REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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HONDA CARS MAKATI, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 6689

Members:

ACOSTA, *Chairperson*
BAUTISTA, and
CASANOVA, *JJ.*

Promulgated:
APR 11 2007; 1:10pm

x -x

DECISION

CASANOVA, C., J.:

Before Us is a Petition for Review under Section 7 of Republic Act No. 1125, as amended by Republic Act No. 9282, seeking the reversal of the Final Decision on Disputed Assessment dated March 21, 2003 issued by the Commissioner of Internal Revenue and the cancellation of amended Assessment Notice No. WE-060-97-03-273 for deficiency withholding tax on compensation income in the amount of **One Million Fifty Thousand One Hundred Eighty Five Pesos and 36/100 (P1,050,185.36)** involving the taxable year 1997.

The material antecedent facts:

Honda Cars Makati, Incorporated ("petitioner") is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal business address at Magallanes Commercial Center, Makati City. It has two (2) branches, namely, Honda Cars Pasig and Honda Cars Alabang with respective businesses located at E. Rodriguez Avenue, Calle Industria, Bagumbayan, Quezon City and Alabang Zapote Road corner Investment Drive, Alabang, Muntinlupa City.[1]

Petitioner is primarily engaged in the sale, distribution, service, repair of automobiles, motor cars, motor trucks, wagons, buggies, carriages and mechanically propelled vehicles, and vehicle engines, parts, accessories, supplies, and other articles; to operate chain stores and general merchandising pertaining to motor vehicles; to build, maintain, lease or otherwise acquire, own, hold and operate warehouses, agencies, structures, service centers and showrooms which may be used in connection with its business; to buy and sell and generally deal in all kinds of merchandise, fixtures, and chattels, relating to motor vehicles; to acquire and own patents, improvements and franchises, and to operate under such patents, improvements and franchises, any commercial dealings enumerated in its Articles of Incorporation.[2]

On the other hand, the Commissioner of Internal Revenue ("respondent") is empowered to perform the duties of his office including, among others, the power to decide, cancel and abate tax liabilities in accordance with the provisions of the 1993 National Internal Revenue Code ("NIRC"), as amended.

For the taxable year 1997, petitioner allegedly deducted income tax due on the compensation earned by its employees working at its main office and its two office branches. It subsequently filed the corresponding tax returns on income tax remittances of the said taxes to the Bureau of Internal Revenue ("BIR").

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[1] Pars. 1 & 2, Joint Stipulation of Facts, Rollo, p. 102.
[2] Rollo, p. 11.

After an investigation by the respondent on petitioner's books of accounts and records for taxable year 1997, there has been found due from the latter deficiency withholding tax on compensation. Thus, on June 29, 1999, respondent issued a Preliminary Assessment Notice informing petitioner of the pre-audit result of its BIR Form No. 1743 IR for the calendar year 1997 and the tax due thereon in the amount of P791,364.26 representing deficiency withholding tax on compensation, computed as follows:[3]

Basic Tax (Under remittance)	P502,988.76
Add: 25% Surcharge	125,747.19
20% Interest 01-26-98 to 03-15-99	142,628.34
Compromise penalty	20,000.00
TOTAL AMOUNT DUE	P791,364.26

Subsequently, on January 11, 2001, the petitioner received Final Assessment Notice (FAN) No. WHT-060-97-00-671 from the respondent demanding payment of the amount of P1,031,834.29 under Sections 78 to 83 of the 1997 NIRC, as amended, to be paid on or before February 9, 2001, as follows:

Assessment No. WHT-060-97-00-671

Deficiency Withholding Tax

Basic Tax (Under remittance)	P 502,988.76
Add: Surcharge	125,747.19
Interest 01-26-98 to 02-12-2001	383,098.34
Suggested compromise penalty	20,000.00
TOTAL AMOUNT DUE	P1,031,834.29[4]

On February 8, 2001, the petitioner protested the said deficiency withholding tax on compensation of P1,031,834.29, inclusive of surcharge, interest and compromise penalty for the year 1997[5] on the ground that petitioner had already been examined and assessed by the BIR National Office Tax Fraud Division for taxable years 1996 and 1997 and had fully settled the same in November 1999.[6]

[3] Exhibit 3.
[4] Par. 4, Joint Stipulation of Facts, p. 103.
[5] Par. 5, Joint Stipulation of Facts, Rollo, p. 103.
[6] Rollo, p. 23.

In reply thereto, respondent informed petitioner that the assessment done by the Tax Fraud Division pertains only to expanded withholding tax while the case at hand pertains to withholding tax on compensation. Respondent then reiterated his demand for the payment of deficiency withholding tax on compensation but in the reduced amount of P829,191.69, inclusive of increments, computed as follows:

Deficiency Withholding Tax	P502,988.71
25% Surcharge	-
Total	P502,988.71
20% Interest 1-26-98 to 2-12-01	306,202.98
Compromise Penalty	20,000.00
Total Amount Due	P829,191.69

On April 1, 2003, the petitioner received the assailed Final Decision on Disputed Assessment and amended Assessment No. WE-060-97-03-273 from the respondent through Assistant Regional Director Anselmo G. Adriano denying its protest, alleging the following:

> ***Discrepancy arises from the difference between the tax due and tax withheld against the total remittance:***
>
> | | |
> |---|---|
> | Per Alpha list of employees | P 4,150,745.19 |
> | Per BIR Form 17431 R | |
> | Annual Information Return of Income | |
> | Tax withheld on compensation | 3,647,756.48 |
> | Difference | P 502,988.71 |
>
> Verification disclosed that you did not remit, the correct amount of tax as required to be withheld pursuant to Section 73 & 74 of the NIRC of 1993.
>
> In view thereof, this office therefore amend and modify the above-mentioned Assessment as shown in the hereunder computation:
>
> | | |
> |---|---|
> | Basic Tax (under remittance) | 502,988.76 |
> | Add: Interest 01-26-98 to 04-22-03 | 527,196.60 |
> | Suggested compromise penalty (RMO 1-90) | 20,000.00 |
> | **Total Amount Due and Collectible** | **P 1,050,185.36**[7] |

The aforementioned Final Decision on Disputed Assessment and Assessment Notice No. WE-060-97-03-273 required petitioner to pay the alleged 1997 deficiency withholding tax on compensation equivalent to P1,050,185.36 on or before April 22, 2003. In addition, respondent emphasized that his decision is final decision on the matter, to wit:

[7] Par. 8, Joint Stipulation of Facts and Issues, Rollo, p. 104.

"You are hereby requested to pay the aforesaid revised assessment representing deficiency withholding tax upon receipt hereof, inclusive of penalties incident to delinquency. This is our final decision. If you disagree, you may appeal this final decision with the Court of Tax Appeals within thirty (30) days from receipt hereof, otherwise, your deficiency withholding tax assessment shall become final, executory and demandable."

Hence, this Petition for Review filed on April 30, 2003.

In his Answer to the Petition, the respondent raised the following Special and Affirmative Defenses:

"4. The assessment in question was made and issued in accordance with law, rules and regulations;

5. The assessments done by the Tax Fraud Division pertains only to expanded withholding tax on compensation;

6. That contrary to petitioner's claim that they have an over-remittance of Php28,718.19, verification disclosed that petitioner did not remit the correct amount of tax as the discrepancy arises from the difference between the tax due and the tax withheld against the actual remittance;

7. All presumptions are in favor of the correctness of the tax assessment."[8]

Petitioner presented CPA Senior Finance and Administration Manager Belinda U. Ramos and Finance Administration Manager Victoria T. Frejas. On the other hand, respondent proffered the testimony of Revenue Officer II Teresita Cañete. Both parties tendered likewise their respective documentary evidence.

The petitioner and respondent jointly stipulated on the following issues for this Court's resolution:

(a) Whether or not petitioner withheld and remitted the correct amount of withholding tax on compensation income paid to its employees for calendar year 1997;

(b) Whether or not petitioner is liable to the alleged deficiency withholding tax assessment on compensation paid to its employees during the calendar year 1997 in the amount of One Million Fifty Thousand One Hundred Eighty-Five Pesos and 36/100 (P1,050,185.36), inclusive of surcharges and interest, for taxable year 1997 covered by Amended Assessment Notice No. WE-060-97-03-273 dated March 21, 2003;

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[8] Rollo, pp. 71 to 72.

> ***(c) Whether or not the alleged deficiency withholding tax assessment on compensation income paid by petitioner for taxable year 1997 is due to the alleged discrepancy arising from the difference between the tax due and tax withheld against the total remittance by the petitioner;***
>
> ***(d) Whether or not there is a discrepancy in amount of taxes withheld by petitioner on compensation income paid to its employees in 1997 per its Alpha List of Employees for 1997 and amount of taxes withheld per petitioner's Annual Information Returns of Income Taxes Withheld on Compensation, Expanded and Final Withholding Taxes [BIR Form No. 1743 IR] for 1997.***"[9]

The issues being interrelated, the same shall be jointly discussed.

Petitioner asserts that the proffered documents which include the alpha list of employees and Annual Information Returns for the year 1997 duly establish two key points: *First*, the absence of any discrepancy arising from the difference between the tax due and the tax withheld as against the total remittance for the said period on the compensation income paid to its employees; and *second*, the over remittance of P28,900.01. Thus, if only respondent had thoroughly examined these two documents, he would not have found petitioner liable for any deficiency withholding tax on compensation.

Petitioner further claims that it filed the pertinent alpha list of employees and Annual Information Returns for all the three existing offices situated at Makati City, the office branches at Quezon City and Muntinlupa City. And that respondent erred in solely examining the Annual Information Return filed by the branch office at Quezon City, the outcome of which is a discrepancy in the taxes withheld and remitted by the petitioner on compensation paid to the employees for the year 1997.

Respondent argues, however, that per verification of the records, petitioner did not remit the correct amount of taxes evidenced in the divergence between the tax withheld and the tax remitted.

We agree with the petitioner.

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[9] Rollo, pp. 105 to 106.

In arriving at the alleged deficiency withholding tax assessment on compensation income, the BIR examiner considered only the following Alpha Lists of Employees for 1997, to wit:

Exhibit	Withholding taxes withheld on Compensation paid per Alpha List of Employees
Exhibits RR and CCC	P 66,863.59
Exhibits SS and DDD	47,541.82
Exhibits TT and EEE	1,643,315.92
Exhibits UU and FFF	5,688.46
Exhibits AAA and GGG	35,044.73
Exhibits BBB and HHH	2,352,290.67
Total	**P4,150,745.19**

The BIR examiner then compared the total withheld taxes on compensation income per alpha list of employees in the amount of P4,150,745.19 with the amount of P3,647,756.48 as shown in only one of petitioner's Annual Information Returns.[10] Consequently, a discrepancy in the amount of P502,988.76 resulted between the tax due and tax withheld as against the total remittance which became the basis of respondent's issuance of deficiency withholding tax assessment on compensation for taxable year 1997 in the total amount of P1,031,834.29, inclusive of increments, later modified to P1,050,185.36.

However, a complete and thorough examination of all the Alpha Lists of Employees and Annual Information Returns filed by petitioner for the year 1997 for withholding taxes on compensation paid to its employees for all of its existing offices, namely, its main office located in Magallanes, Makati City, and its two brances located in Pasig City and Alabang, Muntinlupa City would reveal an over remittance in the amount of P28,900.01, as illustrated in the Analysis of Withholding Tax on Compensation,[11] as follows:

[10] Exhibit LL.
[11] Exhibit SSS.

HONDA CARS MAKATI, INC.
ANALYSIS OF WITHHOLDING TAX (WT) ON COMPENSATION
FOR THE YEAR 1997

Category of Employees	WT on Compensation Per Alpha List of Employees	Refer to Exhibit
With no previous employer within the year & annual compensation is more than or equal to P60,000.00 per annum		
	P 3,775,937.31	OO
	2,352,290.67	BBB and HHH
	1,643,315.92	TT and EEE
	5,688.46	UU and FFF
With no previous employer within the year & annual compensation is less than P60,000.00 per annum		
	44,753.56	NN
	35,044.73	AAA and GGG
	47,541.82	SS and DDD
	66,863.59	RR and CCC
	127,328.26	YY
Resigned Associates	143,144.83	PP
Senior Personnel	2,180,916.59	QQ
	1,993,337.36	III
TOTAL	P12,416,163.10	
HCMI - Magallanes, Makati	P 7,527,340.55	MM
HCMI – Pasig	3,647,756.48	LL
HCMI – Alabang	1,269,966.08	KK
TOTAL	P12,445,063.11	
Under (Over) Remittance	(P 28,900.01)	

Based on the above schedule, petitioner's total taxes withheld from its employees in the amount of P12,416,163.10 as reflected in its alpha lists of employees[12] when compared with the total taxes it has remitted to the BIR in the amount of P12,445,063.11 as reflected in its Annual Information Returns of Income Tax Withheld on Compensation, Expanded and Final Withholding Taxes[13] and the various Monthly Remittance Returns of Income Taxes Withheld[14] result to an over remittance of P28,900.01.

[12] Exhibits KK, LL, MM.
[13] Exhibits NN to UU, YY & AAA to III.
[14] Exhibits A to Z, AA to JJ.

Indubitably, the issuance of 1997 deficiency amended tax assessment stems from respondent's erroneous computation of the taxes withheld on the compensation income of petitioner's employees and the corresponding remittances thereon. Thus, the same should be cancelled.

WHEREFORE, premises considered, the Petition for Review is hereby **GRANTED**. Accordingly, the assessment for deficiency withholding tax on compensation in the amount of P1,050,185.36 for taxable year 1997 is hereby **CANCELLED** and **SET ASIDE.**

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ERNESTO D. ACOSTA
Presiding Justice
Chairman, First Division