REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

GLOBAL QUICKSERVICE RESTAURANT, INC.,
Petitioner,

- versus-

COMMISSIONER OF INTERNAL REVENUE; OFFICE OF THE REGIONAL DIRECTOR, BUREAU OF INTERNAL REVENUE, REVENUE REGION NO. 7 – QUEZON CITY; BUREAU OF INTERNAL REVENUE, REVENUE DISTRICT OFFICE NO. 43A, EAST PASIG,
Respondents.

CTA Case No. 8704

Members:

Castañeda, Jr., *Chairperson*
Casanova, and
Cotangco-Manalastas, *JJ.*

Promulgated:

NOV 1 2 2015 3:52 pm

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R E S O L U T I O N

COTANGCO-MANALASTAS, *J.:*

For resolution are the following:

1. Respondents' *Motion for Partial Reconsideration (Notice of Decision promulgated on August 11, 2015)* filed on August 27, 2015 without petitioner's comment despite notice; and

2. Petitioner's *Motion for Reconsideration* filed on August 27, 2015 without respondents' comment despite notice.

The parties move for the reconsideration of the Decision of this Court dated August 11, 2015, which partially granted the petition, as follows:

"**WHEREFORE**, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. The compromise penalty imposed by respondents for taxable year 2009 in the amount of P15,000.00 is hereby **CANCELLED AND WITHDRAWN**. However, the assessments issued by respondents against petitioner for taxable year 2009 covering deficiency income and value-added taxes are **AFFIRMED** with some modifications. Accordingly, petitioner is **ORDERED TO PAY ONE MILLION SEVEN HUNDRED NINETY-FOUR THOUSAND FOUR HUNDRED TWENTY-ONE PESOS AND 67/100 (₱1,794,421.67)**, inclusive of the twenty-five percent (25%) surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, computed as follows:

Tax Type	Basic	25% Surcharge	Total
Income Tax	₱ 1,290,304.09	₱ 322,576.02	₱ 1,612,880.11
Value-added Tax	145,233.25	36,308.31	181,541.56
Total	**₱ 1,435,537.34**	**₱ 358,884.33**	**₱ 1,794,421.67**

In addition, petitioner is **ORDERED TO PAY**:

(a) Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency income and value added taxes computed from the dates indicated below until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended:

Tax Type	Basic Tax	Deficiency Interest Computed From
Income Tax	₱1,290,304.09	April 15, 2010
Value-added Tax	₱ 145,233.25	January 25, 2010

(b) Delinquency interest at the rate of 20% per annum on the total amount of ₱1,794,421.67 and on the 20% deficiency interest which have accrued as afore-stated in (a), computed from February 25, 2013 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.

SO ORDERED."

In their motion, respondents argue that the Court erred in ruling that petitioner is not liable to pay the assessed compromise penalty in the amount of ₱15,000.00. Petitioner in effect agreed to the compromise penalty of ₱15,000.00 when it voluntarily paid the amount of ₱2,000.00 as partial payment of the assessed compromise penalty.

For its part, petitioner, in its motion, argues that the Court erred in ruling that the petitioner is liable to pay deficiency income taxes in the basic amount of ₱1,290,304.09, and deficiency value-added taxes (VAT) in the basic amount of ₱145,233.25, plus surcharges and interests.

We find no merit in the instant motions.

The Court does not agree with respondents' argument that petitioner in effect agreed to the compromise penalty of ₱15,000.00 when it voluntarily paid the amount of ₱2,000.00 as partial payment of the assessed compromise penalty.

To reiterate, the imposition of the compromise penalty without the conformity of the taxpayer is illegal and unauthorized.[1] Absent any showing that petitioner consented to the compromise penalty, the same should not be imposed. The fact that petitioner disputes the imposition of the compromise penalties, even though it made a ₱2,000.00 payment, signifies that petitioner did not consent to the imposition of the same.

As to petitioner's motion for reconsideration, a perusal of the grounds relied upon are but a mere rehash or reiteration of its previous arguments, which had already been considered, thoroughly discussed and passed upon in the assailed Decision.

Nevertheless, the Court shall briefly discuss some of the arguments raised by petitioner to reinforce its ruling.

Deficiency Income Tax

A. Undeclared sales/revenues/receipts

Under this item, respondents assessed petitioner for alleged undeclared sales/revenues/receipts in the amount of ₱725,934.93, broken down as follows: 1. Deemed sale transactions - ₱282,620.82; 2.1. Taxable Service Charge/Company Share - ₱438,020.09; and 2.2. Taxable Charged Tips/Company Share - ₱5,294.02.

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[1] *Commissioner of Internal Revenue vs. Lianga Bay Logging Co., Inc. et al.*, G.R. No. L-35266, January 21, 1991.

1. Deemed sale transactions

Petitioner submits that it submitted sufficient evidence which remained undisputed or uncontroverted by the respondents. Petitioner sufficiently adduced the Judicial Affidavit of Mr. Fernando Bulante and Global Restaurant Concepts, Inc. (GRCI) Memo on Importation of Supplies.

However, as explained in the assailed Decision, quoted below for easy reference, these documents are not sufficient to disprove this item of assessment:

> "While said Memorandum proves the policy on the distribution of goods and sharing of supplies between GRCI and among its affiliated companies like petitioner, such does not validate the fact that the subject transfers by petitioner to GRCI were subject to replenishment. It must be stressed that the purported stock transfers require proper documentation. Thus, petitioner should have corroborated its Memorandum with other evidence such as, but not limited to, the Stock Transfer Forms and Receiving Report, as well as the subsequent Stock Replenishment Report, made by and between GRCI and petitioner. With that finding, petitioner failed to prove that no income, gain or profit was derived from such transfer."

2. Taxable service charges

With respect to the alleged taxable service charges amounting to ₱438,020.09, petitioner insists that it had presented voluminous documentary evidence to dispute this item of assessment.

Again, the Court had already considered these documents and found that the payroll register, as manifested by GRCI's Comptroller, Ms. Marissa R. Tagle, merely indicates the earnings each employee receives per cut-off which includes, among others, service charges. Otherwise put, these documents merely show that petitioner had allocated each employee its share in the service charges. The same do not support petitioner's claim that it had distributed the subject service charge to its employees only on the following year 2010.

The Court noted that petitioner mistakenly understood this ruling to mean that petitioner should prove that its employees have actually withdrawn from their ATMs the amount of services charges credited to their payroll bank accounts. As a consequence, petitioner argues that it distributes its employees' salaries and other benefits, inclusive of service charges, through its payroll ATM cards, thus, it has no further proof that it paid and distributed said service charges to its employees. When payments are made through ATM, no document showing that the employees actually got their benefits is issued to petitioner. While ATM receipts are issued to employees (upon withdrawal), they cannot constitute proof of receipt of service charges because most employees do not withdraw everything they are paid in one transaction. Moreover, most people, petitioner's employees included, do not keep their ATM withdrawal slips.

It should be remembered that petitioner's argument, in its Petition for Review, is that the subject service charges were collected during the period of December 15-31, 2009, and that the same were only distributed to the employees on January 15 of the following year (2010). Petitioner concludes that respondents' assessment on amounts not yet distributed to the employees is erroneous to say the least considering that petitioner has yet to distribute them.

Hence, petitioner must present evidence that will support its claim that it had distributed the subject service charge to its employees only on the following year 2010.

The Court also noted that petitioner made a confusing explanation as to this item of assessment in its memorandum, aside from being inconsistent with its earlier argument in its petition for review.

In its memorandum, petitioner explains that as a matter of practice, it collects service charges for the following periods in a month: (a) 1st day until the 15th day of the month, and (b) 16th until the last day of the month. The collected service charges in a given period are distributed to the employees in the next payday of the following collection period.

Petitioner then alleged that, for the year 2009, it collected services charges of ₱1,958,204.31 (presenting petitioner's Sales Report for January 1, 2009 to December 31, 2009, Exhibit "P-28"), 85% of which (₱1,664,473.66) goes to the employees. Petitioner then presented its Service Charge Payroll Summary (Exhibit "P-27) for the period January 1, 2009 to December 31, 2009 to show that it distributed service charges to its employees in the amount of ₱1,358,566.50 (supported with Payroll Registers, Exhibits "P-26" to "P-26-W), to GRCI's Restaurant Support Center (RSC) employees in the amount of ₱244,528.88, and commissary employees in the amount of ₱61,378.03 or in the total amount of ₱1,664,473.42.

However, following the practice of petitioner in the distribution of the collected service charges to its employees, then it was erroneous for petitioner to compare the service charges collected for the year 2009 with the service charges distributed during the payroll period of January 1 to December 31, 2009 as the services charges distributed to petitioner's employees for payroll period January 1-15, 2009 pertained to service charges collected in December 16-31, 2008. Moreover, the service charges distributed to petitioner's employees for payroll period January 1-15, 2010, which pertained to service charges collected in December 16-31, 2009, should have been included in the comparison.

Thus, respondent's assessment with regard to service charges shall be upheld.

B. Unsupported accounts written-off

Petitioner maintains that it had adduced sufficient documentary evidence to prove that the Rental Deposit in the amount of ₱100,000.00 was eventually returned to it by presenting the Affidavit of its President, Mr. Armando Rodriguez.

Considering that no new argument was raised by petitioner for this item of assessment, the same shall be upheld.

C. Income payments not subjected to withholding tax

Petitioner submits that its documentary evidence, testimonial evidence and legal arguments deserve a closer and harder look. The assessment pertaining to these items should be cancelled and withdrawn for lack of factual and legal justifications.

However, petitioner merely reiterated its previous arguments with respect to this item of assessment, which was already considered by the Court in arriving at its conclusion, hence, the same shall be upheld.

The Court wishes to emphasize that the evidence presented by petitioner to prove that Personnel Costs in the aggregate amount of ₱551,897.06[2] is not subject to withholding taxes on compensation (*i.e.*, Exhibit "P-14" on Cellphones, Exhibits "P-15" and "P-16" on Training and Seminars, Exhibit "P-17" on Employee Meals and Exhibit "P-18" on Scholarship Program) only prove petitioner's policies on these benefits. Consequently, without submitting additional documentary evidence to support its claim, the Court cannot ascertain the nature of the purported employee benefits not subject to withholding tax. By merely presenting these policies, it only shows that petitioner provides or offers these benefits to its employees but does not prove that the amount expended actually pertains to these benefits and that it met petitioner's policy and is in consonance with the provisions of Section 2.78.1 of Revenue Regulations No. 2-98, as amended, or Revenue Regulations 3-98, whichever is applicable.

In other words, petitioner must present evidence that would prove the factual basis of its claim that these expenses actually pertain to employee benefits that are not subject to withholding taxes. Without limiting the supporting documents that can be presented, and only as a way of example, petitioner could present its disbursement or journal vouchers, liquidation report, supplier's billings/invoices/official receipts, training and scholarship contracts, certificate of attendance showing the topic of the training/seminar attended, or other adequate records that would sufficiently prove that these

[2] Broken down as follows:

Personnel costs	
Cellphone	₱ 11,700.00
Training allowance	72,803.26
Employees meals	413,172.18
Health and accidental insurance	2,310.00
Trainings and seminars	7,788.46
Uniforms	27,379.41
Scholarships	16,743.75
	₱ 551,897.06

Personnel Costs are not subject to withholding taxes on compensation.

As regards "Health and Accidental Insurance" in the amount of ₱2,310.00 and "Uniforms" in the amount of ₱27,379.41, apart from petitioner's allegation that these items are not subject to withholding tax on compensation, petitioner did not present any evidence to support its claim, hence, these items were retained in respondents' computation of income payment not subjected to withholding tax.

Thus, respondents are correct in disallowing personnel costs in the total amount of ₱454,910.31 as deduction from petitioner's gross income.

Deficiency VAT

Again, petitioner merely reiterated its previous arguments to refute the deficiency VAT assessment, which had already been considered, thoroughly discussed and passed upon in the assailed Decision, hence, the deficiency VAT assessment shall be upheld.

WHEREFORE, premises considered, respondent's *Motion for Partial Reconsideration* and petitioner's *Motion for Reconsideration* are hereby **DENIED** for lack of merit.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

(On Leave)
CAESAR A. CASANOVA
Associate Justice