REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

MITSUBISHI MOTORS PHILS. CORPORATION, Petitioner,	**C.T.A. EB NO. 526** (C.T.A. Case No. 6385)
	Members:
- versus -	**ACOSTA,** *PJ* **CASTAÑEDA, JR. BAUTISTA, UY, CASANOVA, PALANCA-ENRIQUEZ, FABON-VICTORINO, MINDARO-GRULLA, and COTANGCO-MANALASTAS,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** SEP 07 2010

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DECISION

Fabon-Victorino, J.:

This Petition for Review[1] filed under Section 18 of Republic Act (R.A.) No. 1125, as amended by R.A. No. 9282, seeks to set aside the Decision[2] of December 12, 2008, which partially granted the cancellation and withdrawal of deficiency tax assessment, as well as the Resolution[3] of August 10, 2009, which denied reconsideration of

[1] En Banc Record, pp. 1-45.
[2] Penned by Associate Justice Lovell R. Bautista and concurred by Presiding Justice Ernesto Acosta and Associate Justice Caesar A. Casanova.
[3] *Supra.*

the assailed decision, both promulgated by the Court in Division in CTA Case No. 6385.

<u>The Factual Antecedents:</u>

Petitioner Mitsubishi Motors Philippines Corporation (MMPC), is a duly organized and existing corporation engaged in the manufacture, assembly and sales of motor vehicles, with principal office at the MMPC Building, Ortigas Avenue Extension, Cainta, Rizal.

Respondent Commissioner of Internal Revenue, on the other hand, is vested by law with the power to make assessments as well as cancel those that were disputed.

On April 5, 2001, petitioner, received a Preliminary Assessment Notice (PAN) dated March 21, 2001 from the BIR Revenue Region No. 7, Quezon City, to which it seasonably filed a Reply. The PAN covered alleged deficiency income tax for taxable year ended December 31, 1997 in the amount of P259,355,875.51, inclusive of interest, computed as follows:

Deficiency income tax	P	162,646,353.76
Add: 20% Interest (4/16/98 to 4/06/01)		96,709,521.95
TOTAL	P	259,355,875.71

On April 20, 2001, petitioner received the Final Assessment Notice (FAN) dated April 11, 2001 under Demand No. 46101 and Assessment No. 000009, for the same deficiency income taxes but this time in the total amount of P259,811,285.50, detailed as follows:

Net Income (loss) per Return	Php	(124,386,956.00)
Add: Audit Findings / Discrepancies		
Interest expense from loans	108,913,892.25	
Interest expense from affiliates	49,519,810.56	
Rent-expense-affiliates	56,276,327.00	
Direct labor, salaries and wages	37,160,143.43	
Rental expense	16,795,188.87	
Other income	6,646,008.35	
Advertising and promotion	138,814,647.00	
Sales – undeclared	18,919,837.00	
Royalty	15,050,738.69	448,096,593.15
Net income per investigation		323,709,637.15
Income tax due thereon		113,298,373.00
Less: Tax credits		
Paid per return	10,207,915.00	
Creditable withholding tax	88,474,492.00	
Total	98,682,407.00	
Less: Disallowances		
Creditable w/tax - no certificates	49,347,980.76	
Allowable	49,334,426.24	
Less: Applied credit to next year	98,682,407.00	49,347,980.76
Deficiency tax		162,646,353.76
Add: 20% interest		97,164,931.74
Amount still due	Php	259,811,285.50

The FAN was based on the following grounds:

> 10.1. Respondent disallowed Interest Expense from loans in the amount of P108,913,892.25 on the ground that the loans from which the interest arose were not indebtedness connected with the taxpayer's trade or business pursuant to the provisions of Section 29(a)(1)(A) of the 1977 National Internal

Revenue Code ("Tax Code") (admitted in par. 3A, Special and Affirmative Defenses, Answer).

10.2. Interest Expense from affiliates in the amount of P49,519,810.56 was disallowed by the BIR as a deduction from income pursuant to the provisions of Section 30(b)(3) of the Tax Code (admitted in par. 3B, Special and Affirmative Defenses, Answer).

10.3. Respondent disallowed Rent Expense charged by Petitioner's affiliates in the amount of P56,276,327.00 as a deduction from income pursuant to the provisions of Section 29(a)(1)(A) of the Tax Code (admitted in par. 3C, Special and Affirmative Defenses, Answer).

10.4. Respondent disallowed Direct Labor & Salaries and Wages amounting to P37,160,143.43 as a deduction from income for alleged failure to withhold the required tax due thereon pursuant to the provisions of Section 29(j) of the Tax Code (admitted in par. 3D, Special and Affirmative Defenses, Answer).

10.5. Respondent disallowed Rental Expense in the amount P16,795,188.87 as a deduction from income for alleged failure to withhold the tax due on the rent payments pursuant to the provisions of Section 29(j) of the Tax Code (admitted in par. 3F, Special and Affirmative Defenses, Answer).

10.6. Respondent alleges that the discrepancy amounting to P6,646,008.35 between income payment (rental) per alpha list against income payment claimed as expense per financial statements represents Other Income pursuant to Section 28 of the Tax Code (admitted in par. 3F, Special and Affirmative Defenses, Answer).

10.7. Respondent disallowed Advertising and Sales Promotion Expense amounting to P138,814,647.00 as a deduction from income for alleged failure by Petitioner to withhold the required amount of tax pursuant to the provisions of Section 29(j) of the Tax Code (admitted in par. 3G, Special and Affirmative Defenses, Answer).

10.8. Respondent alleges that there were undeclared sales in the amount of

> P18,919,837.00 pursuant to the provisions of Section 28 of the Tax Code (admitted in par. 3H, Special and Affirmative Defenses, Answer).
>
> 10.9. It is alleged by the Respondent that Royalties Expense in the amount of P15,050,738.69 should be disallowed as a deduction from income pursuant to the provisions of Section 29(a)(1)(A) of the Tax Code (admitted in par. 3I, Special and Affirmative Defenses, Answer).
>
> 10.10.Creditable withholding taxes claimed by Petitioner as tax credits in its income tax return in the amount of P49,347,980.76 was disallowed by the BIR due to its alleged failure to support the same pursuant to the provisions of Section 50 of the Tax Code as implemented by Section 6 in relation to Section 10 of Revenue Regulations No. 6-85, as amended (admitted in par. 3J, Special and Affirmative Defenses, Answer).

On May 11, 2001, petitioner protested the foregoing FAN praying that it be cancelled or withdrawn for lack of legal and factual bases.

On May 23, 2001, petitioner was notified that the incident had been referred to the BIR Revenue District Office No. 46, Cainta/Taytay, Rizal to which petitioner filed within the reglementary period all the pertinent documents in support of its protest.

As of January 6, 2002, petitioner's protest remained unresolved. Hence, on February 4, 2002, it filed a Petition for

Review docketed as CTA Case No. 6385 and was raffled to the First Division of this Court.

On April 26, 2002, respondent filed his Answer claiming that investigation revealed that petitioner has deficiency income tax in the amount of Php 259,164,258.50. Allegedly, the assessment being assailed was issued in accordance with law and pertinent regulations. Importantly, petitioner was informed of the facts and the law upon which the assessment was based, pursuant to the Rules. As part of his defense, respondent claimed that petitioner has no cause of action for its failure to exhaust available administrative remedies.

On December 12, 2007, the case was deemed submitted for decision with the following issues for the resolution of the Court in Division, to wit:

> 1. Whether or not Respondent correctly disallowed the following expenses as deductions from Petitioner's gross income:
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> | | | |
> |---|---|---|
> | Interest expense from loans | P | 108,913,892.25 |
> | Interest expense from affiliates | | 49,519,810.56 |
> | Rent-expense-affiliates | | 56,276,327.00 |
> | Direct labor, salaries and wages | | 37,160,143.43 |
> | Rental expense | | 16,795,188.87 |
> | Advertising and promotion | | 138,814,647.00 |
> | Royalty | | 15,050,738.69 |
>
> 2. Whether or not there is a discrepancy amounting to P6,646,008.35 between income payment (rental) per alpha list and income payment claimed as expense per

financial statements and if so, whether the same represents Other Income of Petitioner.

3. Whether or not Petitioner had undeclared sales of P18,919,837.00.

4. Whether or not Respondent correctly disallowed creditable withholding taxes of P49,347,980.76 claimed by Petitioner as tax credits in its income tax return.

On December 12, 2008, the Court in Division promulgated the assailed Decision partially in favor of petitioner ruling that only the following should be disallowed as deductible expenses and deficiency income tax should be assessed thereon:

Rent expense-affiliates	Php	56,276,327.00
Direct labor-salaries & wages		37,160,143.43
Rental Expense		15,482,630.67
Other income		2,681,892.41
Advertising & sales promotion		108,857,148.75
Undeclared sales		1,432,524.00
TOTAL	Php	221,890,666.26

The decretal portion of the assailed decision reads as follows:

WHEREFORE, the Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, petitioner is hereby **ORDERED TO PAY** deficiency income tax for taxable year 1997 in the amount of **SIXTY-FOUR MILLION ONE HUNDRED FORTY-THREE THOUSAND SIX HUNDRED EIGHTY-TWO PESOS AND 72/100** (P64,143,682.72), inclusive of 25% surcharge and 20% deficiency interest, computed as follows:

Net Income (loss) per Return			P	(124,386,956.00)
Add: Audit Findings / Discrepancies				
Rent-expense-affiliates	P	56,276,327.00		
Direct labor, salaries and wages		37,160,143.43		
Rental expense		15,482,630.67		
Other income		2,681,892.41		
Advertising and promotion		108,857,148.75		
Undeclared sales		1,432,524.00		221,890,666.26
Net income per investigation			P	97,503,710.26
Tax due (35%)			P	34,126,298.59
Less: Tax credits/Payments				
Paid per return	P	10,207,915.00		
Creditable withholding tax		88,474,492.00		
Total	P	98,682,407.00		
Less: Disallowed creditable w/taxes		628,313.14		
Allowable	P	98,054,093.86		
Less: Applied credit to next year		98,682,407.00		(628,313.14)
Total deficiency tax				34,754,611.73
Add: 25% surcharge				8,688,652.93
20% interest (4/16/98 to 4/06/01)				20,700,418.06
Total amount due			P	64,143,682.72

In addition, petitioner is hereby **ORDERED TO PAY** a twenty percent (20%) delinquency interest computed from May 11, 2001 until full payment thereof pursuant to Section 249 (c) (3) of the same Code.

SO ORDERED.

Petitioner filed a Motion for Partial Reconsideration while respondent, a Motion for Reconsideration with a supplement, all of which were denied in a Resolution promulgated on August 10, 2009. Hence, this appeal.

In compliance with the Court *En Banc* Resolution promulgated on September 22, 2009, respondent filed a one-page comment.

On January 4, 2010, the petition was deemed submitted for decision *sans* respondent's memorandum.

In its Memorandum, petitioner claims that the Court in Division erred in its conclusion that:

The Issues

I

THE RENT EXPENSE IN THE AMOUNT OF FIFTY SIX MILLION TWO HUNDRED SEVENTY SIX THOUSAND THREE HUNDRED TWENTY SEVEN PESOS (Php56,276,327.00) PAID TO PETITIONER'S AFFILIATES WAS NOT A VALID DEDUCTION SINCE PETITIONER HAD EQUITY IN THE PROPERTIES BEING RENTED.

II

THE EXPENSES INCURRED BY THE PETITIONER IN CONNECTION WITH DIRECT LABOR, SALARIES AND WAGES, RENT AND ADVERTISING AND SALES PROMOTION IN THE AMOUNT OF ONE HUNDRED THIRTY SEVEN MILLION TWO HUNDERED SEVENTY SIX THOUSAND ONE HUNDRED ONE AND 34/100 PESOS (Php137,276,101.34) WERE NOT VALID DEDUCTIONS FOR FAILURE TO WITHHOLD THE CORRESPONDING TAXES AT THE TIME THEY WERE CLAIMED AS EXPENSES.

III

PETITIONER HAD UNDECLARED SALES IN THE AMOUNT OF ONE MILLION FOUR HUNDRED THIRTY TWO THOUSAND FIVE HUNDRED TWENTY FOUR PESOS (Php1,432,524.00) WHICH IS SUBJECT TO INCOME TAX AT THE RATE OF 35%.

The Ruling of the Court En Banc

The rent expense paid to petitioner's affiliates is a valid deduction from gross income

Petitioner asserts that the disallowance of its rental expense as a deduction on the sole ground that it is a shareholder of the corporation that owns the rented properties has no legal basis. This is contrary, to the clear mandate of Section 29(a)(1)(A) of the 1977 Tax Code which states that rentals may be validly deducted from gross income as long as the taxpayer has no equity in the property being leased. Further, Section 29(a)(1)(A) of the 1977 Tax Code refers to equity in the property itself and not to equity in the corporation that owns the property subject of lease. To extend the condition stated in the cited provision to the property owned by a corporation which has a separate and distinct juridical personality will unduly impose upon a taxpayer, in particular the petitioner in this case, a burden which is not in the law. Moreover, a stockholder of a corporation has no title, legal or equitable, in the property of the corporation, both of which are held by the corporation for the benefit of all stockholders.[4]

The law is clear and the Court is inclined to take petitioner's cause on this point.

[4] *Candido Pascual vs. Eugenio Del Saz Orozco, et.al., G.R. No. L-5174, March 17, 1911.*

Section 29(a)(1)(A), 1977 Tax Code provides, thus:

> (a) Expenses. – (1) Business expenses. – (A) In general. – All ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including a reasonable allowance for salaries or other compensation for personal services actually rendered; travelling expenses while away from home in the pursuit of a trade, profession or business, rentals or other payments required to be made as a condition to the continued use or possession, for the purpose of the trade, profession or business, of property to which the taxpayer has not taken or is not taking title or in which he has no equity." (*Underscoring supplied*)

The above provision clearly refers to equity in the property itself. It can not go far as to include equity ownership in a corporation that owns the property for let. The extent of a shareholder's interest in the property of the corporation is explained in *Concepcion Magsaysay-Labrador, et.al. vs. Court of Appeals, et.al.*[5], by the no less than the Supreme Court in this wise:

> Here, the interest if it exists at all, of petitioners-movant is indirect, contingent, remote, conjectural, consequential and collateral. At the very least, their interest is purely inchoate, or in sheer expectancy of a right in the management of the corporation and to share in the profits thereof and in the properties and assets thereof on dissolution, after payment of the corporate debts and obligations.
>
> While a share of stock represents a proportionate or aliquot interest in the property

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[5] *G.R. No. 58168, December 19, 1989.*

> of the corporation, it does not vest the owner thereof with any legal right or title to any of the property, his interest in the corporate property being equitable or beneficial in nature. Shareholders are in no legal sense the owners of corporate property, which is owned by the corporation as a distinct legal person. (*Underscoring supplied*)

It is a well-settled doctrine both in law and in equity, that as a legal entity, a corporation has a personality distinct and separate from its individual stockholders or members, and is not affected by the personal rights, obligations and transactions of the latter. Since corporate property is owned by the corporation as a juridical person, the stockholders have no claim on it as owners, but have merely an expectancy or inchoate right to the same should any of it remain upon the dissolution of the corporation after all corporate creditors have been paid. Although a stockholder's interest in the corporation may be attached by his personal creditor, the latter cannot use corporate property to satisfy the shareholder's claim. Neither can the stockholder's property be levied upon for an obligation of the corporation, even if such stockholder be its President[6] .

With the foregoing, petitioner as the lessee cannot be deemed to have equity in the properties owned by or registered in the name of the affiliates without violating the well-entrenched doctrine of separate and distinct juridical personality of the corporation. One

[6] The Corporation Code, Jose R. Campos, Jr. p. 137

instructive reflection on the issue is found in *Silverio, et.al, vs. Filipino Business Consultants, Inc.*[7], thus:

> FBCI's acquisition of the "substantial and controlling shares of stocks" of Esses and Tri-Star does not create a substantial change in the rights or relations of the parties that would entitle FBCI to possession of the Calatagan Property, a corporate property of Esses and Tri-Star. Esses and Tri-Star, just like FBCI, are corporations. A corporation has a personality distinct from that of its stockholders. As early as the case of ***Stockholders of F. Guanzon and Sons, Inc. v. Register of Deeds of Manila***[8], the Court explained the principle of separate juridical personality in this wise:
>
>> A corporation is a juridical person distinct from the members composing it. Properties registered in the name of the corporation are owned by it as an entity separate and distinct from its members. While shares of stock constitute personal property, they do not represent property of the corporation. The corporation has property of its own which consists chiefly of real estate (Nelson v. Owen, 113 Ala., 372, 21 So. 75; Morrow v. Gould, 145 Iowa 1, 123 N.W. 743). A share of stock only typifies an aliquot part of the corporation's property, or the right to share in its proceeds to that extent when distributed according to law and equity (Hall & Faley v. Alabama Terminal, 173 Ala 398, 56 So., 235), but its holder is not the owner of any part of the capital of the corporation (Bradley v. Bauder, 36 Ohio St., 28). Nor is he entitled to the possession of any definite portion of its property or assets (Gottfried v. Miller, 104 U.S., 521; Jones v. Davis, 35 Ohio St., 474). The stockholder is not a co-owner or tenant in common of the corporate property (Harton v. Hohnston, 166 Ala., 317, 51 So., 992).
>
> Thus, FBCI's alleged controlling shareholdings in Esses and Tri-Star merely represent a proportionate or aliquot interest in the properties of the two corporations. Such controlling shareholdings do not vest FBCI with any legal right or title to any of Esses and Tri-Star's corporate properties. As a stockholder, FBCI has an interest in Esses and Tri-Star's corporate properties that is only equitable or

[7] *G.R. No. 143312, August 12, 2005.*
[8] *G.R. No. L-18216, October 30, 1962.*

> beneficial in nature. Even assuming that FBCI is the controlling shareholder of Esses and Tri-Star, it does not legally make it the owner of the Calatagan Property, which is legally owned by Esses and Tri-Star as distinct juridical persons. As such, FBCI is not entitled to the possession of any definite portion of the Calatagan Property or any of Esses and Tri-Star's properties or assets. FBCI is not a co-owner or tenant in common of the Calatagan Property or any of Esses and Tri-Star's corporate properties.

In fine, petitioner cannot be deemed to have title to or equity in the properties owned by its affiliates. That being the case, it may be allowed to deduct from its gross income the rental expenses paid to affiliates amounting to Php56,276,327.00, the same being an ordinary and necessary expense fully deductible under the Code.

Note that the validity of the contracts of lease was no issue in the case at bar. The affiliates earned income in leasing the properties to petitioner and such income was in fact recognized and reported for income tax purposes in the books of the affiliates.

One evil sought to be avoided in disallowing the rental expense in the books of petitioner is the unreported income from such rental if petitioner is also the owner of the subject properties. Here, that evil is not present as the leased properties are not owned by petitioner but by another juridical entity.

In this regard, it is worth mentioning that Section 50 of the 1997 Tax Code (formerly Section 43 of the 1977 Tax Code), gives respondent the power to allocate, distribute or apportion income or deductions between or among such organization, trades or business in order to prevent tax evasion. The provision reads as follows:

> SECTION 50. Allocation of Income and Deductions. — In any case of two or more organizations, trades, or businesses (whether or not incorporated and whether or not organized in the Philippines) owned or controlled directly or indirectly by the same interests, the Commissioner is authorized to distribute, apportion, or allocate gross income or deductions between or among such organization, trades, or businesses, if he determines that such distribution, apportionment, or allocation is necessary in order to prevent evasion of taxes or clearly to reflect the income of any such organizations, trades or businesses.

As stated above, related parties are allowed to transact with each other. It would therefore be unfair to disallow later their expenses by virtue of Section 29(a)(1)(A) of the 1977 Tax Code.

Non-withholding of the corresponding taxes on income payments will result in the disallowance of deduction.

Petitioner also finds flaws in the disallowance of what it termed as accrued expenses which in particular are the (a) 1997 accrual of rent expense subjected to withholding tax in 1998 in the amount of Php8,090,694, and (b) 1997 accrued expense related to advertising and sales promotion paid and subjected to withholding tax in 1998 in the amount of Php78,918,074.64.

Petitioner hinges its theory in the provision of Section 29(j) of the 1977 Tax Code and Section 9 of RR No. 6-85 which allegedly provide that the amount paid or payable may be deducted from the gross income only if the required withholding tax has been paid to the BIR. For quick reference, Section 29(j) of the 1977 Tax Code and Section 9 of Revenue Regulation (RR) No. 6-85 dated 2 May 1985, are quoted as follows:

> (j) Additional requirement 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, Section 51 and 74 of this Code."
>
> xxx xxx xxx
>
> SECTION 9. Requirement for deductibility. — Any income payment, which in otherwise deductible manner under Sections 30 and 57 of the tax code, as amended, shall be allowed as a deduction from the payor's gross income only if it is shown that the tax required to be withheld has been paid to the Bureau of Internal Revenue in accordance with Sections 53, 54, 91 and 93 also of the Tax Code.

Petitioner points out that the said provisions are tellingly silent in regard the requirement that the corresponding tax must be withheld and paid to the BIR in the same year that the income payment is claimed as a deduction from gross income. Moreover, Revenue Memorandum Order No. 38-83 allows a taxpayer to pay withholding tax during the period of audit. It is therefore unjust to disallow deductions for the said accrued expenses when the required taxes were withheld and remitted in the succeeding year.

Petitioner's logic is unacceptable.

Firstly, Section 9 of RR No. 6-85 should be read in conjunction with Section 5 of the same Rules and Regulations which provides the manner and time of payment of the taxes withheld at source, to wit:

> SECTION 5. Monthly return and payment of taxes withheld at source. — (a) The taxes herein deducted and withheld **shall be paid upon filing a return** in duplicate under BIR form — with the Revenue District Officer or the Collection Agent of the City or duly authorized Treasurer of the Municipality where the withholding agent has his legal residence or principal place of business except in cases where the Commissioner of Internal Revenue allows otherwise. The required **return shall be filed within ten days (10) after the end of each month**. (*Emphasis supplied*)

It is therefore incumbent upon the duly authorized withholding agent to withhold and remit to the collecting agent of the BIR the corresponding taxes on income payments that are subject to withholding tax. The duty to withhold arises at the time an income subject to withholding tax is payable or paid[9] while the duty to remit must be performed in accordance with Section 5 of RR No. 6-85. The failure to comply is fatal to the taxpayer' cause as it will result in the disallowance of deduction. Section 29(j) of the 1997 Tax Code provides that if a taxpayer is remiss in his duty, the allowable deduction from the gross income must necessarily be disallowed by reason of non-withholding and non-payment of the withholding tax.

Secondly, in relation to the allegation that RMO 38-83 allows a taxpayer to pay withholding tax during the period of audit, petitioner obviously missed that the same RMO 38-83 requires the payment of surcharges, interest and penalties incident to the failure to withhold the tax in accordance with law.

The record[10] unfolds the fact that when petitioner paid the withholding tax on the alleged accrued expenses, it did not pay surcharges, interest or penalties. Hence, respondent did not err when he disallowed the deduction of said accrued expenses from gross income since its audit/investigation showed that petitioner did

[9] Section 3 of Revenue Regulations No. 6-85, May 2, 1985.
[10] Exhibit "FF", p.502 of the case docket.

not pay the corresponding surcharges, interest and penalties for non-withholding of the corresponding tax.

Significantly, Section 9 of RR No. 6-85 dated May 2, 1985 issued subsequent to RMO No. 38-83 specifically states that any income payment, which is otherwise deductible under Sections 30 and 57 of the Tax Code, as amended, shall be allowed as a deduction from the payor's gross income only if it is shown that the tax required to be withheld has been paid to the Bureau of Internal Revenue. In the instant case, the alleged accrued expenses cannot be deducted from petitioner's taxable gross income simply because petitioner failed to withhold the corresponding withholding taxes at the time they were claimed as expenses.

Thus, the Court En Banc is one with the Division in ruling that the claimed accrued expenses should be disallowed as deduction from the taxable gross income.

Invoices and other export documents, *sans* the schedule of export sales, are not sufficient to prove that no undeclared sales exist.

Petitioner likewise assails the finding of the Court in Division that it has undeclared sales of three (3) units of KZ Adventure in the total amount of Php1,432,524.00 deduced from its inability to submit a schedule of export sales for the year 1997.

Petitioner posits that the export invoices, bill of lading and journal vouchers presented during the trial on the merits taken collectively are sufficient to establish that the three (3) units of KZ Adventure were actually exported to Mitsubishi Japan[11]. Petitioner further avers that its failure to submit the schedule of export sales is not fatal considering that the summary of export sales is considered a mere secondary evidence and is insufficient to prove the fact of export sales without the pertinent invoices, receipts and export sales documents, citing *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue.*[12] The pertinent portion of the ruling reads as follows:

> Third, the summary presented by Atlas does not replace the pertinent invoices, receipts, and export sales documents as competent evidence to prove the fact of refundable or creditable input VAT. Indeed, the summary presented with the certification by an independent Certified Public Accountant (CPA) and the testimony of Atlas' Accounting and Finance Manager are merely corroborative of the actual input VAT it paid and the actual export sales. Otherwise, the pertinent invoices, receipts, and export sales documents are the best and competent pieces of evidence required to substantiate Atlas' claim for tax credit or refund which is merely corroborated by the summary duly certified by a CPA and the

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[11] CTA EB No. 49, May 17, 2005
[12] *G.R. No. 159490, February 18, 2008.*

> testimony of Atlas' employee on the export sales. And when these pertinent documents are not presented, these could not be corroborated as is true in the instant case.

The Court is not convinced.

While it is true that the export invoices, bills of lading and journal vouchers presented by petitioner proved the export sales of the three vehicles, nevertheless, they were not sufficient to establish that the alleged sales transactions were reported as part of petitioner's taxable income. *Sans* the Schedule or Summary of Export Sales, the Court would be unable to determine if petitioner indeed reported such assailed export sales as part of its income.

It was therefore incumbent upon the petitioner to show by sufficient evidence (a) the existence of export sales; and (b) if these export sales were duly declared in the income tax return as part of taxable income. Petitioner however utterly failed to discharge this burden.

Evidently, the invoices and other export documents pertaining to the alleged sales of three units of KZ Adventure are not sufficient to negate conclusion that petitioner has undeclared sales of said three vehicles. Even the "Sales Analysis" marked as Exhibit "LL" failed to indicate with certainty that the sale transactions for

December 31, 1997 included the export sales of the three units of KZ Adventure. The footnote stating, "NOTE: SERVICE PARTS INCLUDES EXPORT SALES IN THE TOTAL AMOUNT OF P41,205,639.02." is not sufficient to establish the declaration of the three (3) units of KZ Adventure. Further, it cannot simply be assumed that the exported three (3) units of KZ Adventure were declared as part of the taxable income. A detailed breakdown of the alleged export sales in the amount of Php41,205,639.02, specifying the name of the client or customer, invoice number, amount and date of export sale is obviously wanting.

In fine, the Court in Division did not err in finding that there is an undeclared sales of three (3) units of KZ Adventure in the total amount of Php1,432,524.00 as petitioner fell short in proving otherwise. The legal dictum that all presumptions are in favor of the correctness of the tax assessments must be sustained[13]. The taxpayer has the burden to show the contrary.

To summarize, the following should be disallowed as deductible expenses and a deficiency income tax should be assessed thereon:

[13] CIR vs. Construction Resources of Asia, Inc., 145 SCRA 67.

Direct labor-salaries & wages	P	37,160,143.43
Rental expense		15,482,630.67
Other income		2,681,892.41
Advertising & sales promotion		108,857,148.75
Undeclared sales		1,432,524.00
TOTAL	P	165,614,339.26

WHEREFORE, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, petitioner is hereby **ORDERED TO PAY** deficiency income tax for taxable year 1997 in the amount of **TWENTY-SEVEN MILLION SEVEN HUNDRED NINETY ONE THOUSAND ONE HUNDRED TWO PESOS AND 75/100 (Php27,791,102.75)**, inclusive of 25% surcharge and 20% deficiency interest, computed as follows:

Net loss per ITR				P	(124,386,956.00)
Add:	Audit findings				
	Direct labor-salaries & wages	P	37,160,143.43		
	Rental expense		15,482,630.67		
	Other income		2,681,892.41		
	Advertising & sales promotion		108,857,148.75		
	Undeclared sales		1,432,524.00		165,614,339.26
Net income per audit				P	41,227,383.26
Tax due (35%)				P	14,429,584.14
Less:	Tax Credits/Payments				
	Paid per return	P	10,207,915.00		
	Creditable withholding taxes		88,474,492.00		
	Total		98,682,407.00		
	Less: Disallowed Creditable W/taxes		628,313.14		
	Allowable	P	98,054,093.86		
	Less:Applied as credit to next year		98,682,407.00		(628,313.14)
Total deficiency tax				P	15,057,897.28
Add:	25% Surcharge				3,764,474.32
	20% Interest (4/16/98 to 4/06/01)				8,968,731.15
Total Amount Due				P	27,791,102.75

In addition, petitioner is also ordered to pay twenty percent (20%) delinquency interest thereon computed from May 11, 2001 until full satisfaction of its liability, pursuant to Section 249(c)(3) of the Tax Code.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

(with Concurring and Dissenting Opinion)
LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

(concurs with the CDO of Justice Bautista)
CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

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's Division.

ERNESTO D. ACOSTA
Presiding Justice