REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

PARITY PACKAGING CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA *EB* NO. 1938
(CTA Case No. 9318)

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COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

PARITY PACKAGING CORPORATION,
Respondent.

CTA *EB* NO. 1942
(CTA Case No. 9318)

Present:
DEL ROSARIO, P.J.,
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:
FEB 04 2021 3:50 p.m.

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RESOLUTION

MODESTO-SAN PEDRO, J.:

The following are for the Court *En Banc's* resolution:

a) Parity Packaging Corporation's ("PPC") **Motion for Partial Reconsideration [of the Decision promulgated on August 26, 2020]** (hereinafter referred to as "PPC's Motion") filed on 24 September 2020; and

b) The Commissioner of Internal Revenue's ("CIR") **Motion for Reconsideration [Decision dated August 26, 2020]** posted on 28 September 2020.

On its first point, PPC alleges that it was able to establish by preponderance of evidence that the Value-Added Tax ("VAT") pertaining to its sales on account to Tanduay Distillers, Inc. ("Tanduay") had already been paid in 2008 and 2009. Hence, it argues that it should not be made liable for the said tax.

It insists that the Court *En Banc* should have given weight to: (a) the Independent Certified Public Accountant's ("ICPA") Report where it is reflected that PPC has no undeclared vatable sales; and (b) the testimony of Revenue Officer Ma. Theresa L. Espino proving that it has no unpaid VAT due in connection with the Tanduay sale.

It also states that the pieces of evidence the Court is looking for which are PPC's Summary List of Sales ("SLS") for 2008 and 2009 were among the documents reviewed and submitted by the ICPA in Court. Therefore, PPC asks the Court *En Banc* to reconsider the assailed Decision upholding its VAT assessment in the amount of ₱7,695,033.62.

On its second point, PPC avers that the Court *En Banc* erred in upholding the CIR's VAT and Withholding Tax on Compensation ("WTC") assessments. It insists that the CIR's assessment pertaining to the 1st and 2nd Quarters of 2011 had already prescribed. Considering the same, it points out that the assessment should have been computed on a per return basis or, in other words, should have been limited to the taxable quarters that had not yet prescribed.

On its third point, PPC asks the Court *En Banc* to reconsider its Decision disallowing its tax credit in the amount of ₱495,581.64. PPC contends that the income corresponding to the said tax credit were all reported in its Income Tax and VAT Returns as found by the ICPA.

On its fourth and final point, PPC posits that it should not be made liable for deficiency interest since that the assessment issued against it should be struck down.

Meanwhile, in the CIR's Motion, he contends that the Court *En Banc* erred in ruling: (a) that the employees' share in the ECC, SSS, Medicare premiums, and Pag-ibig Funds are non-taxable compensation; (b) that PPC was able to present competent evidence to prove that the CIR's assessment on PPC's negative balance in the amount of ₱5,881,234.85 is erroneous; (c) that

PPC has no unsupported CWT in the amount of ₱8,089.00; (d) that PPC has excess tax credits of ₱28,603,044.24 which arose from his erroneous computation of PPC's assessment; and (c) for upholding the findings of the Court in Division that the CIR erroneously deducted the amount of ₱2,119.18 from PPC's total input VAT.

After a review of the foregoing points, the Court *En Banc* finds the arguments raised by both parties bereft of merit.

As to the VAT assessment of PPC arising from its alleged Tanduay sales, the Court *En Banc* cannot stress enough that it had failed to prove with preponderance of evidence that the VAT had already been paid. As explained in the assailed Decision, PPC failed to offer in evidence its 2008 and 2009 VAT returns and BIR Payment Confirmations which are vital in proving its assertion.

Contrary to PPC's argument, the Court of Tax Appeals ("CTA") cannot merely rely on the ICPA report without conducting its own verification as regards to its accuracy, veracity and merit.[1] Hence, without the documents mentioned, the Court in Division was precluded from making its own independent determination on whether the VAT pertaining to the Tanduay sales were indeed already paid. The Court *En Banc* thus sees no reason not to uphold the assailed Decision.

Likewise, the Court *En Banc* finds no merit on the second point raised by PPC. This Court reminds PPC that assessments enjoy the presumption that they are correct and made in good faith.[2] Hence, it is up to PPC to disprove the assessment by identifying which part of the same had already prescribed. In this case, it failed to prove with sufficient evidence, much less, identify the prescribed portions of the assessment. Considering the same, PPC failed to overturn the presumption.

As for the third point raised by PPC, the Court *En Banc* cannot ascribe to its argument considering that it did not provide sufficient evidence to prove that the income payments upon which the taxes were withheld had been declared as part of the gross income in 2009 and 2010. At this point, the Court *En Banc* deems it proper to echo the findings of the Court in Division on this matter, to wit:

> "Petitioner earned the income from Tanduay Distillers, Inc. in the year 2009 while the income from PMFTC Inc. was earned in the year 2010, for which the corresponding withholding taxes were credited by petitioner only when payment was collected in year 2011.

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[1] Section 3, Rule 13 of the Revised Rules of the Court of Tax Appeals.
[2] Marcos II v. Court of Appeals, G.R. No. 120880, 5 June 1997.

> Under Section 2.58.3 of RR No. 2-98, a claim for tax credit of any creditable income tax which was deducted and withheld on income payments shall be given due course only when it is shown that the income payment has been declared as part of the gross income.
>
> In this case, however, no proof was provided to show that indeed the supposed income payments upon which taxes were withheld have been declared as part of the gross income for taxable years 2009 and 2010. Needless to say, the infirmity of evidence on this aspect is fatal to its cause.
>
> While the BIR Form No. 2307 satisfies the fact of withholding as stated in Section 2.58.3 of RR No. 2-98, the official receipts and sales invoices, however, are not sufficient to prove that the income arising from such withholding was recorded and reported as income in prior years. Petitioner did not furnish this Court its GL, audited financial statements (AFS), and AITR for CYs 2009 and 2010 to ascertain that indeed the income payments upon which the taxes were withheld had been declared as part of the gross income in the said years."

All told, PPC failed to support its assertions with competent evidence. Given the same, the Court *En Banc* is constrained to affirm the assailed Decision upholding the assessment against it. Apropos, PPC is liable for deficiency interest on the same.

As for the CIR's arguments, he contends that that the employees' share in the ECC, SSS, Medicare premiums, and Pag-ibig Funds are part of PPC's taxable compensation.

The Court *En Banc* finds his assertions without merit.

Section 32(b)(7)(f) of the National Internal Revenue Code of 1997 (hereinafter referred to as the "Tax Code") as reiterated in the case of ***Confederation for Unity, Recognition and Advancement of Government Employees v. Commissioner, Bureau of Internal Revenue***[3] is clear that the said contributions are exempt from WTC. The pertinent portion of the Decision is quoted, to wit:

> "However, not all income payments to employees are subject to withholding tax. **<u>The following allowances, bonuses or benefits, excluded by the NIRC of 1997, as amended, from the employee's compensation income, are exempt from withholding tax on compensation</u>**:
>
> xxx xxx xxx

[3] G.R. Nos. 213446 & 213658, 3 July 2018.

> 8. **GSIS, SSS, Medicare and Pag-Ibig contributions, and union dues of individual employees** [Section 32(B)(7)(f) of the NIRC of 1997, as amended and Section 2.78.1(B)(12) of RR No. 2-98];"[4]

Hence, the Court *En Banc* sees no reason to disturb the assailed Decision.

The CIR is also erroneous in asserting that PPC's negative balance in its General Ledger amounting to ₱5,881,234.85 was rightfully assessed for VAT and Income Tax.

As explained by PPC the negative cash balance is due to the separation payments it made to its redundant employees. It clarified that, as a remedial measure to make its cash balance positive, its shareholders advanced cash to PPC amounting to ₱30,000,000.00.

PPC was able to support its argument by presenting both its Secretary Certificate and Certifications dated 6 January 2011. As discussed in the assailed Decision, these documents were found by the Court *En Banc* to be sufficient evidence considering that the Secretary's Certificate and Certifications are public documents which, by their nature, are presumed truthful and are highly given weight and credence by the courts.[5] Hence, absent any proof of fraud on the accomplishment of said documents, the Court *En Banc* is duty bound to honor such evidence.

Moreover, the Court *En Banc* finds no merit on the allegation of the CIR that PPC has unsupported CWT in the amount of ₱8,089.00. As discussed in the assailed Decision, PPC was able to submit, during trial, the relevant BIR Form No. 2307 covering the said amount.

As for his last two arguments, the Court *En Banc* is not convinced by the CIR's assertions that the assailed Decision is erroneous in adding back ₱28,603,044.24 and ₱2,119.18 in PPC's respective available tax credits and input VAT balances.

As can be seen in the assailed Decision, the Court meticulously studied the computation made by the Court in Division and the CIR. In doing so, the Court *En Banc* was able to determine that the CIR deducted (a) the amount of ₱29,098,638.87[6] from the available tax credits of PPC; and (b) the amount of

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[4] Emphasis Supplied.
[5] Heirs of Teves v. CA, G.R. Nos. 109963, 13 October 1999.
[6] Only the amount of ₱28,603,044.24 was added back to PPC's available tax credit since the Court deducted the amount of disallowed CWT amounting to ₱495,581.64 to the said balance for PPC's failure to provide competent evidence to support the same.

₱2,119.18 from PPC's total input VAT without providing any legal or factual basis to justify the same.

Considering that the actions of the CIR are contrary to law, the Court *En Banc* is correct in affirming the findings of the Court in Division adding back the said amounts to PPC's tax credit and input VAT balances.

In view of the foregoing disquisitions, the Court finds no justifiable reason to reverse or modify the conclusions reached in the assailed Decision.

WHEREFORE, premises considered, Parity Packaging Corporation's Motion for Partial Reconsideration [of the Decision promulgated on August 26, 2020], and the Commissioner of Internal Revenue's Motion for Reconsideration [Decision dated August 26, 2020] are both hereby **DENIED** for lack of merit.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice