REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

EDISON (BATAAN) COGENERATION CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

EB CASE NO. 766
(C.T.A. CASE NO. 7104)

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COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

EDISON (BATAAN) COGENERATION CORPORATION,
Respondent.

EB CASE NO. 769
(C.T.A. CASE NO. 7104)

Members:

ACOSTA, *PJ,*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
PALANCA-ENRIQUEZ,
FABON-VICTORINO,
MINDARO-GRULLA, *and,*
COTANGCO-MANALASTAS, *JJ.*

Promulgated:

JAN 30 2012 Apolinario 1:00 p.m.

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DECISION

ACOSTA, *PJ:*

Before this Court of Tax Appeals *En Banc*[1] are consolidated Petitions for Review separately filed by Edison (Bataan) Cogeneration Corporation (hereinafter referred to as "EBCC") docketed as CTA EB No. 766 and by the Commissioner of Internal Revenue (hereafter referred to as "the CIR") docketed as CTA EB No. 769, assailing the Decision[2] of the Court of Tax Appeals Former Second Division[3] dated November 30, 2010 and the subsequent Resolution dated April 7, 2011, affirming the assailed Decision. The dispositive portion of the assailed Decision reads:

"**WHEREFORE**, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, the assessments for deficiency withholding tax on compensation in the amount of P128,087.84 and expanded withholding tax in the amount of P79,066.13 for taxable year 2000 are hereby CANCELLED and SET ASIDE.

As regards the deficiency final withholding tax assessment against petitioner for taxable year 2000, the same is hereby AFFIRMED, with modification. Accordingly, petitioner is hereby ORDERED TO PAY respondent Commissioner of Internal Revenue the amount of TWO MILLION TWO HUNDRED THIRTY TWO ONE HUNDRED FORTY SIX AND 91/100 (P2,232,146.91), representing deficiency final withholding tax, computed, as follows:

FWT Due Per Assessment		P 10,227,622.72
Less: Substantiated FWT on interest on syndicated loans	P 734,400.23	
FWT on interest on foreign loan from Ogden	7,707,504.96	8,441 ,905.19
Basic Deficiency FWT		P 1,785,717.53
Add: 25% Surcharge		446,429.38
Total Deficiency FWT		**P 2,232,146.91**

In addition, petitioner is ordered to pay:

1) deficiency interest at the rate of twenty percent (20%) *per annum* on the basic deficiency final withholding tax of Pl,785,717.53 computed from January 25, 2001 until full payment thereof, pursuant to *Section 249(B) of the NIRC of 1997, as amended;* and

2) delinquency interest at the rate of twenty percent (20%) *per annum* on the total deficiency final withholding tax of P2,232,146.91, and on the deficiency interest which have accrued as afore-stated in paragraph 1 hereof, computed from January 23, 2004 until full payment thereof, pursuant to *Section 249(C) of the NIRC of 1997, as amended.*

SO ORDERED.

[1] Court *En Banc*.
[2] In CTA Case No. 7104.
[3] Court Former Second Division.

THE FACTS

The Court Former Second Division found the pertinent facts[4] to be as follows:

> The facts of the case, based on the parties' Joint Stipulation of Facts and evidence on record, are as follows:
>
> Petitioner is a corporation duly organized and existing under Philippine laws, with principal office located at Luzon Ave., Bataan Economic Zone (BEZ), Mariveles, Bataan. It is registered with the Bureau of Internal Revenue (BIR), bearing Taxpayer Identification No. 002-825-292-000, and with the Philippine Economic Zone Authority (PEZA), as an Ecozone Utilities Enterprise; as per its Certificate of Registration No. 96-01-U, dated October 22, 1996.
>
> On the other hand, respondent CIR is the official authorized under *Section 4 of the NIRC of 1997, as amended,* to assess and collect internal revenue taxes, as well as the power to decide disputed assessments, among others, subject to the exclusive appellate jurisdiction of this Court, with office address at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.
>
> On February 2, 2004, petitioner received respondent's Formal Letter of Demand and Final Assessment Notice, dated January 23, 2004, assessing petitioner for alleged deficiency income tax, VAT, withholding tax on compensation, EWT and FWT for taxable year 2000, in the aggregate amount of P84,868,390.16, broken down as follows:

Deficiency Tax Amount	
Income Tax	P65,571 ,268.01
Value-Added Tax	168,866.15
Withholding Tax on Compensation	128,087.84
Expanded Withholdinq Tax	79,066.13
Final Withholding Tax	18,921 ,102.03
TOTAL	**P84,868,390.16**

> As regards the deficiency withholding tax on compensation, the basis of the assessment is, as follows (*Exhibit "QQ"*):
>
> "Verification disclosed that there was under-remittance of taxes withheld from compensation amounting to P80,054.80 (sic) determined as follows:

Withholding tax due on compensation per alpha-list		P2,927,500.36
Less: Remittances per returns		<u>2,847,445.46</u>
Deficiency Withholding Tax	P	80,054.90"

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[4] Decision, pp. 2-9.

While the basis of the assessed deficiency EWT is, as follows (*Exhibit "QQ")* :

"Verification disclosed that the following income payments were not properly subjected to expanded withholding tax as required under RR 2-98, as amended, to wit:

	Amount	Rate	EWT Due
Professional Fees	175,000.00	10%	P 17,500.00
Repairs & Maintenance	12,618,860.45	1%	126,188.60
Rent Expense	141 ,666.49	5%	7,083.60
Laboratory Expense	69,261 .66	1%	692.62
Brokerage Fees	570,808.01	5%	28,500.40
EWT Due			179,964.94
Less: Remittances			130,548.61
Deficiency Expanded Withholding Tax			P49,416.33

On the other hand, the basis of the FWT assessment is, as follows
{*Exhibit "QQ"*):

"Verification disclosed that the following income payments were not subjected to final withholding tax, thus, you are assessed for the deficiency final withholding tax pursuant to the provisions of RR 2-98, as amended, to wit:

	Amount	Rate	EWT Due
Syndicated Loan in Dollars	25,201,177.60	10%	P 2,520,117.76
Inter-company loan from Ogden	51,383,366.40	15%	7,707,504.96
Deficiency Final Withholding Tax			P10,227,622 .72

On March 3, 2004, petitioner protested said assessments by filing a letter-protest dated March 2, 2004 with respondent CIR.

Subsequently, petitioner and the assigned BIR examiners had several meetings between March and May 2004, where petitioner furnished respondent with certain documents, as requested by the examiners.

Respondent failed to render a decision on petitioner's protest, within the 180-day period prescribed in *Section 228 of the Tax Code*; thus, on November 25, 2004, petitioner filed the instant Petition for Review.

In her Answer, respondent raised the following special and affirmative defenses:

"6. Under Republic Act No. 7916, the 'Special Economic Zone Act of 1995', the five percent (5%) preferential tax for locators of Philippine Economic Zones shall apply only to income derived from their registered activities;

7. Under Section 1 of Revenue Regulations No. 20-2002 dated October 14, 2002, 'Clarifying the Tax Treatment of Income Earned from Unregistered Activities by Enterprises Registered under the Bases Conversion and Development Act of 1992 and the Philippine Economic Zone Act of 1995', the income realized by such registered enterprise that is not related to its registered activities shall be subject to the regular internal revenue taxes;

8. Petitioner's registered activity under its PEZA Certificate of Registration No. 96-0 1-U dated October 22, 1996 is to engage in the installation, operation and maintenance of an electric generating facility that will supply the power requirements of the Bataan Economic Zone located at Mariveles, Bataan;

9. Investigation disclosed that for taxable year 2000, Petitioner sold P320,561,217.47 or 56.59% of its generated power to the National Power Corporation, which is not a locator of the Bataan Economic Zone, in violation of the provisions of its Certificate of Registration. Thus, it is not entitled to the 5% preferential tax but to the regular income tax rate of 32% under Section 27(A) of the NIRC of 1997;

