REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY

EN BANC

DUMAGUETE CATHEDRAL CREDIT COOPERATIVE [DCCCO], represented by FELICIDAD L. RUIZ,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. EB NO. 289
(C.T.A. CASE NO. 6827)

Present:

ACOSTA, Presiding Justice,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA, and
PALANCA-ENRIQUEZ, JJ.

Promulgated:

DEC 18 2007 [signature]

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DECISION

PALANCA-ENRIQUEZ, J.:

Is petitioner, a credit cooperative, liable to pay the deficiency withholding taxes for taxable years 1999 and 2000 on interest on savings and time deposits of its members, deposited with petitioner, and the consequent delinquency interest of 20% per annum?

THE CASE

This is the issue raised in this Petition for Review filed by Dumaguete Cathedral Credit Cooperative [DCCCO] (hereafter "petitioner"), *under Section 11 of Republic Act No. 9282 (An Act Expanding the Jurisdiction of the Court of Tax Appeals), in relation to Rule 43 of the Revised Rules of Court*, which seeks the reversal of the Decision dated February 6, 2007, rendered by the First Division of this Court in CTA Case No. 6827, entitled "Dumaguete Cathedral Credit Cooperative [DCCCO], represented by Mrs. Felicidad L. Ruiz vs. Commissioner of Internal Revenue", the dispositive portion of which reads as follows:

> "IN VIEW OF ALL THE FOREGOING, the Petition for Review is hereby PARTIALLY GRANTED. Assessment Notice Nos. 00026-2003 and 00027-2003 are hereby MODIFIED and the assessment for deficiency withholding taxes on the honorarium and per diems of petitioner's Board of Directors, security and janitorial services, commissions and legal and professional fees are hereby CANCELLED. However, the assessments for deficiency withholding taxes on interests are hereby AFFIRMED.
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> Accordingly, petitioner is ORDERED TO PAY the respondent respective amounts of P1,280,145.89 and P1,357,881.14 representing deficiency withholding taxes on

> interests from savings and time deposits of its members for the taxable years 1999 and 2000. In addition, petitioner is ordered to pay the 20% delinquency interest from May 26, 2003 until the amount of deficiency withholding taxes are fully paid pursuant to Section 249 (C) of the Tax Code.
>
> SO ORDERED."

and the Resolution dated May 29, 2007, denying petitioner's Motion for Reconsideration, the dispositive portion of which reads as follows:

> "WHEREFORE, finding no cogent reason to disturb the Decision dated February 6, 2007 and modify the same, petitioner's Partial Motion for Reconsideration is hereby DENIED for lack of merit.
>
> SO ORDERED."

THE FACTS

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

Petitioner is a credit cooperative duly registered with and regulated by the Cooperative Development Authority (hereafter "CDA"). Respondent is the head of the Bureau of Internal Revenue (hereafter "BIR") with main office address at Agham Road, Diliman, Quezon City.

Sometime on November 27, 2001, Letter of Authority (hereafter "LA") Nos. 63222 *(Exhibit "1")* and 63223 *(Exhibit "B")* were issued to petitioner, authorizing BIR Officers to examine petitioner's books of

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accounts and other accounting records for all internal revenue taxes for taxable years 1999 and 2000, respectively.

After the examination, petitioner was assessed of deficiency withholding taxes for the years 1999 and 2000, covering deficiency withholding taxes for the payments of honorarium to the Board of Directors, Security and Janitorial, Legal and Professional Fees, Interest on Savings and Time Deposits of members *(Exhibits "C" and "C-1")*.

On June 26, 2002, petitioner received two Pre-Assessment Notices both dated June 14, 2002, with attached computations, for deficiency withholding taxes for the years 1999 *(Exhibits "D" and "D-1")* and 2000 *(Exhibits "E" and "E-1")*, which were protested by petitioner on July 23, 2002 *(Exhibit "F")*.

On October 16, 2002, petitioner received another two Pre-Assessment Notices, both dated September 17, 2002 for deficiency withholding tax with attached Audit Sheets for Individual for the years 1999 *(Exhibits "G" and "G-1")* and 2000 *(Exhibits "H" and "H-1")*. In response, petitioner wrote a Letter dated October 22, 2002 to BIR Regional Director Sonia L. Flores informing her that petitioner will pay

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the assessment covering only the withholding taxes due on the payments for Board of Directors Honorarium, Security and Janitorial Services and Legal/Professional fees for the year 1999 in the amount of P87,977.86, excluding penalties and interest *(Exhibit "I")*.

Also, in a Letter dated November 8, 2002, petitioner wrote BIR Region 12 Assistant Regional Director Rogelio B. Zambarrano informing him that petitioner will likewise pay the withholding taxes due on Security and Janitorial, Commission, Legal/Professional Fees and Board of Directors' Fees for the year 2000 in the amount of P119,889.37, excluding penalties and interest *(Exhibit "J")*. In said letter, petitioner also manifested its intent to avail of the Voluntary Assessment and Abatement Program ("VAAP") of the BIR under Revenue Regulations No. 17-2002 *(Exhibit "J")*.

On November 29, 2002, petitioner applied for the VAAP under Revenue Regulations No. 17-2002 for its expanded withholding taxes due on the payments for Compensation, Board of Directors Honorarium, Security and Janitorial Services and Legal/Professional fees and paid the

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amount of P105,574.62 for the year 1999 *(Exhibits "K" to "K-3")* and P143,867.24 for the year 2000 *(Exhibits "L" to "L-3").*

On April 24, 2003, petitioner received Letter of Demand No. 00027-2003 dated April 14, 2003 from BIR-Revenue Region No. 12 Regional Director Sonia L. Flores *(Exhibit "N"),* with Transcript of Assessment *(Exhibit "N-1")* and Audit Result/Assessment Notice *(Exhibit "N-2"),* requesting petitioner to pay the amount of P1,489,065.30, representing its deficiency withholding tax, inclusive of penalties, for the year 1999, computed as follows:

Basic Tax Due	P754,721.50
Add: 25% Surcharge	188,680.40
20%Annual interest from 1/25/00 to 5/31/03	505,663.40
Compromise penalty	40,000.00
TOTAL AMOUNT DUE AND COLLECTIBLE	P1,489,065.30

On the same date, petitioner also received Letter of Demand No. 00026-2003 dated April 14, 2003 from BIR-Revenue Region No. 12 Regional Director Sonia L. Flores *(Exhibit "O"),* with Transcript of Assessment *(Exhibit "O-1")* and Audit Result/Assessment Notice *(Exhibit "O-2")* requesting petitioner to pay the amount of P1,462,644.90, representing the deficiency withholding tax, inclusive of penalties, for the year 2000, computed as follows:

Basic Tax Due	P827,119.13
Add: 25% Surcharge	206,779.78
20% Annual interest from 1/25/01 to 5/31/03	388,745.99
Compromise penalty	40,000.00
TOTAL AMOUNT DUE AND COLLECTIBLE	P1,462,644.90

On May 9, 2003, petitioner filed its protest to aforesaid Letters of Demand and Assessment Notices *(Exhibit "P")*.

Since respondent failed to act on the protest within the 180-day period, on December 3, 2003, petitioner elevated its case to this Court by way of Petition for Review, docketed as C.T.A. Case No. 6827.

After trial on the merits, the First Division of this Court rendered the assailed decision on February 6, 2007.

Not satisfied, petitioner moved for a partial reconsideration of the decision, which the First Division denied in its Resolution dated May 29, 2007.

Hence, the instant Petition for Review raising the following sole:

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ISSUE

WHETHER OR NOT THE PETITIONER [A CREDIT COOPERATIVE] SHOULD BE HELD LIABLE TO PAY THE DEFICIENCY WITHHOLDING TAXES ON INTEREST FROM SAVINGS AND TIME DEPOSITS OF ITS MEMBERS FOR TAXABLE YEARS 1999 AND 2000 AND THE CONSEQUENT DELINQUENCY INTEREST OF 20% PER ANNUM CONSIDERING THAT THERE IS NO SPECIFIC PROVISION OF LAW UNDER REPUBLIC ACT 8424, OTHERWISE KNOWN AS THE TAX REFORM ACT.

Without necessarily giving due course to the "Petition for Review", on September 6, 2007, We ordered the respondent to file her comment on the petition.

On October 5, 2007, respondent filed her Comment. Hence, the case was deemed submitted for decision.

Petitioner's Arguments

Petitioner argues that *Section 24(B)(1) of the NIRC of 1997, as amended*, applies to banks and similar arrangements or services rendered, which would generate interest, but not to cooperatives since if it were the intention of the lawmakers to include cooperatives, then it would have specified the same; further, invoking the statutory construction of "ejusdem generis", petitioner argues that the phrase "similar

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arrangements" under *Section 24(B)(1) of the NIRC of 1997, as amended*, having been preceded by terms referring to banking transactions, which have deposit peculiarities, should be construed similar to currency bank deposits, yield or trust funds placed in banks; and invoking BIR Ruling 551-88, petitioner posits that since interest from any Philippine currency bank deposit and yield or any other monetary benefit from deposit substitutes are paid by banks, the cooperative is not the party required to withhold tax from interest earned by its members on savings account and time deposits.

Respondent CIR's Counter-Arguments

Respondent, on the other hand, counter-argues that since it has been adequately expounded that (a) petitioner accepts money from its members by way of savings and time deposits to pool their resources to extend loans to its members; (b) such activity falls within the meaning of "similar arrangements" taxable under *Section 24(B)(1) of the NIRC of 1997, as amended;* and (c) the act of depositing money with the cooperative constitutes wealth or income, then the only viable conclusion would be that petitioner is indeed liable to pay deficiency withholding

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taxes on interest from savings and time deposits of its members for taxable years 1999 and 2000 and the consequent delinquency interest of 20% per annum.

THE COURT EN BANC'S RULING

The petition is devoid of merit.

The NIRC of 1997, As Amended And *Revenue Regulations No. 02-98* Impose 20% Final Withholding Tax On Interest From Deposit Or Yield Or Monetary Benefits From Deposit Substitutes, Trust Funds And Similar Arrangements

Section 57 of the NIRC of 1997, as amended, requires the withholding of tax at source, to wit:

> "SEC. 57. Withholding of Tax at Source. –
>
> (A) Withholding of Final Tax on Certain Incomes. – Subject to rules and regulations the Secretary of Finance may promulgate, upon the recommendation of the Commissioner, requiring the filing of income tax return by certain income payees, the tax imposed or prescribed by Sections 24(B)(1), 24(B)(2), 24(C), 24(D)(1); 25(A)(2), 25(A)(3), 25(B), 25(C), 25(D), 25(E); 27(D)(1), 27(D)(2), 27(D)(3), 27(D)(5); 28(A)(4), 28(A)(5), 28(A)(7)(a), 28(A)(7)(b), 28(A)(7)(c), 28(B)(1), 28(B)(2), 28(B)(3),

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28(B)(4), 28(B)(5)(a), 28(B)(5)(b), 28(B)(5)(c); 33; and 282 of this Code on specified items of income shall be withheld by payor-corporation and/or person and paid in the same manner and subject to the same conditions as provided in Section 58 of this Code."

Implementing the abovequoted provision, *Section 2.57.1. of Revenue Regulations No. 02-98* enumerates the income payments subject to final withholding tax, as follows:

"SEC. 2.57.1. Income Payments Subject to Final Withholding Tax. – The following forms of income shall be subject to final withholding tax at the rates herein specified;

(A) Income payments to a citizen or to a resident alien individual;

(1) Interest from any peso bank, deposit, and yield or any other monetary benefit from deposit substitutes and from trust funds and similar arrangements; royalties (except on books as well as other literary works and musical composition), prizes (except prizes amounting to ten thousand pesos (P10,000.00) or less which shall be subject to tax under Sec 24(A) of the Code) and other winnings) (except Philippine Charity Sweepstakes winnings and lotto winnings) derived from sources within the Philippines – Twenty percent (20%).

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Pursuant to the aforequoted law and revenue regulations, income payments to a citizen or resident alien individual arising from interest on

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bank deposit and yield or monetary benefit from deposit substitutes, trust fund and similar arrangements shall be subject to a final withholding tax of 20%. The law and regulation did not define what constitutes 'similar arrangements'. However, as the enumerated instances: 'bank deposit', defined as cash, checks, or drafts placed with bank for credit to depositors account *(Black's Law Dictionary, sixth ed., p. 145)*; 'deposit substitutes', defined as an alternative form of obtaining funds from the public (the term 'public' means borrowing from twenty deposits, through the issuance, endorsement, or acceptance of debt instruments for the borrower's own account, for the purpose of relending or purchasing of receivables and other obligations, or financing their own needs or the needs of their agent or dealer *(Section 22(Y) of the NIRC of 1997, as amended)*; and 'trust fund', defined as money or property set aside as a trust for the benefit of another and held by a trustee *(Black's Law Dictionary, sixth ed., p. 1515)* are general words or phrases, the phrase 'similar arrangements' should likewise be construed in general terms. It is a general rule of statutory interpretation that provisions should not be given a restricted meaning where no restriction is indicated *(Lo Cham vs. Ocampo, 77 Phil 638)*.

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Section 2.57.1. of Revenue Regulations No. 02-98 expressly requires the withholding of 20% final tax, when an income is received by the depositor/grantee from said deposit, deposit substitute, trust fund and similar arrangements.

Records show that the Articles of Cooperation of the petitioner contains the following informations:

> 1. The objectives and purposes for which petitioner was formed includes: to increase the income and purchasing power of the members; to pool the resources of the members by encouraging savings and promoting thrift to mobilize capital formation for development activities; and, to extend loans to members for provident and productive purposes *(BIR Records)*;
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> 2. Petitioner also has the powers: (a) to draw, make accept, endorse, guarantee, execute and issue promissory notes, mortgages, bills of exchange, drafts, warrants, certificates and all kinds of obligations and instruments in connection with and in furtherance of its business operations; and (b) to issue bonds, debentures, and other obligations of petitioner to contract indebtedness and to secure the same with a mortgage or deed of trust, or pledge or lien on any or all of the real and personal properties of petitioner *(BIR Records)*.

From the foregoing, it is clear that petitioner's conduct of business constitutes activities under the phrase 'similar arrangements'. As correctly found by the First Division of this Court, petitioner does not dispute that it accepts money from its members by way of savings and time deposits, an act which satisfies one of its objectives and purposes, that is, to pool the resources of its members by encouraging savings and promoting thrift to mobilize capital formation for development activities; and to extend loans to members for provident and productive purposes. From said savings and loan deposits, the members receive interest income from the depository cooperative. Accordingly, the law requires petitioner to withhold the corresponding final tax from said interest income received by its members.

Invoking the statutory construction of "ejusdem generis", petitioner however contends that the phrase 'similar arrangements' under *Section 24(B)(1) of the NIRC of 1997, as amended,* applies only to banks, but not to cooperatives. Said contention is untenable. The provision does not provide that monetary benefit from deposit substitutes, trust funds and similar arrangements is subject to 20% final tax, if the same comes from banks only. *Section 24(B)(1) of the NIRC of 1997, as amended,* does not make any distinction as to monetary benefits arising from banks and those arising from other entities, such as cooperatives. The final tax is

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imposed on all monetary benefits from deposit substitutes, trust funds and similar arrangements held by any person or entity. As defined above, a trust fund is money or property set aside as a trust for the benefit of another and held by a trustee. The trustee therefore is not limited only to banks, but to any person or entity holding money or property in trust for a beneficiary. We therefore conclude that the depository of the monetary benefits arising from 'similar arrangements' is not limited only to banks, but includes cooperatives that are depositories of their members' savings and loans deposits, like petitioner in this case. Applicable herein is another well-known maxim in statutory construction — *Ubi lex non distinguit nec nos distinguere debemos* — when the law does not distinguish, we should not distinguish *(Philippine National Oil Company vs. Court of Appeals, 457 SCRA 115).*

Petitioner Is Not Exempt from Its Obligation As A Withholding Agent On All Income Payments Subject To Withholding

Section 4 of Revenue Regulations No. 20-01 provides as follows:

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"SEC 4. Taxability of Cooperatives To Other Internal Revenue Taxes. – All Cooperatives, regardless of classification shall be subject to:

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Moreover, all cooperatives, regardless of classification, are considered as withholding agents and are required to file withholding tax returns and remit withholding taxes on all income payments that are subject to withholding."

Pursuant to *Section 4 of Revenue Regulations No. 20-01*, petitioner, as a cooperative, is considered a withholding agent, and is therefore obliged to file withholding tax returns on all income payments subject to withholding. This obligation of petitioner proceeds from its duty as an agent of the government for the collection of taxes, as expounded by the Supreme Court in *Commissioner of Internal Revenue vs. The Court of Appeals, 301 SCRA 170-171*:

"In the operation of the withholding tax system, the withholding agent is the payor, a separate entity acting no more than an agent of the government for the collection of the tax in order to ensure its payments; the payer is the taxpayer — he is the person subject to tax imposed by law; and the payee is the taxing authority. In other words, the withholding agent is merely a tax collector, not a taxpayer. Under the withholding system, however, the agent-payor becomes a payee by fiction of law. His (agent) liability is direct and independent from the taxpayer, because the

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income tax is still imposed on and due from the latter. The agent is not liable for the tax as no wealth flowed into him — he earned no income. The Tax Code only makes the agent personally liable for the tax arising from the breach of its legal duty to withhold as distinguished from its duty to pay tax since:

> 'the government's cause of action against the withholding agent is not for the collection of income tax, but for the enforcement of the withholding provision of Section 53 of the Tax Code, compliance with which is imposed on the withholding agent and not upon the taxpayer.'

Not being a *taxpayer,* a withholding agent, like ANSCOR in this transaction, is not protected by the amnesty under the decree.

Codal provisions on withholding tax are mandatory and must be complied with by the withholding agent. The taxpayer should not answer for the non-performance by the withholding agent of its legal duty to withhold unless there is collusion or bad faith. The former could not be deemed to have evaded the tax had the withholding agent performed its duty. xxx"

Thus, petitioner's obligation as an agent of the government to withhold and remit the 20% final tax from its members' savings and time deposits is personal and direct. The government's cause of action against the petitioner is not for the collection of income tax, but for the enforcement of the withholding provision of the *NIRC of 1997, as amended,* compliance of which is imposed on petitioner, as the

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withholding agent, and not upon it members. Therefore, petitioner's non-compliance with said obligation to withhold makes it personally liable for the tax arising from the breach of its legal duty.

Finally, petitioner's invocation of *BIR Ruling No. 551-88* is misplaced since said ruling was based on the premise that the savings and time deposits were deposited by the members of the cooperatives in the bank. Whereas, in the instant case, the savings and time deposits were deposited by the members to the petitioner. As aptly ruled by the First Division of this Court:

> "This Court does not agree. As correctly pointed out by respondent in his Memorandum, nothing in the above quoted resolution will give the conclusion that savings account and time deposits of members of a cooperative are tax-exempt. What is entirely clear is the opinion of the Commissioner that the proper party to withhold the corresponding taxes on certain specified items of income is the payor-corporation and/or person. In the same way, in the case of interests earned from Philippine currency deposits made in a bank, then it is the bank which is liable to withhold the corresponding taxes considering that the bank is the payor-corporation. Thus, the ruling that a cooperative is not the proper party to withhold the corresponding taxes on the aforementioned accounts is correct. However, this ruling does not hold true if the savings and time deposits are being maintained in the cooperative, for in this case, it is the cooperative which becomes the payor-corporation, a separate entity acting no more than an agent of the government for

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the collection of taxes, liable to withhold the corresponding taxes on the interests earned."

Considering that petitioner failed to withhold the 20% final withholding tax on interest on savings and time deposits of its members, as required by law, the imposition of the 20% delinquency interest per annum by the First Division of this Court has legal basis under *Section 249(C) of the NIRC of 1997, as amended.*

Finding no reversible error, We affirm the assailed Decision dated February 6, 2007, and the Resolution dated May 29, 2007 of the First Division of this Court.

WHEREFORE, premises considered, the instant petition is hereby **DENIED DUE COURSE**, and accordingly, **DISMISSED** for lack of merit.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
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

CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII 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 cases was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice