Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

SYSTEMS AND ENCODING CORPORATION, Petitioner,	EB Case No. 584 (CTA Case No. 6999)
- versus -	Members: ACOSTA, PJ, CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, PALANCA-ENRIQUEZ, FABON-VICTORINO, MINDARO-GRULLA, and COTANGCO-MANALASTAS, *J.J.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: FEB 22 2011

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DECISION

CASANOVA, J.:

This is an appeal to the Court of Tax Appeals *En Banc* by way of a verified Petition for Review[1], under Section 11 of R.A. 9282, praying that the Decision[2] dated December 16, 2008 rendered by the Former Second Division of this Court in C.T.A. Case No. 6999 entitled *"Systems and Encoding Corporation vs. Commissioner of Internal Revenue"* as well as the Resolution[3] dated January 4, 2010 be set aside "by upholding petitioner's entitlement to deduction for salaries,

[1] Petition for Review, CTA En Banc Rollo, pp. 1-13
[2] CTA En Banc Rollo, pp. 23-60
[3] Ibid, pp. 65-76

wages and rentals or, in the alternative, declaring respondent in estoppel from enforcing the collection of the assessments for deficiency income tax and withholding taxes by reason of the BIR's acceptance of petitioner's payment under compromise."[4]

The facts of the case, as culled from the records, are as follows:

> "Petitioner is a corporation duly organized and existing under the laws of the Philippines with principal office at 3rd Floor, Wardley Bldg., 1991 Taft Avenue, Pasay City. Petitioner is a providing data encoding services.
>
> Respondent Commissioner of Internal Revenue is the duly appointed Commissioner of Internal Revenue vested by law to decide disputed assessments and to enforce the provisions of the National Internal Revenue Code ('NIRC'), with office address at the Bureau of Internal Revenue ('BIR'), BIR Building, Agham Road, Quezon City."[5]
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> "On April 18, 2001, petitioner filed its Income Tax Return ('ITR') for taxable year 2000, attaching thereto its audited financial statement and notes.
>
> Respondent conducted an audit investigation on petitioner for its failure to remit withholding taxes for taxable year 2000.
>
> Petitioner did not conceal, but disclosed its failure to remit withholding taxes for taxable year 2000 in the attachments to its ITR, more particularly in the balance sheet, as a current liability and under note 8 to the financial statement.
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> Petitioner offered to execute a waiver of the Bank Secrecy Law thru a Letter dated January 30, 2003 of its Chairman. In the Letters dated September 6, 2002 and July 18, 2003, petitioner invoked Section 204 of the 1997

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[4] Petition for Review, CTA En Banc Rollo, p. 10
[5] Ibid, p. 24

Tax Code, authorizing respondent to compromise the payment of any internal revenue tax when the taxpayer's financial position demonstrates clear inability to pay the assessed tax.

On September 16, 2003, petitioner received the Formal Assessment Notices and Demand Letters dated September 16, 2003 for deficiency income tax, withholding tax on compensation and expanded withholding tax for taxable year 2000, together with the details of discrepancies thereof.

The assessment for deficiency income tax came out as a result of the BIR's disallowance of deductions amounting to P91,418,997.30, consisting of:

A. Salaries, wages and bonuses	P76,085,176.80
B.Overtime/ night shift premiums	3,787,011.20
C. Rental Expense	6,588,565.54
D. Management fee	2,078,000.00
E.Repairs and Maintenance	741,892.04
F.Subcontractors expense	139,833.46
G. Professional fee	287,161.10
H. Equipment rental	411,879.59
I.Commission expense	790,432.57
J.Guard Services	345,960.00
K.Advertising and promotion	163,085.00

Petitioner was assessed 50% surcharge and 20% penalty each for deficiency withholding tax on

> compensation and deficiency expanded withholding tax, pursuant to *Sections 248 (B) and 249 of the 1997 Tax Code.*
>
> On October 10, 2003, petitioner protested the assessment by filing a request for reconsideration or reinvestigation, which was granted by the RDO 51- Pasay City on November 17, 2003.
>
> Thereafter, petitioner submitted to the RDO 51-Pasay City its detailed summary schedules of its ordinary and necessary expenses.
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> On May 4, 2003, petitioner received a letter from the Revenue District Officer of RDO 51 denying with finality its protest against the questioned assessment and finding petitioner liable for deficiency income tax in the amount of P7,791,568.37, deficiency withholding tax on compensation in the amount of P9,750,180.37 and deficiency expanded withholding tax in the amount of P223,039.95. Petitioner's claimed deduction of P56,067,409.59 for salaries and wages was disallowed for the reason that the withholding taxes due thereon was not remitted by petitioner to the BIR. Also, petitioner's claimed deduction for rental expense of P5,246,432.62 was disallowed by the BIR in its final decision on the ground that no receipts/invoices were issued by the lessor".[6]

On September 15, 2004, respondent filed his Answer[7] and by way of special and affirmative defenses, averred the following:

> "4.The investigation of the petitioner's internal revenue tax liabilities for the year 2000 revealed a tax obligation of Php21,545,247.33 as deficiency income tax, Php10,143,582.22 as deficiency withholding tax, Php116,575.37 as deficiency expanded withholding tax, all inclusive of surcharges and interests.
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> 5. The subject deficiency tax assessments were issued in accordance with law and pertinent regulations and has

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[6] Ibid, pp. 24-27

[7] Division Docket, pp. 77-79

complied with the provisions of Section 228 of the 1997 Tax Code, as amended, relative to the taxpayer being informed in writing of the facts and laws in which the assessment is based, the same is contained in the 'Details of Discrepancies' dated September 16, 2003.

6. Petitioner is found to be liable for deficiency withholding tax on compensation in the amount of Php9,750,270.37. Even if they voluntarily paid Php1,000,000.00 on December 30, 2003 the same is not enough to cancel said assessment. Petitioner is still liable to pay the amount of Php8,750,270.37 as balance of the deficiency tax liability.

7. Rental expense in the amount of Php5,246,432.62 was disallowed for failure to present receipts/invoices issued by the lessor. This substantiation requirement is mandated under Section 34 (A) (1) (b) of the 1997 Tax Code.

8. Since petitioner failed to withhold and remit withholding tax on compensation, the salaries and allowances claimed as expense was disallowed therefore increasing the tax base of the petitioner that resulted to the deficiency income tax.

9. Even if petitioner is said to be suffering from serious financial reverses, it is not enough justification not to withhold and remit withholding tax on compensation because such amount will not be deducted from their cash reserves but it will come from the compensation of the employees. Petitioner is only an agent of the BIR in withholding part of its employees' compensation.

10. All presumptions are in favor of the correctness of tax assessments and the burden of proof to prove otherwise is upon the petitioner."

Trial ensued and petitioner presented testimonial and documentary evidence.

On May 28, 2007, petitioner filed a Manifestation[8] stating that it availed of the BIR's Voluntary Assessment and Abatement Program pursuant to Revenue Regulations 15-2006 and 3-2007.

Thereafter, a Motion for Reconsideration (Of the Honorable Court's Resolution dated May 28, 2007)[9] was filed by respondent on June 28, 2007 requesting that he be allowed to file his Formal Offer of Evidence within the period set for the submission of his memorandum or until July 13, 2007 and that the submission of his memorandum be held in abeyance pending the resolution of the Motion for Reconsideration.

On June 29, 2007, a Supplemental Formal Offer of Exhibits[10] was filed by petitioner.

On July 9, 2007, petitioner filed its Memorandum[11] and subsequently, a Motion[12] for the Admission of the Amendment to the Memorandum of petitioner was filed on July 16, 2007.

A Motion to Admit Formal Offer of Evidence[13] was filed by respondent on July 17, 2007 and petitioner submitted its Comment/Objection to Formal Offer of Evidence[14] on August 23, 2007.

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[8] Ibid, pp. 492-493
[9] Ibid, pp. 501-503
[10] Ibid, pp. 504-505
[11] Ibid, pp. 507-521
[12] Ibid, pp. 523-525
[13] Ibid, pp. 526-528
[14] Ibid, pp. 547-548

On July 9, 2007, petitioner filed its Memorandum while respondent failed to file one.

The instant petition was deemed submitted for decision pursuant to a Resolution[15] issued by the Court on December 18, 2007 taking into consideration petitioner's Memorandum, sans respondent's Memorandum.

The CTA Former Second Division rendered a Decision on December 16, 2008, the dispositive portion of which reads as follows:

> "**WHEREFORE**, premises considered, the present Petition for Review is **PARTIALLY GRANTED**. Accordingly, petitioner is hereby ORDERED to pay respondent Commissioner of Internal Revenue the reduced amounts of SEVEN MILLION SEVEN HUNDRED SIXTY SIX THOUSAND FIVE HUNDRED SIXTY EIGHT AND 37/100 PESOS **(P7,766,568.37)**, representing deficiency Income Tax, SEVEN MILLION TWO HUNDRED SEVENTY SIX THOUSAND ONE HUNDRED NINE AND 33/100 PESOS **(P7,276,109.33)**, representing deficiency Withholding Tax on Compensation, and ONE HUNDRED NINETEEN THOUSAND SIX HUNDRED FIFTY FOUR AND 46/100 PESOS **(P119,654.46)**, representing deficiency Expanded Withholding Tax, all for taxable year 2000, or the total amount of FIFTEEN MILLION ONE HUNDRED SIXTY TWO THOUSAND THREE HUNDRED THIRTY TWO AND 16/100 PESOS **(P15,162,332.16)**.
>
> In addition, petitioner is hereby **ORDERED** to pay respondent 20% delinquency interest per annum on the total amount of **P15,162,332.16** counted from May 3, 2004 until full payment thereof, pursuant to *Section 249 (C) of the NIRC of 1997, as amended.*
>
> **SO ORDERED".**

[15] Ibid, p. 553

On January 19, 2009, petitioner filed a Motion for Partial Reconsideration/ New Trial[16] of the Decision dated December 16, 2008. The Court, in a Resolution[17] promulgated on April 21, 2009, denied the Motion for New Trial for lack of merit and held in abeyance the resolution of petitioner's Motion for Partial Reconsideration, pending the submission of the following: a) copies of the original computer print outs and monthly installment payment forms (BIR Form No. 0605), evidencing monthly installment payments of basic withholding tax from March 2007 to February 2008; b) and a certified true copy of the Termination Letter and Authority to Cancel Assessment, as proof of its availment of the Abatement Program under Revenue Regulations 15-2006 and 3-2007, within ten (10) days from notice of the Resolution.

On May 7, 2009, petitioner filed its Compliance with Motion[18], attaching therein payment forms and BIR EFPS to prove its payment, with notation of "certified true copy" signed by its Comptroller, Mr. Alberto M. Matabang. It also moved for an extension of ninety (90) days or until October 10, 2009 to submit the Termination Letter and Authority to Cancel Assessment.

However, finding the submitted aforementioned documents to be mere photocopied documents, the Court ordered petitioner, in its Resolution[19] dated June 15, 2009, to submit the originals or certified true copies of the same.

[16] Ibid, pp. 596-606
[17] Ibid, pp. 701-708
[18] Ibid, pp. 709-713
[19] Ibid, pp. 743-751

Petitioner complied with the said order thru a Manifestation[20] with attached Payment Forms (BIR Form No. 0605) and BIR EFPS filed on August 6, 2009.

Due to respondent's failure to file his comment, the Court granted, in a Resolution[21] dated September 30, 2009, petitioner's request for an extension of time to submit the copy of the Termination Letter and Authority to Cancel Assessment, after which, petitioner's Motion for Partial Reconsideration shall be deemed submitted for decision.

On October 13, 2009, petitioner filed a Manifestation[22] stating that after a follow up with the BIR of its Termination Letter and Authority to Cancel Assessment, it was informed that their application for abatement and cancellation of tax liabilities has been forwarded to the Office of the Assistant Commissioner for Collection under the Office of the Deputy Commissioner-Operations Group for final processing and approval per letter dated October 9, 2009 of Regional Director Alfredo V. Misajon.

In a Resolution[23], dated November 10, 2009, the Court noted the said Manifestation and, likewise deemed petitioner's Motion for Partial Reconsideration of the Decision dated December 16, 2008, submitted for resolution on the ground that the Court cannot wait for an indefinite time when the decision of the BIR on petitioner's application for abatement will be issued.

[20] Ibid, pp. 760-762
[21] Ibid, pp. 811-814
[22] Ibid, pp. 815-816
[23] Ibid, pp. 818-820

On January 04, 2010, the Court promulgated a Resolution denying petitioner's Motion for Partial Reconsideration of the Decision dated December 16, 2008.

On January 20, 2010, petitioner filed the instant Petition for Review with CTA En Banc praying that the Decision dated December 16, 2008 and Resolution dated January 4, 2010 of the CTA Former Second Division, be set aside and raising the following issues:

> "I. The disallowance of petitioner's deductions for salaries and wages is inequitable and unconstitutional. Under the Constitution, the rule of taxation should be equitable (Art. VI, Sec. 28, 1987 Constitution).
>
> II. Respondent is estopped from collecting the taxes contained in its tax assessment notices as it has accepted petitioner's payments under compromise".

The instant petition was submitted for decision in a Resolution[24] issued on September 22, 2010, taking into consideration petitioner's Memorandum filed on July 19, 2010, sans respondent's Memorandum.

After a careful and thorough perusal, evaluation and study of the instant Petition for Review, the Court En Banc finds no cogent reason to disturb the Decision and Resolution of the CTA Former Second Division promulgated on December 16, 2008 and January 4, 2010, respectively.

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[24] CTA En Banc Rollo, pp. 98-99

On the first issue, the same has already been sufficiently passed upon and threshed out in the assailed Decision and Resolution sought to be reconsidered, to wit:

> "As regards the first two grounds relied upon by petitioner for the disallowance of the deduction for salaries and wages, the Court finds that the same had already been sufficiently passed upon and threshed out in the decision sought to be reconsidered. Another discourse is unnecessary.
>
> As regards the third ground raised by petitioner that an overly strict interpretation of *Section 34 (k) of the NIRC of 1997, as amended,* would be violative of the Constitutional provision that taxation must be equitable, the same is likewise devoid of merit. It must be emphasized that the withholding tax system was devised for three reason: first, to provide the taxpayer a convenient manner to meet his probable income tax liability; second, to ensure the collection of the income tax which could otherwise be lost or substantially reduced through failure to file the corresponding returns; and third to improve the government's cash flow *(Citibank, N.A. vs. Court of Appeals, 280 SCRA 467-468).* For these reasons, a withholding agent is an agent both of the government and of the taxpayer. In the case of *Commissioner of Internal Revenue vs. Procter & Gamble Philippine Manufacturing Corporation, 204 SCRA 386, citing Philippine Guaranty Company, Inc. vs. CIR (15 SCRA 1),* the Supreme Court ruled:
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>> 'The law sets no condition for the personal liability of the withholding agent to attach. **The reason is to compel the withholding agent to withhold the tax under all circumstances. In effect, the responsibility for the collection of the tax as well as the payment thereof is concentrated upon the person over whom the Government has jurisdiction. Thus, the withholding agent is**

> **constituted the agent of both the Government and the taxpayer.** With respect to the collection and/or withholding of the tax, he is the Government's agent. In regard to the filing of the necessary income tax return and the payment of the tax to the Government, he is the agent of the taxpayer. **The withholding agent, therefore, is no ordinary government agent especially because under Section 53 (c) he is held personally liable for the tax he is duty bound to withhold;** whereas the Commissioner and his deputies are not made liable by law.' *(Emphasis supplied)*

Hence, the taxes deducted and withheld by withholding agents are held as special fund in trust for the government until paid to the collecting officer *(Commissioner of Internal Revenue vs. Bank of Commerce, 459 SCRA 647).* The withholding agent, is therefore, subject to and is liable for deficiency assessments, surcharges and penalties should the amount of the tax withheld be finally found to be less than the amount that should have been withheld under the law *(Commissioner of Internal Revenue vs. Procter & Gamble Philippine Manufacturing Corporation, supra, p. 385.)* Much more, when the withholding agent did not remit the amount withheld from the salaries of its employees. Because in such case, the withholding agent appropriated the money that it does not belong to it, but merely held in trust for the government.

Clearly, *Section 34 (K) of the NIRC of 1997 as amended,* is not merely a procedural requirement, but it was incorporated as a penalty for those mandated by law to withhold, but failed to perform their duty. The codal provisions on withholding tax are mandatory and must be complied with by the withholding agent *(Commissioner of Internal Revenue vs. Court of Appeals, 301 SCRA 171).* As the withholding agent is compelled to withhold the tax under all circumstances *(Filipinas Synthetic Fiber Corporation vs. Court of Appeals, 316 SCRA 486),* petitioner cannot, therefore, find solace in the Constitutional provision that taxation must be equitable, for its failure to comply its obligation to withhold and remit the withholding taxes due on compensation income of its employees. The doctrinal rule is that taxes are the lifeblood of the government. As succinctly pronounced by the Supreme Court in the case of *Abakada Guro Party List vs. Ermita, 469 SCRA 145*, a tax is just an enema, a first-aid measure to resuscitate an economy in distress. The Court is neither blind nor is it turning a deaf ear on the plight of the masses. But it does not have the panacea for the malady that the law seeks to remedy. As in other cases, the Court cannot strike down a law as unconstitutional simply because of its yokes.

Neither can petitioner find excuse in its having suffered a net loss for its failure to remit the taxes withheld because the amount withheld was not taken from petitioner's fund, but they came from the compensation of its employees. Therefore, the rule that taxation should be equitable has no application to the instant case. To be fair enough to those employees against whom petitioner had withheld the corresponding withholding taxes due on their compensation income, but were not remitted to respondent, petitioner must bear the consequence of its breach of duty, pursuant to *Section 34 (k) of the NIRC of 1997, as amended.* For the Court is likewise mandated to enforce the Constitutional provision of equal protection of the law.

On the second issue, the same was resolved by the CTA Former Second Division in this wise:

"As regards petitioner's claim that the Court did not consider petitioner's partial payment of P1,000,000.00 in the computation of its deficiency interest on withholding tax on compensation, the same is likewise bereft of merit. The Revised computation of the respondent, which was adopted by the Court, shows that petitioner's partial payment of P1,000,000.00 was in fact considered by the respondent, not only in the computation of the interest on withholding tax on compensation after said payment on December 30, 2003, but even from the time that petitioner defaulted payment of the withholding tax on compensation on January 26, 2001. As shown in the Revised Findings per Reinvestigation, the factor used by respondent is .6667, multiplying the same to the balance of deficiency withholding tax on compensation of P3,796,244.16 is P2,530,955.98. In affirming respondent's computation on deficiency interest on withholding tax on compensation, the Court was even lenient to petitioner considering that if the Court was strict in the enforcement of the correct computation of the deficiency interest on withholding on compensation, the deficiency interest would not only be P2,530,955.98, but, it would have been in the increased amount of P3,122,968.69, as shown hereunder:

Amount of Deficiency Interest for 2001	**Amount of Deficiency Interest for 2002**	**Amount of Deficiency Interest for 2003**	**Amount of Deficiency Interest for 2004**
Original Basic Deficiency Withholding Tax on Compensation P4,796,244.16 x 20% x 339/365 (1/26/2001 to 12/30/2001)	Original Basic Deficiency Withholding Tax on Compensation P4,796,244.16 x 20%	Original Basic Deficiency Withholding Tax on Compensation P4,796,244.16 x 20% x 364/365 (1/1/2003 to 1/30/2003)	Balance of the Basic Deficiency Withholding Tax on Compensation P3,796,244.16 x 20% x 151/365 (1/1/2004 to 5/30/2004)
=P890,918.78	=P959,248.83	=956,620.75	=P314,100.20
		Balance of the Basic Deficiency Withholding Tax on Compensation P3,796,244.16 x 20% x 1/365 (Dec. 31, 2003)	
		=P2,080.13	
P890,918.78	P959,248.83	P958,700.88	P314,100.20
Total Deficiency Interest on Withholding Tax on Compensation			**P3,122,968.69**

However, considering that the Court cannot impose an assessment more than what was assessed by the BIR, the Court did not impose the increased deficiency interest of P3,122,968.69, instead, it adopted the deficiency interest assessment of the respondent in the lower amount of P2,530,955.98".

Records reveal that no Termination Letter or Authority to Cancel the Assessment was submitted by petitioner. While BIR may have accepted the payment of the settlement, the same act of the BIR does not constitute the

Termination Letter contemplated by law.[25] Therefore, petitioner failed to comply with the requirements of the Abatement Program.

In sum, the Court En Banc finds no cogent justification to disturb the findings and conclusions spelled out in the assailed December 16, 2008 Decision and January 4, 2010 Resolution of CTA Former Second Division.

WHEREFORE, the instant Petition for Review is hereby **DENIED DUE COURSE** and **DISMISSED** for lack of merit. Accordingly, the December 16, 2008 Decision and January 4, 2010 Resolution of the CTA Former Second Division are hereby **AFFIRMED** in toto.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

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[25] CTA Case No. 6950, September 1, 2009

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA C. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *en banc* before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice