REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

CDL HOTEL (PHILS.) CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 7167

Members:
Bautista, *Chairperson*
Palanca-Enriquez, *and*
Cotangco-Manalastas, JJ.

Promulgated:
MAR 20 2012
JBFernando 3:25 p.m.

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D E C I S I O N

BAUTISTA, J.:

The present case is an action instituted under Section 228 of the National Internal Revenue Code of 1997, as amended, (hereinafter "The Tax Code") proceeding from an assessment made by respondent against petitioner for alleged deficiency income and withholding tax for the taxable year 2000, under Assessment Notice No. IT-123443-00-04-836,[1] and WF-123443-00-04-836,[2] with Formal Assessment Notice[3] (FAN) dated July 23, 2004 in the aggregate amount of P31,855,866.78.

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[1] *Exhibit "10," Records*, p. 323.
[2] *Records*, p. 322.
[3] *Records*, pp. 324-325.

The Parties[4]

Petitioner CDL Hotels (Phils.), Inc., ("CDL Hotels") is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, 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"), the government agency created by law and charged with, among other powers and duties, the responsibility of assessing and collecting all national internal revenue taxes. Respondent holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City, Philippines.

The Facts

On October 15, 1997, petitioner CDL Hotels entered into a Management Agreement with Grand Plaza Hotel Corporation ("GPHC"), owners of the Heritage Hotel, Manila ("Hotel"), for the management and operation of the said Hotel. Part of the duties and obligations of petitioner, as manager of the Hotel, is to provide marketing, advertising and promotional services for the Hotel, whether by itself or through petitioner's affiliates worldwide. [5]

The advertising, marketing and promotional service was undertaken by petitioner's parent company in Singapore, CDL Hotels International - Singapore ("CDL Singapore"), a foreign corporation not doing business in the Philippines.

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[4] *Records*, p. 1.
[5] *Id.*, p. 671.

The said company promoted and marketed the Hotel by including it in its worldwide advertising and marketing campaign for all its affiliated hotels. [6]

For the taxable year 2000, the Hotel's share in the worldwide advertising campaign undertaken by CDL Singapore amounted to P28,770,607.00, which was later billed to petitioner who reimbursed the same. [7]

In 2003, respondents conducted an examination of petitioner's books of account for the taxable year 2000 and found that petitioner was liable for deficiency income tax, deficiency final withholding tax, and deficiency final expanded withholding tax arising from the P28,770,607.00 reimbursement of expenses made by the petitioner to CDL Singapore. [8]

On July 23, 2004, petitioner received from respondent a FAN dated July 23, 2004, finding petitioner liable for deficiency income tax and final withholding taxes[9], as detailed below:

I. INCOME TAX		
Net Income per Return		P 2,312,433.00
Add: Disallowed Expense for Non-Withholding:		
Share in Group Service Expense	P 28,770,607.00	
Professional Fees	401,204.00	29,171,811.00
Taxable Income per Review		P 31,484,244.00
Tax Due		P 10,074,958.08
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		**P 16,081,061.20**
II. FINAL WITHHOLDING TAX		
Share in Group Service Expense		P 28,770,607.00
Tax due (32%)		P 9,206,594.24

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[6] *Id.*
[7] *Id.*
[8] *Id.*, p. 672.
[9] *Id.*, p. 67.

Add: 20% interest (1-25-01 to 8-20-04)	6,568,211.34
Total Amount Due	**P 15,774,805.58**
TOTAL AMOUNT	**P 31,855,866.78**

On August 17, 2004, petitioner, through its external auditors, filed a letter protest dated August 13, 2004, with respondent against the aforementioned FAN.[10]

Respondent claims that petitioner cannot deduct the said amount from its gross revenues for 2000 because the same is not a deductible expense of petitioner but rather of the Hotel itself. Furthermore, respondent claims that the said sum cannot be claimed as a deduction because the final withholding tax has not been applied and paid. [11]

Disagreeing with the findings of respondent, petitioner filed the present Petition for Review,[12] on March 11, 2005 assailing the validity of the said assessments for deficiency national internal revenue taxes. [13]

In her Answer[14] filed on June 29, 2005, respondent interposed the following Special and Affirmative Defense:

"**SPECIAL AND AFFIRMATIVE DEFENSES**

5. He reiterates and repleads the preceding paragraphs of this answer as part of his Special and Affirmative Defenses;

6. Under Section 228 of the 1997 Tax Code, it is partly provided that:

'SEC. 228. *Protesting of Assessment*. – Such assessment may be protested administratively by

[10] *Id*.
[11] *Id*., p. 672.
[12] *Id*., pp. 1-23.
[13] *Id*., p. 672.
[14] BIR Records, pp. 31-34.

> filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. *Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final."(Emphasis supplied).*

In the instant case, since the petitioner failed to submit all relevant documents in support of its protest, the subject assessment has already become final and executory.

7. Since the subject assessments has already become final and executory, this Honorable Court has no jurisdiction to act on the instant petition.

8. Assuming arguendo that this Honorable Court has jurisdiction to act on the instant petition, petitioner were assessed for deficiency income tax and final withholding tax, for taxable year 2000, for the reason that during the administrative investigation of its tax case, petitioner failed to substantiate or controvert by concrete evidence the BIR findings that:

a.) On Income Tax:

1. Petitioner failed to withhold the required withholding tax due on its Share in Group Expenses, amounting to P28,770,607.00, which was determined to be profit allocation payable for the account of CDL-Singapore subject to final withholding tax under Section 2.57.1 of Revenue Regulations No. 2-98. Hence the said amount should be disallowed as deduction pursuant to Section 34(K) of the Tax Code, which states that:

> '(K) *Additional Requirements for Deductibility of Certain Payments.* - Any amount paid or payable which is otherwise deductible from, or taken into account in computing gross income or for which depreciation or amortization may be allowed under this Section, shall be allowed as a deduction only if it is shown that the tax required to be deducted and withheld therefrom has been paid to the Bureau of Internal

Revenue in accordance with this Section
58 and 81 of this Code.'

2. Under the management agreement between petitioner and Grand Plaza Hotel Corporation (GPHC) it was clearly provided that 'any and all expenses incurred by affiliates for the benefit of the managed hotel shall be for the account of that hotel, and therefore, shall not constitute as deductible business expense insofar as the operation of petitioner is concerned, as it is not related to the operation or conduct of its trade or business.' Hence, it is apparent that petitioner in this case is an affiliate of GPHC or the CDL-Singapore.

3. The receipts for professional fees claimed by petitioner, amounting to P401,204.00 were not in its name, CDL-Philippines but in the name of another corporate entity which has separate and distinct personality with that of petitioner, hence, the same amount should be disallowed as deduction from its gross income for taxable year 2000.

4. Petitioner claimed excess creditable withholding tax amounting to P1,136,581.12 should be disallowed as deduction from its gross income pursuant to Section 76(B) of the 1997 Tax Code since the same has already been carried over and credited against its income tax liabilities of the taxable quarters of the succeeding taxable years, as indicated in its Income Tax Returns.

b.) On Final Withholding Tax:

Petitioner failed to withhold the required withholding tax due on its Share in Group Expenses, amounting to P28,770,607.00, which was determined to be profit allocation payable for the account of CDL-Singapore subject to final withholding tax under Section 2.57.1 of Revenue Regulations No. 2-98.

9. The assessments issued against petitioner for deficiency income tax and withholding tax on compensation, for taxable year 2000, covered under Formal Assessment Notice No. IT-123443-00-04-836 and WF-123443-00-04-836, both dated July 23, 2004 were made in accordance with law and regulations.

10. All presumptions are in favor of the correctness of tax assessments."[15]

On December 8, 2005, the parties filed their Joint Stipulation of Facts and Issues,[16] which was approved by the Court on January 3, 2006 when it promulgated a Resolution[17] to this effect.

On December 13, 2007, petitioner availed of the Tax Amnesty Program under Republic Act No. 9480.[18]

Thus, on March 28, 2008, petitioner filed a "Motion to Withdraw Petition for Review (with Motion to Cancel Hearing),"[19] stating that by availing of the tax amnesty, petitioner is now immuned from payment for any alleged unpaid internal revenue taxes for the taxable year 2005 and prior years. Respondent filed a "Comment/Opposition (To Petitioner's Motion to Withdraw Petition for Review),"[20] pointing that the tax amnesty coverage was not absolute since it does not include deficiency final withholding taxes.

In a Resolution dated June 3, 2008, the Court denied petitioner's "Motion to Withdraw Petition for Review" for lack of merit, but required the submission of the original or certified true copies of the documents relating to its availment of the tax amnesty program, which was later admitted by the Court in the Resolution[21] dated May 12, 2009.

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[15] *Id.*
[16] *Id.*, pp. 66-73.
[17] *Id.*, p. 74.
[18] An Act Enhancing Revenue Administration And Collection By Granting An Amnesty On All Unpaid Internal Revenue Taxes Imposed By The National Government For Taxable Year 2005 And Prior Years.
[19] *Reocrds*, pp. 286-271, with Annexes.
[20] *Id.*, pp. 284-286.
[21] *Id.*, pp. 578 - 579.

Both parties submitted their respective memorandums, thus on May 31, 2011, the Court promulgated a Resolution[22] submitting the case for decision.

Hence, this Decision.

The Issues

In the Joint Stipulation of Facts and Issues,[23] the parties stipulated on the following issues:

> "2.1 Whether or not the deficiency income tax and final withholding tax assessment issued by the BIR to petitioner for taxable year 2000 has already become final and executory for failure of petitioner to submit the required documents in support of its protest, pursuant to Section 228 of the NLRC, as implemented by Section 3 of Revenue Regulations 12-99 dated September 6, 1999;
>
> 2.2 Whether or not the amount of P28,770,607.00, representing [p]etitioner's Share in Group Expenses should be disallowed as deduction from its gross income, pursuant to Section 34(K) of the NLRC of 1997;
>
> 2.3 Whether or not the amount of P28,770,607.00 remitted by petitioner to CDL Hotels-International Singapore is by nature a profit allocation subject to the Final Withholding Tax;
>
> 2.4 Whether or not petitioner failed to withhold the required withholding tax due on its Share in Group Expenses amounting to P28,770,607.00, pursuant to Section 2.57.1 of Revenue Regulations No. 2-98, as amended;
>
> 2.5 Whether or not [p]etitioner is an affiliate of CDL Hotels-International Singapore;
>
> 2.6 Whether or not the amount of P401,204.00 claimed by petitioner as receipts for professional fees may be disallowed as deduction from its gross income for taxable year 2000 for the reason that the same were not in the name of the petitioner but in the name of another corporate entity which has a separate and distinct personality from that of petitioner;

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[22] *Id.*, p. 699.
[23] *Id.*, pp. 70-72.

2.7 Whether or not [p]etitioner's claimed excess creditable withholding tax amounting to P1,136,581.12 should be disallowed as deduction from its gross income pursuant to [S]ection 76(B) of the 1997 Tax Code since the same has already been carried over and credited against its income tax liabilities of the taxable quarters of the succeeding taxable years, as indicated in its 2000 Annual Income Tax Return; and

2.8 Whether or not petitioner is liable to pay the assessed deficiency income tax and final withholding tax in the amounts of P16,081,061.20 and P15,774,805.58, both inclusive of interest, covered under Assessment Notice Nos. IT-123443-00-04-836 and WF-123443-00-04-836 both dated July 23, 2004, for taxable year 2000."

The Ruling of the Court

At the onset, the Court deems it necessary to first tackle the issue on the availment of the Tax Amnesty Program, and how it will affect the subject alleged deficiency taxes. As correctly pointed out by the Court in its Resolution,[24] dated June 3, 2008, where it stated that:

> "The Court agrees with petitioner that taxpayers availing of the tax amnesty program are entitled to the immunities found under Section 6 of R.A. No. 9480. However, Section 8 of the same law provides that the benefits afforded under R.A. 9480 do not extend to withholding agents with respect to their withholding tax liabilities, to wit:
>
>> SEC. 8. *Exceptions.* – The tax amnesty provided in Section 5 hereof shall not extend to the following persons or cases existing as of the effectivity of this Act:
>>
>> **(a) Withholding agents with respects to their withholding tax liabilities;**
>>
>> (b) Those with pending cases falling under the jurisdiction of the Presidential Commission on Good Government;

[24] *Id.*, pp. 296-297.

(c) Those with pending cases involving unexplained or unlawfully acquired wealth or under the Anti-Graft and Corrupt Practices Act;

(d) Those with pending cases filed in court involving violation of the Anti-Money Laundering Law;

(e) Those with pending criminal cases for tax evasion and other criminal offenses under Chapter II of Title X of the National Internal Revenue Code of 1997, as amended, and the felonies of frauds, illegal exactions and transactions, and malversation of public funds and property under Chapters III and IV of Title VII of the Revised Penal Code; and

(f) Tax cases subject of final and executory judgment by the courts.

(Emphasis Ours)

It must be emphasized that petitioner is being assessed, among others, for deficiency final withholding taxes in the amount of P15,774,805.58 for its alleged failure to withhold the required withholding taxes due on its share in group expenses, pursuant to Section 2.57.1 of Revenue Regulations No. 2-99; and that petitioner's non-liability for such deficiency taxes, as a pending issue, needs to be addressed by the Court during a full-blown trial of the case..."

Thus, while Republic Act No. 9480 gives petitioner the immunity with regards to its deficiency income tax, subject to the provisions of the Tax Amnesty Law, the assessment on its deficiency final withholding tax, which is not covered by the law, continues.

Therefore, the Court will now tackle the issues pertinent only to the assessment for deficiency final withholding tax for taxable year 2000 covered by Assessment Notice No. WF-123443-00-04-836.

Deficiency Final Withholding Tax

To determine petitioner's liability over the alleged deficiency final withholding tax, the Court must first ascertain whether or not petitioner is liable for the income tax from which it originates.

Petitioner explains that the amount of P28,770,607.00 represents its contribution or share in the worldwide expenses incurred by CDL Singapore in promoting all the hotels within the group, including the Hotel owned by GPHC.[25]

As owner of CDL Hotel, CDL Singapore assists the former in marketing the Hotel through advertisements in international magazines, journals, exhibitions, shows, *etc.*, including the maintenance of a centralized booking office allowing for international reservations. For such services extended to the local subsidiary (CDL Hotel), CDL-Singapore bills petitioner a pro-rated share in the reasonable and ordinary marketing, advertising, promotional and related expenses incurred by CDL Singapore.[26]

Petitioner then remits to CDL Singapore the amounts stated in the billing invoices. The theory advanced by petitioner is that since these expenses are not income payments to CDL Singapore but are in fact reimbursements, these should not be subject to withholding tax. Therefore, petitioner states that there is no basis for the assessment of deficiency income tax. Even assuming that the said

[25] *Id.*, pp. 676-677.
[26] *Id.*

amount is income payment, petitioner argues that Article 7 of the RP-Singapore Tax Treaty provides that such income is not taxable.[27]

Respondent, on the other hand, contends that petitioner's remittance of the amount of P28,770,607.00 to its parent company, CDL Singapore is considered a profit allocation and is subject to final withholding tax under Section 2.57.1 of Revenue Regulations No. 2-98.

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.

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: S$578,497.19,[28] S$102,310.19,[29] S$94,397.69,[30] and S$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

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[27] "Convention Between the Republic of the Philippines and the Republic of Singapore for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income."
[28] *Exhibit "M,"* dated November 30, 2000, *Records*, p. 400.
[29] *Exhibit "N,"* dated December 19, 2000, *Records*, p. 401.
[30] *Exhibit "O,"* dated December 19, 2000, *Records*, p. 402.
[31] *Exhibit "P,"* dated December 31, 2000, *Records*, p. 403.

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 & Development Corporation vs. Commissioner of Internal Revenue,*[32] 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) [now Section 34(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 in 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.

[32] G.R. Nos. L-26911 and L-26924, January 27, 1981, 102 *SCRA* 246.

> . . . 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.

RP-Singapore Tax Treaty

Petitioner, however, argues that by virtue of the RP-Singapore Tax Treaty, the income payments are not subject to final withholding tax.

Petitioner's argument lacks basis in fact and in law.

Section 4 of Revenue Regulations No. 7-82, which implements the RP-Singapore Treaty, requires the filing of an appropriate BIR Form for Income Tax Convention with the International Operations Division (now International Tax Affairs Division ["ITAD"]) of the Bureau of Internal Revenue for the availment of the treaty provisions, to wit:

> "SEC. 4. *Availment of Treaty Benefits.* — Any person availing of any benefits provided by the Convention shall file the appropriate BIR Form for Income Tax Convention, herein below indicated with the International Operations Division, Bureau of Internal Revenue, National Office Bldg., Quezon City. . . . . It shall be the duty of the Regional Director to forward the said form to the International Operations Division for proper action."

The requirement to file an application for tax treaty relief before the ITAD of the BIR for the valid availment of the provisions of any tax treaty has been confirmed in the case of ***Mirant (Philippines) Operations Corporation [formerly: Southern Energy Asia-Pacific Operations (Phils.), Inc] vs. CIR***,[33] *viz:*

> "However, it must be remembered that **a foreign corporation wishing to avail of the benefits of the tax treaty should invoke the provisions of the tax treaty and prove that indeed the provisions of the tax treaty applies to it, before the benefits may be extended to such corporation. In other words, a resident or non-resident foreign corporation shall be taxed according to the provisions of the National Internal Revenue Code**, unless it is shown that the treaty provisions apply to the said corporation, and that, in cases the same are applicable, the option to avail of the tax benefits under the tax treaty has been successfully invoked.
>
> Under Revenue Memorandum Order 01-2000 of the Bureau of Internal Revenue, it is provided that the availment of a tax treaty provision must be preceded by an application for a tax treaty relief with its International Tax Affairs Division (ITAD). This is to prevent any erroneous interpretation and/or application of the treaty provisions with which the Philippines is a signatory to. The implementation of the said Revenue Memorandum Order is in harmony with the objectives of the contracting state to ensure that the granting of the benefits under the tax treaties are enjoyed by the persons or corporations duly entitled to the same." *(Boldfacing supplied.)*

Applying the above ruling to the case at bench, petitioner failed to prove that the treaty should apply to CDL Singapore. There is no proof that CDL Singapore, or through petitioner, applied with the ITAD of the BIR pursuant to Revenue Regulations No. 7-82. Petitioner immediately raised the defense that the amount of P28,770,607.00 is not subject to final withholding tax by virtue of the treaty, but without presenting any evidence to support its contention.

Considering that the amount of P28,770,607.00 is a profit allocation for CDL Singapore, the same is therefore subject to final withholding tax as

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[33] CTA EB 40 (CTA Case No. 6382), June 7, 2005, which was affirmed in a Minute Resolution under G.R. No. 168531.

provided in Section 2.57.1 of Revenue Regulations No. 2-98, in relation to Section 28 of the NIRC, *viz.*:

"SEC. 28. *Rates of Income Tax on Foreign Corporations. —*

xxx xxx xxx

(B) *Tax on Nonresident Foreign Corporation. —*

(1) *In General.* — Except as otherwise provided in this Code, a foreign corporation not engaged in trade or business in the Philippines shall pay a tax equal to thirty-five percent (35%) of the gross income received during each taxable year from all sources within the Philippines, such as interests, dividends, rents, royalties, salaries, premiums (except reinsurance premiums), annuities, emoluments or other fixed or determinable annual, periodic or casual gains, profits and income, and capital gains, except capital gains subject to tax under subparagraphs 5(c) and (d): *Provided*, That effective January 1, 1998, the rate of income tax shall be thirty-four percent (34%); effective January 1, 1999, the rate shall be thirty-three percent (33%); and, effective January 1, 2000 and thereafter, the rate shall be thirty-two percent (32%).

REVENUE REGULATIONS NO. 2-98

Sec. 2.57.1 *Income Payments Subject to Final Withholding Tax.* -

xxx xxx xxx

(I) Income Derived From all Sources Within the Philippines by Non-Resident Foreign Corporation. — The following shall be subject to final withholding tax based on the gross amount of income and at the rate of tax prescribed therefore:

(1) *In General* — On gross income derived from all sources within the Philippines such as interests, dividends, rents, royalties, salaries premiums (except reinsurance premiums), annuities, emoluments, or other fixed or determinable annual, periodic or casual gains, profits and income from capital gains (except capital gains realized from sale, exchange, disposition of shares of stock in any domestic corporation which is subject to capital gains tax under Sec. 28(B)(5)(c) — at the following rates:

> 34% - beginning January 1998
> 33% - beginning January 1999 and
> 32% - beginning January 2000 and thereafter.'
>
> Revenue Regulations No. 2-98 was issued to implement the provisions of R.A. No. 8424, An Act Amending the NIRC, as amended, relative to the Withholding on 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. Additionally, Section 57 of the NIRC speaks of "Withholding of Tax at Source" and it enumerates under Subsection (A) thereof, the specific sections in the NIRC when "Withholding of Final Taxes on Certain Incomes" shall be imposed. The enumeration therein includes Section 28(B) of the NIRC, or the provision on the taxability of the income of non-resident foreign corporations, as subject to the final tax at 32%."

It has been often said that assessments are *prima facie* presumed correct and made in good faith. It is an elementary rule that in the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed. All presumptions are in favor of tax assessments. Verily, failure to present proof of error in the assessment will justify the judicial affirmance of said assessment.[34]

Thus, based on this analysis, the Court has no choice but to uphold the assessment issued by respondent against petitioner covering deficiency final withholding tax for taxable year 2000, but with modification to the computation.

Accordingly, petitioner is liable to pay respondent the amount of P11,508,242.80, representing deficiency final withholding tax for taxable year

[34] Commissioner of Internal Revenue *v.* Court of Appeals, March 10, 1995, 242 SCRA 313, *citing the cases of Interprovincial Autobus Co., Inc. v. Collector of Internal Revenue, 98 Phil 290; Sy Po v. Court of Tax Appeals, et al., G.R. No. 81446, August 18, 1988, 164 SCRA 524; Dayrit, et al. v. Cruz, et al., L-39910, September 26, 1988, 165 SCRA 571; Aban, B., Law of Basic Taxation in the Philippines, 1994 ed., 109, citing Delta Motors Co. v. Commissioner of Internal Revenue, CTA Case No. 3782, May 21, 1986.*

2000, inclusive of 25% surcharge imposed pursuant to Section 248(3) of the NIRC of 1997, computed as follows:

Share in Group Service Expense	P 28,770,607.00
Multiply by rate	32%
Basic Tax Due	P 9,206,594.24
Add: 25% Surcharge	2,301,648.56
Total	**P 11,508,242.80**

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 at the 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, 2001, 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.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

OLGA PALANCA-ENRIQUEZ
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

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

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, 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's Division.

ERNESTO D. ACOSTA
Presiding Justice