REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

ISHIDA PHILIPPINES TUBE CO., INC., Petitioner,	**CTA CASE NOS. 9729**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson,* **BACORRO-VILLENA,** ***JJ.***
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: MAR 18 2021 8:45 Am

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RESOLUTION

BACORRO-VILLENA, J.:

For the Court's resolution are:

1. Petitioner's "Partial Motion for Reconsideration (to Decision dated 8 October 2020)" (**PMR**), filed on 29 October 2020, with respondent's "Comment", filed on 25 November 2020; and,

2. Respondent's "Motion for Reconsideration" (**MR**), filed on 30 October 2020, with petitioner's "Comment on the Motion for Reconsideration filed by Respondent", filed on 07 December 2020.

In petitioner's PMR, it argues that the Court committed grave abuse of discretion when it imputed the entire deficiency expanded withholding tax (**EWT**) assessment to the unprescribed portion for the taxable year (**TY**) 2012. Petitioner posits that the Court's ruling has no support in law or jurisprudence to warrant the most severe penalty for failing to establish facts. The Court's decision to impute the entire EWT assessment on the last two (2) unprescribed months is not consistent with business and human experience. It implies that there could not have been any payments for the ten (10) months from which the EWT assessment could have originated, and all the payments were made only on the last two (2) months.

Moreover, petitioner contends that respondent failed in properly informing it of the facts on which the EWT assessment was based. It points out that respondent's assessment was computed annually by comparing the annual alleged expenses that should have been subjected to EWT vis-à-vis the total EWT petitioner remitted for the year. Thus, respondent fell short in its duty to properly apprise petitioner of the specific month or period to which the EWT assessment pertains.

Petitioner likewise stresses that since the EWT is computed on a monthly basis and the monthly tax return is filed monthly, then the EWT assessment must be computed or based on and the three-year prescriptive period reckoned from each monthly EWT tax return and not on an annual basis. Hence, by computing the EWT assessment on an annual basis, respondent's EWT assessment should be considered void for failing to inform petitioner of the factual bases of the EWT assessment, that is, the specific monthly transactions from which its deficiency EWT was derived. Due process dictates that the taxpayer shall be informed in writing of the law and the facts on which the assessment is made, otherwise the assessment shall be void.

In refutation, respondent counters that the burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the Commissioner of Internal Revenue (CIR) is wrong, but that the taxpayer is right. Otherwise, the presumption of correctness of tax assessment stands. Respondent thus agrees with the Decision of the Court in imputing the entire assessment for EWT to the unprescribed months in line with the said presumption of correctness of tax assessments.

On the other hand, as regards his MR, respondent avers that the Court erred in taking cognizance of the Petition for Review for lack of jurisdiction. Respondent believes that the assessment has already attained finality when petitioner failed to submit within sixty (60) days from filing of the protest the additional relevant documents to support its request for reinvestigation.

Responding thereto, contrarywise, petitioner remains firm that the Court has jurisdiction over the instant petition since it timely filed an appeal within thirty (30) days from its receipt of the Final Decision on Disputed Assessment (**FDDA**).

Petitioner clarifies that it submitted the Service Agreement upon the filing of the protest letter and further submitted documents on scrap sales during the audit examination. The Bureau of Internal Revenue (**BIR**) can only inform the taxpayer to submit additional documents but it cannot demand what type of supporting documents should be submitted. Otherwise, the taxpayer will be at the mercy of the BIR, which may require the production of documents that a taxpayer cannot submit.

Even assuming that it did not submit relevant supporting documents, petitioner posits that the lack of supporting documents will not invalidate the fact of filing a protest. The lack of documentation will only matter when the BIR evaluates the merits of the protest, but does not result in the deficiency assessment becoming final and executory.

We resolve.

PETITIONER'S PARTIAL MOTION FOR RECONSIDERATION

After an assiduous review of petitioner's arguments and a second hard look on the records of the case, the Court finds no compelling reason to modify or reverse our earlier disquisition with respect to the EWT assessment.

While it is recognized that the period to assess for deficiency EWT for the first ten (10) months of TY 2012 (January to October) has already prescribed, the Court nonetheless imputed the entire EWT assessment to the unprescribed period of November to December 2012. To this, petitioner strongly disagrees. It assails the ruling of the Court as without legal mooring.

Petitioner's allegation is specious.

Petitioner raised the defense of prescription for the EWT assessment, yet it failed to adduce evidence relating to the expenses or payments for the months of January to October 2012 so as to clearly establish the portion of the assessment pertaining to the prescribed months. It heavily relied on its defense of prescription for the most part of TY 2012 and overlooked the importance of segregating the expenses or payments made during the prescribed period and the unprescribed period.

It is a basic tenet that he who alleges a fact has the burden of proving it and a mere allegation is not evidence. In civil cases, the party having the burden of proof must establish his case by preponderance of evidence, which means evidence of greater weight, or more convincing than that which is offered in opposition to it.[1] Petitioner, in seeking relief to this Court, has the obligation to prove its claim. *Indeed, the necessity of proving lies with the person who sues.*[2]

Indeed, this Court has consistently opined that it is incumbent upon the taxpayer to show which portion of said deficiency taxes pertain to the prescribed months and in the absence of proof, We have no alternative but to uphold the validity and correctness of the assessment and consider the entire assessment as pertaining to the unprescribed portion of the taxable year.[3]

To be clear, it is not implied that the expenses were only made in the last two (2) months, and that no expenses were incurred in the first ten (10) months as petitioner claims. However, records are inadequate to allocate which items should be cancelled for having prescribed and those which falls within the unprescribed period. Had petitioner been more circumspect in its substantiation, the Court may have nullified the portion pertaining to the prescribed period. In fact, one of the items not subjected to EWT was cancelled as it was clearly shown that the payment was made in October as evidenced by official receipt, to wit:

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1 *MOF Company, Inc. v. Shin Yang Brokerage Corporation,* G.R. No. 172822, 18 December 2009.
2 Id.
3 *Parity Packaging Corp. v. Commissioner of Internal Revenue*, CTA E.B. Case Nos. 1938 & 1942, 26 August 2020; *Liquigaz Philippines Corporation v. Commissioner of Internal Revenue*, CTA E.B. Case Nos. 1117 and 1119, 21 September 2015.

...

A.3 AMORTIZATION OF PREPAID EXPENSES NOT SUBJECTED TO EWT

As the ICPA explained, the subject amount of ₱25,000.00 represented the one-month amortization of the prepaid rent totalling to ₱150,000.00 paid on 30 October 2012, as evidenced by OR No. 1514.[4] Petitioner did not submit any evidence to support its argument that the same is not subject to 5% EWT. However, a scrutiny of petitioner's documents yields the following discrepancy:

Supplier	Per Official Receipt			Per MAP		Difference
	OR No.	Date	Amount	Month	Amount	
Jurie E. Entac	1458[5]	5/11/12	₱142,500	May 2012[6]	₱150,000	₱7,500[7]
Jurie E. Entac	1514[8]	10/30/12	142,500	-	-	142,500

From the above, petitioner did not remit the amount it withheld on 30 October 2012 on its income payment to Jurie E. Entac, (proprietor of Entac Transport Service) as evidenced by OR No. 1514 in the amount of ₱7,500.00.

Per the ICPA's examination of petitioner's documents, the ICPA also found out the non-payment of petitioner of its 5% EWT due on OR No. 1514, to wit:[9]

> ...
> 6. The aforementioned amortization of prepaid rental expense amounting to P25,000.00 represents one month amortization of the paid prepaid rents in the amount of P150,000.00 under Official Receipts No. 1514 shown as **Exhibit No. ICPA AMOR-2** that was paid on October 30, 2012. The Petitioner failed to pay the corresponding 5% expanded withholding tax of the said prepaid rent.[10]
> ...

Section 2.57.4 of RR No. 2-98, as amended by RR 12-2001[11], provides:

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4 Exhibit "ICPA AMOR-2".
5 Exhibit "ICPA AMOR-1".
6 Exhibit "ICPA MAP-5".
7 Amount withheld by petitioner computed as follows: *P150,000 – (P150,000 x 5% EWT).*
8 Exhibit "ICPA AMOR-1".
9 Division Docket, Volume I, p. 350.
10 Emphasis in the original text.
11 *Amendment to the Pertinent Provisions of Revenue Regulations No. 1-98, as Amended, Revenue Regulations No. 2-98 as Amended, and Revenue Regulations No. 6-2001, Relative to the Revision of Withholding Tax Rates on Certain Income Payments Subject to Withholding Tax, the Deferment of the New Deadline Dates For Filing Selected Tax Returns, the Reporting Requirements for Receipts of Talent Fees, and for Other Purposes.*

> ...
>
> **Sec. 2.57.4.** *Time of Withholding.* – The obligation of the payor to deduct and withhold the tax under Section 2.57 of these [R]egulations arises at the time an **income payment is <u>paid</u> or payable**, or the income payment is accrued or **recorded as an expense or asset**, whichever is applicable, in the payor's books, **whichever comes first**. The term "payable" refers to the date the obligation becomes due, demandable or legally enforceable.[12]
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> ...
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> In the instant case, petitioner only claimed the one-month amortization of ₱25,000.00 as expense and recorded the difference of ₱125,000.00 as prepaid expense asset. However, since petitioner had already paid the entire amount of ₱150,000.00 and in fact, properly withheld the amount of ₱7,500.00; it should have remitted said amount in 2012. <u>As the same is an assessment covering the October 2012 EWT Return, which had already prescribed, its cancellation will be in order.</u>[13]
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> ...

With respect to the other items of the EWT assessment, petitioner failed to forward evidence to warrant the cancellation of the assessment items. Surely, petitioner's bare allegations without corroborating evidence cannot overturn the presumption of correctness of the assessment. In *Commissioner of Internal Revenue v. Hantex Trading Co., Inc.*[14], the Supreme Court ruled in this wise:

> ...
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> As a general rule, tax assessments by tax examiners are presumed correct and made in good faith. All presumptions are in favor of the correctness of a tax assessment. It is to be presumed, however, that such assessment was based on sufficient evidence. Upon the introduction of the assessment in evidence, a *prima facie* case of liability on the part of the taxpayer is made. **If a taxpayer files a petition for review in the CTA and assails the assessment, the *prima facie* presumption is that the assessment made by the BIR is correct, and that in preparing the same, the BIR personnel regularly performed their duties.** This rule for tax initiated suits is premised on several factors other than the normal evidentiary rule imposing proof obligation on the petitioner-taxpayer: the presumption of administrative regularity; the likelihood that the taxpayer will have access to the relevant information; and the desirability of bolstering the record-keeping requirements of the NIRC.

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12 Emphasis and underscoring supplied.
13 Emphasis in the original text; underscoring supplied.
14 G.R. No. 136975, 31 March 2005.

> However, the *prima facie* correctness of a tax assessment does not apply upon proof that an assessment is utterly without foundation, meaning it is arbitrary and capricious. Where the BIR has come out with a "naked assessment", *i.e.*, without any foundation character, the determination of the tax due is without rational basis. In such a situation, the U.S. Court of Appeals ruled that the determination of the Commissioner contained in a deficiency notice disappears. ***Hence, the determination by the CTA must rest on all the evidence introduced and its ultimate determination must find support in credible evidence.***[15]
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> ...

Petitioner's assertion that the assessment is void for respondent's failure to properly inform it of the facts on which the assessment was based is likewise unavailing. As can be recalled, respondent assessed petitioner of deficiency EWT for the following items:

Expenses subject to withholding - Annex A	₱	185,006,235.72
Total tax due		2,437,464.28
Less: Tax Paid		2,244,461.57
Basic Deficiency Tax		193,002.71
Add: Interest (1.16.13 to 12.01.15)		110,936.90
Total Amount Due	₱	303,939.61

Annex A

	Amount	**Tax Due**
Rentals (5%)	4,058,378.94	202,918.95
Professional Fees (0%)	750,028.42	-
Professional Fees (10%)	66,456.00	6,645.60
Professional Fees (15%)	1,312,471.83	196,870.77
Purchase of Materials (1%)	154,534,905.11	1,545,349.05
Purchase of Services (2%)	24,283,995.42	485,679.91
	185,006,235.72	2,437,464.28

Although the Formal Letter of Demand (FLD) may only contain a summary of the items subject to EWT and may not be as detailed as petitioner expected, such brevity will not result in the invalidation of the assessment. The *prima facie* presumption of correctness of assessment in favor of respondent stands considering that the subject assessment was based on petitioner's own records and accounts. It behooves upon petitioner to refute the same. Petitioner is charged with the knowledge of the expenses it incurred and it had ample opportunity to present countervailing evidence to merit the nullification of the assessment against it. Regrettably, the pieces of

[15] Citations omitted; emphasis supplied and italics in the original text.

evidence adduced by petitioner were insufficient to cancel the assessment for EWT.

The Court has exhaustively discussed in the assailed Decision each item of the EWT assessment and the reasons for upholding or modifying the same. We thus find it unnecessary to again delve on the same, much less disturb our earlier findings.

RESPONDENT'S MOTION FOR RECONSIDERATION

A careful perusal of respondent's MR readily reveals that the arguments raised are mere reiterations of the basic issues in the Petition for Review, which the Court already considered and passed upon.

Respondent essentially claims that the Court lacks jurisdiction as the assessment has already become final, executory and demandable for petitioner's failure to submit relevant supporting documents within sixty (60) days from the filing of the protest or the request for reinvestigation.

As We have earlier ruled, it is the taxpayer that decides what documents it will submit to support its protest. The records of the case show that petitioner did attach a copy of the Service Agreement to the protest. The term "relevant supporting documents" in Section 228[16] of the National Internal Revenue Code (**NIRC**) of 1997, as amended, should be understood as those documents necessary to support the legal basis in disputing a tax assessment as determined by the taxpayer. The BIR can only inform the taxpayer to submit additional documents. It cannot demand what type of supporting documents should be submitted. Otherwise, the taxpayer will be at the mercy of the BIR, which may require the production of documents that a taxpayer cannot submit.[17]

Verily, respondent failed to raise plausible matters that would justify a deviation from our earlier findings. In *Shangri-la International*

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16 Protesting of Assessment.

17 *Commissioner of Internal Revenue v. First Express Pawnshop Company, Inc.*, G.R. Nos.172045-46, 16 June 2009.

Hotel Management v. Developers Group of Companies, Inc.[18], the Supreme Court elucidated that it is incumbent upon the movant to convince the Court that its findings are contrary to law to warrant the relief sought, *viz*:

> ...
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> The bulk of the aforementioned grounds is a mere rehash of movant's previous arguments. While DGCI is correct in stating that a motion for reconsideration, by its very nature, may tend to dwell on issues already resolved in the decision sought to be reconsidered and that this should not be an obstacle for a reconsideration, the hard reality is that movant has failed to raise matters substantially plausible or compellingly persuasive to warrant the desired cause of action.
>
> Considering that the grounds presently raised have been sufficiently considered, if not squarely addressed, in the subject Decision, it behooves movant to convince the Court that certain findings or conclusions in the Decision are contrary to law. As it is, however, the instant motion does not raise any new or substantial legitimate ground or reason to justify the reconsideration sought.
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> ...

WHEREFORE, premises considered, petitioner Ishida Philippines Tube Co., Inc.'s Partial Motion for Reconsideration (to Decision dated 8 October 2020) and respondent Commissioner of Internal Revenue's Motion for Reconsideration are hereby **DENIED** for lack of merit.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

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

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18 G.R. No. 159938, 22 January 2007.