REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

****

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

AMKOR / ANAM PILIPINAS, INC.,
Respondent.

C.T.A. E.B. NO. 101
(C.T.A. Case No. 5953)

Present:

ACOSTA, *P.J.*,
CASTAÑEDA, Jr.,
BAUTISTA,
UY,
CASANOVA, and
PALANCA-ENRIQUEZ, *JJ.*

Promulgated:

MAR 2 0 2006

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DECISION

UY, J.:

This is a Petition for Review filed before the Court of Tax Appeals *En Banc* under Section 11 of Republic Act No. 9282, impugning the Decision promulgated on December 28, 2004 and the Resolution promulgated on June 22, 2005 in CTA Case No. 5953 entitled, "Amkor/Anam Pilipinas, Inc. vs. Commissioner of Internal Revenue."

The Resolution of June 22, 2005 affirmed *in toto* the Decision of December 28, 2004, the decretal portion of which reads:

"WHEREFORE, the Court hereby cancels the assessment for deficiency value-added tax in the amount of P211,816,184.20 (sic) and upholds the assessments for deficiency withholding taxes and deficiency DST in the reduced amounts of P1,564,895.68 and P262,652.13, respectively, computed as follows:

Deficiency Withholding Tax

	Rental	*Income Benefits*	*Total*
Tax Base	*P 832,720.24*		
Tuition Fee		*P 1,636,652.53*	
Housing and Lodging		*832,720.24*	
Total Tax Base	*P 832,720.24*	*P 2,469,372.77*	
Multiply By Tax Rate	*5%*	*30%*	
Basic Deficiency Withholding Tax Due	*P 41,636.01*	*P 740,811.83*	*P 782,447.84*
Surcharge	*10,409.00*	*185,202.96*	*195,611.96*
Interest	*31,227.01*	*555,608.87*	*586,835.88*
Total Deficiency Withholding Tax Due	*P 83,272.02*	*P 1,481,623.66*	*P 1,564,895.68*

Deficiency Documentary Stamp Tax

	BPI Loan	*Issuance of Preferred Stock to IMI*	*Total*
Tax Base	*P 140,000,000.00*	*P 12,170.00*	
Multiply by Tax Rate	*P0.30/P200.00*	*P2.00/P200.00*	
Tax Due	*P 210,000.00*	*P 121.70*	*P 210,121.70*
	52,500.00	*30.43*	*52,530.43*
Deficiency DST	*P 262,500.00*	*P 152.13*	*P 262,652.13*

Petitioner is likewise ordered to pay 20% delinquency interest from February 6, 1999 until full payment thereof pursuant to Section 249(c) (3) of the 1993 Tax Code.

The Court cannot sustain respondent's imposition of compromise penalty since there was no compromise agreement reached by the parties (Atlas Consolidated Mining and Development Corporation (doing business under the name of Atlas Itochu Consortium) vs. Commissioner of Internal Revenue, CTA Case No. 5671, promulgated on August 29, 2002).

SO ORDERED."

Petitioner is the official of the Republic of the Philippines charged with the duty of assessing and collecting national internal revenue taxes, holding office at the BIR National Office Building, Diliman, Quezon City.

Respondent, on the other hand, is a corporation duly organized and existing under and by virtue of Philippine laws, engaged in the business of manufacturing, assembling for a fee, exporting, buying and/or selling semiconductor products and semiconductor components.

On January 6, 1999, respondent received Demand Letters with accompanying Assessment Notices from the petitioner, informing it of its alleged deficiency withholding tax (P211,816,184.20), documentary stamp tax (P35,902,183.62) and value-added tax (P10,952,417.75) liabilities inclusive of increments for the year 1994 in the aggregate amount of P258,670,785.57.

On January 25, 1999, respondent through counsel, filed a formal written protest with the petitioner assailing the said deficiency tax assessments on both factual and legal grounds, together with the documents in support of its arguments and defenses against the validity of the assessments. Additional supporting documents were likewise submitted by the respondent on March 26, 1999.

Petitioner's failure to immediately act on respondent's protest prompted the latter to file a Petition for Review docketed as CTA Case No. 5953 before the Court's First Division on October 14, 1999.

In the assailed Decision promulgated on December 28, 2004, the Court partially granted the Petition by cancelling the deficiency VAT assessment in the amount of P211,816,184.20 (should be P10,952,417.75) and upholding the assessments for deficiency withholding taxes and deficiency DST in the reduced amounts of P1,564,895.68 and P262,652.13, respectively plus the payment of 20% delinquency interest from February 9, 1999 until full payment thereof. Subsequently, petitioner's Motion for Partial Reconsideration was denied for lack of merit in the assailed Resolution promulgated on June 22, 2005.

Hence, the present petition raising the sole issue of whether or not respondent is liable for the deficiency VAT and other taxes in the aggregate amount of P258,670,785.57.

Petitioner presents the following grounds in support of this petition:

> "A. Petitioner [*should be respondent*] is liable for the deficiency VAT in the amount of P10,952,417.75;
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> B. The communication of Petitioner [*should be respondent*] to its non-resident customer, T.L., Ltd., for the inward remittance of the latter's assembly fees is an order of payment subject to the documentary stamp tax under the Tax Code;
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> C. Petitioner [*should be respondent*] is liable to withhold and remit 1% tax on the payment to its bus service contractor and medical retainer;
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> Petitioner's [*should be respondent's*] payment to Copper Kettle operator representing the cash equivalent of the meal tickets presented by the employees is subject to 1% expanded withholding tax;
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> D. The guaranteed floating rate notes (GFRN) issued by petitioner [*should be respondent*] are equity investments the interest on which is subject to 35% income tax on non-resident foreign corporations;
>
> E. The professional fee of P2,800,000.00 was paid to a non-resident legal retainer;
>
> F. Petitioner [*should be respondent*] is liable to withhold taxes for payments made to a non-resident alien, T.L. Ltd.; and
>
> G. The transfer of properties from IMI to Sunvar Realty constituted an indirect transfer of properties to petitioner [*should be respondent*] subject to tax."

The issue elevated to Us for resolution has already been considered and passed upon by the Court's First Division in the Decision of December 28, 2004 as the grounds forwarded by the petitioner are among the stipulated issues therein, to wit:

> "1. Whether or not Petitioner's [now respondent's] purchase of all the interest of Integrated MicroElectronics, Inc. over Automated MicroElectronics, Inc. is subject to VAT;
>
> 2. Whether or not the communication of petitioner [now respondent] to its non-resident customer, T.L. Ltd., for the inward remittance of the latter's assembly fees is an order of payment subject to the DST under Section 181 of the Tax Code;
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> xxx xxx xxx

6. Whether petitioner [now respondent] is liable to withhold and remit 1% tax on the payment to its bus service contractor (PJC), as well as payments made to medical doctors who render medical services for the annual medical examination of the company employees;

7. Whether or not Petitioner's [now respondent's] payment to Copper Kettle canteen operator representing cash equivalent of the meal tickets presented by the employees, as well as the payment of its gas, water and electricity consumption is subject to 1% expanded withholding tax;

8. Whether the guaranteed floating rate notes (GFRNs) issued by Petitioner [now respondent] are equity investments the interest on which is subject to 35% income tax on non-resident foreign corporations;

9. Whether or not the professional fees of P2,800,000 were in fact paid by petitioner [now respondent] to a non-resident legal retainer, an affiliate of Bito, Lozada and Castillo Law Office;

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13. Whether or not there was in fact payment of P52,762,407.39 made to a non-resident alien T.L. Ltd., and for which Petitioner [now respondent] is liable to withhold taxes;

14. Whether Integrated Microelectronics, Inc. (IMI) transferred land to IMI Realty, Inc. (IRI) in exchange for shares of stock; whether there was indirect transfer of land from IRI to petitioner [now respondent], indirect transfer of building from IMI to petitioner [now respondent], and indirect transfer of land and building from Petitioner [now respondent] to Salcedo Sunbar (sic) Realty. If so, whether the corresponding creditable withholding tax and DST were paid on each alleged transaction (Decision, C.T.A. Case No. 5953, pp.4-5)."

In its Motion for Partial Reconsideration of the December 28, 2004 Decision, herein petitioner also submitted the following grounds:

"1. Petitioner's [now respondent's] purchase of all the interest in Integrated MicroElectronics, Inc. (IMI) over Automated Micro Electronics, Inc. (AME) is subject to VAT;

2. The communication of petitioner [now respondent] to its non-resident customer, T.L., Ltd., for inward remittance of the latter's assembly fees is an order of payment subject to the DST;

3. The guaranteed floating rate notes (GFRN) issued by petitioner [now respondent] are equity investments the interest of which is subject to 35% income tax on non-resident foreign corporations;

4. The professional fee was paid to a non-resident legal retainer;

5. The petitioner [now respondent] is subject to withhold taxes for payments made to a non-resident alien, T.L. Ltd.;

6. The transfer of properties from IMI to Sunbar (sic) Realty constituted an indirect transfer of properties to petitioner [now respondent], hence, subject to tax (Resolution dated June 22, 2005, C.T.A. Case No. 5953, pp.1-2)."

Clearly then, all the grounds submitted by petitioner in its petition before the Court *En Banc* are nothing new. In fact, the Court's First Division had already exhaustively tackled each and every one of them. Thus, We reiterate that:

First, respondent's purchase of the shares of stock of AME does not warrant the imposition of VAT since the acquisition of the shares of stock of AME does not involve a direct sale or transfer of goods, much less a sale of inventories. And even assuming, VAT was due, respondent could not be held liable therefor as it was not the seller of goods pursuant to the provisions of Section 100 (a) of the Tax Code of 1993 wherein it states that such tax shall "be paid by the seller or transferor".

Second, the advice from respondent to channel its customer's remittances to the designated banks where respondent maintains a foreign currency account cannot be considered a bill of exchange, letter of credit, or any order for payment of money and therefore not subject to DST. As correctly found by the First Division of this Court in its assailed Decision, "the situation merely involves two parties, namely, petitioner [now, respondent] as seller, and T.L. Ltd., which is not ordered to remit payments but is simply advised about its preference as to how exactly it should effect the remittance (Decision, C.T.A. Case No. 5953, p. 9)."

Third, respondent is not liable for failure to withhold and remit 1% expanded withholding tax or the amount of P219,781.78 arising from payment of the shuttle service fees to PJC Bus Service in transporting its employees from their residence to the workplace. Revenue Regulations No. 6-85, as amended, only imposes 1% EWT on transportation contractors or common carriers of goods. In addition, the assessment of 1% EWT on professional payments to medical doctors who rendered medical services to respondent's employees was properly cancelled, because respondent, based on the evidence presented, already withheld 10% tax on income payments to said medical retainers.

Further, the amounts paid by respondent to Copper Kettle for services rendered were simply cash equivalent of the meal tickets presented by the employees for every meal consumed while the "economic benefits", i.e. for gas, water and electricity incident to Copper Kettle's operations were in fact for the benefit of the respondent and not of Copper Kettle.

Fourth, contrary to petitioner's contention that the guaranteed floating rate notes ("GFRNs") constitute equity investment and the interest remittances in favor of the note holders are in fact returns on investment subject to 35% income tax on non-resident foreign corporations not engaged in the trade and business, the Court *En Banc* agrees with the First Division of this Court that the publicly issued GFRNs are debt instruments, and the interests due thereon are subject to income tax rate of twenty (20)% percent in accordance with Section 25(b)(5)(A) of the 1993 Tax Code, or to ten (10)% percent tax rate under applicable tax treaties entered into by the Philippines with other countries *(BIR Ruling UN-365-94 [Exhibit B-6])*. In the instant case, respondent actually withheld income taxes on interests due at the rate of twenty (20%) per cent.

Fifth, based on the documents submitted identified as voucher ending April 24, 1994 (*Exhibit "D-2"*) and telegraphic transfer (*Exhibit "D-4"*), the payment of P2,800,000.00 professional fees was made to Bito Lozada Ortega Castillo Law Office, a local legal retainer, and not to a non-resident legal retainer. As the said law firm is a general professional partnership formed for the practice of law, respondent is not obligated to withhold tax on income payments paid to the partnership as only income received by the partners from the general partnership are subject to withholding taxes in accordance with Section 1(h) of Revenue Regulation No. 6-85.

Sixth, the total assembly fees worth P1,758,746,913 was income received by respondent for services rendered to T.L. Ltd. by virtue of the Supply Agreement executed between respondent and T.L. Ltd. Thus, it is not accountable to pay withholding taxes on the assembly fees it actually received.

Seventh, the transfer of properties from Integrated Micro Electronics, Inc. (IMI) to Salcedo Sunvar Realty, Inc. does not constitute indirect transfer of properties to respondent which may subject respondent to both income tax and DST on the transaction, in the absence of any clear and convincing evidence that respondent was privy to said transaction. Consistent with the provisions of the Corporation Code of the Philippines, Sunvar Realty has a personality distinct and separate from respondent; hence, failure to establish that there was indeed a commission of fraud in the form of tax evasion, the principle of piercing the veil of corporate fiction cannot apply in this case at bar.

In the light of the foregoing discussions, the Court *En Banc* finds no reversible error committed by the First Division of this Court when it rendered its assailed Decision dated December 28, 2004 except that the amount of the cancelled assessment for deficiency value-added tax should be P10,952,417.75 and not P211,816,184.20 as stated in the dispositive portion of the aforesaid Decision.

WHEREFORE, premises considered, the Petition for Review is **DENIED** for lack of merit. The assailed Decision is **AFFIRMED WITH MODIFICATION** that the amount of the cancelled assessment for deficiency value-added tax is P10,952,417.75 and not P211,816,184.20. The assessments for deficiency withholding taxes and deficiency DST in the reduced amounts of P1,564,895.68 and P262,652.13, respectively, and the imposition of twenty (20%) per cent delinquency interest from February 6, 1999 until full payment are upheld.

The Resolution dated June 22, 2005 is **AFFIRMED in TOTO.**

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII 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 *En Banc*.

ERNESTO D. ACOSTA
Presiding Justice