REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

CONAL HOLDINGS CORPORATION,
Petitioner,

- versus –

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9099

Members:

CASTAÑEDA, JR., *Chairperson,*
CASANOVA, and
MANAHAN, *JJ.*

Promulgated:

JUL 17 2017 3:25 p.m.

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DECISION

CASTAÑEDA, JR., *J.:*

THE CASE

This is a Petition for Review filed by Conal Holdings Corporation praying for the cancellation and withdrawal of the deficiency expanded withholding tax (EWT) assessment issued by the Commissioner of Internal Revenue against it in the aggregate amount of ₱291,875,839.72, arising from its purchase of the Iligan Diesel Power Plants from the City Government of Iligan in 2013.

THE FACTS

Petitioner Conal Holdings Corporation is a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal place of business at the 4th Floor, Alphaland Southgate Tower, 2258 Chino Roces Avenue corner EDSA, Makati City.[1] It is a registered taxpayer of the Bureau of Internal Revenue (BIR), Large Taxpayers Service, as shown by its Certificate of Registration dated July 31, 2015, with Taxpayer Identification Number 005-182-763-000.[2]

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue vested under the appropriate laws with the authority to carry out the functions, duties and responsibilities of said office including, *inter alia*, the power to decide disputed assessments and to cancel and abate tax liabilities, pursuant to the pertinent provisions of the National Internal Revenue Code (NIRC) of 1997, as amended, and other tax laws, rules and regulations. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On August 26, 2014, petitioner received a copy of the Preliminary Assessment Notice[3] (PAN) dated August 20, 2014, which alleged that petitioner was liable for deficiency capital gains tax (CGT) and documentary stamp tax (DST) in connection with the purchase of buildings, machineries and equipment comprising two (2) foreclosed National Power Corporation (NPC) diesel power stations, collectively known as the "Iligan Diesel Power Plants", in the amounts of ₱282,961,279.54 and ₱122,252,314.88, respectively.[4]

On September 9, 2014, petitioner filed its Reply[5] to the PAN, and raised therein legal and factual objections to the proposed CGT and DST findings.[6]

On October 8, 2014, petitioner received a copy of the Amended Preliminary Assessment Notice[7] dated October 1, 2014 which cancelled

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[1] Par. 1, Stipulated Facts, Joint Stipulation of Facts and Issues (JSFI), docket, vol. I, p. 408; Exhibit "P-1", docket, vol. II, pp. 455-475.
[2] Par. 2, Stipulated Facts, JSFI, docket, vol. I, p. 408; Exhibit "P-1-b", docket, vol. II, p. 477.
[3] Exhibit "P-2", docket, vol. II, pp. 478-481; Exhibit "R-1", BIR Records, pp. 382-385.
[4] Par. 4, Stipulated Facts, JSFI, docket, vol. I, p. 409.
[5] Exhibits "P-3" and "P-3-a", docket, vol. II, pp. 482-492.
[6] Par. 5, Stipulated Facts, JSFI, docket, vol. I, p. 409.
[7] Exhibit "P-4", docket, vol. II, pp. 493-498; Exhibit "R-2", BIR Records, pp. 467-472.

the assessment for CGT and DST but then assessed EWT in the amount of ₱290,255,010.77 in connection with the purchase of the Iligan Diesel Power Plants instead.[8]

Petitioner filed its Reply[9] to the Amended PAN on October 21, 2014, which alleged that despite the change in theory, petitioner is still not liable for EWT amounting to ₱290,255,010.77.[10]

On November 4, 2014, petitioner received a copy of respondent's Formal Letter of Demand[11] (FLD) dated October 24, 2014. In the FLD, respondent requested petitioner to pay the alleged deficiency EWT in the amount of ₱291,875,839.72 in connection with the purchase of the Iligan Diesel Power Plants, broken down as follows:[12]

Basic Expanded Withholding Tax	₱184,875,803.03
25% Surcharge	46,218,950.76
20% Interest per annum	60,781,085.93
Total Amount Due and Payable	₱291,875,839.72

Petitioner filed a letter of protest[13] against the FLD on November 24, 2014, which raised legal and factual objections to the assessment for alleged deficiency EWT. Petitioner requested a reinvestigation of the assessments and the cancellation and withdrawal of the assessment for alleged deficiency EWT.[14]

On December 19, 2014, petitioner filed relevant documents in support of its protest.[15]

In view of respondent's inaction on its protest, petitioner filed the instant Petition for Review before this Court on July 15, 2015.

In his Answer[16] filed on September 28, 2015, respondent raised the following special and affirmative defenses:

[8] Par. 6, Stipulated Facts, JSFI, docket, vol. I, p. 409.
[9] Exhibits "P-5" and "P-5-a", docket, vol. II, pp. 499-505.
[10] Par. 7, Stipulated Facts, JSFI, docket, vol. I, p. 409.
[11] Exhibit "P-6", docket, vol. II, pp. 506-513; Exhibits "R-3" and "R-4", BIR Records, pp. 493-499.
[12] Par. 8, Stipulated Facts, JSFI, docket, vol. I, pp. 409-410.
[13] Exhibits "P-7" and "P-7-a", docket, vol. II, pp. 514-524.
[14] Par. 9, Stipulated Facts, JSFI, docket, vol. I, p. 410.
[15] Exhibits "P-8" and "P-8-a", docket, vol. II, pp. 525-556.
[16] Docket, vol. I, pp. 121-130.

Petitioner is legally bound to withhold taxes from the sale of the Iligan Diesel Power Plants.

5. At the outset, it must be emphasized that the National Internal Revenue Code of 1997 (Tax Code) imposes a duty upon petitioner to withhold taxes from the income payments it made to the City of Iligan. It states:

SEC. 57. Withholding of Tax at Source. -

xxx xxx xxx

6. As can be gleaned from above, the mandate of the law is clear – that is all withholding agents of the government are legally bound to withhold a creditable income tax from income payments it made to corporations arising from the sale, exchange or transfer or real properties.

7. Thus, simply applying the provisions of the Tax Code, it cannot be denied that petitioner should have withheld taxes from the income payments it made to the City of Iligan.

Petitioner is liable for deficiency Expanded Withholding Tax (EWT), not in its capacity as a taxpayer, rather as an agent of the government who failed to comply with its legally mandated duty to withhold taxes.

8. As explained above, there is no exception to the duty to withhold on income payments arising from the sale, exchange or transfer of real properties.

9. Thus, as penalty for petitioner's failure to comply with its legally mandated duty to withhold taxes, it is being assessed for deficiency EWT.

10. To be clear, petitioner is not being assessed for deficiency EWT as a taxpayer, but rather being penalized as an agent of the government who failed to comply with its legally mandated duty to withhold taxes.

11. The fact that the amount sought to be collected from the withholding agent is not a tax, despite the nomenclature "deficiency tax", but rather a penalty, has long been emphasized by the Honorable Supreme Court stating:

xxx xxx xxx

12. As clearly stated by the Highest Court, the imposition on the withholding agent for non-withholding and non-remittance to the government is just a mere penalty for its failure to comply with the withholding tax provision.

13. It need not be stressed that in an assessment for deficiency withholding taxes, as provided by the aforecited jurisprudence, the amount sought to be collected from petitioner is not the tax itself. Logically, it would be ridiculous to collect the said tax from petitioner when no income flowed into its person and jurisprudence affirms the same. It is merely an agent and not the statutory taxpayer. In the case of Commissioner of Internal Revenue vs. The Court of Appeals, Court of Tax Appeals and A. Soriano Corp. it was provided:

xxx xxx xxx

14. It bears emphasis that withholding agent merely holds in trust the amount of tax it withheld and as a trustee, it is duty bound to remit to the government

the proper amount of tax withheld. Thus, Section 58(A) of the Tax Code succinctly provides that:

xxx xxx xxx

15. The tax deducted and withheld by withholding agents under the said provision shall be held as a special fund in trust for the government until paid to the collecting officer.

16. In instances of non-withholding or non-remittance of the tax, such as the case herein, the liability of the withholding agent becomes separate and distinct from the liability of the person on whom the tax is primarily imposed because the cause of action against the withholding agent is not for the collection of the tax but for the enforcement of the withholding tax provision of the Tax Code. The same abovecited case provides:

xxx xxx xxx

17. Clearer than day, in case of breach by the agent of his legal duty, he is assessed not for the collection of tax. He is merely penalized for failure to comply with the withholding tax provision. Therefore, in case of such breach, and no income taxes were withheld by the agent, the agent is penalized. The tax cannot be collected from the agent because as stated in the above case, "(t)he agent is not liable for the tax as no wealth flowed into him – he earned no income." The cause of action against the withholding agent is not for the collection of the tax but for the enforcement of the withholding tax provision of the Tax Code.

18. As a matter of fact, the Highest Court even pronounced that despite the liability of the withholding agent for its failure, the tax itself may still be collected from the payee, stating:

xxx xxx xxx

19. As can be seen, the Supreme Court itself provided that while the agent may be held accountable for the penalty, the actual tax may still be collected from the payee.

20. Prescinding from the foregoing circumstances, petitioner is clearly liable for deficiency Creditable Withholding Tax for its failure to comply with the withholding provisions of the Tax Code and its implementing rules.

Assuming arguendo that petitioner is being assessed for taxes and not penalties for violation of the withholding tax provisions of the Tax Code, exemptions from taxation can only be invoked by the taxpayers legally entitled to the exemptions.

21. Petitioner argued that it was not duty bound to withhold taxes from its income payments to the City of Iligan since the latter allegedly performed governmental functions.

22. Assuming arguendo that petitioner is being assessed for taxes and not penalties for violation of the withholding tax provisions of the Tax Code, petitioner's argument is flawed.

23. In the first place, petitioner is not the one entitled to the alleged exemption.

24. It has been consistently held that an exemption being enjoined by one entity cannot be invoked by another entity not legally entitled to said exemption.

25. The Honorable Supreme Court in the case of CIR v. Guerrero explained:

xxx xxx xxx

26. In the instant case, petitioner invoked Section 32 (B) (7) (b) for its alleged exemption from Creditable Withholding Tax. It states:

xxx xxx xxx

27. The above quoted provision is clear, it is the Philippine Government or its Political Subdivisions that is entitled to exclude from its Gross Income any income it derived from the exercise of governmental functions, not petitioner.

28. As admitted by petitioner, it is corporation duly organized and existing under the laws of the Republic of the Philippines. It is neither the Philippine Government or any of its Political Subdivision.

29. Thus, clearly, Section 32 (B) (7) (b) of the Tax Code does not apply to petitioner and it has no legal standing to invoke the same.

30. Second, assuming arguendo, that petitioner has the legal standing to invoke the exemption clearly vested to the Philippine Government or any of its Political Subdivision, the sale of the Iligan Diesel Power Plant did not satisfy the essential requisites before it may be treated as excluded from the Gross Income of the City of Iligan.

31. Before the City of Iligan be allowed to exclude any proceeds of its sale of the Iligan Diesel Power Plants, the following requisites must concur:

a. That the income be derived by the Philippine Government or any of its

Political Subdivision from any of its essential government functions; and

b. That the income accrued to the Philippine Government or any of its Political Subdivision.

32. Elementary is the rule that exemption from taxation is not favored and is never presumed, so that if granted it must be strictly construed against the taxpayer.

33. In the instant case, petitioner unilaterally stated that the City of Iligan was exempt from taxation and it presented no proof whatsoever.

34. This cannot be done.

A Notice of Pre-Trial Conference was issued by the Court on September 30, 2015, setting the case for pre-trial conference on November 12, 2015[17], but was reset to December 10, 2015[18], and later reset to January 21, 2016[19], upon respondent's motions[20]. Accordingly, Petitioner's Pre-Trial Brief[21] was filed on November 6, 2015; while Respondent's Pre-Trial Brief[22] was filed on January 15, 2016.

The parties submitted their Joint Stipulation of Facts and Issues[23] on February 19, 2016. Thereafter, on March 1, 2016, the Court issued a Pre-Trial Order[24] approving and adopting the joint stipulations and terminating the pre-trial.

During trial, petitioner presented Atty. Ranulfo D. Cenas[25], the City Environment Management Officer of the City Government of Iligan

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[17] Docket, vol. I, pp. 132-133.
[18] Order dated November 11, 2015, docket, vol. I. p. 139.
[19] Order dated December 8, 2015, docket, vol. I. p. 375.
[20] Urgent Motion to Defer Pre Trial Conference filed on November 9, 2015, docket, vol. I, pp. 134-137 and Motion to Defer Pre Trial Conference filed on December 7, 2015, docket vol. I, pp. 370-373.
[21] Docket, vol. I, pp. 141-154.
[22] Docket, vol. I, pp. 381-384.
[23] Docket, vol. I, pp. 408-421.
[24] Docket, vol. I, pp. 428-432.
[25] Minutes of the Hearing dated March 2, 2016, docket, vol. I, p. 433; Exhibit "P-19", docket, vol. I, pp. 174-182.

and former Chief of Staff of Mayor Lawrence Ll. Cruz; and Mr. Tirso G. Santillan, Jr.[26], petitioner's Executive Vice President, as its witness.

Petitioner filed its Formal Offer of Evidence[27] on May 4, 2016. In the Resolution[28] dated June 2, 2016, the Court admitted all of petitioner's evidence.

On the other hand, respondent presented Revenue Officer Maricel O. Develos[29]. Respondent made an oral formal offer of evidence and the Court admitted all of respondent's evidence.[30]

The case was submitted for decision on October 17, 2016[31], considering petitioner's Memorandum[32] filed on October 3, 2016 by registered mail and received by the Court on October 12, 2016 and respondent's Manifestation[33] filed on September 5, 2016, adopting his Answer as his memorandum.

THE ISSUES

The sole issue presented by the parties for this Court's resolution is whether petitioner is liable for deficiency EWT, inclusive of interest and surcharge, in the aggregate amount of ₱291,875,839.72 for its purchase of the Iligan Diesel Power Plants.[34]

THE COURT'S RULING

In the FLD[35], respondent is assessing petitioner for deficiency EWT on its purchase of real properties owned by the City Government of Iligan, basically computed as follows:

[26] Minutes of the Hearing dated April 11, 2016, docket, vol. I, p. 434; Exhibit "P-20", docket, vol. I, pp. 158-170.
[27] Docket, vol. II, pp. 443-454.
[28] Docket, vol. II, pp. 645-646.
[29] Minutes of the Hearing dated July 20, 2016, docket, vol. II, pp. 649-650; Exhibit "R-5", docket, vol. I, pp. 391-396.
[30] Minutes of the Hearing dated July 20, 2016, docket, vol. II, pp. 649-650.
[31] Resolution dated October 17, 2016, docket, vol. II, p. 713.
[32] Docket, vol. II, pp. 692-709.
[33] Docket, vol. II, pp. 659-661.
[34] Issue, JSFI, docket, vol. I, p. 410.
[35] Exhibit "P-6", docket, vol. II, pp. 506-513; Exhibits "R-3" and "R-4", BIR Records, pp. 493-499.

OCT/TCT OCT No.	Tax Declaration No. (TD)	LOCATION OF PROPERTY	CLASS.	Fair Market Value (FMV) per Tax Declaration
00069	02-009-08702	Dalipuga, Iligan City	Mach.-Ind.	1,219,843,126.69
00072	02-009-08703	Dalipuga, Iligan City	Misc.-Ind.	562,427,853.28
03702	02-009-08695	Dalipuga, Iligan City	Mach.-Ind.	1,466,440,236.07
				3,248,711,216.04

	EXPANDED WITHHOLDING TAX ***(On other real properties, i.e., machineries)***
Taxable Base	3,248,711,216.04
x Tax Rate	6%
Tax Due	194,922,672.96
Less: Basic Tax Paid per Return	10,046,869.93
Basic Tax Still Due	184,875,803.03
Add:	
25% Surcharge	46,218,950.76
20% Interest p.a. (03/10/13 to 10/31/14)	60,781,085.93
TOTAL AMOUNT DUE AND PAYABLE	**291,875,839.72**

According to the Details of Computation, pursuant to Section 4(c) of Revenue Regulations (RR) No. 07-06[36] RE Applicable Taxes on Sales, Exchange or other Disposition of Real Property in case of Domestic Corporations, there are three possible scenarios, to wit:

Nature	**Tax Rate/Base**
Sale, exchange or disposition of lands and/or buildings classified as capital asset	6% Capital Gains Tax based on the gross selling price or current FMV as determined in accordance with Section 6(E) of the Tax Code, whichever is higher.
Sale of lands and/or building classified as ordinary asset	Creditable withholding tax (expanded) under Section 2.57.2(J) of RR 2-98, as amended, and consequently, to

[36] Should be RR No. 07-03 (Providing the Guidelines in Determining Whether a Particular Real Property is a Capital Asset or an Ordinary Asset Pursuant to Section 39(A)(1) of the National Internal Revenue Code of 1997 for Purposes of Imposing the Capital Gains Tax under Sections 24(D), 25(A)(3), 25(B) and 27(D)(5), or the Ordinary Income Tax under Sections 24(A), 25(A) & (B), 27(A), 28(A)(1) and 28(B)(1), or the Minimum Corporate Income Tax (MCIT) under Sections 27(E) and 28(A)(2) of the same Code). RR No. 07-06 pertains to "Further Amending Certain Provision of Revenue Regulations (RR) No. 6-2005, as Amended by RR 10-2005, Implementing the Provisions of Executive Order No. (EO) 399, as Amended by EO 422, Otherwise Known as the 'No Audit Program (NAP).'"

	the ordinary income tax under Section 27(A).
Sale of other real property regardless of classification i.e. capital asset or ordinary asset	Creditable withholding tax (expanded) under Section 2.57.2(J) of RR 2-98, as amended, and consequently, to the ordinary income tax under Section 27(A).

Based on the foregoing, respondent avers that the sale/disposition of machineries-industries and miscellaneous-industries belongs to the third category, *i.e.*, sale of other real property regardless of classification, which is subject to creditable withholding tax (CWT) and consequently to ordinary income tax. The machineries in question, which are essential and principal elements in the industry, are considered real property pursuant to Article 415(5) of the Civil Code; thus, subject to CWT.

On the other hand, petitioner argues that its income payments to the City Government of Iligan for the purchase of the Iligan Diesel Power Plants are specifically excluded from the coverage of withholding tax pursuant to Section 2.57.5(A) of RR No. 2-98, as amended, which provides that income payments made to a city government is not subject to EWT.

In this connection, petitioner further argues that the City is a public corporation/local government unit created under Republic Act (RA) No. 525. As such, it possesses taxing powers granted by the Constitution and RA No. 7160 or the Local Government Code (LGC). Thus, any income that the City may realize in the course of performing its functions as a local government unit should be exempt from taxation pursuant to Section 32(B)(7)(b) of the NIRC of 1997, as amended. Petitioner submits that the City's income from the sale to petitioner of the Iligan Diesel Power Plants arose from the exercise of an essential government function.

According to petitioner, the Iligan Diesel Power Plants were formerly owned by Northern Mindanao Power Corporation (NMPC)/National Power Corporation (NPC). The City assessed NMPC with real property taxes (RPT) covering the period from the 3rd quarter of 2003 up to the 1st quarter of 2007. However, NMPC did not pay the RPT, but instead contested the assessment on the ground that it is exempt from RPT. NMPC's protest against the RPT eventually reached the Central Board of Assessment Appeals. During the pendency of the appeal, the City issued Warrants of Levy on the Iligan Diesel Power Plants in accordance with Sections 258 and 231 of the LGC. The City auctioned the Iligan Diesel Power Plants at the tax delinquency sale of NMPC properties on April 25, 2007. However, the City was unsuccessful in trying to sell the Iligan Diesel Power Plants at a public auction. As a consequence, the City bought the properties in accordance with Section 263 of the LGC. Since NMPC failed to redeem the property within one year from the sale, the ownership of the Iligan Diesel Power Plants was vested to the City by operation of Section 263 of the LGC.

Petitioner avers that considering the City could not operate the Iligan Diesel Power Plants, the Sangguniang Panlungsod of the City resolved to sell the same at a public action pursuant to Section 264 of the LGC, and through Sangguniang Panlungsod Resolution No. 08-611 and City Ordinance No. 08-5367. In 2008, the City again offered the Iligan Diesel Power Plants for sale through public bidding. Despite the required notices and publications, however, only one bidder participated which resulted in a bidding failure. Upon its declaration of bidding failure, the City proceeded to negotiate the sale of the Iligan Diesel Power Plants. Petitioner approached Mayor Lawrence Ll. Cruz, then City Mayor of Iligan, and offered to purchase the Iligan Diesel Power Plants from the City for a price of ₱300,000,000.00. On September 6, 2010, the City's Sangguniang Panlungsod passed Resolution No. 10-551 which authorized Mayor Cruz to enter into a Memorandum of Agreement (MOA) with petitioner for the sale of the Iligan Diesel Power Plants to petitioner, subject to a Swiss-Challenge. On December 3, 2011, the City, through Mayor Cruz, and petitioner, signed the Memorandum of Agreement. Pursuant to the MOA, the City was to sell the Iligan Diesel Power Plants to petitioner to address the power shortage in Mindanao, and that petitioner was to rehabilitate, run and operate the Iligan Diesel Power Plants to generate additional power.

Petitioner further narrates that on December 12, 2011, the City's Sangguniang Panlungsod passed Resolution No. 11-1134 awarding the sale of the Iligan Diesel Power Plants to petitioner, but subject to review by the Commission on Audit (COA). The resolution further authorized Mayor Cruz to issue the Notice of Award in favor of petitioner. Pursuant to the Commission on Audit Decision No. 2012-146 dated September 21, 2012, the Iligan Diesel Power Plants were to be sold to petitioner for a consideration of ₱386,911,780.44. On January 28, 2013, the Sangguniang Panlungsod passed Resolution No. 13-78 and enacted City Ordinance No. 13-5989. Resolution No. 13-78 reiterated the City's decision to sell the Iligan Diesel Power Plants to petitioner, incorporating therein the recommendations of the COA. City Ordinance No. 13-5989 reiterated the mandate in City Ordinance No. 08-5367 to authorize the sale of the Iligan Diesel Power Plants, amended a portion of Resolution No. 11-1134, and awarded the sale in favor of petitioner. On February 27, 2013, petitioner and the City executed a Deed of Sale and an Amended and Restated Memorandum of Agreement covering the sale of the Iligan Diesel Power Plants for a consideration of ₱386,911,780.44.

Petitioner argues that the above-discussed events clearly show that the City originally acquired the Iligan Diesel Power Plants from NMPC due to its failure to settle its RPT liability to the City. The collection of RPT from taxpayers is undeniably a governmental function of the City. The above discussion also proves that the City sold the subject power plants to petitioner because the City is not in the business, and is not capable of operating a power plant. Moreover, the proceeds of the sale to petitioner were appropriated in the City's 2013 General Fund. Verily, the City performed essential governmental functions when it sold the Iligan Diesel Power Plants to petitioner in order to recover deficiency RPT originally due from NMPC and to increase the power supply in Mindanao.

Pursuant to Section 57(B) of the NIRC of 1997, as amended, the Secretary of Finance may, upon the recommendation of the Commissioner, require the withholding of tax on items of income payable to any person, natural or juridical, residing in the Philippines, to wit:

> "SEC. 57. *Withholding of Tax at Source.* –
>
> xxx xxx xxx
>
> (B) *Withholding of Creditable Tax at Source.* – The Secretary of Finance may, upon the recommendation of the Commissioner, require the withholding of a tax on the items of income payable to natural or juridical persons, residing in the Philippines, by payor-corporation/persons as provided for by law, at the rate of not less than one percent (1%) but not more than thirty-two percent (32%) thereof, which shall be credited against the income tax liability of the taxpayer for the taxable year."

Pursuant to the above authority, RR No. 2-98 was issued, implementing the said provision.

In relation thereto, Section 4(c)(ii) of RR No. 07-03 provides that sale of other real property (other than land and/or building treated as capital asset), regardless of the classification thereof, located in the Philippines, shall be subject to creditable withholding tax (expanded) under Sec. 2.57.2(J) of RR No. 2-98, as amended, to wit:

> "SECTION 4. *Applicable Taxes on Sale, Exchange or Other Disposition of Real Property.* – Gains/Income derived from sale, exchange, or other disposition of real properties shall, unless otherwise exempt, be subject to applicable taxes imposed under the Code, depending on whether the subject properties are classified as capital assets or ordinary assets.
>
> xxx xxx xxx
>
> c. ***In the case of domestic corporations.*** –
>
> xxx xxx xxx
>
> (ii) The sale of land and/or building classified as ordinary asset and other real property (other than land and/or building treated as capital asset), regardless of the classification thereof, all of which are located in the Philippines, shall be subject to the creditable withholding tax (expanded) under Sec. 2.57.2(J) of Rev. Regs. No. 2-98, as amended, and consequently, to the ordinary income tax under Sec. 27(A) of the Code. In lieu of the ordinary income tax, however, domestic corporations may become subject to the minimum corporate income tax (MCIT) under Sec. 27(E) of the Code, whichever is applicable."

On the other hand, Sec. 2.57.2(J) of RR No. 2-98, as amended, provides:

> "SECTION 2.57.2. *Income Payments Subject to Creditable Withholding Tax and Rates Prescribed Thereon.* – Except as herein otherwise provided, there shall be withheld a creditable income tax at the rates herein specified for each class of payee from the following items of income payments to persons residing in the Philippines:
>
> xxx xxx xxx
>
> (J) *Gross selling price or total amount of consideration or its equivalent paid to the seller/owner for the sale, exchange, or transfer of real property classified as ordinary asset.* – A creditable withholding tax based on the gross selling price/total amount of consideration or the fair market value determined in accordance with Section 6(E) of the Code, whichever is higher, paid to the seller/owner for the sale, transfer or exchange of real property, other than capital asset, shall be imposed upon the withholding agent/buyer, in accordance with the following schedule:

A. Where the seller/transferor is exempt from creditable withholding tax in accordance with Sec 2.57.5 of these regulations	Exempt
xxx xxx xxx	
C. Where the seller/transferor is not habitually engaged in the real estate business	6.0%"

Based on Section 4(c)(ii) of RR No. 07-03, sale of other real property regardless of classification (whether capital asset or ordinary asset), is subject to EWT under Section 2.57.2(J) of RR No. 2-98, as amended, and when the seller is not habitually engaged in real estate business, the income payment is subject to 6% creditable withholding tax.

However, respondent failed to take into consideration subparagraph A of Section 2.57.2(J) of RR No. 2-98, above-quoted, which provides that where the seller/transferor is exempt from creditable withholding tax in accordance with Section 2.57.5 of RR No. 2-98, then the income payment is exempt from creditable withholding tax.

A reading of Section 2.57.5(A) of RR No. 2-98, as amended, shows that the withholding of creditable withholding tax shall not apply to income payments made to the National Government and its instrumentalities, including provincial, city or municipal governments and barangays, to wit:

> "Sec. 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 agencies and its instrumentalities, including provincial, city, municipal governments and barangays except government-owned and controlled corporations."

In the present case, there is no question that the sale of other real property was made by the City Government of Iligan. Section 2.57.5(A) of RR No. 2-98, as amended, clearly states that the withholding of creditable withholding tax prescribed in Section 2.57.2(J) of RR No. 2-98 shall not apply to income payments made to the city government. Hence, pursuant to Section 2.57.5(A) of RR No. 2-98, implementing Section 57(B) of the NIRC of 1997, as amended, income payments made to the City Government of Iligan is exempt from the payment of creditable withholding tax. Consequently, petitioner is not liable to the deficiency EWT assessed by respondent on its income payments made to the City Government of Iligan.

Section 2.57.5(A) of RR No. 2-98 is clear and unequivocal, leaving no room for interpretation. A regulation adopted pursuant to law is law.[37] And where the law speaks in clear and categorical language, there is no occasion for interpretation; there is only room for application.[38]

WHEREFORE, premises considered, the instant Petition for Review is **GRANTED**. Accordingly, the Formal Letter of Demand dated October 24, 2014 and Audit Result/Assessment Notice No. RR16-101-182-14 dated October 24, 2014 assessing petitioner for deficiency expanded withholding tax in the aggregate amount of ₱291,875,839.72, inclusive of surcharge and interest, arising from petitioner's purchase of the Iligan Diesel Power Plants from the City Government of Iligan in 2013 are **CANCELLED** and **WITHDRAWN** for lack of legal and factual bases.

SO ORDERED.

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

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

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[37] *Commissioner of Internal Revenue vs. Central Luzon Drug Corporation*, G.R. No. 159647, April 15, 2005.
[38] *Rizal Commercial Banking Corporation vs. Intermediate Appellate Court, et al.*, G.R. No. 74851, December 9, 1999.

ATTESTATION

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

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, 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 Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice