REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

MEDTEX CORPORATION,
Petitioner,

- versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. Case No. 8508

Members:

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

Promulgated:

DEC 15 2014 10:40 a.m.

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RESOLUTION

COTANGCO-MANALASTAS, J.:

The "Entry of Appearance", filed on October 30, 2014 by Espina & Yumul-Espina as new counsel for petitioner, is hereby NOTED.[1]

For resolution is respondent's Motion for Partial Reconsideration[2], filed through registered mail on September 17, 2014, and received by this Court on September 24, 2014.

On October 30, 2014, petitioner, through counsel, filed its Opposition[3] to respondent's Motion for Partial Reconsideration.

Respondent requests this Court to reconsider its Decision[4], dated September 1, 2014, which disposed of the case, as follows:

> "WHEREFORE, premises considered, the instant Petition for Review is hereby PARTIALLY GRANTED. The assessment issued by respondent against petitioner for calendar year 2006 covering the alleged deficiency expanded withholding tax in the amount of P405.00 is

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[1] Docket, pp. 2226-2228.
[2] Docket, pp. 2202-2208.
[3] Docket, pp. 2229-2234.
[4] Docket, pp. 2163-2200.

> CANCELLED and WITHDRAWN, while the assessment for deficiency income tax and final withholding tax is UPHELD with some modifications. Accordingly, petitioner is ORDERED TO PAY the amount of P201,146.68 and P34,600.63 representing deficiency income tax and FWT, respectively, inclusive of the twenty-five percent (25%) surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, xxx"[5]

In addition to the basic deficiency tax and surcharge, petitioner Medtex was also ordered to pay deficiency interest and delinquency interest on the amounts due.[6]

In the motion for partial reconsideration, respondent Commissioner of Internal Revenue (CIR) once again reiterates the argument that petitioner's alphalist did not reconcile with the amounts in the Salaries and other employee benefits reflected in the Financial Statements. Respondent also reiterates that the disallowance of various expenses as deductions is because the same are not allowed as deductions under the PEZA Law.

A perusal of respondent's Motion for Partial Reconsideration readily reveals that the arguments raised have been previously considered, evaluated, and discussed by the Court in the Decision dated September 1, 2014.

With respect to the reconciliation of petitioner's alphalist with the amounts in the Salaries and other benefits reflected in the Financial Statements, the Court has already found that the petitioner has satisfactorily explained the discrepancy in the reported amounts of Salaries, and consequently, it has no unreported income, contrary to the findings of the respondent.[7]

As to the issue of deductible direct costs, We reiterate our discussion, as follows:

> "It is clear from the amendment under RR No. 11-05 that the list is not meant to be all-inclusive but merely enumerates the expenses that can be considered as direct costs. PEZA-registered enterprises may be allowed to deduct expenses which are in the nature of

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[5] Docket, p. 2198.
[6] *Ibid.*
[7] Docket, pp. 2180-2182.

> direct costs even though the same are not included in the list.
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> The criteria in determining whether the item of cost or expense should be part of direct cost is the direct relation of such item in the rendition of the PEZA-registered services. If the item of cost or expense can be directly attributed in providing the PEZA-registered services, then it should be treated as direct cost."[8]

Based on the foregoing, this Court sustained the disallowance of Forex Loss, Other Dues to Authorities, and portions of Documents and Handling; Miscellaneous; and Office Supplies.[9] The assessment for deficiency income tax was reduced to P160,917.34.[10]

As to petitioner's argument that respondent's motion for partial reconsideration has been rendered moot and academic due to petitioner's payment of the tax liability[11], this Court disagrees.

This Court's Decision, dated September 1, 2014, has not yet attained finality and therefore, is not yet executory. Even more so considering that respondent CIR has filed a motion for partial reconsideration questioning the decision and therefore the reduction of the assessments.

The cases cited by petitioner do not have the same factual circumstances as the instant cases and are not applicable. The *Flores* case[12] involves the payment of taxes pursuant to the availment of tax amnesty under Presidential Decree No. 68 dated November 24, 1972, while the *Belle* case[13] dealt with payment of tax liabilities upon availment of the Tax Amnesty Program under R.A. No. 9480.

In the instant case, there is no tax amnesty program. Instead, petitioner unilaterally paid the deficiency taxes, as found by this Court, before the finality of the Court's Decision.

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[8] *East Asia Utilities Corporation vs. Commissioner of Internal Revenue*, CTA Case No. 8179, May 21, 2014.
[9] Docket, pp. 2189-2194.
[10] Docket, p. 2194.
[11] Docket, pp. 2229-2231.
[12] *Flores vs. Court of Tax Appeals and the Commissioner of Internal Revenue*, G.R. No. L-24186, May 31, 1973.
[13] *Belle Corporation vs. Commissioner of Internal Revenue*, G.R. No. 182176, October 4, 2010.

Petitioner's payment of the deficiency taxes and final withholding taxes does not render the assessments moot, as the same is still subject to reconsideration and further appeal. At best, petitioner's payment of the deficiency taxes, based on this Court's Decision, only halts the running of the deficiency and delinquency interests corresponding to the amounts paid.

WHEREFORE, premises considered, the instant Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CONCURS:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CAESAR A. CASANOVA
Associate Justice