Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

UPSI PROPERTY HOLDINGS, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 7702

Members:

CASTAÑEDA JR., *Chairperson*
CASANOVA, and
MINDARO-GRULLA, *JJ.*

Promulgated:
JUN 2 1 2011
2:01 p.m.

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RESOLUTION

For resolution of this Court is the petitioner's **Omnibus Motion**[1] filed on March 23, 2011, praying for the cancellation of the assessment on deficiency expanded withholding taxes and the subsequent withdrawal of the present Petition for Review.

In its motion, petitioner alleges that during the pendency of the proceedings, respondent issued a Revised Revenue Officer's Audit Report[2] (Revised Audit Report) which states the recomputed expanded withholding tax deficiency in the amount of P78,076.03. The Revised Audit Report was duly signed by Revenue Officer J.C. Quevedo, Group Supervisor Doris Rimando and Revenue District Officer (RDO) Laura M. Salita. On the basis of the Revised Audit Report, petitioner paid the recomputed assessed amount of

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[1] Division Docket, Vol. II, pp. 1006-1008.
[2] Annex "A", Reply (to Respondent's Comment dated 11 April 2011), Division Docket, Vol. II, pp. 1023-1025.

P78,076.03 on January 15, 2011 through Electronic Filing and Payment System (EFPS).

On April 11, 2011, respondent filed her **Comment (To Petitioner's Omnibus Motion)**[3], stating that the aforementioned Revised Audit Report was not final as the same was not approved and signed by the Chief of the Assessment Division and the Regional Director of Revenue Region 6 of the Bureau of Internal Revenue (BIR). Thus, the respondent argues that the original assessment of deficiency expanded withholding taxes in the amount of P1,617,910.13 against the petitioner remains valid and in full force. Accordingly, respondent opposes petitioner's Omnibus Motion on the ground that it lacks basis.

In its **Reply (to Respondent's Comment dated April 11, 2011)**[4] on April 25, 2011, petitioner argues that the Revised Audit Report is valid. The absence of the signature of the Chief of Assessment Division does not invalidate it on the ground that the said report already bears the signature and approval of RDO Salita, the senior officer of the former. As for the alleged lack of approval of the Regional Director, petitioner points out that in the Indorsement Memorandum[5] addressed to the Regional Director, Revenue Officers Quevedo, Rivero and Cartagena, Group Supervisor Rimando recommended the issuance of a Revised Final Assessment Notice stating the revised assessment of deficiency expanded withholding taxes in the amount of P78,076.03. Likewise, in a Memorandum[6] dated December 10, 2007, Revenue Officers Quevedo, Rivero and Cartagena, Group Supervisor Rimando and RDO Huelva, forwarded the tax dockets of petitioner to the Regional Director for appropriate action.

Petitioner further argues that the presumption of regularity in the performance of the official duties of the revenue officers, group supervisor and RDO should be observed. Finally, petitioner alleges that the action of

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[3] Division Docket, Vol. II, pp. 1014-1016.
[4] Division Docket, pp. 1017-1022.
[5] Annex "B", Reply (to Respondent's Comment dated 11 April 2011), Division Docket, Vol. II, p. 1025.
[6] Annex "C", Reply (to Respondent's Comment dated 11 April 2011), Division Docket, Vol. II, p. 1026.

respondent impugning the validity of the Revised Audit Report is inconsistent with her earlier representations during the proceedings in this case. Petitioner points out that since it manifested its intention to pay the revised assessed amount pursuant to the Revised Audit Report during the June 09, 2010 hearing, respondent did not exhibit any opposition nor question the validity of the report and the intended payment until now. Instead, respondent, through its then counsel Atty. Cacatian, represented that the Revised Audit Report is final and even encouraged petitioner to pay the revised amount assessed. Petitioner relied on the representations of respondent as to the validity and finality of the Revised Audit Report when it paid the revised amount of deficiency expanded withholding taxes. Thus, petitioner argues that respondent, after guaranteeing the finality & validity of the Revised Audit Report cannot now recant on her representations and claim that the said report is invalid.

After a careful study of the arguments proffered by the petitioner in its Omnibus Motion and Reply, as well as those submitted by respondent in its Comment, this Court holds that the Revised Audit Report is valid and the payment of the revised assessed amount by the petitioner effectively settles in full, the deficiency expanded withholding taxes assessed against it.

The Revised Audit Report, being the work product of revenue officers in the performance of their official duties, enjoys the presumption of regularity pursuant to Section 3(m) of Rule 131 of the Revised Rules on Evidence.[7] In the case of *Kemwater Phil. Corp. vs. Secretary of Finance and Commissioner of Customs*[8], the former First Division of this Court ruled that unless contradicted by other evidence, the presumption on the regularity in the performance of official duties should be observed. This Court stated:

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[7]

RULE 131
Burden of Proof and Presumptions
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Section 3. *Disputable presumptions.* — The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:

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(m) That official duty has been regularly performed;

[8] CTA Case. No. 7001, December 4, 2008.

> "Since respondents' witnesses Mr. Renato C. Reyes and Ms. Maria Ney B. Poculan are public officers, they enjoy the disputable presumption that their official duty has been regularly performed unless contradicted and overcome by other evidence, pursuant to Section 3 (m), Rule 131 of the Revised Rules of Court. In the absence of proof that the aforesaid witnesses performed their duties irregularly, it is presumed that the acts in question were in conformity with the usual conduct of business."

In the instant case, the Revised Audit Report was issued and duly signed by the revenue officers assigned to the assessment of deficiency taxes against petitioner. They have the competence as well as the authority to determine the amount of petitioner's deficiency taxes and issue an audit report stating the same. As respondent failed to adduce evidence that the Revised Audit Report was invalid and therefore not yet final, this Court holds that the issuance of the said report was in order and that petitioner can rely on the same in settling its deficiency expanded withholding taxes.

Moreover, respondent, in her representations before this Court, did not express any doubt on the validity of the report nor objected when petitioner manifested its intention to pay the revised assessed amount as well as when petitioner made the actual payment. Rather, the records of the case reveal that petitioner's payment was actually made with the conformity of respondent. Counsel for the respondent was well aware of the petitioner's settlement of its assessed deficiency taxes pursuant to the Revised Audit Report as the latter manifested this in open court. No objection was submitted on the part of respondent. Instead, her counsel guaranteed that the Revised Audit Report was already final and that payment of the revised assessed amount will be in full settlement of the deficiency expanded withholding taxes imposed against petitioner. The statements and the actions of respondent, acting through her counsel, constitute a judicial admission, which may only be contradicted by a showing that a palpable mistake was made.[9]

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[9] RULE 129

The admissions were made in open court and there was no evidence that there was palpable mistake made in the same. Thus, respondent cannot now turn its back on its past representations to this Court and to petitioner and claim that the Revised Audit Report is not yet final and that petitioner's payment does not fully settle its tax deficiencies. Doing so will be contrary to justice and fair play, two things that this Court vows to attain for its litigants.

WHEREFORE, premises considered, petitioner's **Omnibus Motion** is hereby **GRANTED** and the assessment for deficiency expanded withholding tax is hereby **CANCELLED** and **SET ASIDE.** Accordingly, as the deficiency expanded withholding tax is the only remaining issue to be resolved in this case and considering our ruling on the said matter, the instant Petition for Review is deemed **CLOSED** and **TERMINATED.**

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CAESAR A. CASANOVA
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

What Need Not Be Proved

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Section 4. *Judicial admissions.* — An admission, verbal or written, made by the party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made.