10. Verification disclosed that Petitioner failed to include in its taxable income for taxable year 2000 its sale of sludge amounting to P428,605.00, sale of scrap amounting to P17,190.00 and gain on sale of vehicle amounting to P467,000.00, resulting to deficiency income tax under Sections 31 and 32 of the (sic) NIRC of 1997;

11. Petitioner's amortization of unrealized foreign exchange loss in the amount of P18,444,824.35 was disallowed pursuant to the provisions of Section 34 of the NIRC of 1997 as the loss was not yet realized as of the end of the taxable year 2000;

12. Verification disclosed that Petitioner failed to subject to the 10% value-added tax its sale of sludge amounting to P428,605.00, sale of scrap amounting to P 17,190.00 and the sale of vehicle amounting to P467,000.00. Thus, it is liable for deficiency VAT in the amount of P 168,866.15 pursuant to the provisions of Section 106 of the NIRC of 1997;

13.Verification disclosed that Petitioner failed to withhold the proper expanded withholding taxes on its Professional Fees (P175,000.00), Repair and Maintenance (P12,618,860.45), Rent Expense (Pl41,666.49), Laboratory Expense (P69,261.66) and Brokerage Fees (P570,080.01) in violation of the

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provisions of Revenue Regulations No. 2-98, resulting to deficiency expanded withholding taxes in the amount ofP49,416.33;

14. Verification disclosed that Petitioner failed to withhold the final withholding taxes on its Syndicated Loan ($25,201,177 .60) and Inter-company loan from Ogden Power International Holdings, Inc. (P51,383,366.40), resulting to Deficiency Final Withholding Tax in the amount of P18,921,102.03;

15. Petitioner cannot invoke BIR Ruling No. 085-95 dated June 13, 1995 and BIR Ruling No. 098-A-98 dated June 29, 1998 as these were not issued to Petitioner;

16. All presumptions are in favor of the correctness of tax assessments. The good faith of tax assessors and the validity of their actions are presumed. They will be presumed to have taken into consideration all the facts to which their attention was called (*CIR vs. Construction Resources of Asia, Inc. 145 SCRA 671*). It is incumbent upon the taxpayer to prove the contrary (*Mindanao Bus Company vs. CIR, 1 SCRA 538; CIR vs. Tuazon, Inc., 173 SCRA 397*) and failure to do so shall vest legality to respondent's actions and assessments."

Petitioner presented Alberto Canlas, Edgar M. Reyes, NelsonCaballan, Angelina M. Sarlabos, Marichelle Q. Gerardo, Manolito P. Manalo, as witnesses, and documentary evidence, marked as Exhibits *"A " to "N ", "Q" "R" "T "U" "Y", "Z", "AA " to "EE ", "GG ",and "HH",* inclusive of their sub-markings.

On August 12, 2008, petitioner filed a "Motion for Leave of Court to Serve Supplemental Petition upon Respondent and to Present Additional Evidence", together with the attached Supplemental Petition dated August 12, 2008; which was granted in the Resolution dated September 24, 2008.

In its Supplemental Petition, petitioner alleged that on December 27, 2007, it availed of the benefits of tax amnesty under *RA 9480* and paid the amnesty tax amounting to P500,000.00, and it is entitled to all the immunities and privileges under *Section 6 of RA 9480*, such as the cancellation of the assessment for deficiency income tax and VAT (as well as interests and surcharges) for the year 2000 in the amounts of P65,571,268.01 and P168 ,866.15, respectively.

On the other hand, respondent presented Dahlia Nitura, as witness, and documentary evidence, marked as *Exhibits "1" to "12 "*, inclusive of their sub-markings, which were admitted by the Court in a Resolution dated November 27, 2008.

In a Resolution dated November 7, 2008, the Court resolved that petitioner has fully complied with the requirements prescribed by *RA 9480.* Consequently, petitioner's Petition for Review was deemed partially withdrawn, and the case considered closed and terminated, as regards petitioner's

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deficiency income tax in the amount of P65,571,268.01, and VAT in the amount of Pl68,866.16 for the year 2000, subject to the provisions of *RA 9480.*

On November 27, 2008, petitioner filed a "Motion for Clarification and/or Reconsideration" of the Resolution dated November 7, 2008, praying that the Court clarify and/or reconsider said Resolution, as follows: 1) by confirming that petitioner is entitled to all the immunities and privileges under *Section 6 of RA 9480;* and 2) by cancelling the assessment against petitioner for deficiency income tax and VAT for taxable year 2000.

In a Resolution dated March 18, 2009, the Court set aside the assessments against petitioner for deficiency income tax and VAT for taxable year 2000, solely in view of petitioner's availment of the Tax Amnesty Program under *RA 9480.*

On February 11, 2009, petitioner filed an "Urgent Motion to Reopen the Case for the Presentation of Additional Evidence"; which was granted in a Resolution dated March 18, 2009.

As additional evidence, petitioner presented Atty. Jerome B. Arnalda and Jennifer Urriquia, and *Exhibits "LL " to "WW",* inclusive of their sub-markings.

Thereafter, both parties were ordered to file their simultaneous memoranda, within thirty (30) days from notice; afterwhich, the case shall be deemed submitted for decision. Both parties having filed their respective memorandum, the case was deemed submitted for decision on December 1, 2009.

On November 30, 2010, the Court Former Second Division rendered the assailed Decision, which partially granted the Petition for Review and ordered herein CIR to cancel and set aside the assessments for deficiency withholding tax on compensation and expanded withholding tax for taxable year 2000. The EBCC, on the other hand, was ordered to pay the CIR the amount of Two Million Two Hundred Thirty Two Thousand One Hundred Forty Six Pesos and 91/100 (P2,232,146.91), representing EBCC's deficiency final withholding tax.

EBCC filed its Motion for Partial Reconsideration and/or Clarification on December 17, 2010. The CIR also filed her Motion for Reconsideration (Re: Decision promulgated on November 30, 2010) on December 22, 2010. The Court Former Second Division, in a Resolution dated April 7, 2010, denied both EBCC's and CIR's Motions.

On April 27, 2011, EBCC filed with the Court *En Banc* a Motion for Extension of Time to File Petition docketed as CTA EB No. 766; while the CIR also filed her Motion for Extension of Time To File Petition for Review on April 28, 2011, which was docketed as CTA EB No. 769. Both motions were granted by the Court *En Banc* on May 2, 2011.

On May 12, 2011, both EBCC and the CIR filed their separate Petitions for Review.

On May 16, 2011, this Court ordered CTA EB No. 769 consolidated with CTA EB No. 766, the latter being the lower docket number.

In a Resolution dated May 27, 2011, the parties were ordered to file their respective Comments. On June 17, 2011, both EBCC and the CIR filed their respective Motions for Additional/Extension of Time to File Comment, which were both granted by the Court *En Banc* on June 21, 2011.

On June 27, 2011, EBCC filed its Comment (To the Petition for Review dated 11 May 2011).

On July 22, 2011, the Court issued a resolution ordering the CIR to file her memorandum within thirty (30) days from receipt therewith as she failed to file her comment within the period given to her by the Court *En Banc*.

On September 1, 2011, the Court *En Banc* granted both EBCC's Motion for Additional Time to File Memorandum filed on August 26, 2011 and CIR's Motion for Extension of Time to File Memorandum filed on August 31, 2011.

On September 12, 2011, EBCC timely filed a Manifestation and Motion stating that it shall adopt both its Petition for Review filed on May 12, 2011 and

Comment filed on June 27, 2011 as its Memorandum and, if the need arises, to be allowed to file a Reply to the CIR's Memorandum.

On September 15, 2011, the CIR filed her Memorandum.

In a Resolution dated September 28, 2011, the Court *En Banc* granted the CIR's Motion for Extension of Time to File Memorandum and EBCC's Manifestation and Motion. Considering that the CIR filed her Memorandum, the Court *En Banc* gave EBCC fifteen (15) days to file a Reply to the CIR's Memorandum.

On October 14, 2011, EBCC filed a Manifestation that it shall not anymore file a Reply.

On October 25, 2011, the Court *En Banc* noted EBCC's Manifestation. With the filing of the CIR's Memorandum and EBCC's Manifestation, the Court *En Banc* submitted the consolidated cases for decision.

