REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

EDISON (BATAAN) COGENERATION CORPORATION,
Petitioner,

CTA EB No. 735
(CTA Case No. 7142)

-versus-

Members:

Acosta, *P.J.,*
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Palanca-Enriquez,
Fabon-Victorino,
Mindaro-Grulla, and
Cotangco-Manalastas, *JJ.:*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
APR 12 2012 Apolinario 9:00 a.m.

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D E C I S I O N

CASTAÑEDA, JR., J.:

On appeal are the Court in Division's Decision dated October 6, 2010 and the Resolution dated February 17, 2011 in CTA Case No. 7142.

Petitioner prays for the cancellation of the assessment concerning taxable year 2001 final withholding tax on interest payments to Ogden Power International Holdings, Inc., in the basic amount of P9,895,713.80; deletion of surcharges and interests on the FWT due on the interest payments to Ogden; and confirmation of the revised computation of deficiency expanded withholding tax from the original basic amount of P341,712.90 to P7,054.04 also for taxable year 2001.

THE FACTS

Edison (Bataan) Cogeneration Corporation ("petitioner") is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines. It is registered with the Bureau of Internal Revenue ("BIR") Revenue District Office No. 20.[1]

From taxable year 2001 until the present, petitioner is registered with the Philippine Economic Zone Authority ("PEZA") as an ECOZONE Utilities Enterprise.[2]

The Commissioner of Internal Revenue ("respondent") on the other hand, is a public official tasked to decide disputed assessments, refund of erroneously or excessively paid internal revenue taxes, fees or other charges, penalties, or other matters arising under the National Internal Revenue Code ("NIRC").

On April 21, 2004, petitioner received a Formal Letter of Demand and Final Assessment Notice ("FAN") from respondent informing the former of its alleged taxable year 2001 income tax, value added tax ("VAT"), withholding

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[1]Docket, CTA Case No. 7142, p. 101.
[2] *Ibid.*

tax on compensation ("WT"), expanded withholding tax ("EWT") and final withholding tax ("FWT") deficiencies and increments for allegedly filing and paying in the wrong venue the aggregate amount of P70,193,676.37, detailed as follows:

Tax Type	Amount (inclusive of interest and penalties)
Income Tax	P 60,013,809.92
Value-Added Tax	164,775.77
Withholding Tax on Compensation	68,474.49
Expanded Withholding Tax	478,548.41
Final Withholding Tax	9,384,314.27
Increments for Filing and Paying in the Wrong Venue	83,753.51
TOTAL	**P 70,193,676.37**[3]

Petitioner protested the FAN on May 20, 2004.[4]

Without awaiting for respondent's ruling on the protest, petitioner filed a Petition for Review before the Court's Special First Division ("Court in Division") on February 9, 2005, and sought for the cancellation and withdrawal of the assessments including increments for filing and paying in the wrong venue pertaining to the aggregate amount of P70,193,676.37

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[3] Docket, CTA Case No. 7142, pp. 101-102.
[4] Docket, CTA Case No. 7142, p. 102.

representing its alleged income tax, VAT, WT on compensation, EWT and FWT deficiencies, including increments covering taxable year 2001.[5]

During the pendency of the proceedings, on September 3, 2008, petitioner filed a Supplemental Petition with prior leave of Court stating that it applied for tax amnesty under R.A.9480.[6]

In the Decision dated October 6, 2010, the Court in Division nullified the assessment for income tax, VAT deficiencies and increments for erroneous filing and paying in the wrong venue (as well as interests and surcharges) covering the taxable year 2001 on the ground that petitioner is a tax amnesty compliant applicant under R.A. 9480. However, the Court ordered petitioner to pay taxable year 2001 WT on compensation, FWT, and EWT deficiencies, including surcharges and interests, the dispositive portion of the assailed Decision reads:

> Consequently, petitioner shall still be liable to pay basic deficiency final withholding tax of P6,115,116.58 for taxable year 2001, computed as follows:

	Amount	**Rate**	**FWT Due**
Syndicated Loan in Dollars	P10,815,091.81	10%	P1,081,509.18
Inter-company loan from Ogden	65,971,425.27	15%	9,895,713.80
FWT Due			P10,977,222.98
Less: Remittances			4,276,247.38

[5] Docket, CTA Case No. 7142, p.20.
[6] Docket, CTA Case No. 7142, p.636.

Substantiated FWT on the interest on petitioner's syndicated Loan in dollars			585,859.02
Deficiency FWT			**P 6,115,116.58**

WHEREFORE, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, the assessments for deficiency income tax, value-added tax, and increments for erroneous filing and paying in the wrong venue (as well as the interests and surcharges) for the year 2001 are hereby **CANCELLED** and **WITHDRAWN** in view of petitioner's availment of the Tax Amnesty under R.A. No. 9480 and petitioner's payment of the increments for erroneous filing and paying in the wrong venue.

However, the assessments for deficiency withholding tax on compensation, expanded withholding tax, and final withholding tax issued by the respondent against petitioner for taxable year 2001 are hereby **AFFIRMED** with some modifications. Accordingly, petitioner is hereby **ORDERED** to **PAY** respondent the following amounts inclusive of the twenty-five percent (25%) surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended:

Tax Type	Basic Tax	25% Surcharge	Total
Withholding Tax on Compensation	P 48,894.98	P 12,223.75	P 61,118.73
Expanded Withholding Tax	334,658.86	83,664.72	418,323.58
Final Withholding Tax	6,115,116.58	1,528,779.15	7,643,895.73
TOTAL	P 6,498,670.42	1,624,667.61	P 8,123,338.03

Likewise, petitioner is liable to pay (a) deficiency interest at the rate of twenty percent (20%) per *annum* on the basic deficiency withholding tax on compensation, expanded withholding tax, and final withholding tax computed from January 25, 2002 until full payment thereof, pursuant to Section 249(B) of the NIRC of 1997, as amended; and (b) delinquency interest at the rate of twenty percent (20%) per annum on the total deficiency taxes of P8,123,338.03 and on the 20% deficiency interest which have accrued as aforestated in (a) computed from April 15, 2004 until full payment thereof, pursuant to Seciton 249(C) of the NIRC of 1997, as amended.

SO ORDERED.[7]

Dissatisfied, petitioner moved for a partial reconsideration of the Decision dated October 6, 2010. However, in the Resolution dated February 17, 2011, the Court denied the same for lack of merit.[8]

THE ISSUES

Unfazed, petitioner appealed before the Court *en banc* raising the following errors allegedly committed by the Court in Division:

a) Petitioner's independent and direct liability for the withholding of taxes should be in accord with preferential tax rate granted by R.A. 7916;

b) Petitioner should not be prejudiced by its reliance on Respondent's own ruling; and

c) Petitioner's reliance upon Respondent's ruling warrants the removal of surcharges and interest.

d) CTA Division erred in not reducing petitioner's liability for deficiency expanded withholding tax (EWT) from P341,712.90 to P7,054.04 despite findings of the examiners of the BIR.[9]

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[7] Penned by Associate Justice Lovell R. Bautista and concurred in by Presiding Justice Ernesto D. Acosta and Associate Justice Caesar A. Casanova as members of the Special First Division, Rollo, pp. 80-82.
[8] Rollo, pp. 84-92.

On May 5, 2011, respondent filed her Comment to the Petition.

In compliance with the Court's Resolution dated May 23, 2011, respondent manifested that she will be adopting her Comment as her Memorandum; while petitioner submitted its Memorandum on July 4, 2011. Thereafter, the case was submitted for Decision.[10]

THE COURT'S RULING

PETITIONER SHOULD WITHHOLD FINAL TAXES ON INTEREST PAYMENTS TO OGDEN POWER INTERNATIONAL HOLDINGS, INC., AT THE RATE OF 15%.

The parties have stipulated that from taxable year 2001 until the present, petitioner continues to be registered with the Philippine Economic Zone Authority ("PEZA") as an ECOZONE utilities enterprise.[11]

In the case of *Commissioner of Internal Revenue v. Toshiba Information Equipment (Phils.), Inc.*[12], the Supreme Court defined an ECOZONE or a Special Economic Zone as follows:

> . . . [S]elected areas with highly developed or which have the potential to be developed into agro-industrial, industrial, tourist, recreational, commercial, banking, investment and financial centers whose metes and bounds are fixed or delimited by Presidential Proclamations. An ECOZONE may contain any or all of the following: industrial estates (IEs), export processing zones (EPZs), free trade zones and tourist/recreational centers.

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[9] Rollo, p. 15.
[10] Rollo, pp. 117 & 153.
[11] Docket,CTA Case No. 7142, p. 101.
[12] G.R. No. 150154, August 09, 2005, 466 SCRA 211.

> The national territory of the Philippines outside of the proclaimed borders of the ECOZONE shall be referred to as the Customs Territory.
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> Section 8 of Rep. Act No. 7916, as amended, mandates that the PEZA shall manage and operate the ECOZONES as a separate customs territory; thus, creating the fiction that the ECOZONE is a foreign territory.

ECOZONES were established to effectively attract legitimate and productive foreign investments.[13]

Under Republic Act No. 7916, entities operating within the ECOZONES enjoy, among others, the 5% preferential tax rate of the gross income earned in lieu of national and local taxes except for real property taxes also emphasized in the *Toshiba*[14] case where the Supreme Court declared that:

> Since respondent Toshiba is a PEZA-registered enterprise, it is subject to the five percent (5%) preferential tax rate imposed under Chapter III, Section 24 of Republic Act No. 7916, otherwise known as The Special Economic Zone Act of 1995, as amended. According to the said section, "[e]xcept for real property taxes on land owned by developers, no taxes, local and national, shall be imposed on business establishments operating within the ECOZONE. In lieu thereof, five percent (5%) of the gross income earned by all business enterprises within the ECOZONE shall be paid..." The five percent (5%) preferential tax rate imposed on the gross income of a PEZA-registered enterprise shall be in lieu of all national taxes, including VAT.
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> xxx xxx xxx
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> The five percent (5%) preferential tax rate on gross income under Rep. Act No. 7916, as amended, is in lieu of all taxes. Except for real property taxes, no other national or local tax may be imposed on a PEZA-registered enterprise.
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[13] *Commissioner of Internal Revenue v. Seagate Technology (Philippines)*, G.R. No. 153866, February 11, 2005, 451 SCRA 132.

[14] *Commissioner of Internal Revenue v. Toshiba Information Equipment (Phils.), Inc., supra, at note 12.*

Section 2 (h) of Revenue Regulations No. 12-97 enumerates the taxes classified as national taxes:

> h. "**National Taxes**" shall refer to all internal revenue taxes, including the regular income taxes, otherwise due and collectible from a registered ECOZONE enterprise under the National Internal Revenue Code and customs duties and import charges under the Tariff and Customs Code. **National taxes shall, however, not include withholding taxes on salaries of employees or on income payments to persons other than a registered ECOZONE enterprise, subject to the withholding tax at source under Section 50(b) of the Tax Code, as amended.** (Emphasis supplied.)

According to petitioner, it obtained a loan from Ogden Power International Holdings, Inc., withheld and remitted tax on interest payments for taxable year 2001 but at the rate of 5%, not 15%.

Petitioner's direct and independent liability for FWT on its interest payments to Ogden is magnified by the fact that in their Loan Agreement, it was stipulated that the interest payable to Ogden would be exclusive of withholding tax and/or other similar taxes. Its independent and direct liability for withholding taxes should be viewed with regard to the incentives granted by R.A. No. 7916.

Respondent counters that petitioner should withhold final taxes at the rate of 15% under Revenue Regulations 2-98.

We disagree with petitioner's contention.

Respondent correctly assessed petitioner of 2001 FWT deficiency on interest payments to Ogden at the rate of 15% and not 5% premised on three grounds:

First, only PEZA registered entities such as petitioner has the right to avail of the tax incentives granted by R.A. 7916. Considering that Ogden, petitioner's lender is a non-resident foreign corporation **operating outside the ECOZONE**, the 5% tax rate cannot be applied to the interest income earned from the loan subject to withholding tax. Petitioner has in fact admitted that its liability as a withholding agent is independent from Ogden, the entity primarily liable for the income tax due.

In the case of *Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue*[15], the Supreme Court explained the function of a withholding agent independent from a taxpayer:

> Based on the foregoing, the liability of the withholding agent is independent from that of the taxpayer. The former cannot be made liable for the tax due because it is the latter who earned the income subject to withholding tax. The withholding agent is liable only insofar as he failed to perform his duty to withhold the tax and remit the same to the government. The liability for the tax, however, remains with the taxpayer because the gain was realized and received by him.

