REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

TAISHO HIZON MANUFACTURING, INC., Petitioner,	**C.T.A. CASE NO. 7519**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson* **UY,** *and* **PALANCA-ENRIQUEZ,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** MAR 2 5 2008 4:10 p.m.

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RESOLUTION

Petitioner's **"Notice of Change of Address"** filed on February 20, 2008 is hereby **NOTED**; and the **"Urgent Motion to Admit"** filed on same date is **GRANTED**. Petitioner's Memorandum is hereby **ADMITTED**.

Now, this Court shall resolve petitioner's **"Motion for Judgment Based On Judicial Admissions"** filed on November 5, 2007. Respondent failed to file her memorandum in support of her respective position within the prescribed period.

Petitioner submits that it is appropriate for this Court to render judgment this early since the admissions contained in the Joint Stipulation are sufficient to decide on the merits of the petition without having a full blown trial of the case. It avers that:

"5. During the Pre-Trial Conference, Respondent, realizing that the alleged discrepancies in the BIR Form 2307 and the Financial Statements of Petitioner was a result of a 'timing difference' admitted that there was no undeclared receipts. As to the discrepancies in the Security Services per alphalist, Respondent admitted that there is no unaccounted income payments considered as undeclared income since the discrepancy was also a result of a timing difference (Please see pp. 6-8, Joint Stipulations). The assessment amount of ₱1,840,207.75 being a result of timing difference has no basis and should be cancelled.

6. As to the Income payments not subjected to withholding income tax (and disallowed as deductions from Gross Income), Respondent made the following admissions:

a. Respondent admitted that Petitioner should not have been assessed ₱197,839[.]60 since (i) it had already paid the withholding tax on ₱15,000.00 (for the legal fees) after receiving the Post Reporting Notice, and (ii) the ₱182,840.00 (for audit fees) is without basis because Petitioner's auditor, Joaquin Cunanan & Co. is a General Professional Partnership which is exempted from withholding taxes. (Please see pp. 8-9, Joint Stipulations)

b. As to the assessment of ₱342,493.20, Respondent likewise admitted that it no longer had basis after going through the documents in the docket it was determined that of the assessed amount. ₱245,893.20 represented the purchase of maintenance supplies and repair parts while the balance of ₱96,600.00 was subjected to withholding tax and paid after receiving the Post Reporting Notice.

c. As to the ₱450,701.04 assessment for Salaries, Direct and Benefits, Respondent after going through the docket admitted that the ₱123,173.73 was admitted by Respondent to be a deminimis expense which may not be subjected to withholding tax and should be allowed as an expense from gross income. (Please see pp. 9-10, Joint Stipulations)

7. In page 10 of the Joint Stipulation, Respondent clarified that 'since there was no failure to subject the Professional Fees and Repairs and Maintenance items to

> Expanded Withholding Tax, it is only proper that it be allowed as a deduction from gross income.' With this admission, the assessment in the amount of ₱43,008.15 for Deficiency Expanded Withholding Tax has no basis and should be cancelled.
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> 8. As to the assessment of ₱1,980,995.25 for Deficiency Final Withholding Tax on the cash dividend declared and paid by Petitioner to Hizon Laboratories, Inc. and Taisho Pharmaceuticals (Philippines), Inc., Respondent after going through his docket did not deny that both corporations are domestic corporations and admitted that being such, cash dividends distributed to it are not subject to final withholding tax. (Please see p. 11, Joint Stipulations)"

Upon review of the Joint Stipulation of Facts and Issues submitted by the parties on July 13, 2007, and admitted by this Court *via* a Resolution dated September 26, 2007; and the records of the case, We **RESOLVE** to **GRANT** petitioner's motion.

In contradicting respondents findings of undeclared receipts and income, petitioner pointed out that the discrepancy was a result of timing difference. We reviewed and verified the items under "Annex A"[1] of the parties' Joint Stipulations and found that petitioner's contention is well supported. The submitted Certificates of Creditable Withholding Taxes, official receipts, and sales invoices show that a portion of the discrepancy resulted from sales reported in 2002, and the taxes are withheld only in 2003; and some income reported as sales in 2001 were reflected in the Certificates of Creditable Withholding Taxes only in 2002.[2] The reconciliation of petitioner's income for the year 2002 shows the following:[3]

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[1] *Docket*, p. 125.
[2] *Ibid.*, pp. 127-133, and 146-149.
[3] *Ibid.*, p. 125.

Income per Certificate of Creditable Tax Withheld at Source

1st Quarter		P 7,807,642.00
xxx		
2nd Quarter		8,441,160.50
xxx		
3rd Quarter		6,442,847.00
xxx		
4th Quarter		9,688,977.50
xxx		
Total Income per Certificate		P 32,360,627.00
Reconciling Items: Add (Deduct)		
Invoice No. 239-Nov. 22 sales (Note 2)	P 1,023,983.70	
Erroneous recording of Income per Certificate (See attached schedule)		
7.00		
January Income per Certificate (Note 1)	(2,844,015.00)	(1,819,994.30)
Income per Financial Statements (Note 3)		P 30,540,632.70

Note 1-January Income per Certificate

January 2002 income per certificate reported by Taisho Pharmaceuticals is an income already recorded per FS and reported per Income Tax in November and December 2001 by Taisho Hizon Mfg., Inc. (See attached Schedule). There was a timing difference since at the time the income is already recognized by Taisho Hizon Manufacturing, Inc., it was not yet recognized as expense by Taisho Pharmaceuticals. This should not form part of 2002 income subject for Income Tax otherwise it will result to double taxation.

Note 2- Invoice No. 239

Invoice No. 239 is already recorded per FS and reported per Income Tax in 2002 by Taisho Hizon Mfg., Inc. but not yet recognized as expense by Taisho Pharmaceuticals hence this is not included as income per certificate in 2002. It was collected per OR#0195 in Jan. 17, 2003. (See attached Invoice and OR)

Note 3- Income per Financial statements

Income per Financial Statements is based on Invoice which is also the basis for Value Added Tax and Income Tax. (See attached schedule and photocopy of Invoices).

As to the deficiency arising from unaccounted income payments considered as undeclared income, petitioner presented to Us "Annex B."[4] With supporting vouchers, statement of accounts and official receipts, [5] the P20,213.97 was accounted for as follows:

Security services from 12/01-31/2001 paid in January 3, 2002 per Voucher 1734	(P 36,293.39)
Accrual of Security services from 12/16-31/202 per JV012-10 subjected to Expanded Withholding Tax when actual payment was made in January 6, 2003 per Voucher 2101 and remitted in January 2003 Expanded Withholding Tax remittance.	16,079.42
Net adjustment	(P 20,213.97)

With respect to income payments not subjected to withholding tax, petitioner submitted to Us several annexes for consideration and study. "Annex C" showed that part of P197,839.60, representing the professional fees allegedly not subjected to withholding tax, was the amount of P15,000.00 which petitioner admitted to be due to respondent.[6] Thus, petitioner paid the same as evidenced by Monthly Remittance Return of Creditable Income Taxes Withheld (Form 1601-E).[7] As regards the balance of P182,839.60, respondent admitted that the finding has no basis considering that this corresponded to audit fees paid to Joaquin Cunanan & Co., a general professional partnership, hence not subject to withholding tax.[8]

As regards the repairs and maintenance, "Annex D," together with vouchers and official receipts, validly supports petitioner's claim that

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[4] *Ibid.*, p. 191.
[5] *Ibid.*, pp. 192-258.
[6] *Ibid.*, p. 259.
[7] *Ibid.*, p. 263.
[8] *Ibid.*, pp. 265-277.

P245,893.20 was expense validly incurred.[9] The balance of P96,600 was duly paid as reflected in Form 1601-E.

On the salaries, direct labor and benefits, "Annex E,"[10] SSS special bank recipts,[11] Philhealth Contributions Returns,[12] and PAG-IBIG Fund Receipts[13] showed that P327,527.45 was actually paid to SSS, Philhealth, and PAG-IBIG. Petition also proved that it incurred *de minimis* expense in the amount of P123,173.73 as the same was supported by various vouchers and invoices.[14]

Finally, petitioner is correct in pointing out that the cash dividend declared and paid for taxable year 2002 in the amount of P9,991,892.00 is not subject to tax. Petitioner also attached copies of the Articles of Incorporation of the two domestic corporations as proofs.[15]

As all of the above were admitted by respondent, there is nothing left for Us to resolve. In fact in the Joint Stipulations of Issues, both parties agreed and stated:

> "After going through voluminous records of the case and discussing the facts of the case, and it has been determined that all proofs against the deficiency have been substantiated, the Parties have jointly agreed that there are no more issues for the Honorable Court to resolve since the issues involved in the case which are factual in nature have been clarified and resolved."[16]

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[9] *Ibid.*, pp. 279, and 281-304.
[10] *Ibid.*, p. 305.
[11] *Ibid.*, pp 307-330.
[12] *Ibid.*, pp 331-343.
[13] *Ibid.*, pp 344-380.
[14] *Ibid.*, pp 381-402.
[15] *Ibid.*, pp. 403-423.
[16] *Ibid.*, p. 11.

Section 1 of Rule 35 of the Revised Rules of Court states:

> "**Section 1.** *Summary judgment for claimant.* A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory relief may, at any time after the pleading in answer thereto has been served, move with supporting affidavits, depositions or admissions for a summary judgment in his favor upon all or any part thereof."

Summary judgment "is a device for weeding out sham claims or defenses at an early stage of the litigation, thereby avoiding the expense and loss of time involved in the trial. The very object is 'to separate what is formal or pretended in denial or averment from what is genuine and substantial, so that only the latter may subject a suitor to the burden of trial.' xxx The test, therefore, of a motion for summary judgment is whether the pleadings, affidavits, and exhibits in support of the motion are sufficient to overcome the opposing papers and to justify a finding as a matter of law that there is no defense to the action or the claim is clearly meritorious."[17]

Proceeding therefrom, We find that there is nothing left to be tried and resolved as the parties have already agreed on all matters material to petitioner's claim.

With respect to petitioner's prayer for the cancellation of the deficiency tax assessment against it, We likewise find the same in order.

WHEREFORE, petitioner's motion is hereby **GRANTED.** The Preliminary Assessment Notice dated December 16, 2005 and the Formal Letter of Demand, together with the Final Assessment Notice, dated January

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[17] *Estrada v. Hon. Consolacion, et al.*, 71 SCRA 523 (1976).

12, 2006 issued against petitioner are hereby **CANCELLED** and **SET ASIDE**.

SO ORDERED.

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

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice