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:

OCT 0 6 2017 2:23 PM

x - x

RESOLUTION

CASTAÑEDA, JR., *J.*:

For resolution is respondent's **Motion for Reconsideration**, filed on August 2, 2017, with petitioner's **Comment (Re: Motion for Reconsideration dated July 31, 2017)**, filed on September 14, 2017.

Respondent seeks reconsideration of the Court's Decision promulgated on July 17, 2017 (assailed Decision), the dispositive portion of which reads:

> **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purchase of the Iligan Diesel Power Plants from the City Government of Iligan in 2013 are **CANCELLED** and **WITHDRAWN** for lack of legal and factual bases.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.

Respondent avers that the Court erred in ruling that petitioner is not liable for deficiency expanded withholding tax (EWT) on its income payments made to the City Government of Iligan. Respondent argues that Section 57(B) of the National Internal Revenue Code (NIRC) of 1997, as amended, imposes a duty upon petitioner to withhold taxes from the income payments it made to the City Government of Iligan. Respondent stresses that 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.

Respondent further argues that Section 2.57.5(A) of Revenue Regulations (RR) No. 2-98, as amended, should be read in connection with Section 32(B)(7)(b) of the NIRC of 1997, as amended, which provides that 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. According to respondent, two requirements must be satisfied. First, the entity claiming the exemption must be the government or its political subdivisions, and second, the income must be derived from the exercise of any essential governmental functions. However, respondent points out that petitioner is neither the Philippine government nor any of its political subdivision and assuming the income was received by the City of Iligan, that income must be derived from the exercise of any essential or governmental functions. Respondent avers that the requirements were not fully complied with in the instant case.

In its comment, petitioner contends that its payment to the City of Iligan for the purchase of the Iligan Diesel Power Plants is not subject to EWT. Petitioner maintains that its income payments to the City of Iligan for the purchase of the Iligan Power Plants are specifically excluded from the coverage of withholding tax under Section 2.57.5(A) of RR No. 2-98, as amended, which was affirmed by the Court in the assailed Decision.

Petitioner points out that respondent seems to have overlooked that Section 57 of the NIRC of 1997, as amended, provides that "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, xxx." Petitioner asserts that the word "may" connotes that the Secretary of Finance had been given the discretion or option to specify which types of income payments should be subject to withholding tax. Petitioner alleges that judging by the language of Section 2.57.5(A), RR No. 2-98, as amended, there can be no doubt that the Secretary of Finance had decided that payments to the National Government and its instrumentalities would not be subjected to EWT.

Petitioner further contends that contrary to respondent's claim, both requisites for tax exemption under Section 32(B)(7)(b) of the NIRC of 1997, as amended, are present. Petitioner claims that its payment for the purchase of the Iligan Diesel Power Plants was made to the City of Iligan, thus the subject income clearly accrued to a political subdivision. Moreover, petitioner avers that the City of Iligan's income from the sale of the Iligan Diesel Power Plants arose from the exercise of an essential governmental function as seen from the history behind the City's acquisition of the Iligan Diesel Power Plants and its eventual sale to petitioner.

A perusal of respondent's motion shows that the arguments raised therein are mere reiteration of the arguments in his Answer which were already considered, thoroughly discussed and passed upon in the assailed Decision. There being no new matters or issues raised, the Court finds no compelling reason to reverse or modify the assailed Decision.

To reiterate, 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.

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

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice