lib.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PBM CONSTRUCTION SERVICE, INC.,
Petitioner,

-versus-

C.T.A. CASE NO. 3938

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

x - - - - - - - - - - - - - x

12/23/89

D E C I S I O N

This is an appeal from the decision of respondent assessing and demanding against petitioner the sum of P76,664.37, inclusive of interest and 10% surcharge, for 1980 income tax deficiency, computed as follows:

Net income per return		P1,106.61
Add: Items disallowed:		
(1) Miscellaneous	P 275.00	
(2) Expenses not subjected to Expanded Withholding tax		
(a) Lease of jeep	12,000.00	
(b) Professional fees	148,814.12	161,089.12
Net income per investigation		P162,195.73
Less: Exemptions		-
Net income subject to tax		P162,195.73
Tax due thereon		P 54,879.00
Less: Tax paid per return		118.74
Deficiency income tax		P 54,760.26
Plus: 10% surcharge (Sec.51 PD1705)		5,476.03
20% interest P/A from 4-16-81 to 10-16-82 (.30)		16,428.08
TOTAL AMOUNT DUE AND COLLECTIBLE		P 76,664.37

In a letter dated January 7, 1983, it filed a protest of the deficiency assessment with the Regional Director of Region 10-A of the Bureau of Internal Revenue. This was followed by a protest to respondent Commissioner of Internal Revenue dated April 22, 1985.

Instead of acting on the merits of the protest, respondent served upon petitioner on April 18, 1985, warrant of distraint on personal property and levy on real property.

This warrant of distraint is considered a denial by respondent of the protest.

Hence, petitioner appealed.

The deductions in the income tax return of 1980, namely; (a) P275 for representation and goodwill in connection with the MCCI LAB Project; (b) the lease of the jeep in the sum of P12,000 and (c) the professional fees in the amount of P148,814.12 as advances drawn by Engrs. Mejia and Tolosa, officers of petitioner, were disallowed for the sole reason that petitioner did not withhold the amount required under the expanded withholding tax (EWT).

However, in Revenue Memorandum Order No. 38-83, respondent had expressly instructed his revenue examiners against indiscriminately disallowing expenses and fees and that instead to allow their deduction if it is shown that the recipient of the fee had declared them in their respective income tax returns and that the corresponding income tax therein properly paid.

Petitioner had finally satisfied these conditions because the recipients of the fees had previously declared them in their income tax returns and actually paid the income tax.

True it is that the amount of P275 consisted of P15 as payment for assistance of non-employees of the Land Registration Commission in stencilling the engine and chassis number of the motor vehicle; P160 for lechon, and an additional paltry amount of P100. These expenses partakes of the nature of ordinary and necessary business expenses. (T.S.N., Jan. 22, 1986, pp. 19-20, Exhs. E, E-1 and E-2.)

Regarding the P12,000 jeep rental, there is no indication that there was actually a jeep rental. This is indeed careless and arbitrary on the part of respondent. (Exh. A, 1980 Income Tax Return, inclusive of schedule and financial statement.)

Anent the professional fees in the sum of P148,000.00, this amount was disallowed by respondent because petitioner did not withhold the income tax under the provisions of the Expanded Withholding Tax.

The Expanded Withholding Tax (EWT) Regulations, as amended by Rev. Regs. No. 6-79, dated June 4, 1979, provides for the withholding for the amount paid to the enumerated contractors of 3% of the fifteen percent of such gross payments, which provides in part as follows:

> "Section 7. Paragraph (e) of Section 1 of Revenue Regulations No. 13-78 is hereby amended to read as follows:
>
> '(e) <u>Amounts paid to certain contractors</u>. - On fifteen percentum (15%) of gross payments to the following contractors, whether individual or corporate--three per centum (3%).
>
> '(1) General engineering, general building and specially contractors -
>
> (a) General Engineering Contractors
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> ---
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> ---
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> xxx xxx xxx
>
> (b) General Building Contractors. ---- Those whose principal contracting business is in connection with any structure built, being built or to be built, for the support, shelter and enclosure of persons .... Such structure includes ......refineries, chemical plants and similar industrial plants requiring specialized engineering knowledge and skill....................................
> ....

The payments to Engrs. Mejia and Tolosa in the sum of P148,000 (should be P107,000) (Exhs. F, F-1 to F-5, G, G-1 to G-7) were not considered as payments of income to contractors. The payment made to them were made as officers and employees and not as contractors. (Exhs. I, I-1, I-2 and K.) Since these total amount of P107,000 were not payments to officers and employees within the meaning of the EWT, petitioner had no duty under the law to withhold the income tax. Resort to the EWT regulations as basis for deficiency income tax assessment becomes illegal. As a consequence, the 1980 deficiency income tax loses its legal support and is a nullity.

WHEREFORE, we so hold that petitioner PBM Construction Service, Inc. is not liable for the 1980 deficiency in the sum of P76,664.37, inclusive of interest and surcharges.

Without pronouncement as to costs.

SO ORDERED.

Quezon City, Philippines, December 23, 1989.

CONSTANTE C. ROAQUIN
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

ALEX Z. REYES
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation among the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

AMANTE FILLER
Presiding Judge
Court of Tax Appeals