REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

CONAL HOLDINGS CORPORATION,
Respondent.

CTA EB NO. 1732
(CTA Case No. 9099)

Present:
Del Rosario, *P.J.,*
Castañeda, Jr.,
Uy,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban, *and*
Manahan, *JJ.*

Promulgated:
MAY 03 2019
4:12 p.m.

x---x

DECISION

RINGPIS-LIBAN, J.:

Before the Court *En Banc* is a Petition for Review filed by petitioner[1] Commissioner of Internal Revenue (CIR) to seek nullification of the Decision[2] dated July 17, 2017 (assailed Decision), the dispositive portion thereof reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is **GRANTED**. Accordingly, the Formal Letter of Demand dated October 24, 2014 and Audit Result/Assessment Notice No. RR16-101-182-14 dated October 24, 2014 assessing petitioner for deficiency expanded withholding tax in the aggregate amount of P291,875,839.72, inclusive of surcharge and interest, arising from petitioner's purchase of Iligan Diesel Power Plants from the City Government of Iligan in 2013

---
[1] Respondent in CTA Case No. 9099.
[2] Rollo, CTA EB Case No. 1732, pp.20-38.

are **CANCELLED** and **WITHDRAWN** for lack of legal and factual bases.

SO ORDERED."

and the Resolution[3] dated October 6, 2017 (assailed Resolution) of the same Second Division of the Court (Court in Division) denying the CIR's Motion for Reconsideration, the dispositive portion thereof reads:

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

SO ORDERED."

THE FACTS

The relevant antecedents stated in the assailed Decision[4] are as follows:

"Petitioner[5] Conal Holdings Corporation is a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal place of business at the 4th Floor, Alphaland Southgate Tower, 2258 Chino Roces Avenue corner EDSA, Makati City. It is a registered taxpayer of the Bureau of Internal Revenue (BIR), Large Taxpayers Service, as shown by its Certificate of Registration dated July 31, 2015, with Taxpayer Identification Number 005-182-763-000.

On the other hand, respondent[6] is the duly appointed Commissioner of the Bureau Internal Revenue vested under the appropriate laws with the authority to carry out the functions, duties and responsibilities of said office including, inter alia, the power to decide disputed assessments and to cancel and abate tax liabilities, pursuant to the pertinent provisions of the National Internal Revenue Code (NIRC) of 1997, as amended, and other tax laws, rules and regulations. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On August 26, 2014, petitioner received a copy of the Preliminary Assessment Notice (PAN) dated August 20, 2014,

---

[3] Rollo, pp. 39-42.
[4] Citations omitted.
[5] Respondent Conal Holdings Corporation ("CHC") in this case.
[6] Petitioner in this case.

which alleged that petitioner was liable for deficiency capital gains tax (CGT) and documentary stamp tax (DST) in connection with the purchase of buildings, machineries and equipment comprising two (2) foreclosed National Power Corporation (NPC) diesel power stations, collectively known as the "Iligan Diesel Power Plants", in the amounts of P282,961,279.54 and P122,252,314.88, respectively.

On September 9, 2014, petitioner filed its Reply to the PAN, and raised therein legal and factual objections to the proposed CGT and DST findings.

On October 8, 2014, petitioner received a copy of the Amended Preliminary Assessment Notice dated October 1, 2014 which cancelled the assessment for CGT and DST but then assessed EWT in the amount of P290,255,010.77 in connection with the purchase of the Iligan Diesel Power Plants instead.

Petitioner filed its Reply to the Amended PAN on October 21, 2014, which alleged that despite the change on theory, petitioner is still not liable for EWT amounting to P290,255, 010.77.

On November 4, 2014, petitioner received a copy of respondent's Formal Letter of Demand (FLD) dated October 24, 2014. In the FLD, respondent requested petitioner to pay the alleged deficiency EWT in the amount of P291,875,839.72 in connection with the purchase of the Iligan Diesel Power Plants, broken down as follows:

Basic Expanded Withholding Tax	P184,875,803.03
25% Surcharge	46,218,950.76
20% Interest per annum	60,781,085.93
Total Amount Due and Payable	P291,875,839.72

Petitioner filed a letter of protest against the FLD on November 24, 2014, which raised legal and factual objections to the assessment for alleged deficiency EWT. Petitioner requested a reinvestigation of the assessments and the cancellation and withdrawal of the assessment for alleged deficiency EWT.

On December 19, 2014, petitioner filed relevant documents in support of its protest.

In view of respondent's inaction on its protest, petitioner filed the instant Petition for Review before this Court on July 15, 2015."

In the Answer filed on September 28, 2015, the CIR raised the following special and affirmative defenses: that CHC is legally bound to withhold taxes from the sale of the Iligan Diesel Power Plants; that CHC is liable for deficiency EWT, not in its capacity as a taxpayer but as an agent of the government who failed to comply with its legally mandated duty to withhold taxes; and that exemptions from taxation can only be invoked by taxpayers legally entitled to the exemptions.

The case proceeded to pre-trial with the parties filing their Joint Stipulation of Facts (JSFI)[7] on February 19, 2016 which the Court approved and adopted in the Pre-Trial Order[8] dated March 1, 2016.

The case proceeded to trial with CHC presenting three witnesses, namely: Atty. Ranulfo D. Cenas, Mayor Lawrence Ll. Cruz and Mr. Tirso G. Santillan, Jr.

On the other hand, respondent presented its sole witness, Revenue Officer Maricel O. Develos.

The Court ordered the submission of memoranda wherein CHC complied on October 3, 2016, while the CIR filed a Manifestation on September 5, 2016 stating that he is adopting his Answer as his Memorandum. Considering the foregoing, the instant case was deemed submitted for decision on October 17, 2016.

The parties submitted the sole issue[9] for resolution of the Court in Division: Whether petitioner is liable for deficiency EWT inclusive of interest and surcharge, in the aggregate amount of P291,875,839.72 for its purchase of the Iligan Diesel Power Plants.

On July 17, 2017, the Court in Division rendered the assailed Decision. On October 6, 2017, the Court in Division rendered the questioned Resolution.

Aggrieved, the CIR filed before the Court *En Banc* within the extended period this Petition for Review[10] on November 16, 2017.

---

[7] Docket, CTA CASE No. 9099, pp. 408-421.
[8] Ibid., pp. 428-432.
[9] Joint Stipulation of Facts and Issues, Docket, CTA Case No. 9099, p. 410.
[10] Rollo CTA EB Case No. 1732, pp. 1-9, with Annexes.

In the Resolution[11] dated December 11, 2017, CHC was directed by the Court *En Banc* to file its comment in this case.

On January 29, 2018, CHC filed its "Comment *(Re: Petition for Review dated November 6, 2017)*".[12]

In the Resolution dated February 20, 2018,[13] the Court gave due course to this Petition for Review and ordered the parties to file their respective memoranda within thirty (30) days from notice.

THE ISSUE

The main issue in this case is whether or not the Court in Division erred in granting CHC's Petition for Review, cancelling the FLD dated October 24, 2014 and Audit Result/Assessment Notice No. RR16-101-182-14 dated October 24, 2014 assessing petitioner for deficiency EWT in the aggregate amount of P291,875,839.72, inclusive of surcharge and interest, arising from petitioner's purchase of the Iligan Diesel Power Plants from the City Government of Iligan in 2013.

THE ARGUMENTS

The CIR contends that CHC should have withheld taxes from the income payments it made to the City of Iligan; that CHC is not being assessed for deficiency EWT as a taxpayer but it is being penalized as an agent of the government who failed to comply with its legally mandated duty to withhold taxes and that the exemption from taxation is not favored and never presumed, hence, it must be strictly construed against the taxpayer.

On the other hand, CHC argues that its payment to the City of Iligan for the purchase of the Iligan Diesel Power Plants is not subject to EWT pursuant to Section 2.57.5(A) of Revenue Regulation (RR) No. 2-98; and that the city performed an essential governmental function when it sold the foreclosed Iligan Diesel Power Plants to CHC.

THE RULING OF THE COURT *EN BANC*

Timeliness of the Petition

---

[11] Ibid. pp. 47-48.
[12] Ibid., pp. 49-69.
[13] Ibid., pp. 71-72.

On October 13 2017, the CIR received the Resolution of the Court in Division denying his Motion for Reconsideration. Hence, the CIR has until October 28, 2017 within which to file the Petition for Review. On October 27, 2017, the CIR filed before this Court a "Motion for Extension of Time to File Petition for Review,"[14] praying for an extension of fifteen (15) days from October 28, 2017 or until November 12, 2017, within which to file the Petition for Review. On October 30, 2017, this Court issued a Minute Resolution[15] granting an extension of fifteen (15) days from October 28, 2017 or until November 12, 2017, within which to file the Petition for Review.

On November 16, 2017, the CIR filed the instant Petition for Review. The last day to file the Petition for Review falls on a Sunday. The next working days, November 13, 14 and 15, 2017 were declared Special Holidays due to the 31st ASEAN Summit. Hence, this Petition for Review was timely filed on November 16, 2017.

The Court shall now proceed to determine the merits of the Petition for Review.

The City Government of Iligan is exercising its governmental functions when it sold the power plants

Local government units are given the power to create its own sources of revenue, to levy taxes, fees and charges under Section 5, Article X of the 1987 Philippine Constitution, viz.:

> "Each local government unit shall have the power to create its own sources of revenue, to levy taxes, fees and charges subject to such guidelines and limitations as the Congress may provide, consistent with the basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the local governments."

By virtue of this power, the City of Iligan imposed Real Property Taxes (RPT) on Northern Mindanao Power Corporation (NMPC). For failure of NMPC to pay its RPT, the City of Iligan foreclosed NMPC's power plants. Consequently, the City of Iligan sold the power plants to CHC because it is not in the business of and is not capable of operating said power plants. The purpose of the sale was for the city to recover the RPT that NMPC owed to the City of Iligan and to increase the power supply in Mindanao. The sale by the City Government of Iligan of the power plants to CHC therefore, is an exercise of its governmental functions.

[14] Ibid., pp. 1-5.
[15] Ibid., p. 6.

As held in *Republic of the Philippines, represented by Hon. Heherson T. Alvarez, in his capacity as Secretary of the Department of Environment and Natural Resources (DENR), et al. vs. The City of Davao, represented by Benjamin C. De Guzman, City Mayor,*[16] governmental functions are those that concern the health, safety and the advancement of the public good or welfare as affecting the public generally.

Whether the Formal Letter of Demand and Assessment Notice assessing CHC for deficiency EWT should be cancelled

The CIR insists that the subject assessment for deficiency EWT was a penalty since CHC failed to withhold taxes from the income payments it made to the City Government of Iligan from the sale of the power plants. The amount sought to be collected from respondent is not the tax itself.

The Court *En Banc* agrees with the findings of the Court in Division that CHC is not liable for deficiency EWT assessed by the CIR on its income payments made to the City Government of Iligan. While it may be true that the transaction is subject to 6% creditable withholding tax, the withholding of creditable withholding tax, however, shall not apply to income payments made to the City Government of Iligan pursuant to Section 2.57.5 (A) of RR No. 2-98, which provides that the withholding of creditable withholding taxes shall not apply to income payments made to the city governments.

Considering that the City of Iligan is exercising its governmental functions when it sold the power plant, any income therefore that the city may have realized should be exempt from taxation pursuant to Section 32 (B)(7)(b) of the NIRC, as amended.[17] Consequently, it logically follows that CHC as a withholding agent does not have the obligation to withhold EWT on its payment to the City Government of Iligan.

As aptly discussed in the assailed Decision:

---

[16] G.R. No. 148622, September 12, 2002.

[17] "Sec. 32 Gross Income. –

xxx xxx xxx

(B) Exclusions from Gross Income. – The following items shall not be included in gross income and shall be exempt from taxation under this title:

xxx xxx xxx

(7) Miscellaneous Items. –

xxx xxx xxx

(b) *Income Derived by the Government or its Political Subdivisions.* – Income derived from any public utility or from the exercise of any essential governmental function accruing to the Government of the Philippines or to any political subdivision thereof."

"In the FLD, respondent is assessing petitioner for deficiency EWT on its purchase of real properties owned by the City Government of Iligan, basically computed as follows:

OCT/TCT OCT No.	Tax Declaration No. (TD)	LOCATION OF PROPERTY	CLASS.	Fair Market Value (FMV) per Tax Declaration
00069	02-009-08-702	Dalipuga, Iligan City	Mach.-Ind.	1,219,843,126.69
00072	02-009-08703	Dalipuga, Iligan City	Mach.-Ind.	562,427,853.28
03702	02-009-08695	Dalipuga, Iligan City	Mach.-Ind.	1,466,440,236.07
				3,248,711,216.04

	EXPANDED WITHHOLDING TAX (On other real properties, i.e. machineries)
Taxable Base	3,248,711,216.04
x Tax Base	6%
Tax Due	194,922,672.96
Less: Basic Tax Paid per Return	10,046,860.93
Basic Tax Still Due	184,875,803.03
Add:	
25% Surcharge	46,218,950.76
20% Interest p.a. (03/10/13 to 10/31/14)	60,781,085.93
TOTAL AMOUNT DUE AND PAYABLE	**291,875,839.72**

According to the Details of Computation, pursuant to Section 4(c) of Revenue Regulations (RR) No. 07-0[3] RE Applicable Taxes on Sales, Exchange or other Disposition of Real Property in case of Domestic Corporations, there are three possible scenarios, to wit:

Nature	Tax Rate/Base
Sale, exchange or disposition of lands, and/or buildings classified as capital asset.	6% Capital Gains Tax based on the gross selling price or current FMV as determined in accordance with Section 6(E) of the Tax Code, whichever is higher.
Sale of Lands, and/or building classified as ordinary asset.	Creditable withholding tax (expanded) under Section 2.57.2(J) of RR 2-98, as amended, and consequently, to the ordinary income tax under Section 27(A).
Sale of other real property regardless of classification, i.e. capital asset or ordinary asset	Creditable withholding tax (expanded) under Section 2.57.2(J) of RR 2-98, as amended, and consequently, to the ordinary income tax under Section

	27(A)

Pursuant to Section 57(B) of the NIRC of 1997, as amended, the Secretary of Finance may, upon the recommendation of the Commissioner, require the withholding of tax on items of income payable to any person, natural or juridical, residing in the Philippines, to wit:

"SEC. 57. *Withholding of Tax at Source.* –

xxx xxx xxx

(B) *Withholding of Creditable Tax at Source.* – The Secretary of Finance may, upon the recommendation of the Commissioner, require the withholding of a tax on the items of income payable to natural or juridical persons, residing in the Philippines, by payor-corporation/persons as provided for by law, at the rate of not less than one percent (1%) but not more than thirty-two percent (32%) thereof, which shall be credited against the income tax liability of the taxpayer for the taxable year."

Pursuant to the above authority, RR No. 2-98 was issued, implementing the said provision.

In relation thereto Section 4(c)(ii) of RR No. 07-3 provides that the sale of other real property (other than land and/or building treated as capital asset), regardless of the classification thereof, located in the Philippines, shall be subject to creditable withholding tax (expanded) under Section 2.57.2(J) of RR No. 2-98, as amended, to wit:

"SECTION 4. *Applicable Taxes on Sale, Exchange or Other Disposition of Real Property.* – Gains/Income derived from sale, exchange, or other disposition of real properties shall, unless otherwise exempt, be subject to applicable taxes imposed under the Code, depending on whether the subject properties are classified as capital assets or ordinary assets.

xxx xxx xxx

c. In the case of domestic corporations. -

xxx xxx xxx

> (ii) The sale of land and/or building classified as ordinary asset and other real property (other than land and/or building treated as capital asset), regardless of the classification thereof, all of which are located in the Philippines, shall be subject to the creditable withholding tax (expanded) under Sec. 2. 57.2 (J) of Rev. Regs. No. 2-98, as amended, and consequently, to the ordinary income under Sec. 27(A) of the Code. In lieu of the ordinary income tax, however, domestic corporations may become subject to the minimum corporate income tax (MCIT) under Sec. 27(E) of the Code, whichever is applicable."

On the other hand, Section 2.57.2 (J) of RR No. 2-98, as amended, provides:

> "SECTION 2.57.2 *Income Payments Subject to Creditable Withholding Tax and Rates Prescribed Thereon.* – Except as herein otherwise provided, there shall be withheld a creditable income tax at the rates herein specified for each class of payee from the following items of income payments to persons residing in the Philippines:
>
> xxx xxx xxx
>
> (J) *Gross selling price or total amount of consideration or its equivalent paid to the seller/owner for the sale, exchange, or transfer of real property classified as ordinary asset.* – A creditable withholding tax based on the gross selling price/total amount of consideration or the fair market value determined in accordance with Section 6(E) of the Code, whichever is higher, paid to the seller/owner for the sale, transfer or exchange of real property, other than capital asset, shall be imposed upon the withholding agent/buyer, in accordance with the following schedule:
>
> | | |
> |---|---|
> | A. Where the seller/transferor is exempt from creditable withholding tax in accordance with Sec. 2.57.5 of these regulations | Exempt |
>
> xxx xxx xxx
>
> | | |
> |---|---|
> | C. Where the seller/transferor is not Habitually engaged in the real estate Business | 6.0%" |

Based on Section 4(c)(ii) of RR No. 07-03, sale of other real property regardless of classification (whether capital asset or ordinary asset), is subject to EWT under Section 2.57.2(J) of RR No. 2-98, as amended, and when the seller is not habitually engaged in real estate business, the income payment is subject to 6% creditable withholding tax.

However, respondent failed to take into consideration subparagraph A of Section 2-57.2(J) of RR No. 2-98, as amended, which provides that where the seller/transferor is exempt from creditable withholding tax in accordance with Section 2.57.5 of RR No. 2-98, then the income payment is exempt from creditable withholding tax.

A reading of Section 2.57.5(A) of RR No. 2-98, as amended, shows that the withholding of creditable withholding tax shall not apply to income payments made to the National Government and its instrumentalities including provincial, city or municipal governments and barangays, to wit:

> "Sec. 2.57.5. *Exemption from Withholding.* - The withholding of creditable withholding tax prescribed in these Regulations shall not apply to income payments made to the following:
>
> (A) National government agencies and its instrumentalities, including provincial, city, municipal governments and barangays except government-owned and controlled corporations."

In the present case, there is no question that the sale of other real property was made by the City Government of Iligan. Section 2.57.5(A) of RR No. 2-98, as amended, clearly states that the withholding of creditable withholding tax prescribed in Section 2.57.2(J) of RR No. 2-98 does not apply to income payments made to the city government. Hence, pursuant to Section 2.57.5(A) of RR No 2-98, implementing Section 57(B) of the NIRC of 1997, as amended, income payments made to the City Government of Iligan is exempt from the payment of creditable withholding tax. Consequently, petitioner is not liable to the deficiency EWT assessed by respondent on its income payments made to the City Government of Iligan.

Section 2.57.5(A) of RR No. 2-98 is clear and unequivocal, leaving no room for interpretation. A regulation adopted pursuant to law is law. And where the law speaks in clear and categorical language, there is no occasion for interpretation; there is only room for application."

The findings of fact by the CTA in Division are not to be disturbed without any showing of grave abuse of discretion considering that the members of the Division are in the best position to analyze the documents presented by the parties.[18]

Considering the foregoing discussion, Court *En Banc* finds no cogent reason to disturb the assailed Decision and Resolution.

WHEREFORE, premises considered, the Petition for Review is **DENIED** for lack of merit. The assailed Decision dated July 17, 2017 and the assailed Resolution dated October 6, 2017 are **AFFIRMED**.

SO ORDERED.

Ma. Belen S.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

(See Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

[18] *Republic of the Philippines, represented by the Commissioner of Internal Revenue vs. Team (Phils.) Energy Corporation (formerly Mirant (Phils.) Energy Corporation)*, G. R. No. 188016, January 14, 2015, citing Sea-Land Service, Inc. vs. Court of Appeals, G.R. No. 122605, April 30, 2001.

CATHERINE T. MANAHAN
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.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB NO. 1732** (CTA Case No. 9099)
-versus-	Present: **DEL ROSARIO,** *P.J.,* **CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN,** and **MANAHAN,** *JJ.*
CONAL HOLDINGS CORPORATION, *Respondent.*	Promulgated: MAY 03 2019 4:12 p.m.

x - x

CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur with the *ponencia* in denying the Petition for Review filed by the Commissioner of Internal Revenue for lack of merit.

I, however, find it worthy to emphasize that the Final Assessment Notice (FAN) No. RR16-101-182-14 dated October 24, 2014 issued against Conal Holdings Corporation is void *ab initio* for having been issued *sans* any Letter of Authority (LOA).

In ***Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.,***[1] the Supreme Court, citing Section 1, Rule 4 of A.M. No. 05-11-07- CTA, or the Revised Rules of the Court of Tax Appeals, declared that the CTA can resolve the issue on the authority of the revenue officers to conduct the audit, albeit the same was not raised by the parties in their pleadings or memoranda. For want of

[1] G.R. No. 183408, July 12, 2017.

valid LOA, the Supreme Court ultimately resolved to declare the assessment void.

Moreover, in ***Medicard Philippines Inc. vs. Commissioner of Internal Revenue,***[2] the Supreme Court emphasized the importance of an LOA and the authority of revenue officers who conducted the audit and examination of the taxpayer. It went on further to declare as **void the subject disputed assessment for lack of an LOA authorizing the revenue officers to examine the taxpayer's books of account and other accounting records.**

In fine, since the FAN was issued, without an audit being conducted pursuant to a valid LOA, the same is patently void. Being a void assessment, the FAN bears no fruit[3] and must be slain at sight.

All told, I **VOTE** to **DENY** the Petition for Review filed by the Commissioner of Internal Revenue for lack of merit.

ROMAN G. DEL ROSARIO
Presiding Justice

---

[2] G.R. No. 222743, April 5, 2017.
[3] *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.,* G.R. No. 185371, December 8, 2010.