REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

WRIGLEY PHILIPPINES, INC.,
Petitioner,

- versus - C.T.A. CASE NO. 6196

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
NOV 04 2003

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DECISION

This case is an appeal for the cancellation of the assessments issued by the respondent against petitioner for deficiency income tax of P1,014,446.93 and deficiency withholding tax of P6,867,897.71 in the aggregate sum of P7,882,344.64 for taxable year 1995.

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Philippines, with office address at Marcos Highway, Sitio Puting Bato, Brgy. Inarawan, Antipolo City (*par. 1, Facts Admitted*). It is engaged in the manufacture and sale of chewing gum (*page 7, TSN, November 12, 2001*).

On January 21, 2000, petitioner received from the respondent two (2) Assessment Notices, along with the Formal Letter of Demand, all dated January 14, 2000, covering alleged 1995 deficiency income tax of P1,014,446.93 and deficiency withholding tax of P6,867,897.71 in the total amount of P7,882,344.64 (*Exhibits A to C*), broken down as follows:

Deficiency Income Tax		
Basic Tax Due	P 580,015.40	
Interest (from April 15, 1996 to Jan. 14, 2000)	434,431.53	P 1,014,446.93
Deficiency Withholding Tax		
Basic Tax Due	P 3,828,473.00	
Interest (from Jan. 26, 1996 to Jan. 14, 2000)	3,039,424.71	6,867,897.71
		P 7,882,344.64

On February 18, 2000, petitioner filed a protest letter disputing the respondent's income and withholding tax assessments for lack of factual and legal bases (*Exhibit D*).

On April 18, 2000, petitioner submitted a supplemental protest letter together with the documents supporting its position (*Exhibit E*).

Respondent failed to act on the protest filed by petitioner within the period of one hundred eighty (180) days from April 18, 2000, or until October 15, 2000. Hence, Petitioner filed the instant Petition for Review on November 14, 2000 or within thirty (30) days from the last day of the aforesaid 180-day period pursuant to Section 228 of the Tax Code.

Respondent, in his Answer filed through registered mail on July 16, 2001, interposed the following Special and Affirmative Defenses:

"1. That the investigation of the petitioner's internal tax liabilities for the year 1995 revealed a tax obligation of P7,882,344.64 as deficiency income and withholding tax;

2. That the subject deficiency income and withholding tax (Assessment Notice No. 45184) was issued in accordance with law and pertinent regulations and has substantially complied with the provisions of Section 228 of the National Internal Revenue Code relative to the taxpayer being informed in writing of the facts and law in which the assessment is based;

3. That the deficiency income tax has been assessed pursuant to Section 29 of the National Internal Revenue Code;

4. That the deficiency income tax assessment was based on the findings that:

A.) There is a discrepancy noted between professional fees per audit/investigation against per alpha list;

B.) There is a discrepancy noted on salaries and wages to withholding tax per audit/investigation against salaries and wages per alpha list;

C.) There is a leasehold rental not subjected to EWT pursuant to RMO 28-83.

5. That the deficiency withholding tax has been assessed pursuant to Section 71 of the NIRC;

6. That the deficiency withholding tax assessment was based on the findings that:

(A) Professional Fees (P189,624.00) and Leasehold Rental (P1,075,996.38) were not subjected to the required expanded withholding tax;

(B) The amount of P19,5734,225.69 (should be P19,573,225.69) on salaries and wages and allocated in benefits were not subjected to withholding tax.

7. The 20% per annum has been imposed pursuant to the provisions of Section 249(b) of the NIRC;

8. That the petitioner has not exhausted the administrative remedies required by law and jurisprudence on cases of this nature, hence petitioner has no cause of action; and

9. That all presumptions are in favor of the correctness of tax assessments and the burden of proof to prove otherwise is upon the petitioner."

To support its case, petitioner presented documentary and testimonial evidence. Respondent, on the other hand, was declared to have waived his right to present evidence for failure to appear for four (4) consecutive trial dates *(pages 215 & 216, CTA records)*. He even failed to submit the BIR records of this case and did not file his memorandum (*pages 242, 261 & 262, CTA records*).

As jointly stipulated by the parties, the issues to be resolved in this case are:

1. Whether or not the corresponding withholding taxes on the leasehold rental have been paid and, therefore, may be allowed as deduction from gross income;

2. Whether or not the professional fees paid to SGV are ordinary and necessary business expense deductible from gross income and subject to expanded withholding tax;

3. Whether or not petitioner has fully accounted for the alleged discrepancy in salaries and wages;

4. Whether or not salaries and wages representing payments to employment agencies are subject to withholding tax;

5. Whether or not petitioner has fully accounted for the alleged allocated-in benefits; and

6. Whether or not petitioner is liable for the alleged deficiency income and withholding tax amounting to P7,882,344.64

The first four stipulated issues pertain to the validity of the following disallowances made by the respondent that resulted to the alleged deficiency income tax of P1,014,446.93 (*Exhibit C*):

1.	Professional Fees – Unaccounted	P 189,624.00
2.	Salaries and Wages – Unaccounted	391,563.50
3.	Leasehold rental not subjected to EWT	1,075,996.38
		P 1,657,183.88

As stated in the Details of Discrepancies (*attached to Exhibit C*), the alleged unaccounted professional fees of P189,624.00 and salaries and wages of P391,563.50 represent discrepancies between the amounts found by the examiner per audit/investigation as against those found in the alpha list. Similarly, the leasehold rental of P1,075,996.38 was disallowed based on the respondent's finding that the same was not subjected to withholding tax.

Proceeding now to the first issue of whether or not the corresponding withholding taxes on the leasehold rental have been paid and, therefore, may be allowed as deduction from gross income, we answer in the affirmative.

It is evident from the Payment Form (BIR Form No. 0605) filed by petitioner with the Land Bank of the Philippines, East Avenue Branch and the official receipt issued by the latter on February 16, 2000 (*Exhibits F & G*), that petitioner paid to the Bureau of Internal Revenue on even date the total amount of P98,095.33 which consisted of the deficiency 5% withholding tax due of P53,800.00 on the leasehold rentals of P1,075,996.38 and the deficiency interest thereon of P44,295.33. Having paid the corresponding withholding taxes due, petitioner may validly claim the leasehold rentals of P1,075,996.38 as deduction from its gross income pursuant to Section 29((j) of the 1995 Tax Code, to wit:

> "**Section 29.** ***Deductions from gross income.*** – xxx
>
> (j) ***Additional requirement for deductibility of certain payments.*** – Any amount paid or payable which is otherwise deductible from, or taken into account in computing gross income or for which depreciation or amortization may be allowed under this section, shall be allowed as a deduction only if it is shown that the tax required to be deducted and withheld therefrom has been paid to the Bureau of Internal Revenue in accordance with this section, Sections 51 and 74 of this Code."

As to the second stipulated issue which refer to the disallowed professional fees of P189,624.00, petitioner claims that the said amount represents accrual in taxable year 1995 of the audit service fees it incurred in the same taxable year but were actually paid to SGV & Co. in the subsequent year 1996 (*petitioner's memorandum, page 229, CTA records*). According to petitioner, these professional fees are considered ordinary and necessary business expenses, which are deductible from its gross income. Petitioner likewise avers that professional fees of a general professional partnership like SGV & Co. are exempt from income tax under Section 23 of the 1995 Tax Code and therefore, not subject to any withholding tax.

This court agrees with petitioner that professional fees, which are payable or paid to a general professional partnership like SGV & Co., are not subject to withholding tax. The mandated 5% withholding tax under Section 1.(b) of Revenue Regulations No. 6-85 refers to professional fees payable or paid to *taxable* juridical persons. Since a general professional partnership like SGV & Co. is *exempt* from income tax under Section 23 of the 1995 Tax Code, the same does not fall within those referred to under Section 1.(b) of Rev. Reg. No. 6-85 as subject to 5% withholding tax.

Nevertheless, petitioner failed to convince this court that the disallowed amount of P189,624.00 actually represents SGV audit fees accrued in 1995 and paid in 1996. The amount of P189,624.00 does not tally with the accrued audit fees appearing in petitioner's General Ledger Listing as of December 31, 1995 *(Exhibit J)*. Moreover, granting that the 1995 General Ledger Listing shows the same amount of P189,624.00, petitioner should have also presented the billings/official receipts from SGV & Co. in order for this court to verify the propriety of the accrual of P189,624.00. For failure to substantiate/account for the disallowed professional fees of P189,624.00, petitioner should be made liable to pay the deficiency income tax due thereon.

We shall jointly discuss the third and fourth stipulated issues as they both relate to the disallowed salaries and wages of P391,563.50.

Based on the examiner's initial findings (*Exhibit H-1*), there was a discrepancy of P5,566,012.82 in the amounts of salaries and wages as per audit/investigation vis-à-vis petitioner's schedule, computed as follows:

Per BIR examiner's audit	P 89,658,339.00
Per petitioner's schedule	84,092,326.18
Difference	P 5,566,012.82

As summarized by petitioner in Exhibit V, the difference of P5,566,012.82 is accounted for as follows:

1.	Compensation of temporary workers consisting of basic pay, overtime and other payments paid to their employer, the employment agencies:		
	Asia Central Employment Services	P 2,459,648.72	
	Enriquez Security Services, Inc. (P1,195,143.40 x 80%)	956,114.72	
	United Utilities Maintenance Corp. (P1,969,969.75 x 80%)	1,575,975.80	
	Madise Corporation (part of P529,048.14)	305,123.76	P 5,296,863.00
2.	Payment of separation pay to permanent employees whose positions were declared redundant		
	Violeta Estrada	P 19,600.00	
	Angelito Esteban	19,600.00	
	Jose Recibido	229,950.00	269,150.00
			P 5,566,013.00

Per the above reconciliation, the amount of P5,296,863.00 pertains to payments made by petitioner to employment agencies for the compensation of temporary workers. Since the temporary workers are not under the employ of petitioner but those of the agencies, petitioner is only required to withhold 1% tax on its contractual payments to the employment agencies pursuant to Revenue Regulations No. 6-85, as amended. It was shown through the Annual Information Return of Income Tax Withheld on

Compensation, Expanded and Final Withholding Taxes (*Exhibit S*) and the accompanying Alpha List of Payees-Expanded Withholding Tax *(Exhibits T, T-1, T-2, T-3 & T-4*) filed by petitioner for taxable year 1995 that the total payments it made to the aforementioned employment agencies were subjected to 1% withholding tax regardless of whether a portion of the total payments was charged to factory labor-salaries and wages and another portion to the general services account (*page 16, TSN, December 11, 2001*).

Part of the alleged discrepancy of P5,566,013.00 pertains to the separation pay of redundant employees in the amount of P269,150.00. The Memo Orders (*Exhibits M, O & Q*) and the acknowledgment receipts signed by the separated employees (*Exhibits N, P & R*) proved that petitioner actually paid separation pay to some employees due to redundancy of job positions. Pursuant to Section 28(b)(7)(B) of the 1995 Tax Code, any amount received by an official or employee or by his heirs from the employer as a consequence of separation of such official or employee from the service of the employer due to death, sickness or other physical disability or for any cause beyond the control of the said official or employee is exempt from taxes regardless of age or length of service. Inasmuch as the employees were separated beyond their control and not by their own making or choice, their separation pay of P269,150.00 is not subject to any withholding tax.

Likewise, it was established through the testimony of petitioner's controller, Mrs. Rosario G. Martin, that the disallowed salaries and wages of P391,563.50 is part of the accounted difference of P5,566,013.00 (*page 12, TSN, December 11, 2001*). Considering that petitioner withheld the required withholding tax on the accounted difference of

P5,566,013.00, the amount of P391,563.50 may be allowed as deduction from petitioner's gross income.

In fine, this court finds that only the disallowance pertaining to the professional fees in the amount of P189,624.00 is valid and correct. Accordingly, petitioner should be held liable for the deficiency income tax due thereon in the amount of P116,154.84 (inclusive of interest), computed as follows:

Taxable income per return	P 95,970,758.00
Add: Disallowed professional fees	189,624.00
Adjusted taxable income	P 96,160,382.00
Income tax due thereon (35%)	P 33,656,134.00
Less: Income tax paid per return	33,589,765.00
Deficiency income tax	P 66,369.00
Add: 20% Interest from Apr. 15, 1996 to Jan. 14, 2000	49,785.84
Total deficiency income tax due	P 116,154.84

Anent the alleged 1995 deficiency withholding tax assessment of P6,867,897.71, the same arose from the alleged failure on the part of petitioner to withhold the required expanded withholding tax on the following:

		Expanded W/holding Tax Due	
		Rate	Amount
Leasehold Rental	P 1,075,996.38	5%	P 53,800.00
Professional Fees	189,624.40	10%	18,962.00
Salaries and Wages	391,563.50	19%	75,136.00
Allocated-in Benefits	19,181,662.19	19%	3,680,575.00
			P 3,828,473.00

As discussed earlier, petitioner paid the deficiency withholding tax due of P98,095.33 on the leasehold rentals of P1,075,996.38. Likewise, petitioner was able to prove that it withheld the required withholding tax due on the salaries and wages of P391,563.50. With regard to the professional fees of P189,624.00, we earlier ruled that petitioner failed to prove its allegation that the same represents accrued SGV audit fees.

As such, petitioner should be made liable for the corresponding deficiency withholding tax.

What remains to be resolved is whether or not petitioner should be assessed deficiency withholding tax on the alleged allocated-in benefits of P19,181,662.19.

The documents submitted by petitioner, namely; sample journal vouchers and General Ledger Listings for the months of February, March and April, 1995 (*Exhibits X, Y, Z, AA, BB & CC, EE, FF & GG*) and Schedule of Allocations In (Out) for the year 1995 (*Exhibit DD*) proved that the allocated-in benefits of P19,181,662.19 formed part of petitioner's claimed deduction for salaries and wages the corresponding withholding taxes of which were already withheld (*Exhibit S*). We agree with the petitioner that the "allocated in" and "allocated out" accounts are used merely for internal accounting purposes to properly charge the appropriate departments of accurate cost/expense and that the recorded salaries and wages, which already include those which have been allocated to other departments through the petitioner's internal allocation system, had been subjected to withholding tax. Hence, it was erroneous on the part of the respondent to charge petitioner of deficiency withholding tax on the allocated benefits of P19,181,662.19.

In sum, petitioner should only be held liable for deficiency withholding taxes of P34,028.42 due on the professional fees of P189,624.00, computed as follows:

Professional fees	P 189,624.00
Multiplied by withholding tax rate	10%
Deficiency withholding tax due	P 18,962.40
Add: 20% interest (Jan. 26, 1996 to Jan. 14, 2000)	15,066.02
Total deficiency withholding tax due	P 34,028.42

IN VIEW OF THE FOREGOING, petitioner is hereby **ORDERED** to **PAY** to respondent deficiency income tax of P116,154.84 and deficiency withholding tax of P34,028.42 in the total amount of P150,183.26 *(inclusive of 20% deficiency interest)*. In addition, petitioner is **ORDERED** to **PAY** 20% delinquency interest computed from February 15, 2000 until fully paid pursuant to Section 249(a)(c)(3) of the 1995 Tax Code.

SO ORDERED.

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

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

LOVELL R. BAUTISTA
Associate Judge

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Judge