In the light of petitioner acting as withholding agent, the Court in Division correctly observed that:

> Clearly, from the foregoing law and jurisprudence, what is being taxed in the instant case is the interest income earned by Ogden, being the non-resident foreign corporation lender or payee and not the income of petitioner, being the borrower or payor. Petitioner merely acts as a collecting agent of the government.[16]

We also do not subscribe to petitioner's view in applying the consolidated cases of Commissioner of *Internal Revenue v. Nidec Copal Philippines*

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[15] G.R. No. 170257, September 7, 2011.
[16] Rollo, pp. 69-70.

Corporation and Nidec Copal Philippines Corporation v. Commissioner of Internal Revenue[17] to the instant case. In the *Nidec* case, the CTA *en banc* ruled that Nidec, a PEZA registered enterprise is not liable for DST on loan agreements with a Japanese Licensor and a non-resident German Corporation and also on its loan agreement and lease contract with affiliate on the basis that the 5% preferential tax rate on the gross income earned pursuant to R.A. 7916, is in lieu of all taxes. As a PEZA registered enterprise and the entity primarily liable for DST, Nidec has the right to avail of the 5% preferential tax rate incentive under R.A. 7916; while in the instant case, petitioner is merely bound to withhold income tax on interest payments to Ogden, an entity operating outside the ECOZONE. Thus, the 5% preferential tax rate incentive does not extend to Ogden.

Second, as earlier reiterated, withholding taxes on income payments to persons other than a registered ECOZONE enterprise are not treated as national taxes; thus, the FWT imposed on Ogden's interest income is not within the scope of the 5% preferential tax rate incentive granted by R.A. 7916.

Finally, the Court in Division duly applied Section 28(B)(5)(a) of the 1997 NIRC, in relation to the RP-US Tax Treaty dated January 1, 1983 and emphasized the reduction of FWT rate from 20% to 15% imposed on interests on loans obtained from a non-resident foreign corporation, quoted as follows:

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

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[17] EB Case Nos. 250 and 255, Decision dated October 1, 2007.

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

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(5) *Tax on Certain Incomes Received by a Nonresident Foreign Corporation.-*

(a) *Interest on Foreign Loans.* – A final withholding tax at the rate of twenty percent (20%) is hereby imposed on the amount of interest on foreign loans contracted on or after August 1,1986.

However, pursuant to the RP-US Tax Treaty dated January 1, 1983, the foregoing rate was reduced to 15% with respect to non-resident foreign corporation organized and existing under US laws. The relevant provisions of the RP-US Tax Treaty state:

"ARTICLE 12"
INTEREST

(1) Interest by a resident of one of the Contracting States from sources within the other Contracting State may be taxed by both Contracting States.

(2) Interest derived by a resident of one of the Contracting States from sources within the other Contracting State shall not be taxed by the other Contracting State at a rate in excess of 15 % of the gross amount of such interest.

(3) Interest derived by a resident of one of the Contracting States from sources within the other Contracting State with respect to public issues of bonded indebtedness shall not be taxed by the other Contracting State at a rate in excess of 10% of the gross amount of such interest.

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(5) Paragraphs (2), (3), and (4) shall not apply if the recipient of interest from sources within one of the contracting states, being a resident of the other Contracting State, carries on business in the first-mentioned Contracting State through a permanent establishment situated therein or performs in all other State

independent personal services from a fixed base situated therein and the debt claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 8 (*Business Profits*) or Article 15 (*Independent Personal Services*) shall apply.

(6) Where an amount is paid to a related person and would be treated as interest but for the fact that it exceeds an amount which would have been paid to any related person, the provisions of this Article shall apply only to so much of the amount as would have been paid to an unrelated person. In such a case, the excess amount may be taxed by each Contracting State according to its own law, including the provisions of this Convention where applicable.

(7) The term 'interest" as used in the Convention means income from debt-claims of every kind, whether or not secured by mortgage, and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures, as well as income assimilated to income from money lent by the taxation law of the Contracting State in which the income arises, including interest on deferred payment sales.[18]

Clearly, petitioner is liable to pay 15% FWT on interest payments to Ogden.

BIR RULING NO. 085-95 IS NOT BINDING UPON THE PETITIONER.

Petitioner alleges that it relied upon BIR Ruling No. 085-95 dated June 13, 1995 which ruled that the 5% preferential tax rate is a commutation tax which accords the grantee exemption from national or local taxes. Although

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[18] Rollo, pp. 66-68.

respondent's ruling was made in view of the privileges accorded by RA 7227, it should apply equally to PEZA-registered entities.

BIR Ruling No. 085-95 provides that (a) withholding agent is held to be directly and independently liable for the tax that it should withhold; and (b) petitioner is exempted by law from all taxes other than a 5% tax on gross income.

The Court *en banc* may take judicial notice of the issuance, authenticity, and due execution of the BIR Ruling No. 085-95 since it is an official act of the BIR, an agency of the executive department under the Rules of Court.

Respondent argues that the Court in Division correctly ruled that petitioner is liable for FWT on interest payments pursuant to Section 28(B)(5)(a) of the 1997 NIRC and RP-US Tax Treaty dated January 1, 1983. BIR Ruling No. 085-95 dated June 13, 1995 is contrary to the aforestated law.

Moreover, BIR Rulings are of a personal nature, and its application is limited to the facts and circumstances of the applicant. Thus, BIR Ruling No. 085-95 is inapplicable to the instant case.

We are not persuaded with petitioner's arguments.

In BIR Ruling No. 085-95 dated June 13, 1995, respondent clarified that Subic Power Corporation ("SPC") as a Subic Bay Freeport ("SBF") Enterprise under R.A. 7227, and as a withholding agent should pay 5% FWT on interest income payments to U.S. bondholders. Respondent further mentioned that SBF enterprises, such as SPC, are subject to the maximum rate of 5% in lieu of all other national or local taxes. The 5% tax imposed on SBF enterprises is a commutation tax which effectively accords the grantee exemption from all other taxes.

In a litany of cases, administrative rulings should be in consonance with the Constitution and law as synthesized in the case of *Commissioner of Internal Revenue v. Fortune Tobacco Corporation*[19] where the Supreme Court ruled that:

> This is not the first time that national revenue officials had ventured in the area of unauthorized administrative legislation.
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> In *Commissioner of Internal Revenue v. Reyes*, respondent was not informed in writing of the law and the facts on which the assessment of estate taxes was made pursuant to Section 228 of the 1997 Tax Code, as amended by Republic Act (R.A.) No. 8424. She was merely notified of the findings by the Commissioner, who had simply relied upon the old provisions of the law and Revenue Regulation No. 12-85 which was based on the old provision of the law. **The Court held that in case of discrepancy between the law as amended and the implementing regulation based on the old law, the former necessarily prevails. The law must still be followed, even though the existing tax regulation at that time provided for a different procedure.**
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> In *Commissioner of Internal Revenue v. Central Luzon Drug Corporation*, the tax authorities gave the term "tax credit" in Sections 2(i) and 4 of Revenue Regulation 2-94 a meaning utterly disparate from what R.A. No. 7432 provides. Their interpretation muddled up the intent of Congress to grant a mere discount privilege and not a sales discount. **The Court, striking down the revenue regulation, held that an administrative agency issuing regulations may not enlarge, alter or restrict the provisions of the law it administers, and it cannot engraft additional requirements not contemplated by the legislature. The Court emphasized that tax administrators are not allowed to expand or contract the legislative mandate and that the "plain meaning rule" or *verba legis* in statutory construction should be applied such that where the words of a statute are clear, plain and free from ambiguity, it must be given**

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[19] G.R. No. 167274-75, July 21, 2008, 559 SCRA 160 citing *Commissioner of Internal Revenue v. Reyes,* G.R. Nos. 159694 and 163581, January 27, 2006, 480 SCRA 382; *Commissioner of Internal Revenue v. Central Luzon Drug Corporation,* G.R. No. 159647, April 15, 2005, 456 SCRA 414; *Commissioner of Internal Revenue v. Michel J. Lhuillier Pawnshop, Inc.,* G.R. No. 150947, July 15, 2003, 406 SCRA 178 and *Commissioner of Internal Revenue v. CA, et al.,* G.R. No. 108358, January 20,1995, 240 SCRA 368 .

its literal meaning and applied without attempted interpretation.

As we have previously declared, rule-making power must be confined to details for regulating the mode or proceedings in order to carry into effect the law as it has been enacted, and it cannot be extended to amend or expand the statutory requirements or to embrace matters not covered by the statute. Administrative regulations must always be in harmony with the provisions of the law because any resulting discrepancy between the two will always be resolved in favor of the basic law.

In *Commissioner of Internal Revenue v. Michel J. Lhuillier Pawnshop, Inc.*, Commissioner Jose Ong issued Revenue Memorandum Order (RMO) No. 15-91, as well as the clarificatory Revenue Memorandum Circular (RMC) 43-91, imposing a 5% lending investor's tax under the 1977 Tax Code, as amended by Executive Order (E.O.) No. 273, on pawnshops. The Commissioner anchored the imposition on the definition of lending investors provided in the 1977 Tax Code which, according to him, was broad enough to include pawnshop operators. However, the Court noted that pawnshops and lending investors were subjected to different tax treatments under the Tax Code prior to its amendment by the executive order; that Congress never intended to treat pawnshops in the same way as lending investors; and that the particularly involved section of the Tax Code explicitly subjected lending investors and dealers in securities only to percentage tax. And so the Court affirmed the invalidity of the challenged circulars, stressing that "administrative issuances must not override, supplant or modify the law, but must remain consistent with the law they intend to carry out."

In *Philippine Bank of Communications v. Commissioner of Internal Revenue,* the then acting Commissioner issued RMC 7-85, changing the prescriptive period of two years to ten years for claims of excess quarterly income tax payments, thereby creating a clear inconsistency with the provision of Section 230 of the 1977 Tax Code. The Court nullified the circular, ruling that the BIR did not simply interpret the law; rather it legislated guidelines contrary to the statute passed by Congress.

The Court held:

It bears repeating that Revenue memorandum-circulars are considered administrative rulings (in the sense of more specific and less general interpretations of tax laws) which are issued from time to time by the Commissioner of Internal Revenue. It is widely accepted that the interpretation placed upon a statute by the executive officers, whose duty is to enforce it, is entitled to great respect by the courts. Nevertheless, such interpretation is not conclusive and will be ignored if judicially found to be erroneous. Thus, courts will not countenance administrative issuances that override, instead of remaining consistent and in harmony with, the law they seek to apply and implement.

In *Commissioner of Internal Revenue v. CA, et al.*, the central issue was the validity of RMO 4-87 which had construed the amnesty coverage under E.O. No. 41 (1986) to include only assessments issued by the BIR after the promulgation of the executive order on 22 August 1986 and not assessments made to that date. Resolving the issue in the negative, the Court held:

x x x all such issuances must not override, but must remain consistent and in harmony with, the law they seek to apply and implement. **Administrative rules and regulations are intended to carry out, neither to supplant nor to modify, the law.** (Emphasis Ours.)

BIR Ruling No. 085-95 is not on all fours with the case at bar. The withholding agent in that case involves Subic Power Corporation known as SBF enterprise under R.A. 7227, and not as a PEZA registered enterprise under R.A. 7916. Worse, the same BIR Ruling violates Section 28(B)(5)(a) of the 1997 NIRC and RP-US Tax Treaty dated January 1, 1983. BIR Ruling No. 085-95 imposed a lower FWT rate of 5%, instead of 15%. Clearly, the FWT rate mandated by Section 28(B)(5)(a) of the 1997 NIRC, in relation to the RP-US Tax Treaty dated January 1, 1983 should prevail as against the tax rate stated in BIR Ruling No. 085-95.

THE IMPOSITION OF SURCHARGES AND INTERESTS AS TO PETITIONER'S 2001 FWT ON INTEREST INCOME PAID TO OGDEN IS PROPER.

Petitioner insists that it acted in good faith when it relied on BIR Ruling No. 085-95 justifying the removal of surcharges and interests.

Petitioner's stance is unmeritorious. *gr*

Assertion of honest mistake on petitioner's part in relying on respondent's erroneous interpretation of the law as shown in BIR Ruling No. 085-95 cannot be countenanced by this Court. BIR Ruling No. 085-95 involves different parties, transaction and taxable period. Thus, petitioner also erred in invoking the applicability of BIR Ruling 085-95 to the instant case.

The Court in Division correctly imposed surcharges and interests based on Sections 248(A)(3), 249(B) and 249(C) of the 1997 NIRC. These surcharges and interests are not penal, but are compensatory in accordance with the Supreme Court's pronouncements in *Bank of the Philippine Islands v. Commissioner of Internal Revenue*[20], stating:

> The above legal provision makes no distinctions nor does it establish exceptions. It directs the collection of the surcharge and interest at the stated rate upon any sum or sums due and unpaid after the dates prescribed in subsections (b), (c), and (d) of the Act for the payment of the amounts due. The provision therefore is mandatory in case of delinquency. This is justified because the intention of the law is precisely to discourage delay in the payment of taxes due to the State and, in this sense, the surcharge and interest charged are not penal but compensatory in nature — they are compensation to the State for the delay in payment, or for the concomitant use of the funds by the taxpayer beyond the date he is supposed to have paid them to the State.

Thus, We sustain the imposition of surcharges and interests accruing from the assessed 2001 FWT on interest income.

THE MEMORANDUM INCORPORATING THE REDUCTION OF PETITIONER'S 2001 EWT LACKS PROBATIVE VALUE AS IT IS MERELY RECOMMENDATORY.

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[20] G.R. No. 137002, July 27, 2006, 496 SCRA 601. See *Phil. Refining Company v. Court of Appeals*, May, 8, 1996, 256 SCRA 667 and *Republic v. Lim Tian Teng Sons & Co., Inc.*, G.R. No. L-21731, March 31, 1966, 16 SCRA 584.

Petitioner claims that subsequent to the issuance of FAN, respondent reduced the 2001 EWT assessment from P341,712.90 to P7,054.04 (both without interest).

The reduction of the assessment for EWT is stated in the Memorandum for respondent signed by Task Force Coordinators of the National Task Force on Independent Power Producers, namely: Ma. Elizabeth Neri, Dahlia V. Nitura, Edwin Sulit, and Josephine S. Virtucio. This Memorandum formed part of the BIR Records and should have been considered by the Court in Division even if it was not formally offered.

The Memorandum is supported by a revised computation of EWT signed by Ms. Nitura and marked as Exhibit "V-1". Ms. Nitura even testified as to the veracity of Exhibit "V-1".

Petitioner's assertion deserves scant consideration.

While petitioner alleges that the Memorandum signed by the National Task Force on Independent Power Producers establishes the reduction of petitioner's 2001 EWT deficiency assessment, the same is devoid of any probative value. The Court in Division aptly declared in its Resolution dated February 17, 2011 that:

> As to petitioner's allegation that the purported Memorandum signed by the members of the National Task Force on Independent Power Producers which was submitted to this Court and which also formed part of the BIR Records, may be considered even if it was not formally offered, and that aside from the said Task Force Memorandum, it also presented the revised computation of EWT signed by Revenue Officer Dahlia Nitura; suffice it to say that the assailed Decision found that the said Memorandum, it appears, **was not approved and was merely**

recommendatory. The said revised computation and the purported Memorandum cannot supplant the final assessment upheld by this Court in the assailed Decision.[21] (Emphasis supplied.)

Clearly, the Court in Division committed no reversible error in upholding the assessment on petitioner's 2001 FWT on interest payments to Ogden and EWT deficiencies and in imposing surcharges and interests on the FWT on interest payments to Ogden.

WHEREFORE, PREMISES CONSIDERED, the Petition for Review is hereby **DISMISSED**. The assailed Decision dated October 6, 2010 and the Resolution dated February 17, 2011 are **AFFIRMED**.

SO ORDERED.

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

WE CONCUR:

(On Wellness Leave)
ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

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[21] Rollo, pp. 90-91.

CAESAR A. CASANOVA Associate Justice	**OLGA PALANCA-ENRIQUEZ** Associate Justice
ESPERANZA R. FABON-VICTORINO Associate Justice	**CIELITO N. MINDARO-GRULLA** Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

C E R T I F I C A T I O N

Pursuant to Article VIII, Section 13 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.

JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice