REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PHILIPPINE BANK OF COMMUNICATIONS,
Petitioner,

- versus -

C.T.A. CASE NO. 4394

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAY 11 1995

x - x

D E C I S I O N

This is an assessment case for alleged deficiency expanded withholding tax assessment amounting to P1,222,944.55.

On January 25, 1988, Petitioner a commercial banking corporation received the Respondent's Assessment Notice No. FAS-I-84-88-000221 dated January 20, 1988 demanding payment of the amount of P1,222,944.55 as alleged deficiency withholding tax computed as follows:

1984
Deficiency Expanded Withholding Tax

Income Payment	Amount	Rate	Tax Due
Rent	P10,365,479.28	.05	P 518,273.95
Security and Messengerial services	6,370,334.35	.0045	28,666.50
Professional fees	1,139,485.23	.10	113,948.52

Total expanded withholding tax due	P 660,888.97
Add: 25% surcharge	165,222.24
Interest from 1/20/85 to 1/20/88	396,533.38
Compromise penalty	300.00
TOTAL AMOUNT DUE AND COLLECTIBLE	P1,222,944.55

(Annex A, Petition)

On February 23, 1988, Petitioner filed a written protest refuting the above assessment "attaching herewith a copy of the report we have submitted to your good office showing all the payments made by the Bank which are subject to expanded withholding tax, and which may have been inadvertently not taken into full consideration by your examiner." (Exh. N)

On January 6, 1989 the Respondent informed the Petitioner that "a perusal of the attached schedule showed that they were the same documents previously submitted to this Office and which were already taken into account". (Exh. O) But still, Respondent invited the Petitioner "for an informal conference with the Chief, Banks, Financing and Insurance Division not later than January 17, 1989... in order that this matter could be discussed thoroughly." (ibid.)

In accordance with the Respondent's letter-directive, Petitioner conferred with the concerned BIR examiner, Mrs. Adelaida M. Rozal, and explained to her Petitioner's position on the alleged tax liability. Mrs. Rozal then allegedly promised to make the necessary corrections and would advice Petitioner accordingly.

All the while, Petitioner thought that the assessment could be withdrawn when, suddenly, on September 14, 1989, two Warrants of Distraint on Personal Property and Levy on Real Property were served on the Petitioner due to non-payment of alleged deficiency expanded withholding tax (Exhs. P and Q).

On October 10, 1989, Petitioner informed the Respondent that "there was a pending protest still unresolved. Having been served with indecent haste, he was requested to withdraw the two Warrants he issued" (Exh. R).

Respondent neither ruled on Petitioner's written protest nor withdrawn the Warrants.

Hence, this appeal.

The sole issue in this case is whether or not Petitioner is liable to pay the alleged deficiency expanded withholding tax assessed by the Respondent.

We answer in the negative.

During the hearing of this case, the Respondent was given more than enough opportunity to justify her assessment as it was, precisely, contested by the Petitioner. In fact, on October 31, 1990, the Petitioner requested for a Subpoena Ad Testificandum and Duces Tecum, which this Court issued on November 9, 1990 against the BIR examiner, Mrs. A.M. Rozal for her to bring "all the documents relative to the figures and computation made and appearing on Assessment Notice No. FAS-I-84-88-000221 dated 20 January 1988" (CTA Records, p. 95).

On December 4, 1990, Mrs. Rozal indeed appeared in this Court but, surprisingly, did not bring with her the documents relative to the subject assessment. Several subsequent hearings scheduled by this Court were also postponed because of the failure of Mrs. Rozal to appear or even submit a recomputation of the alleged tax due.

When it was the Respondent's turn to present her evidence, her counsel acknowledged the mistakes in the assessment and the need to submit a recomputation. Until the last hearing, Respondent failed to submit the recomputation because "the BIR records do not have the official receipts nor copy thereof and the BIR examiner and her group supervisors have already retired" (see Remarks of the Executive Clerk of Court I, CTA Records, p. 544). In fine, the Respondent, simply, cannot substantiate her assessment and submitted this case for decision based on the pleadings and records sans the submission of a memorandum.

With the Respondent's admission that there were indeed mistakes in the assessment, thereby, there was a need to submit a recomputation which she failed do, is enough ground to cancel said assessment. The BIR cannot just indiscriminately issue tax assessments against innocent taxpayers without substantiating the same, however noble the intention is (that is, for tax collection purposes). Such act cannot, of course, be justified at the expense of the taxpayers. This Court cannot countenance this form of harassment and should put an end to this (mal)practice.

Hence, We cannot do otherwise but rely on the Petitioner's uncontroverted stand, very well supported by documentary evidences, to wit:

1. A substantial portion of the P10,365,479.28 is not for rent but represents payments for Light and Water which are not subject to withholding tax

With respect to Rent, the two-page worksheet of BIR Examiner Rozal (Exhibit "VVVV") shows how she arrived at the amount of P10,365,479.28. On the first page, she scribbled the following:

"1. Rent, Light and Water
Per P & L (See Note 6)
43,000 x 12 = P 516,000
= 4,263,505
P4,779,505.00
- 3,567,592.80
P1,211,912.20

(COMPUTATION NO. 1)

And, on the second page of the same worksheet -

"Rent, Light and Water per P/L P13,933,072.00
Less: Amount subjected to EWT
(See computation No. 1)
4,779,505.00
P 9,153,567.00

(COMPUTATION NO. 2)

Adding up P1,211,912.20 from Computation No. 1 and P9,153,567 from Computation No. 2, the BIR Examiner got the sum of P10,365,479.28 which she claims to be rent payments still subject to EWT.

The figure P10,365,479.28 is wrong for the following reasons: First, the BIR Examiner erroneously considered only the amount of P3,567,592.80 as the amount PBCom withheld and remitted for rental payments. Second, the BIR mistakenly considered only the EWT withheld and remitted by PBCom's Head Office. Third, the BIR Examiner did not consider the EWT PBCom withheld and remitted through its several branches nationwide. Fourth, the BIR Examiner knowingly included payments by PBCom for power, light and water of which, under Revenue Regulations No. 6-85, are not subject to withholding tax. Fifth, the BIR Examiner also included PBCom's rental payments for equipment which also included PBCom's rental payments for equipment which are also not subject to withholding tax under the same Revenue Regulations. And Sixth, the BIR Examiner did not even bother to check PBCom's records resulting in her failure to see the amounts already subjected to EWT.

Correcting the BIR Examiner's Computation No. 1, the following amounts should be subtracted from the amount of P4,779,505.00 which, as stated in her worksheet, is the rent paid by PBCom for its Head Office and branches, based on Note 6 of PBCom's Auditor's Report:

P3,781,629 - Rent for Head Office, NCR Branches and Iloilo Branch, already subjected to EWT, per Head Office BIR Form 1743B (Exhs. "A" to "A-11") as explained by Mrs. Leticia Ignacio (Exh. "BBBB")

P 144,000 - Rent for Davao Branch already, subjected to EWT, per copy of BIR Davao Form 1743B (Exhs. "S" and "S-1")

P 158,559 - Rent for Cebu Branch already, subjected to EWT, as recognized by the BIR Examiner in her worksheet (Exhibit "UUUU")

The figure P9,153,567 in the BIR Examiner's Computation No. 2 is not subject to EWT because, as stated even in her worksheet, it pertains to the payment for "Light and Water". Such payments by PBCom for power, light and water, as well as rent for equipment, all of which are not subject to withholding tax (Revenue Regulations No. 6-85, as amended), include the following:

P1,695,422 - PBCom Head Office Expenses for electric bills from September to December 1984, per 1 July 1993 Meralco certification (Exh. "CCCC")

P2,076,293 - PBCom Head Office Expenses for electric bills from January to December 1984, per 26 July 1993 Meralco certification (Exh. "EEEE") and partly, per manager's checks paid to Meralco (Exh. "FFFF" series)

P1,013,194 - PBCom NCR Branches' Expenses for electric bills, per 20 July 1993 Meralco certification (Exh. "DDDD")

P2,454,806 - PBCom Expenses for rent of equipment, per Head Office Sub-ledger, which were part of the account "Rent, Light and Water" in the Auditor's Report erroneously included by the BIR in the disputed assessment (Exh. "OOOO")

P 105,783 - PBCom Iloilo Branch's Expenses for power, light and water, per Branch Sub-Ledger (Exh. "KKKK")

P 48,136 - PBCom Cagayan de Oro Branch's Expenses for power, light and water, per Branch Sub-Ledger (Exh. "LLLL")

P 32,580	-	PBCom Davao Branch's Expenses for power, light and water, per Branch Sub-Ledger (Exh. "MMMM")
P 286,822	-	PBCom Cebu Branch's Expenses for power, light and water, per Branch Sub-Ledger (Exh. "NNNN")
P 325,433	-	Head Office Expenses for light and water, paid through lessor Dominga, Inc. (Exh. "OO"), determined by subtracting the P517,500 annual rent from P842,933 face value of 10 manager's checks paid (Exhs. "GGGG" series) (excluding June and July 1984 payments)
P 36,730	-	Head Office Expenses for light and water, paid through lessor Dominga, Inc. in July 1984, per copy of debit ticket and bills (Exhs. "UUU" and "UUU-1")
P 283,598	-	PBCom Head Offcice Expenses for water, paid direct to MWSS, per MWSS certification (Exh. "HHHH")

2. <u>The figure used by the Commissioner as allegedly representing payments for security, messengerial services and janitorial not yet subject to EWT is wrong</u>

With respect to Security, Messengerial and Janitorial Services, BIR Examiner Rozal, without looking further into the records, merely lifted the figure P6,727,178 indicated in the Auditor's Report. The records of PBCom show that the following payments are for such services and were already subjected to EWT earlier:

P5,884,638	-	Payments by PBCom Head Office, NCR and La Union branches, already subjected to EWT, per Head Office BIR Form 1743B (Exhs. A to A-11) as explained by Mrs. Leticia Ignacio (Exh. PPP)
P 201,179	-	Payments by PBCom Cebu Branch, already subjected to EWT, per BIR worksheet (Exh. "TTTT")
P 103,200	-	Payments by PBCom Davao Branch subjected to EWT, per Davao BIR Form 1743B (Exhs. "S" and "S-1")
P 153,560	-	Payments by Iloilo Barnch subjected to EWT, Iloilo BIR Form 1743B (Exhs. "JJ" and "JJ-1")

3. <u>The figure used by the Commissioner as allegedly representing payments for professional fees is not the correct amount subject to EWT</u>

The deficiency withholdinng tax assessment on the Professional Fees paid by PBCom in the amount of P2,444,670 is also erroneous. Only a portion of this amount is subject to EWT at the rate of 10%. The others are either exempt from the EWT or are subject to a different rate. In any event, PBCom withheld and remitted the EWT at the correct rate, except for those exempt. To illustrate:

P 475,831	-	PBCom payments to individual professional, already subjected to 10% EWT, per Head Office BIR Form 1743B (Exhs. A to A-11), as explained by Mrs. Leticia Ignacio (Exhibit "QQQQ")

P 89,254 - PBCom payments to corporations, already subjected to 5% EWT, per Head Office BIR Form 1743B (Exhs. "A" to "A-11"), as explained by Mrs. Leticia Ignacio (Exhibit "QQQQ")

P 508,655 - PBCom payments to professional partnerships, included by the Auditor's Report per Head Office Sub-Ledger (Exh. "RRRR"), which are exempt from EWT

P 365,963 - PBCom payments misbooked under professional fees (Exh. "RRRR"), but included by the Auditor's Report and already subjected to .0045 EWT, per Head Office BIR Form 1743 (Exhs. "A" to "A-11")

P 912,000 - PBCom payments for Central Bank supervision and examination (Exh. "SSSS"), which are exempt from EWT.

(CTA Records pp. 563-568)

WHEREFORE, in all the foregoing, the Respondent is hereby **ORDERED** to **CANCEL** Assessment No. FAS-I-84-88-000221 dated January 14, 1988 for being admittedly erroneous and unjustifiable.

SO ORDERED.

MANUEL K. GRUBA
Associate Judge

WE CONCUR:

(On Leave)
ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation among the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

MANUEL K. GRUBA
Associate Judge
Court of Tax Appeals