THE ISSUES

Herein EBCC submits the sole issue for the resolution of the Court *En Banc* to be, *viz*:

> Petitioner respectfully submits that the sole issue for the resolution of this Court is whether the CTA-Division erred by not recognizing that Respondent (CIR) reduced her assessment for deficiency final withholding tax (FWT) for taxable year 2000.

On the other hand, the CIR assigns the following error on the part of the Court Former Second Division, *to wit*:

> Petitioner respectfully submits that the Former Second Division of this Honorable Court erred in determining that respondent (EBCC) is not liable to

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final withholding tax on interest paid in relation to the loan granted by a non-resident foreign corporation.

Respondent respectfully submits that the Former Second Division of this Honorable Court erred in partially granting the instant Petition for Review relative to the deficiency expanded withholding tax of the respondent.

THE PARTIES' ARGUMENTS

EBCC's Arguments

EBCC alleges that contrary to the Court Former Second Division's decision finding EBCC's failure to prove its remittances of P2,842,630.20, it is no longer liable for any deficiency taxes for the year 2000 since it already remitted the amount of P2,842,630.20 as payment for its final withholding tax (FWT) for 2000.

EBCC alleges that its remittance of the P2,842,630.20 was admitted by the CIR's witness, when in her Memorandum[5], she admitted reduction of the original assessment of FWT from P10,227,622.72 to P7,384,992.52 due to said remittance.

EBCC avers that the admission amounts to a judicial admission which does not require proof and an admission against interest which should be deemed proven without the presentation of evidence.

CIR's Arguments

The CIR argues that based on the loan agreement with Ogden Power International Holdings, Inc. (Ogden Power), EBCC is liable to pay the interest "from the date hereof" or the date of the execution of the contract. The CIR opines that considering the failure of the Loan Agreement to state the date of

[5] Exhibit "*4-a*".

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its entry, she believes that by reference to the date when the document was notarized or on January 5, 2000, the interest has accrued starting said date.

As to the final tax on account of EBCC's syndicated US Dollar denominated loans to various lenders, the CIR reiterates that EBCC did not present any document which would substantiate its claim that interest payments were intended and made in favor of PNB. She further stresses that neither did EBCC present relevant and material proofs of the loans granted by United Overseas Band (UOB), First Metro Investment Corporation (FMIC) and Security Bank.

Also, the CIR avers that considering EBCC's failure to prove that it is not liable for Expanded Withholding Tax (EWT) for taxable year 2000, EBCC should be made liable to pay for the deficiency EWT.

THE COURT EN BANC's DECISION

The petitions are bereft of merit.

The issues and arguments raised by both EBCC and the CIR in their respective Motions for Reconsideration with the Court Former Second Division are only replicated in herein Petitions for Review. The Court *En Banc* does not find any justifiable reason to disturb the findings of the Court *a quo.*

At the onset, the CIR intended to put into issue the assessment over EBCC's deficiency EWT. The Court *En Banc*, however, unequivocally agrees with the findings of the Court Former Second Division that by virtue of the admission of the CIR's witness, Revenue Officer Dahlia V. Nitura, in her affidavit dated August 12, 2008, of EBCC's payments in the amount of P11,031.63 for deficiency EWT for taxable year 2000 and P3,426.69 for penalties for late

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remittance, thus, the assessment for EBCC's deficiency EWT is cancelled and set aside.

To proceed with the main contentions of the parties, the Court *En Banc* notes that the assessment which remain in issue is comprised of only the Final Withholding Tax (FWT) arising from (1) Interest Payments from EBCC's Inter-company Loans from Ogden Power International Holdings, Inc. amounting to P7,707,504.96; and (2) Interest Payments on Syndicated Loans in Dollars made by EBCC amounting to P2,520,117.76. The Court *En Banc* shall resolve the issues *in seriatim*.

Interest Payments from its Inter-company Loans from Ogden Power International Holdings, Inc. (Ogden)

The determination of EBCC's liability for the deficiency FWT on Interest Payments from Inter-company loans from Ogden Power is subject to the provision of Revenue Regulation (RR) No. 2-98, the controlling revenue issuance at the time the loan agreement was entered into. RR No. 2-98 provides:

> SECTION 2.57.4. Time of Withholding. — The obligation of the payor to deduct and withhold the tax under Section 2.57 of these regulations arises at the time an income is **paid or payable**, whichever comes first, the term "payable" refers to the ***date* the obligation become due, demandable or legally enforceable.** (Emphasis provided)

Noteworthy that the withholding of the tax only accrues when it is paid or payable, in other words, when it becomes due, demandable or legally enforceable, whichever comes first.

There is a difference, however, in the provision of RR No. 12-01, the successor to RR No. 2-98. In RR No. 12-01, in addition to the period when to

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pay the taxes, *viz*: "when it is paid or becomes due, demandable or legally enforceable, whichever comes first", it also provides that the obligation to withhold may arise when the income is recorded as an expense or asset, whichever is applicable, in the payor's books.

Since in the case at bar the deficiency FWT in dispute involves a loan from Ogden Power in the year 2000, then RR No. 2-98 was the controlling revenue issuance. Thus, applying RR No. 2-98, there is no question then that the obligation to withhold only accrues when the loan is paid or becomes payable or when it becomes due, demandable or legally enforceable, whichever comes first.

Upon analysis of the loan agreement between EBCC and Ogden, the Court *En Banc* finds no controversy on the date when the obligation to pay the loan to the lender has commenced, which as indicated in the loan agreement is on June 1, 2002. The controversy now lies on when the interest payment actually became payable.

The CIR alleges that it is on January 5, 2000, when the loan document was notarized that the interest started to accrue. On the part of EBCC, it alleges that the intention of the parties was to set simultaneously the payment of the loan and the interest.

After much consideration of the reasoning of the parties as to the proper interpretation of the date when the interest payment became payable, the Court *En Banc* finds the argument of EBCC more persuasive. A perusal of the loan agreement indicates that the intention of the parties was to pay the loan and the interest simultaneously. It appears that a simultaneous payment of the principal and interest is more beneficial to both parties. More pressing is the act of EBCC of paying the principal loan and the interest together a year before the date when it should have been due. There were clear indications that the intention of the parties was really to pay the loan and interest simultaneously. Thus, the obligation to withhold the interest over the loan only commenced on June 1, 2002.

Considering that no obligation on the part of EBCC to withhold any taxes on the interest payment for the year 2000, the Court *En Banc* finds the assessment over EBCC's FWT on interest payments arising from EBCC's loan from Ogden Power to be without basis and is hereby cancelled.

Interest Payments on Syndicated Loans in Dollars

EBCC alleges that with the admission of the CIR's witness, Revenue Officer Dahlia V. Nitura, of EBCC's payment of FWT amounting to P2,842,630.20,[6] the liability imposed by the Court Former Second Division is already complied with. On the other hand, the CIR reiterates EBCC's failure to prove the remittance of the withholding tax by the lending banks due to lack of evidence.

The Court *En Banc* agrees with the CIR. The disquisition of the Court in the assailed Decision clearly established the liability of EBCC for deficiency FWT arising from EBCC's syndicated loans in dollars, to wit:

> "Records show that petitioner obtained a syndicated dollar-denominated loan from and paid interest to the following creditors (Exhibit "BB"):
>
> 1.) United Coconut Planters Bank (UCPB);
> 2.) Philippine National Bank (PNB);
> 3.) First Metro Investment Corporation;
> 4.) Security Bank;
> 5.) Sung Hung Kai; and
> 6.) United Overseas Bank/Westmont Bank

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[6] *Ibid.*

Petitioner claims that as industry practice, the lender banks remitted to the BIR the 10% final tax on interest on behalf of petitioner.

To prove remittance of the 10% FWT on the interest payments on its dollar-denominated syndicated loan for the year 2000, petitioner presented the following:

Creditors	Supporting Documents	Exhibit	Tax Withheld
PNB			
May	BIR Form No. 1601-E	AA	P 350,183.04
November	BIR Form No. 1601-F	Z	346,988.77
First Metro Investment Corp.	BIR Form No. 2306	Y	536,254.43
Security Bank	BIR Form No. 1604-CF, Alphalist	CC and CC-1	387,411.46
UOB/Westmont Bank	BIR Form No. 2306	HH	155,912.63
TOTAL			**P 1,776,750.33**

FWT on Loan Interest Paid to UCPB and Sung Hung Kai Bank

Petitioner, however, failed to submit any proof of withholding and/or remittance of FWT on its interest payments to UCPB and Sung Hung Kai Bank. Hence, the deficiency FWT assessments on loan interest paid to UCPB and Sung Hung Kai Bank are hereby sustained.

FWT on Loan Interest Paid to First Metro Investment Corporation and UOB/Westmont Bank

As to BIR Forms No. 2306 (Certificates of Final Income Tax Withheld), pertaining to the alleged FWT of P536,254.43 and P155,912.63 on petitioner's interest payments to First Metro Investment Corporation and UOB/Westmont Bank, respectively, the same cannot be given probative value because a perusal of said certificates shows that the income recipient/payee therein is petitioner; while the withholding agents/payors are First Metro Investment Corporation and United Overseas Bank. Even if said certificates pertain to the withholding taxes subject of the assessments, still the same do not prove remittance of the subject withholding taxes. Hence, the deficiency FWT assessments on loan interest paid to First Metro Investment Corporation and UOB/Westmont Bank are sustained.

FWT on Loan Interest Paid to PNB

The Court also disallows BIR Form No. 1601-E [Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded)], pertaining to the alleged FWT of P350,183.04 on petitioner's interest payments to PNB, because the return shows that the amount of P350,183.04 refers to creditable income taxes withheld on petitioner's income payments to certain

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brokers and agents. We, therefore, sustain the deficiency FWT assessment on loan interest paid to PNB.

However, the Court finds BIR Form No. 1601-F (Monthly Remittance Return of Final Income Taxes Withheld), as valid proof of the P346,988.77 FWT on petitioner's interest payments on its dollar-denominated syndicated loan with PNB. Accordingly, the amount of P346,988.77, representing 10% FWT and corresponding to the assessment on loan interest payment of petitioner to PNB, is hereby ordered cancelled and set aside.

FWT on Loan Interest Paid to Security Bank Corporation

While a perusal of BIR Form No. 1604-CF filed by Security Bank Corporation would show that the FWT indicated therein pertains to Security Bank Corporation's income payments, and not to petitioner's income payments; the attached alphalist, however, proves otherwise. As reflected in the alphalist, the amount of P387,411.46 corresponds to ATC (Alphanumeric Tax Code) WC 191, which refers to "Interest and other income payments on foreign currency transactions/loans payable to FCDU's" (*dorsal portion of Exhibit "Y")*. Since petitioner is not an FCDU, but an Ecozone entity engaged in power generation services, we conclude that the FWT of P387,411.46 pertains to petitioner's interest payments to Security Bank Corporation. In fact, the amount of P387,411.46 was included in the total FWT remittances of P2,842,630.20 deducted by respondent's examiners in arriving at the revised assessment of P12,111,387.73 (*Exhibit "4-a", BIR Records, pp. 761-762*).

As such, the amount of P387,411.46, representing 10% FWT on loan interest payments made by petitioner to Security Bank Corporation, was properly withheld and remitted to the BIR. For this reason, the amount of P387,411.546 is hereby ordered cancelled and set aside."

Now, EBCC asserts that there was judicial admission on the part of the CIR that EBCC remitted an amount of P2,842,630.20 to the BIR as payment for FWT. EBCC avers that as stated in the Memorandum submitted by the CIR to the Court, said amount need not be proven in Court. The Court *En Banc* finds EBCC's allegation bereft of merit.

Section 4 of Rule 129 of the Rules of Court states:

> "SEC. 4. *Judicial Admissions*. --- An admission, verbal or written, made by a 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."

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[A]s a rule, a judicial admission, such as that xxx in the Joint Stipulation of Facts, is binding on the declarant. However, such rule does not apply when there is a showing that (1) the admission was made through a "palpable mistake," or that (2) "no such admission was made".[7]

The Court *En Banc* does not consider the inclusion of the alleged remittance of the payment of the FWT in the amount of P2,842,630.20 to be a judicial admission noteworthy of not being proven.

Notably, the Memorandum alleged to have admitted said remittance was made prior to EBCC's filing of its Petition for Review before the Court *a quo*. Contrary to said Memorandum, in the proceeding before the Court *a quo,* on both the Joint Stipulations of Facts and Issues by the parties[8] and the Answer[9] filed by then respondent CIR, the alleged remittance amounting to P2,842,630.20 as payment for FWT was not recognized by the CIR. Even in the Affidavit[10] of witness Revenue Officer Dahlia V. Nitura, she did not stipulate the payment for EBCC's FWT. More telling is the Memorandum[11] filed by the CIR claiming that then petitioner EBCC never presented in evidence the proofs showing remittances of final withholding taxes on income payments made with other creditor banks.

The overwhelming denial and omission by the CIR to recognize the remittance of any payment for FWT made by EBCC refutes any admission on the part of the witness of the CIR. The CIR cannot be bound by the admission of her witness when the veracity of said admission is refuted by the CIR herself. There was no judicial admission in the first place.

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[7] *Atlas Consolidated Mining & Development Corporation vs. CIR*, GR No. 134467, November 17, 1999.
[8] *Rollo*, pp. 122-129, filed on October 12, 2005.
[9] *Rollo*, pp. 64-69, filed on February 11, 2005.
[10] *Rollo*, pp. 545-550 filed on August 12, 2008.
[11] *Rollo*, pp. 882-911 filed on October 16, 2009.

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Neither does the Court *En Banc* consider said Memorandum to fall under admission against interest. Admissions against interest are those made by a party to a litigation or by one in privity with or identified in legal interest with such party, and are admissible whether or not the declarant is available as a witness.[12] Notably, the Memorandum recognizing the remittance of P2,842,630.20 as payment for deficiency FWT was made by Revenue Officer Dahlia V. Nitura and not by the CIR. And on the Affidavit made by said witness, she did not confirm nor state said remittance but only the existence of the Memorandum. On the other hand, the CIR was consistent in not recognizing said remittance. The Court *En Banc* cannot therefore attribute any admission on the part of the CIR.

Based on the foregoing, the Court cannot give credence to the allegations of EBCC, hence, EBCC is duty bound to prove that indeed it has remitted the amount of P2,842,630.20 as payment for its deficiency FWT. For cases filed before the Court are litigated *de novo,* party litigants should prove every minute aspect of their cases.[13] Unfortunately, in this case, EBCC has failed to present sufficient evidence to prove remittance of its payment. Thus, the Court *En Banc* adopts the computation of the Court Former Second Division on EBCC's deficiency FWT on its interest payments on its dollar-denominated syndicated loan liability amounting to P1,785,717.53 for the year 2000, *viz*:

	Interest Payment	Rate	FWT
FWT Due on Interest Paid on Syndicated Loan in US Dollars	P 25,201,177.60	10%	P 2,520,117.76
Less: Duly substantiated FWT			
On loan interest paid to PNB	P 3,469,887.70	10%	P 346,988.77
On loan interest paid to Security Bank Corp.	3,874,114.60	10%	387,411.46
Subtotal	P 7,344,002.30		P 734,400.23
FWT Still Due on Interest on Syndicated Loan in US Dollars	**P 17,857,175.30**		**P 1,785,717.53**

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[12] *Unchuan vs. Lozada*, GR No. 172671, April 16, 2009.
[13] *CIR vs. Manila Mining Corporation*, GR No. 153204, August 31, 2005.

WHEREFORE, the Petitions for Review are hereby **DENIED** for lack of merit. The assailed Decision dated November 30, 2010 and Resolution dated April 7, 2011 of the Court Former Second Division are hereby **AFFIRMED.**

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

WE CONCUR:

Juanito C. Castaneda, Jr.
JUANITO C. CASTANEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Justice