REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

ACES PHILIPPINES CELLULAR SATELLITE CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8567

Members:

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

Promulgated:

OCT 15 2014

9:30 a.m.

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RESOLUTION

COTANGCO-MANALASTAS, *J.:*

For resolution is petitioner's *Motion for Reconsideration (For Petitioner Aces Philippines Cellular Satellite Corporation)* filed on August 8, 2014 with respondent's *Comment (Re: Petitioner's Motion for Reconsideration)* filed through registered mail on September 26, 2014 and received by this Court on October 2, 2014.

Petitioner moves for the reconsideration of this Court's Decision dated July 23, 2014, which affirmed respondent's deficiency final withholding tax assessment against petitioner and cancelled the imposition of compromise penalty, *to wit*:

> "**WHEREFORE**, premises considered, the assessment issued by respondent against petitioner covering deficiency final withholding tax for taxable year 2006 as per the assailed Final Decision on Disputed Assessment dated August 23, 2012 is hereby **AFFIRMED** with some modifications. Accordingly, petitioner is **ORDERED TO PAY** respondent the amount of **P87,199,073.94**, representing deficiency final withholding tax for taxable year 2006, inclusive of the twenty-five percent (25%) surcharge imposed under Section 248(3) of the NIRC of 1997, computed as follows:

Basic Final Withholding Tax Due	P 69,759,259.15
Add: 25% Surcharge	17,439,814.79
TOTAL AMOUNT DUE	**P87,199,073.94**

Likewise, petitioner is **ORDERED TO PAY** the following:

(a) deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency final withholding tax of P69,759,259.15 computed from January 10, 2007 until full payment thereof pursuant to Section 249(B) of the NIRC of 1997; and

(b) delinquency interest at the rate of 20% per annum on the total amount of P87,199,073.94 and on the 20% deficiency interest which have accrued as afore-stated in (a), computed from October 3, 2012 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997.

SO ORDERED."

In its motion, petitioner asserts that the Court erred in ruling that the satellite airtime services subject of the satellite airtime fees is considered performed in the Philippines so as to be deemed income from within the Philippines, hence, subject to the Philippine income tax and consequently to final withholding tax.

Petitioner argues that stare decisis is not applicable. The cases of *Commissioner of Internal Revenue vs. Juliane Baier-Nickel*[1] and *Alexander Howden & Co., Ltd. vs. Collector of Internal Revenue*[2] cited in the assailed Decision are not in any way similar to the circumstances surrounding Aces International Limited (AIL). As such, it is of paramount injustice to petitioner and AIL to be treated similarly with the abovementioned cases which in any way do not deal with technological advances such as satellite communications services. The labor or personal service rendered in the *Baier-Nickel* case can be easily determined considering that the individual's stay in the Philippines is measurable and perceptible, whereas in the instant case, the intangibility of the satellite airtime makes it different from rendering of labor or personal services. The issue being a novel one, has to be re-examined and re-decided.

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[1] G.R. No. 153793, August 29, 2006.
[2] G.R. No. L-19392, April 14, 1965.

Petitioner further argues that several United States (US) tax laws, jurisprudence and tax regulations address the source of income principle on satellite communications which have persuasive effect in our jurisdiction. In the United States, as a general rule, an enterprise is not considered to have performed services in the United States without some physical presence therein. As early as 1942, the US Court of Appeals has recognized that the language of the statutes clearly demonstrates the intent of United States Congress that the source of income is the situs of the income-producing service. The repeated use of the words within and without the United States denotes a concept of some physical presence, some tangible and visible activity. If income is produced by the transmission of electromagnetic waves that cover a radius of several thousand miles, free of control or regulation by the sender from the moment of generation, the source of that income is the act of transmission.

Based on the foregoing, petitioner contends that the source of AIL's income derived from satellite airtime service fees paid by petitioner is the act of transmission of the call which occurs in outer space, and not the property, activity or service that produced the income. Moreover, all of AIL's facilities are located outside the Philippines as its satellite is located in outer space whereas its ground station is situated in Batam Island, Indonesia. Verily, AIL's service of providing satellite airtime to petitioner is performed outside the Philippines.

Petitioner likewise cited Section 863(e)(1)(B)(i) of the US Internal Revenue Code which provides that any international communications income of a foreign person is sourced outside the United States, except as provided in regulations or Section 863(e)(1)(B)(ii), which provides that if a foreign person maintains an office or other fixed place of business in the United States, any international communications income attributable to such office or other fixed place of business is U.S. source income. Following the foregoing, AIL, being a foreign person not maintaining any office or fixed place in the Philippines, any international communications income earned by it through the payment of satellite airtimes fees by petitioner should be considered as sourced outside the Philippines.

Petitioner also contends that assuming for the sake of argument that the source of income is the activity that produced the income, the activity which produced the income took place outside the Philippines as petitioner's subscribers are located outside the Philippines. The subscriber base of petitioner are mainly seafarers who subscribed to satellite phone services since they do not have access to various cell sites in the Philippines as they are located outside the Philippines or in the high seas.

Petitioner avers that a careful reading of the Mertens Federal Law of Taxation cited in the *Baier-Nickel* case should lead to a deduction that the source of AIL's income derived from satellite airtime services fees paid by petitioner is the act of transmission of the call which occurs in outer space which is where the service is actually rendered, and not the property, activity or service that produced the income as enunciated in the *Baier-Nickel* case.

Finally, petitioner asserts that assuming for the sake argument that the satellite airtime fees are subject to Philippine income tax and consequently to withholding tax, it is not the intent of the law to simultaneously impose a 20% deficiency interest per annum and a 20% delinquency interest per annum on the unpaid balance of tax deficiency until full payment.

In her comment, respondent counter-argues that the satellite airtime services were performed in the Philippines, hence, deemed income from within the Philippines. Both our tax laws and jurisprudence clearly lay down the rule that the "source of income" is the place where the service was performed or the place where the activity that produced the income took place.

Respondent maintains that the activity AIL is engaged in is providing satellite communication time. As such, there can only be an income-producing activity when such communication time is subscribed to. Petitioner, on its part, entered into an Airtime Purchase Agreement with AIL to make this satellite communication time available in the Philippines. With that, the services, which is making the satellite communication time available in the Philippines, is actually offered in the Philippines, and subscribed within the Philippines. There is, indeed, no doubt to the fact that the exchange of service and money, as payment of such service, occurred within the Philippines.

After weighing the arguments presented, the Court finds no merit in the instant motion.

The issue on whether the income of AIL, a non-resident foreign corporation, from satellite airtime fees was sourced from within or outside the Philippines had already been thoroughly discussed and passed upon in the assailed Decision.

To recapitulate, as held in *Commissioner of Internal Revenue vs. Juliane Baier-Nickel*[3] and *Alexander Howden & Co., Ltd. vs. Collector of Internal Revenue*[4], the source of income is the property, activity or service that produced the same; the important factor which determines the source of income of personal services is not the residence of the payor, or the place where the contract for service is entered into, or the place of payment, but the place where the services were actually rendered. In this case, the activity that produces the income is the undertaking of providing satellite communication time to be delivered by AIL and utilized by petitioner and its subscribers in the Philippines. Therefore, the activity which produced the income took place in the Philippines. The evidence presented by petitioner is insufficient to support its claim that the service fee received by AIL should be considered as income from sources outside the Philippines.

US cases may have persuasive effect in our jurisdiction, because Philippine income tax law was patterned after its US counterpart[5], but they are not controlling in our jurisdiction.

Anent the imposition of both deficiency and delinquency interests, Section 249 of the NIRC of 1997, as amended, provides:

> "SEC. 249. Interest. —
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> (A) *In General.* — There shall be assessed and collected on any unpaid amount of tax, interest at the rate of twenty percent (20%) per annum, or such higher rate as may be prescribed by rules and regulations, from the date prescribed for payment until the amount is fully paid.

[3] G.R. No. 153793, August 29, 2006.
[4] G.R. No. L-19392, April 14, 1965.
[5] *Commissioner of Internal Revenue vs. Solidbank Corporation*, G.R. No. 148191, November 25, 2003.

> (B) *Deficiency Interest.* — Any deficiency in the tax due, as the term is defined in this Code, shall be subject to the interest prescribed in Subsection (A) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof.
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> (C) *Delinquency Interest.* — In case of failure to pay:
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> xxx xxx xxx
>
> (3) A deficiency tax, or any surcharge or interest thereon on the due date appearing in the notice and demand of the Commissioner, there shall be assessed and collected on the unpaid amount, interest at the rate prescribed in Subsection (A) hereof until the amount is fully paid, which interest shall form part of the tax."

A comparison of Section 249(B) and 249(C)(3) of the NIRC reveals that the deficiency interest on any deficiency tax is assessed "from the date prescribed for its payment until the full payment thereof" while the delinquency interest, which is imposed for failure to pay a deficiency tax or any surcharge or interest thereon, is assessed starting "on the due date appearing in the notice and demand of the Commissioner ... until the amount is fully paid". Clearly, the law allows the imposition of these two kinds of interest simultaneously.

All the foregoing considered, this Court finds no compelling reason to reverse or modify the assailed Decision.

WHEREFORE, premises considered, petitioner's Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CAESAR A. CASANOVA
Associate Justice