REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

SILVER COSMO (PHILS.) CORPORATION (formerly CDL HOTELS (PHILS.) CORPORATION), Plaintiff,	CTA EB NO. 911 (CTA CASE NO. 7167)
	Present:
-versus-	DEL ROSARIO, *PJ*; CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS *and* RINGPIS-LIBAN, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUL 31 2013 9:00 a.m.

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DECISION

Fabon-Victorino, J.:

This appeal stemmed from the Petition for Review filed by petitioner Silver Cosmo (Phils) Corporation, formerly CDL Hotels (Phils.) Inc., before the Court in Division praying for the cancellation of assessments for deficiency income tax and withholding tax for taxable year 2000 in the total amount of P31,855,866.78 issued by respondent.

The petition was denied in the assailed Decision promulgated on March 20, 2012 for lack of merit which was effectively affirmed in the similarly assailed Resolution dated

June 8, 2012, which denied its Motion for Reconsideration, also for lack of merit.

First, the facts.

Petitioner is a domestic corporation, with principal office located at the 10th Floor, The Heritage Hotel, EDSA Extension, Pasay City, Metro Manila Philippines.

Respondent Commissioner of Internal Revenue is the head of the Bureau of Internal Revenue (BIR), vested with authority to assess and collect all national internal revenue taxes. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On October 15, 1997, petitioner entered into a management Agreement with Grand Plaza Hotel Corporation (GPHC), the owner of the Heritage Hotel, for the management and operation of the Hotel. Pursuant to the said Agreement, petitioner, through its parent company in Singapore, CDL Hotels International-Singapore (CDL-Singapore) provided marketing, advertising and promotional services for Heritage Hotel. CDL-Singapore, a foreign corporation not doing business in the Philippines, promoted and marketed Heritage Hotel by including it in its worldwide advertising and marketing campaign for all its affiliated hotels.

For taxable year 2000, the Heritage Hotel's share in the worldwide expense for advertising campaign undertaken by CDL Singapore amounted to P28,770,607.00, for which petitioner was billed. The latter remitted the amount as billed to its parent company CDL-Singapore.

In 2003, respondent conducted an examination of petitioner's books of account for taxable year 2000. After audit, respondent found petitioner liable for deficiency income tax, deficiency final withholding tax, and deficiency expanded withholding tax arising from the P28,770,607.00 reimbursement of expenses it made to CDL Singapore.

On July 23, 2004, petitioner received from respondent a Final Assessment Notice (FAN) dated July 23, 2004, finding it liable for deficiency income tax and final withholding taxes, as detailed below:

I. INCOME TAX		
Net Income per Return		P 2,312,433.00
Add: Disallowed Expense per non-Withholding:		
Share in Group Service Expense	P28,770,607.00	
Professional Fees	401,204.00	29,171,811.00
Taxable Income per Review		P31,484,244.00
Tax Due		P10,074,958.08
Less: Payment		739,978.40
Basic Deficiency		P 9,334,979.68
Add: Interest - 20% (4-16-01 to 8-20-04)		6,746,081.52
Total Amount Due		**P16,081,061.20**
II. FINAL WITHHOLDING TAX		
Share in Group Service Expense		P28,770,607.00
Tax Due (32%)		P 9,206,594.24
Add: 20% interest (1-25-01 to 8-20-04)		6,568,211.34
Total Amount Due		P15,774,805.58
TOTAL AMOUNT		**P31,855,866.78**

On August 17, 2004, petitioner, through its external auditors, filed with respondent a letter protest dated August 13, 2004 against the said FAN.

Respondent explained that petitioner could not deduct the said amount from its gross revenues for 2000 because it was not a deductible expense of petitioner but rather of the Hotel. Furthermore, the said sum could not possibly be claimed as a deduction since the final withholding tax had not been applied and paid.

On March 11, 2005, petitioner filed a Petition for Review before the Court in Division assailing the validity of the assessments issued by respondent.

In her Answer dated June 29, 2005[1] respondent countered that the subject assessments has become final and executory as petitioner failed to submit the required

[1] Docket, pp. 28-31.

documents in support of its protest. That being the case, the Court can no longer entertain the petition for lack of jurisdiction. Even assuming that the Court still has jurisdiction over the case, petitioner was not able to controvert her findings as stated in the questioned assessments which was issued in accordance with law and regulations.

On December 13, 2007, petitioner availed of the Tax Amnesty Program under Republic Act No. 9480 with respect to its deficiency income tax.

On March 20, 2012, the Court in Division denied the petition for lack of merit[2], in this wise:

> WHEREFORE, the Petition for Review is hereby DENIED for lack of merit. CDL Hotels (Phils.) Corporation is ORDERED to PAY the amount of P11,508,242.80, in addition to the (a) deficiency interest rate of twenty percent (20%) per annum on the basic deficiency final withholding tax in the amount of P9,206,594.24 computed from January 25, 2001, until full payment thereof pursuant to Section 249(B) of the NIRC of 1997; and (b) delinquency interest at the rate of twenty percent (20%) per annum on the 20% deficiency interest which have accrued from January 25, 2011, until August 23, 2004, and on the total deficiency taxes of P11,508,242.80, computed from August 23, 2004, until full payment thereof pursuant to Section 249(C) of the NIRC of 1997.
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> SO ORDERED.

On April 10, 2012, petitioner moved for a reconsideration of the foregoing decision, but it was denied for lack of merit in the Resolution dated June 7, 2012[3].

[2] Docket, pp. 25-42.
[3] Docket, pp. 44-47.

On July 18, 2012, petitioner elevated on appeal the adverse decision through the instant Petition for Review[4] with the Court *En Banc,* raising the following issues:

a) Contrary to the findings of this Honorable Court, [p]etitioner has established with sufficient documentary and testimonial evidence that the remittance of the amount of Php28,770,607.00 by CDL Hotels (Phils.) Inc. to Millennium & Copthorne is not an income payment but a reimbursement of expense incurred by Millenium & Copthorne and, hence, not subject to final withholding tax.

b) Contrary to the findings of the Honorable Court, the amount of Php Php28,770,607.00 claimed by [p]etitioner as a deduction from its income is an ordinary and necessary expense vis-à-vis the hotel industry of which [p]etitioner is a part.

Petitioner claims that the amount of Php28,770,607.00 remitted to the head office is not income payment but rather reimbursement, an expense which may be properly deducted from petitioner's gross revenues for the year 2000 as necessary and ordinary business expense in the hotel industry to which it belongs. Moreover, the promotion, advertising and marketing services provided by CDL-Singapore for the benefit of Heritage Hotel managed by petitioner is not unusual in hotel industry.

Petitioner also posits that the BIR has long recognized this practice in the hotel industry. In fact, on February 24, 1995, BIR issued BIR Ruling No. 045-95 for Hongkong Shanghai Hotels Ltd. - Philippine Branch, which provides that the expenses incurred by a parent company in connection with the finance, administration and research and development for the benefit of its branches, may be claimed as an expense. This was strengthened by BIR Ruling No. 079-99 dated June 22, 1999, which provides that all ordinary and necessary expenses directly attributable to the development, management, operation and/or control of the trade or business are deductible from gross income pursuant to Section 34(A)(1)(a) of the NIRC of 1997.

[4] *En Banc*'s Minute Resolution, docket, p. 11.

As Manager of Heritage Hotel, petitioner strongly believes that the expenses incurred for the advertisement and promotion of the hotel is reasonable and necessary to its business. Hence, the reimbursement of head office expense may be properly deducted from its gross revenues for the year 2000.

Evidence also reveals that certain activities were performed by CDL-Singapore outside of the Philippines for and on behalf of petitioner, the expense for which CDL-Singapore claimed for reimbursement.

The petition was submitted for decision *sans* comment from respondent who failed to file any despite the opportunity granted.[5]

THE RULING OF THE COURT *EN BANC*

Evident after a careful examination of the arguments set forth by petitioner that the grounds relied upon as well as the matters raised therein are mere reiteration of points brought before the Court in Division, which were exhaustively considered and determined in the assailed Decision dated March 20, 2012 and in the subsequent Resolution dated June 7, 2012. A closer look in fact shows that the instant Petition for Review is a *replica* or an exact duplicate of petitioner's Motion for Reconsideration filed on April 10, 2012.

That being the case, the Court *En Banc* finds no reason or sufficient justification to modify much more reverse the ruling of the Court in Division consistent with that of respondent and adequately explained in this fashion:

> After studying the arguments of both parties and the evidence on record, the Court finds no reason to deviate from the findings of the respondent in this case.

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[5] Record Verification dated October 12, 2012, docket, p. 55.

Despite the submission of numerous documentary evidence by petitioner, the Court finds no convincing evidence that establishes the fact that the amount of P28,770,607.00 represents a deductible expense, and not a profit or income remittance or allocation to CDL Singapore.

The Tax Invoices, which were supposed to prove that the said amount is a reimbursable expense, are insufficient to grant petitioner's claim. Petitioner was only able to show four (4) amounts for reimbursements from the head office: $578,497.19,[28] $102,310.19,[29] $94,397.69,[30] and $424,761.08.[31] These amounts were not detailed enough to show that it included the amount of P28,770,607.00 and that such amount is to be treated as a deductible expense. Unfortunate for the petitioner, there were no other evidence presented that could have established the fact that the amount was incurred and that the same is a deductible expense under our laws and regulations.

In ***Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue***, the Supreme Court ruled:

> 'The principle is recognized that when a taxpayer claims a deduction, he must point to some specific provision of the statute in which that deduction is authorized and must be able to prove that he is entitled to the deduction which the law allows. As previously adverted to, the law allowing expenses as deduction from gross income for purposes of the income tax is Section 30(a) (1) of the National Internal Revenue which allows a deduction of 'all the ordinary and necessary expenses paid or

incurred during the taxable year in carrying on any trade or business.' An item of expenditure, in order to be deductible under this section of the statute, must fall squarely within its language.

We come, then, to the statutory test of deductibility where it is axiomatic that to be deductible as a business expense, three conditions are imposed, namely: (1) the expense must be ordinary and necessary, (2) it must be paid or incurred within the taxable year, and (3) it must be paid or incurred in carrying on a trade or business. In addition, not only must the taxpayer meet the business test, he must substantially prove by evidence or records the deductions claimed under the law, otherwise, the same will be disallowed. The mere allegation of the taxpayer that an item of expense is ordinary and necessary does not justify its deduction.

. . . Similarly, this Court has never attempted to define with precision the terms 'ordinary and necessary.' There are however, certain guiding principles worthy of serious consideration in the proper adjudication of conflicting claims. Ordinarily, an expense will be considered 'necessary' where the expenditure is appropriate and helpful in the development of the taxpayer's business. It is 'ordinary' when it connotes a payment which is normal in relation to the

> business of the taxpayer and the surrounding circumstances. The term 'ordinary' does not require that the payments be habitual or normal in the sense that the same taxpayer will have to make them often; the payment may be unique or non-recurring to the particular taxpayer affected.
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> ... The burden of proof that the expenses incurred are ordinary and necessary is on the taxpayer and does not rest upon the Government. To avail of the claimed deduction under Section 30(a)(1) [now Section 34(A)(1)] of the National Internal Revenue Code, it is incumbent upon the taxpayer to adduce substantial evidence to establish a reasonably proximate relation between the expenses to the ordinary conduct of the business of the taxpayer. A logical link or nexus between the expense and the taxpayer's business must be established by the taxpayer.'

> Thus, the Court agrees with respondent that the subject amount is more of a profit allocation as supported by the evidence on record.[6]

Aside from petitioner's bare assertion that the amount of P28,770,607.00 assessed by respondent as deficiency income tax should be considered as a deductible expense as it constitutes a reimbursement to its parent company, CDL-Singapore for promoting its affiliate hotels, petitioner has not presented evidence to prove or support this allegation.

It should be emphasized that when tax assessment is assailed, the burden of proof is on the taxpayer contesting

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[6] Docket, pp. 36-38.

the validity or correctness of an assessment to prove not only that the Commissioner of Internal Revenue is wrong but that he (taxpayer) is right.[7] And if the taxpayer fails to present evidence or proof in support of his allegations in his petition for review, as in this case, conformably to the doctrine of the presumption in favor of the correctness of tax assessment[8], the Court has no option but to sustain the assessment against the taxpayer.

Finding the ruling of the Court in Division within the ambit of what the law and jurisprudence provide, the same must be sustained and not disturbed.

WHEREFORE, the Petition for Review filed by petitioner Silver Cosmo (Phils) Corporation (formerly CDL Hotels (Phils) Corporation) on July 18, 2012 is hereby **DENIED**, for lack of merit. Accordingly, the assailed Decision and Resolution promulgated on March 20, 2012 and June 7, 2012, respectively, are AFFIRMED *in toto*.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

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[7] Lino Gutierrez vs. Collector of Internal Revenue, CTA Case No. 504, January 28, 1962; See also Tan Guan vs. Court of Tax Appeals, L-23676, April 27, 1967, 19 SCRA 903.

[8] Inter-provincial Auto-bus Co., Inc. vs. Collector of Internal Revenue, L-6741, January 31, 1956, 98 Phil. 290; Collector of Internal Revenue vs. Bohol Land Transportation Co., L-13099 and L-13462, April 29, 1960, 107 Phil. 965.

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

(On Leave)
LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

(On Leave)
CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice