REPUBLIC OF THE PHILIPPINES
**Court of Tax Appeals**
QUEZON CITY

*EN BANC*

**ALFREDO V. MISAJON, in his capacity as Assistant Commissioner of the Bureau of Internal Revenue,**
*Petitioner,*

-versus-

**SOCIAL SECURITY SYSTEM, represented by its President and CEO EMILIO S. DE QUIROS, JR.,**
*Respondent.*

**CTA EB No. 1361**
*(CTA Case No. 8564)*

*Present:*

Del Rosario, P.J.,
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban, and
Manahan, JJ.

Promulgated:
OCT 09 2017 4:11 p.m.

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# RESOLUTION

***DEL ROSARIO, P.J.:***

This resolves petitioner's "Motion for Reconsideration Re: Decision promulgated on May 24, 2017" filed on June 19, 2017,[1] with respondent's Comment (on Petitioner's Motion For Reconsideration Re: Decision promulgated on 24 May 2017) filed on August 15, 2017.[2]

In his Motion for Reconsideration, petitioner prays that the Decision promulgated on May 24, 2017 be modified and judgment be rendered ordering respondent to pay the disputed deficiency Withholding Tax on Compensation (WTC) in the amount of P23,998,188.36, deficiency expanded withholding taxes (EWT) in the amount of P54,386,601.73 and value added tax (VAT) and other percentage taxes withheld on government money payments in the amount of P135,085,28.57 *(sic)* for calendar year 2004, plus 25%

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[1] Rollo, pp. 141-152.
[2] Rollo, pp. 161-165.

surcharge and 20% deficiency and delinquency interest for late payment until fully paid pursuant to Sections 248 and 249 of the National Internal Revenue Code (NIRC) of 1997, as amended.[3]

Petitioner presented the following grounds in support of his Motion for Reconsideration, viz.:

> I. The Honorable Court erred in ruling that deficiency WTC in the amount of P23,998,188.36 attained finality, considering that the same was not raised in the petition.
>
> II. The Honorable Court erred in ruling that Social Security System (SSS), a government-owned and controlled corporation, may not be held liable for the "additions to tax".
>
> The additions to the tax enumerated in Chapter I, Title X of the NIRC of 1997, as amended, are made to apply to all taxpayers regardless if such taxpayers are public entities or private entities.
>
> III. Respondent is liable to pay the deficiency EWT in the amount of P54,386,601.73 in accordance with Section 57 of the NIRC of 1997, as amended and Revenue Regulations (RR) Nos. 6-2001 and 17-2003.
>
> IV. Respondent is liable to pay deficiency VAT and other percentage tax in the amount of P135,085,28.57 *(sic)*.[4]

Petitioner argues that while he agrees with the Court that he did not question the Court in Division's findings and conclusion about the liability of SSS for deficiency WTC, petitioner, however, prays that the same be subjected to 25% surcharge and 20% deficiency and delinquency interests. He claims that he was able to raise the matter in his discussion relating to the imposition of surcharge and interest.[5]

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[3] Rollo, p. 149.
[4] Rollo, p. 142.
[5] Rollo, p. 142.

Petitioner contends that conviction is not necessary to hold the officer or employee of a corporation, who is under a duty to perform the act in respect of which the violation occurs, liable for the additions to the tax. He asserts that as long as a violation of the NIRC was committed, Section 247(b) applies by itself without any relation to Section 251; that Section 251 is a penal/criminal provision that governs withholding agents in general, providing for a criminal penalty equal to the amount of tax not withheld upon conviction; that if the failure to withhold is due to his willful act then conviction is necessary, but if the same was committed by mere omission, then conviction is not necessary; and that the penalty in Section 251 is far from the civil liability for deficiency interest and surcharge.[6] He stresses that since the civil liability assailed in this case resulted from the failure of the officer responsible to withhold and remit the same, conviction is not necessary in order that the Head of Office and Chief Accountant or other persons holding similar position, to be held liable for interest and surcharges provided in Section 247 (b).[7]

Citing the Concurring and Dissenting Opinion of Associate Justice Lovell R. Bautista, petitioner avers that the additions to the tax enumerated in Chapter I, Title X of the NIRC of 1997 are made to apply to all taxpayers regardless if such taxpayers are public entities or private entities.[8]

Petitioner disagrees with the Court *En Banc* in affirming the ruling of the Court in Division that respondent is liable only up to the amount of P13,518,496.99 and contends that respondent is liable for EWT in the amount of P54,386,601.73 in accordance with Section 57 of the NIRC of 1997, as amended and RR Nos. 6-2001 and 17-2003.[9] He claims that respondent failed to rebut the result of the investigation made by the examiners; and that the EWT assessment is proper since there was discrepancy on respondent's income payments shown in the Financial Statements against those already subjected to EWT which resulted in under withholding of tax.[10]

Petitioner posits that the Court *En Banc* erred in sustaining the ruling of the Court in Division that respondent is liable to pay deficiency VAT and other percentage tax of P29,797,830.63 only. He insists that

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[6] Rollo, p. 143.
[7] Rollo, p. 144.
[8] Rollo, p. 144.
[9] Rollo, p. 145.
[10] Rollo, p. 147.

respondent is liable for the assessed amount of P135,085,28.57 *(sic)*.[11] He claims that various purchases of goods amounting to P1,770,2899.33 *(sic)* were not subjected to the 3% withholding VAT on Government Money Payments as prescribed by RR No. 2-98 and Section 114(C) of the NIRC of 1997, as amended, thus resulting to deficiency VAT and other percentage tax of P135,085,228.57.[12] He stresses that the burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the Commissioner of Internal Revenue (CIR) is wrong, but also that the taxpayer is right; and that the presumption of the correctness of tax assessment stands where evidence to the contrary is wanting.[13]

In its Comment, respondent counter-argues that petitioner's Motion for Reconsideration presents no new grounds or defenses that would warrant the reversal of the decision of the Court *En Banc*.[14]

Respondent avers that the non-imposition of interest and surcharges are separate and distinct from the tax assessment itself, hence, the question on the application of the former is not an issue on the latter.[15]

Respondent states that since it is a government-owned-and-controlled corporation, the responsible official charged with the duty to correctly withhold and remit the taxes shall be held personally liable *[for the "additions to tax"]*; that while the Court *En Banc* ruled that conviction is not necessary for its imposition, it, however, explained that there is still a need to observe procedural due process as a primordial constitutional right;[16] that to hold the SSS official or employee liable without informing them of the nature of the liability they are being penalized is indeed a violation of their right to due process;[17] that having a separate and distinct personality, the notice given to SSS is not a notice to its official or employee;[18] and that holding SSS liable for additions to tax is assuming that SSS and the responsible official is one and the same person, and such official tasked with the correct

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[11] Rollo, p. 147.
[12] Rollo, p. 148.
[13] Rollo, pp. 148-149.
[14] Rollo, p. 161.
[15] Rollo, pp. 161-162.
[16] Rollo, p. 162.
[17] Rollo, p. 164.
[18] Rollo, p. 164.

withholding and remittance of the tax for the year assessed is still connected with SSS.[19]

Respondent finally argues that it has disproved the presumption of regularity and correctness of the result of investigation with the volume of documents that it submitted and were evaluated by the Court in Division, and such matter was fully discussed by the Court *En Banc*.[20]

## THE COURT'S RULING

The arguments posited by petitioner in this present motion pertaining to the alleged liability of SSS for the "additions to tax", and the alleged correct liability of SSS for deficiency expanded withholding taxes and deficiency VAT and other percentage taxes are a mere rehash or amplification of previous arguments in his Petition for Review, which have been duly considered and adequately discussed and settled in the assailed Decision.

The Court *En Banc* shall, however, address petitioner's insistence that it erred in ruling that the assessed WTC has attained finality. Petitioner claims that the deficiency WTC should be subjected to the 25% surcharge and 20% deficiency and delinquency interest on the proposition that he was able to raise the matter in his discussion relating to the imposition of surcharge and interest.

To recall, this Court *En Banc* noted in the May 24, 2017 Decision that petitioner did not question in his Petition for Review the Court in Division's findings and conclusion about the liability of SSS for deficiency WTC.[21] In other words, at the time petitioner elevated his case before the Court *En Banc*, he did not assail the ruling of the Court in Division on the disputed WTC assessment. The indubitable conclusion is that the Court in Division's ruling on WTC assessment could no longer be disturbed and the same has attained finality. To reiterate the settled rule in this jurisdiction that issues not raised in the pleadings, as opposed to ordinary appeal of criminal cases where the whole case is opened for review, are deemed waived or abandoned.[22]

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[19] Rollo, p. 164.
[20] Rollo, p. 164.
[21] Rollo, p. 117.
[22] Abedes vs. Court of Appeals, et al., G.R. No. 174373, October 15, 2007.

In the same vein, petitioner's argument that the deficiency WTC should be subjected to the 25% surcharge and 20% deficiency and delinquency interest pertains to a relief that was not sought in the Petition for Review filed before the Court *En Banc*. More importantly, the Court *En Banc* made it clear in the assailed Decision that the "additions to the tax" cannot be imposed on the Government, or any of its agencies, political subdivisions or instrumentalities, or a government-owned or controlled corporation, like respondent SSS, as it is the personal liability of the employee who is responsible for the withholding and remittance of the assessed tax pursuant to Section 247(b) of the NIRC of 1997, as amended. Absent any showing that the BIR observed the procedural requirements in assessing and collecting the "additions to tax" from respondent SSS' responsible official or employee, the imposition thereof against said responsible official or employee cannot be sustained.

All told, the Court *En Banc* sees no cogent reason to disturb, much more, to reverse the assailed Decision.

**WHEREFORE,** premises considered, petitioner's "Motion for Reconsideration Re: Decision promulgated on May 24, 2017" is hereby **DENIED** for lack of merit.

**SO ORDERED.**

**ROMAN G. DEL ROSARIO**
Presiding Justice

*WE CONCUR:*

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

*(I maintain my Concurring and Dissenting Opinion)*
**LOVELL R. BAUTISTA**
Associate Justice

**ERLINDA P. UY**
Associate Justice

**CAESAR A. CASANOVA**
Associate Justice

**ESPERANZA R. FABON-VICTORINO**
Associate Justice

(On Leave)
**CIELITO N. MINDARO-GRULLA**
Associate Justice

*(I join the Concurring and Dissenting Opinion of Justice Lovell R. Bautista)*
**MA. BELEN M. RINGPIS-LIBAN**
Associate Justice

*(I join the Concurring and Dissenting Opinion of Justice Lovell R. Bautista)*
**CATHERINE T. MANAHAN**
Associate Justice