court of Appeals*, G.R. No. 102096, August 22, 1996, 329 Phil. 456, 483.
[14] *ING Bank N.V. v. Commissioner of Internal Revenue*, G.R. No. 167679, July 22, 2015, 763 SCRA 359.

It should also be remembered that the same documents and testimonies of witnesses have been extensively and judiciously examined and evaluated by the Court in Division in its Decision[15] and Resolution[16] in *CTA Case No. 8704*, where the present case arose, and further by the Court *En Banc* in the Assailed Decision[17]. Finding no reversible error, the assessment must be upheld.

Time and again, the Supreme Court has held that taxation is the rule, exemption is the exception.[18] The burden of proof rests upon the party claiming the exemption to prove that it is in fact covered by the exemption so claimed.[19] For failure to prove that the deemed sale transaction, service charges, and rental deposit are not subject to income tax, the Court *En Banc* finds no reason to reverse its finding in the Assailed Decision.

2. *Income payments not subjected to withholding tax*

GQRI insists that the income payments for cellphone, training allowance, employee meals, health and accidental insurance, trainings and seminars, uniforms, and scholarships are ordinary and necessary expenses, given for the convenience of employer, and/or *de minimis* benefit, thus, were properly not subjected to WTC.

Section 34 (A) (1) of the 1997 NIRC provides:

> SEC. 34. Deductions from Gross Income. - xxx
>
> (A) *Expenses.* -
>
> (1) *Ordinary and Necessary Trade, Business or Professional Expenses.* -

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[15] *Records, CTA Case No. 8704, Vol. 3, Decision,* pp. 1611-1643; penned by Associate Justice Amelia R. Cotangco-Manalastas, with Associate Justices Juanito C. Castañeda, Jr. and Caesar A. Casanova, concurring.
[16] *Records, Vol. 3, Resolution,* pp. 1677-1684; penned by Associate Justice Amelia R. Cotangco-Manalastas, with Associate Justices Juanito C. Castañeda, Jr. and Caesar A. Casanova, concurring.
[17] *Rollo, Decision,* pp. 131-132.
[18] *Mactan Cebu International Airport Authority v. Marcos,* G.R. No. 120082, September 11, 1996, 261 SCRA 667, 680.
[19] *Quezon City and The City Treasurer of Quezon City v. ABS-CBN Broadcasting Corporation,* G.R. No. 166408, October 6, 2008, 568 SCRA 496.

> (a) *In General.* - There shall be allowed as deduction form gross income all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on or which are directly attributable to, the development, management, operation and/or conduct of trade, business or exercise of a profession, including:
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> xxx xxx xxx.

The requisites for the deductibility of ordinary and necessary trade, business, or professional expenses, are: *(1)* the expense must be ordinary and necessary; *(2)* it must have been paid or incurred during the taxable year; *(3)* it must have been paid or incurred in carrying on the trade or business of the taxpayer; and *(4)* it must be supported by receipts, records or other pertinent papers.[20]

In the present case, the various memoranda[21] submitted by GQRI only prove its policies on those benefits. Notably, no evidence was presented to show the actual nature of these benefits, and that these were incurred in the carrying on the trade or business of GQRI.

As for the payment for health and accidental insurance, and uniforms, GQRI avers that these are considered as *de minimis* benefits under *RR No. 10-2008*, hence not subject to WTC. Nevertheless, GQRI failed to present evidence other than the affidavit of Mr. Bulante attesting to the nature of said income payments. Thus, these statements are merely allegations which deserve scant consideration.

GQRI further posits that having paid the assessed withholding taxes, the income payments should be allowed as deductions from gross income, and a new assessment is issued reflecting the payment. According to GQRI, this is in consonance with *Section 2.79 of RR No. 2-98*.

The Court *En Banc* does not agree. *Section 2.79 of RR No. 2-98* must be read in relation to *Section 2.58.5*, which provides:

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[20] *Commissioner of Internal Revenue v. General Foods (Phils.), Inc.*, G.R. No. 143672, April 24, 2003, 401 SCRA 545.

[21] *Records, Vol. 3, Exhibit "P-14," "P-15," "P-16," "P-17," and "P-18," various memoranda*, pp. 1225-1237.

> Sec. 2.58.5. *Requirements for Deductibility.* – Any income payment which is otherwise deductible under the Code shall be allowed as a deduction from the payor's gross income only if it is shown that the income tax required to be withheld has been paid to the Bureau in accordance with Secs. 57 and 58 of the Code.
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> A deduction will also be allowed in the following cases where no withholding of tax was made:
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> xxx xxx xxx
>
> (C) The withholding agent erroneously underwithheld the tax but pays the difference between the correct amount and the amount of tax withheld, including the interest, incident to such error, and surcharges, if applicable, at the time of the audit/investigation or reinvestigation/ reconsideration.[22]

Records reveal that while GQRI paid the basic deficiency withholding taxes, it failed to pay the attendant surcharges and interest, thus, rendering the same not in compliance with the above *Section 2.58.5 of RR No. 2-1998.* Clearly, the income payments shall not be allowed as deduction.

GQRI is liable for deficiency value-added tax

GQRI asserts that the testimony of Ms. Tagle should be given greater weight for having rebutted the findings of the BIR that VAT has already been paid on the credit card sale transactions, and that having filed the 2009 ITR, the VAT pertaining to its "Trade Receivables" are necessarily paid.

Again, other than mere allegations, it failed to present proof that the VAT pertaining to its trade receivables have already been paid. Absent proof, its argument must necessarily fail.

[22] Underscoring ours.

Deficiency interest is imposable on VAT

According to GQRI, *Section 249 (B)*[23] *of the 1997 NIRC* is clear. Since only income tax, donor's tax, and estate tax carry a provision on deficiency tax, these are the types of taxes on which the deficiency interest may only be imposed.

The Court *En Banc* does not agree.

The imposition of deficiency interest is found under *Section 247 of the 1997 NIRC* which provides that "additions to the tax or deficiency tax" prescribed in the chapter on Additions to Tax under Title X Statutory Offenses and Penalties under the *1997 NIRC*" shall apply to all taxes, fees and charges imposed in the [*1997 NIRC*]."[24] In relation thereto, *Section 249 (A) of the 1997 NIRC* is explicit that the deficiency interest shall be assessed on any unpaid amount of tax, *viz.:*

> SEC. 49. Interest. -
>
> (A) *In general.* - There shall be assessed and collected on any unpaid amount of tax, interest at the rate of twenty percent (20%) per annum, or such higher rate as may be prescribed by rules and regulations, from the date prescribed for payment until the amount is fully paid.[25]

Basic is the rule in statutory construction that "if a statute is clear, plain and free from ambiguity, it must be given its literal meaning and applied without interpretation."[26] In the case of *Globe-Mackay Cable and Radio Corporation v. National Labor Relations Commission*[27], the Supreme Court explained,

> This plain-meaning rule or *verba legis* derived from the maxim *index animi sermo est* (speech is the index of intention) rests on

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[23] SEC. 249. Interest. - xxx
(B) *Deficiency Interest.* Any deficiency in the tax due, as the term is defined in this Code, shall be subject to the interest prescribed in Subsection (A) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof.
[24] Underscoring ours.
[25] Underscoring ours.
[26] *Enjay, Inc. v. National Labor Relations Commission*, G.R. No. 110240, July 4, 1995, 245 SCRA 588.
[27] G.R. No. 82511, March 3, 1992, 206 SCRA 701.

> the valid presumption that the words employed by the legislature in a statute correctly express its intent or will and preclude the court from construing it differently. The legislature is presumed to know the meaning of the words, to have used words advisedly, and to have expressed its intent by the use of such words as are found in the statute. *Verba legis non est recedendum* or from the words of a statute there should be no departure.[28]

Both *Sections 247 and 249 (A) of the 1997 NIRC* have expressly and unequivocally provided that deficiency interest shall be imposed on all taxes imposed under the *1997 NIRC,* without qualification on the kind of tax. The VAT is a tax imposed under the *1997 NIRC.*[29] To construe that the deficiency interest may only be imposed on certain kind of taxes would be inconsistent with the express provision of *Sections 247 and 249 (A) of the 1997 NIRC.*

Based on the foregoing, the Court concludes that the deficiency interest may be imposed not just on deficiency income tax, donor's tax, and estate tax, but also on VAT.[30]

It must be emphasized that among the ends to which a motion for reconsideration is addressed, one is precisely to convince the Court that its ruling is erroneous and improper, contrary to laws and evidence.[31] Having failed to do so, GQRI's Motion for Reconsideration must necessarily fail.

WHEREFORE, premises considered, Global Quickservice Restaurant, Inc.'s Motion for Reconsideration is hereby **DENIED** for lack of merit. Accordingly, the Assailed Decision dated March 15, 2017 is hereby **AFFIRMED** and **UPHELD.**

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

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[28] Underscoring ours.
[29] *Section 21, 1997 NIRC.*
[30] *Liquigaz Philippines Corporation v. Commissioner of Internal Revenue and Commissioner of Internal Revenue v. Liquigaz Philippines Corporation,* CTA EB Case Nos. 1117 and 1119, June 3, 2016; *Splash Corporation v. Commissioner of Internal Revenue,* CTA Case No. 8530, October 12, 2016.
[31] *Coquilla v. Commission on Elections,* G.R. No. 151914, July 31, 2002, 434 Phil. 861.

WE CONCUR:

(I maintain my Concurring and Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

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

(I maintain my concurrence with PJ's CDO)
ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice