REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

COMMISSION ON ELECTIONS, represented by ATTY. MARIA NORINA S. TANGARO-CASINGAL, Acting Director IV of the Law Department, Petitioner,	**CTA CASE NO. 8929**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson,* **CASANOVA,** *and* **MANAHAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JAN 03 2017 4:10 p.m.

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AMENDED DECISION

CASTAÑEDA, JR., *J.*:

For this Court's resolution are the following:

1. petitioner's **Motion for Reconsideration**, filed through registered mail on August 18, 2016, and received by this Court on August 24, 2016; and

2. respondent's **Motion for Leave of Court to Submit and Admit Attached Comment/Opposition (Re: Petitioner's Motion for Reconsideration of the Decision dated 02 August 2016)**, filed on October 4, 2016.

Finding merit in respondent's excuse for the late submission of its Comment/Opposition (Re: Petitioner's Motion for Reconsideration of the Decision dated 02 August 2016), respondent's Motion for

Leave of Court to Submit and Admit Attached Comment/Opposition (Re: Petitioner's Motion for Reconsideration of the Decision dated 02 August 2016) is **GRANTED**. Accordingly, respondent's Comment/Opposition (Re: Petitioner's Motion for Reconsideration of the Decision dated 02 August 2016) is **ADMITTED**.

As to the instant motion, petitioner seeks reconsideration of the Court's Decision promulgated on August 2, 2016 (assailed Decision)[1], the dispositive portion of which reads:

> "**WHEREFORE**, the instant Petition for Review is hereby **PARTIALLY GRANTED**.
>
> Finding that petitioner COMELEC has the duty to withhold and remit the expanded withholding tax from its payments to its suppliers, the assessment for such failure to withhold and remit the withholding taxes is **UPHELD** with respect to the basic deficiency expanded withholding tax assessment. Accordingly, petitioner COMELEC is **ORDERED TO PAY** the respondent the amount of ₱49,082,867.69 as deficiency expanded withholding tax for taxable year 2008.
>
> However, petitioner shall not be held liable for the interests in addition to the basic tax due, pursuant to Sections 247(b) and 249 of the NIRC of 1997, as amended.
>
> **SO ORDERED**."[2]

Petitioner admits that the COMELEC is a withholding agent for expanded withholding tax (EWT) but argues that it is not liable for the tax as the liability remains with the taxpayer who realized and received the gain on the transactions. It contends that since the transactions COMELEC entered into relative to the automated elections are tax exempt, as provided in Republic Act (R.A.) No. 8436, as amended by R.A. No. 9369, no tax whatsoever may be charged on the payments made by COMELEC.

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[1] Docket, pp. 302-314.
[2] Docket, pp. 312-313.

Moreover, petitioner alleges that COMELEC is only liable to the basic tax due in the amount of ₱30,645,542.62 and not ₱49,082,867.69 as found by the Court. It claims that in the assailed Decision, the Court ruled that petitioner should not be held liable for the interests in addition to the basic tax due, pursuant to Sections 247(b) and 249 of the National Internal Revenue Code (NIRC) of 1997, as amended. Petitioner points out that the amount of ₱49,082,867.69 includes the interest and penalty on top of the basic tax due.

Finally, petitioner argues that the EWT should be re-computed at the rate of either one percent (1%) for goods and/or two percent (2%) for services.

Respondent opposes the motion and alleges that the same deserves scant consideration for lack of merit.

According to respondent, COMELEC is liable for EWT in its capacity as withholding agent and is therefore obligated to the government for the withholding and remittance of the tax due from the lease transactions it entered with Smartmatic Sahi Technology, Inc. (Smartmatic) and Avante International, Inc. (Avante). Consequently, the COMELEC's failure to comply with this obligation makes it liable and accountable to the government.

Respondent also contends that COMELEC'S exemption under Section 10 of R.A. No. 9369 is limited only to the payment of all duties and taxes and it does not cover withholding taxes on payments made to local supplier of goods and services.

Moreover, respondent claims that Section 247 of the NIRC of 1997, as amended, is not applicable in this case since the COMELEC is a constitutional commission.

Finally, respondent alleges that the propriety of the amount of deficiency withholding tax has already been admitted by COMELEC and thus it should not be permitted to impugn the validity thereof.

The Motion for Reconsideration is partially granted.

As to petitioner's allegation that it is not liable to pay the EWT assessed, the Court finds the same bereft of merit.

As found by the Court in the assailed Decision and as admitted by petitioner, COMELEC is a withholding agent for EWT. As a withholding agent, petitioner is considered a taxpayer under the NIRC as he is personally liable for the withholding tax as well as 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 law.[3]

In this case, petitioner did not impose or withhold EWT from its payments to Smartmatic and Avante, on the ground that COMELEC enjoys a tax-exempt status under RA No. 9369. However, considering that the Court found that the tax exemption granted to COMELEC under RA No. 9369 does not include an exemption from its duty to withhold taxes from its income payments to its suppliers, COMELEC is now liable to pay the amount of tax that it should have withheld as the withholding agent.

Nevertheless, petitioner's claim that COMELEC is only liable to the basic tax due in the amount of ₱30,645,542.62 is found to be meritorious.

In the assailed Decision, the Court discussed that petitioner is not liable for the interest in addition to the basic tax due, pursuant to Sections 247(b) and 249 of the NIRC of 1997, as amended, which reads as follows:

> "Sec. 249. **Interest**.-
>
> (A) *In General*. - There shall be assessed and collected on any unpaid amount of tax, interest at the rate of twenty percent (20%) per annum, or such higher rate as may be prescribed by rules and regulations, from the date prescribed for payment until the amount is fully paid.
>
> (B) *Deficiency Interest*. - Any deficiency in the tax due, as the term is defined in this Code, shall be subject to the interest prescribed in Subsection (A) hereof, which

[3] *Commissioner of Internal Revenue vs. Smart Communications Inc.,* G. R. Nos. 179045-46, August 25, 2010; *Commissioner of Internal Revenue vs. Procter & Gamble Philippine Manufacturing Corporation*, G.R. No. 66838, December 2, 1991.

interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof.

(C) *Delinquency Interest.* - In case of failure to pay:

(1) The amount of the tax due on any return to be filed, or

(2) The amount of the tax due for which no return is required, or

(3) A deficiency tax, or any surcharge or interest thereon on the due date appearing in the notice and demand of the Commissioner, there shall be assessed and collected on the unpaid amount, interest at the rate prescribed in Subsection (A) hereof until the amount is fully paid, which interest shall form part of the tax."

"Sec. 247. **General Provisions**. –

(a) The additions to the tax or deficiency tax prescribed in this Chapter shall apply to all taxes, fees and charges imposed in this Code. The amount so added to the tax shall be collected at the same time, in the same manner and as part of the tax.

(b) <u>If the withholding agent is the Government or any of its agencies</u>, political subdivisions or instrumentalities, or a government-owned or controlled corporation, <u>the employee thereof responsible for the withholding and remittance of the tax shall be personally liable for the additions to the tax prescribed herein.</u>

(c)The term '*person*', as used in this Chapter, includes an officer or employee of a corporation who as such officer, employee or member is under a duty to perform the act in respect of which the violation occurs." (*Underscoring ours*) *gr*

Based on the foregoing provisions, the employee of petitioner responsible for the withholding and remittance of the tax is the one personally liable for the accrued interest, deficiency interest and/ or delinquency interest on the deficiency tax imposed on petitioner and not petitioner itself. Thus, petitioner is liable only for the basic EWT due.

In this case, the basic EWT due is ₱30,645,542.62. The parties stipulated that as a result of the investigation, petitioner was found to be liable for EWT in the amounts of ₱26,269,583.62 and ₱4,375,959.00 for failure to deduct, withhold and remit the required expanded tax on income payments made by petitioner on account of the lease of properties from Smartmatic and Avante, respectively.[4]

As correctly pointed out by petitioner, the amount of ₱49,082,867.69 clearly includes the interest and penalty on top of the basic tax due. Accordingly, petitioner must only be liable to pay the basic tax due amounting to ₱30,645,542.62 and not ₱49,082,867.69.

Lastly, there is no basis for the re-computation of the EWT at the rate of either one percent (1%) for goods and/or two percent (2%) for services. The parties did not present any evidence for the Court to reconsider the findings in the assessment made by respondent.

Well-settled is the rule in taxation that tax assessments by tax examiners are presumed correct and made in good faith, and all presumptions are in favor of the correctness of a tax assessment unless proven otherwise.[5] The burden of proof is on the taxpayer to present evidence to show that the assessment is incorrect.

WHEREFORE, premises considered, petitioner's **Motion for Reconsideration** is **PARTIALLY GRANTED**. Accordingly, the dispositive portion of the assailed Decision dated August 2, 2016 is hereby amended to read, as follows:

> "**WHEREFORE**, the instant Petition for Review is hereby **PARTIALLY GRANTED**. *Jr*

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[4] Par. 9, Joint Stipulation of Facts, docket, p. 248.

[5] *Commissioner of Internal Revenue vs. Hon. Raul M. Gonzalez, et al.*, G.R. No. 177279, October 13, 2010.

Finding that petitioner COMELEC has the duty to withhold and remit the expanded withholding tax from its payments to its suppliers, the assessment for such failure to withhold and remit the withholding taxes is **UPHELD** with respect to the basic deficiency expanded withholding tax assessment. Accordingly, petitioner COMELEC is **ORDERED TO PAY** the respondent the amount of ₱30,645,542.62 as deficiency expanded withholding tax for taxable year 2008.

However, petitioner shall not be held liable for the interests in addition to the basic tax due, pursuant to Sections 247(b) and 249 of the NIRC of 1997, as amended.

SO ORDERED."

SO ORDERED.

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

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

(TOOK NO PART)
CATHERINE T. MANAHAN
Associate Justice

ATTESTATION

I attest that the conclusions in the above Amended Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

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

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Amended Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice