REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

COVANTA ENERGY PHILIPPINE HOLDINGS, INC., Petitioner,	**C.T.A. CASE NO. 7103**
	Members:
- versus -	**ACOSTA, *Chairperson* UY, and FABON-VICTORINO, *JJ.***
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** SEP 15 2010; 10:03 AM

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DECISION

FABON-VICTORINO, *J.*:

In this Petition for Review filed on November 25, 2004, petitioner Covanta Energy Philippine Holdings, Inc. seeks the cancellation and withdrawal of the assessments issued against it by respondent Commissioner of Internal Revenue (CIR) for alleged deficiency value-added tax (VAT), expanded withholding tax (EWT), and documentary stamp tax (DST) for taxable year 2000, inclusive of increments and compromise penalty, in the aggregate amount of P2,196,138.04.

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THE FACTS

Petitioner Covanta Energy Philippine Holdings, Inc. (CEPHI) alleges that it is duly organized and existing local corporation with principal office at the 17th Floor, Robinsons Equitable Tower, ADB Avenue corner Poveda Street, Ortigas Center, Pasig City. It is registered with the Bureau of Internal Revenue (BIR) Revenue District Office (RDO) No. 43.[1]

Respondent CIR is the government official authorized under the National Internal Revenue Code (NIRC) of 1997 to assess and collect internal revenue taxes as well as to decide disputed assessments, subject to the exclusive appellate jurisdiction of this Court. He may be served with summons and other notices at the BIR National Office Building, BIR Road, Diliman, Quezon City.

On February 28, 2004, petitioner received Formal Letters of Demand and Assessment Notices, all dated January 23, 2004, issued by respondent assessing it for deficiency VAT, EWT, and DST in the aggregate amount of P2,196,138.04, broken down as follows:[2]

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[1] Annexes "A" and "B", Petition for Review, docket, pp. 13 and 14; par. 2, Stipulation of Facts, Joint Stipulation of Facts and Issues, docket, pp. 86-87.
[2] Exhibits "BBB", "CCC", "AAAA", "AAAA-1", "BBBB", and "CCCC".

DEFICIENCY TAX	AMOUNT
Value-added Tax	P1,252,869.02
Expanded Withholding Tax	862,804.35
Compromise Penalty on Withholding Tax on Compensation	1,000.00
Documentary Stamp Tax	79,464.67
TOTAL	**P2,196,138.04**

According to petitioner, the alleged deficiency VAT arose from respondent's conclusion that there was erroneous computation of output tax, not to mention the disallowed input taxes[3]. Respondent deduced that petitioner did not compute the output tax based on gross receipt as required under Section 108 of the Tax Code. Moreover, some input taxes claimed were for the purchase of non-VAT goods such as gasoline, if not expenses for the account of petitioner's affiliates and subsidiaries, shown as follows:

A/R-January 1		None
Management Fees Earned		P15,346,574.00
Less: A/R – December 31, 2001		1,023,309.07
Gross Receipts		14,323,264.93
Output Tax		1,432,326.49
Less: Input Tax per Return	1,275,727.06	
Disallowed Input Taxes	485,667.17	790,059.89
Value-added Tax Payable		642,266.60
Less: Paid per return		None
Add: carried over to next quarter		132,703.93
Deficiency VAT		774,970.53
Interest up to 2.24.04		477,898.49
Total Deficiency VAT		**P1,252,869.02**

[3] Annex "C", Petition for Review, docket, pp. 15-16; par. 12, Stipulation of Facts, Joint Stipulation of Facts and Issues, docket, pp. 88-89.

Petitioner as well complains respondent's assessment on deficiency EWT for taxable year 2000 amounting to P862,804.35 on the ground that it failed to withhold on various income payments subject to EWT, in violation of Revenue Regulation 2-98,[4] as indicated below:

	2000	
ACCOUNT	**AMOUNT**	**WITHHOLDING TAX DUE**
Courier Freight	P 111,679.67	P 1,116.80
Repairs and Maintenance	359,163.94	3,591.64
Security/Janitorial	114,907.01	1,149.07
Advertisement	17,462.00	174.62
Janitorial – HKGA	23,749.00	237.49
Professional Fees	3,279,384.68	327,938.36
Rental Expenses	P12,665,421.52	633,271.08
Total EWT Due		967,479.06
Less: EWT Remitted		433,785.65
Deficiency EWT		533,693.41
Add: Interest up to 2.24.04		329,110.94
TOTAL DEFICIENCY EWT		**P 862,804.35**

Petitioner also rejects respondent's imposition of compromise penalty of P1,000.00 for its failure to file an alphabetical list (Alphalist) of employees subjected to withholding tax for the taxable year 2000, in violation of Section 2.83.2 of Revenue Regulations (R.R.) No. 2-98.

Petitioner also denies liability on deficiency DST relative to the several contracts of lease it executed with various lessors for its use

[4] Annex "D", Petition for Review, docket, pp. 17-18; par. 14, Stipulation of Facts, Joint Stipulgation of Facts and Issues, docket, p. 89.

in business operation and as residence of its foreign executives, which required the payment of documentary stamp tax pursuant to Section 194 of the Tax Code.[5] The alleged deficiency DST is broken down as follows:

NAME OF LESSOR	DATE OF CONTRACT	BASIC DST	SURCHARGE	INTEREST	TOTAL
Camira Holdings	08.12.99-11.02.01	P 2,421.00	P 605.25	P 2,158.00	P 5,184.25
Trixie Brothers	09.03.99-11.02.01	1,092.00	273.00	973.37	2,338.37
Ofelia Cheah	09.08.99-11.02.01	3,052.00	763.00	2,720.44	6,535.44
Abaya Investment	08.30.01-12.31.04	4,483.00	1,120.75	3,995.99	9,599.74
Federico Galang	06.13.00-08.31.01	3,001.00	750.25	2,775.22	6,526.47
Jobeliz Realty	08.31.99-08.31.01	17,509.00	4,377.25	15,606.92	37,493.17
Pan American	06.15.99-07.24.02	5,420.00	1,355.00	5,012.23	11,787.23
Total		**P36,978.00**	**P9,244.50**	**P33,242.17**	**P79,464.67**

On March 18, 2004, petitioner formally protested the foregoing assessments, citing the factual and legal bases against the subject assessments and prayed for their withdrawal and cancellation. The same letter protest made respondent aware that petitioner already submitted supporting documents to the BIR Task Force on Independent Power Producers.[6]

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[5] Annex "E", Petition for Review, docket, pp. 19-20; par. 17, Stipulation of Facts, Joint Stipulation of Facts and Issues, docket, p. 90.

[6] Annex "J", Petition for Review, docket, pp. 25-28; par. 7, Stipulation of Facts, Joint Stipulation of Facts and Issues, docket, p. 88.

On November 19, 2004, petitioner paid respondent P34,409.83 in settlement of its alleged deficiency DST liability.[7]

On November 25, 2004, petitioner filed the instant Petition for Review for failure of respondent to render a decision on the protest against the disputed assessments.

On January 31, 2005, respondent filed his Answer with the following Special and Affirmative Defenses [8]:

> 4.) Respondent has no personal knowledge on the date of receipt by petitioner of the Final Assessment Notice. Thus, no admission can be made regarding such fact.
>
> 5.) Respondent takes exception from petitioner's assertion that it has submitted all relevant documents in support of its protest. Many of the documents submitted by the petitioner fail to controvert items/issues in the assessment. Nonetheless, the petitioner submitted substantial documents in support of numerous issues in its protest.
>
> 6.) The Income Tax Returns of the petitioner for taxable year 2000 showed sales/receipts of P15,346,574.00. The General Ledger of taxpayer for the same year showed Accounts Receivable ending balance of P 1,023,309.07. Thus, petitioner's Gross Receipts for the year, subject to output VAT amounts to P14,323,264.93, or an output VAT of P1,432,326.49. The taxpayer did not pay anything of this output VAT. On the other hand, petitioner claimed input VAT in the amount of P1,060,789.49 (deductible from output VAT). However, the examiners in this case, after thorough investigation, disallowed numerous input VAT entries amounting to

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[7] Annexes "K" and "K-1", Petition for Review, docket, pp. 29-30; par. 18, Stipulation of Facts, Joint Stipulation of Facts and Issues, docket, p. 91.
[8] Docket, pp. 44-45.

P485,667.17, on the basis that these expenditures of the petitioner are either non-VAT items, or coming from purchases made by affiliates and subsidiaries. The BIR records containing the worksheet of the examiners will show supporting computations and particular disallowances made. Thus,

Output VAT due		P 1,432,326.49
Less:		
Input VAT allowed	P575,131.32	
Carried-over input tax from last quarter of 1999	214,928.57	(790,059.89)
VAT payable for 2000		P 642,266.60
Add: Carried-over to next quarter		132,703.53
Basic VAT deficiency		**P 774,970.53**

The taxpayer did not pay any VAT for taxable year 2000.

7.) Of the assessment on petitioner for deficiency expanded withholding tax, only the payments to ACCRA Law Offices and SGV are payments to General Professional Partnerships. The bulk of the assessment is withholding on rent and service providers of the company. The examiners made a detailed investigation and verification of the documents submitted by petitioner, and found that there is a discrepancy in the amount collected and paid by petitioner for withholding taxes. The onus of proving that the needful withholding taxes were indeed paid rests on the petitioner.

8.) While petitioner represents that it has already paid P34,309.83 of the documentary stamp taxes due for taxable year 2000, the assessment for petitioner amounts to P79,464.67 (interest only up to 23 January 2004). Thus, the payment made by petitioner is not the full payment for said tax liability.

9.) It is presumed that tax assessments are correctly and legally made. The burden of assailing the same rests on the party alleging irregularity. In the instant case, petitioner fails to discharge this burden.

On March 14, 2005[9] and March 16, 2005[10], the parties filed their respective pre-trial briefs followed by their Joint Stipulation of Facts and Issues on May 13, 2005, which the Court approved on June 9, 2005[11].

Trial ensued during which the parties presented evidence in support of their respective positions.

On September 24, 2008, while respondent's Formal Offer of Documentary Evidence was pending resolution, petitioner filed a Motion for Leave of Court to Serve Supplemental Petition Upon Respondent and to Present Additional Evidence[12], with the Supplemental Petition[13] attached thereto, praying for the cancellation of the assessments for deficiency VAT and DST for the taxable year 2000 issued against it in the amount of P1,252,869.02 and P79,464.67, respectively, in view of its availment of tax amnesty under Republic Act (R.A.) No. 9480.

On November 3, 2008, respondent filed a Supplemental Answer[14]. In his Special and Affirmative Defenses, respondent focused on petitioner's alleged availment of tax amnesty under R.A.

[9] Docket, pp. 50-61.
[10] Docket, pp. 62-71.
[11] Docket, p. 95.
[12] Docket, pp. 683-687.
[13] Docket, pp. 688-695.
[14] Docket, pp. 757-765.

9480. Allegedly, petitioner's action was still under investigation/examination and the BIR had a year to verify petitioner's qualifications for the grant of amnesty. Besides, availment of amnesty must still be proved by petitioner. More importantly, there is nothing in R.A. 9480, which should be strictly construed, that provides for cancellation of deficiency tax assessments.

On December 11, 2008, petitioner filed a Supplemental Formal Offer of Evidence[15] to which respondent filed a Comment on December 19, 2008.

In its Resolution of February 5, 2009,[16] the Court admitted petitioner's Exhibits "SSS" to "DDDD-1" and deemed partially withdrawn its Petition for Review and the Supplemental Petition for Review insofar as the assessment for deficiency VAT and DST for the taxable year 2000 were concerned considering petitioner's compliance with the all the requisites for availment of tax amnesty under R.A. No. 9480.

[15] Docket, pp. 781-786.
[16] Docket, pp. 846-847.

On February 24, 2009, petitioner sought clarification and/or reconsideration[17] of the foregoing Resolution to which respondent filed a Comment on March 23, 2009.[18]

On May 12, 2009, the Court ruled on the incident as follows:

> **WHEREFORE**, the assessment for deficiency Value Added Tax and Documentary Stamp Tax for the year 2000 is hereby **CANCELLED** and **SET ASIDE** solely in view of petitioner's availment of the Tax Amnesty under RA 9480.
>
> The parties are **GRANTED** a non-extendible period of thirty (30) days from receipt hereof within which to file their simultaneous Memoranda on the remaining issues pertaining to Deficiency Expanded Withholding Tax Assessment.
>
> **SO ORDERED**.

On August 14, 2009, the Court denied respondent's Motion for Reconsideration[19] filed on May 29, 2009,[20] to which petitioner interposed an objection on June 29, 2009[21].

On December 8, 2009, the case was submitted for decision[22], after petitioner and respondent filed their memoranda on June 15, 2009[23] and November 23, 2009, respectively.[24]

[17] Docket, pp. 848-860.
[18] Docket, pp. 868-875.
[19] Resolution dated August 14, 2009, docket, pp. 963-965.
[20] Docket, pp. 892-903.
[21] Docket, pp. 950-961.
[22] Docket, pp. 910-943.
[23] Docket, pp. 981-996.

THE ISSUES

Respondent assessed petitioner for alleged deficiency VAT, expanded withholding tax, and DST in the aggregate amount of P2,196,138.04, broken down as follows:

DEFICIENCY TAX	AMOUNT
Value-added Tax	P 1,252,869.02
Expanded Withholding Tax	862,804.35
Compromise Penalty on Withholding Tax on Compensation	1,000.00
Documentary Stamp Tax	79,464.67
TOTAL	**P 2,196,138.04**

But as stated earlier, petitioner availed of the benefits under R.A. 9480 resulting in the cancellation of the assessment for deficiency VAT and DST for taxable year 2000 issued against it by respondent.

Hence, only the issues pertaining to the assessment for deficiency expanded withholding tax and the compromise penalty on withholding tax on compensation are left for resolution, to wit[25]:

> I. WHETHER OR NOT PETITIONER IS LIABLE FOR DEFICIENCY EXPANDED WITHHOLDING TAX AND COMPROMISE PENALTIES IN CONNECTION THEREWITH

[24] Resolution dated December 8, 2009, docket, pp. 999.
[25] Docket, p. 847.

II. WHETHER OR NOT PETITIONER WITHHELD EXPANDED WITHHOLDING TAX ON INCOME PAYMENTS FOR OFFICE IMPROVEMENTS OR OPERATIONAL EXPENSES, PARTICULARLY, COURIER FREIGHT, REPAIRS AND MAINTENANCE, SECRETARIAL AND JANITORIAL SERVICES, ADVERTISEMENTS AND RENTAL EXPENSES

III. WHETHER OR NOT PETITIONER'S PAYMENT OF PROFESSIONAL FEES TO GENERAL PROFESSIONAL PARTNERSHIPS IS SUBJECT TO EXPANDED WITHHOLDING TAX.

THE RULING OF THE COURT

1. Compromise Penalty on Withholding Tax on Compensation

Respondent imposed a compromise penalty of P1,000.00 for petitioner's alleged failure to file an alphalist of its employees subjected to withholding tax for taxable year 2000, in violation of Section 2.83.2 of Revenue Regulations No. 2-98.

However, there is no indication that petitioner voluntarily entered into such a compromise with respondent. It was imposed and included in the computation of the assailed assessments without any participation on the part of petitioner. A compromise agreement by its very nature is mutual,[26] meaning with the knowledge and consent of both parties. The compromise penalty, being an imposition cannot be compulsorily imposed on the one who did not agree to its imposition.[27] Thus, without the knowledge and conformity of petitioner the compromise penalty is illegal and unauthorized.[28] In fine, respondent's imposition of a compromise penalty cannot be sustained.

2. Deficiency Expanded Withholding Tax

Respondent assessed petitioner for alleged deficiency EWT in the amount of P862,804.35 for taxable year 2000, inclusive of increments, for failure to withhold taxes on the following transactions:

ACCOUNT	AMOUNT	WITHHOLDING TAX DUE
Courier Freight	P 111,679.67	P 1,116.80
Repairs and Maintenance	359,163.94	3,591.64
Securities & Janitorial	114,907.01	1,149.07
Advertisement	17,462.00	174.62
Janitorial - HKGA	23,749.00	237.49
Professional Fees	3,279,384.68	327,938.36
Rental Expense	P12,665,421.52	633,271.08
Total EWT Due		P 967,479.06

[26] Vda. De San Agustin vs. CIR, G.R. No. 138485, September 10, 2001.
[27] Atlas Consolidated Mining and Development Corporation (doing business under the name Atlas-Itochu Consortium) vs. Commissioner of Internal Revenue, CTA Case No. 5671, August 29, 2002.
[28] Commissioner of Internal Revenue vs. Lianga Bay Logging Co., Inc., *et al.*, G.R. No. L-35266, January 21, 1991.

Less: EWT Remitted		433,785.65
Deficiency EWT		P 533,693.41
Add: Interest up to 2.24.04		329,110.94
TOTAL DEFICIENCY EWT		**P 862,804.35**

For better appreciation, the Court shall address separately each item in detail.

Professional Fees:

The Professional fees in the amount of P3,279,383.68 may be broken down as follows:[29]

Payments Made to:	
Corporation (5%)	P 475,000.00
Individual (10%)	679,922.71
General Professional Partnerships	537,200.00
Out-of-Pocket Expenses/Reimbursements	21,545.52
Others	1,565,715.45
Total	**P3,279,383.68**

The alleged deficiency EWT on professional fees amounting to P327,938.36 was arrived at by subjecting petitioner's total payments of professional fees for taxable year 2000 amounting to P3,279,383.68 to a tax rate of ten percent (10%).

[29] Exhibit "P".

Petitioner claims that of the total amount of P3,279,383.68, only P91,742.27 is due as EWT. Witness Rowena V. Guinto in her Sworn Statement dated September 13, 2005[30], explained how petitioner arrived at the amount of P91,742.27 as EWT due from the total amount of professional fees that petitioner paid for the taxable year 2000, thus:

> A: The BIR's findings are not accurate. Out of the total amount of P3,279,383.68, the EWT due is only P91,742.27.
>
> Q: What is your basis for saying this?
>
> A: I prepared a summary of the items listed under 'Professional Fees' based on the invoices and official receipts in Petitioner's name for the year 2000.
>
> xxx xxx xxx
>
> A: Since the Details of Discrepancy given by the BIR was not clear as to how it arrived at the amount of P3,279,383.68, I presumed that it just applied the rate of ten percent (10%) to the total amount of professional fees of P3,279,384.68 listed in Petitioner's General Ledger. So I retrieved the invoices and official receipts related to the entries in the General Ledger. I then based the summary I prepared on these invoices and official receipts.
>
> Q: Why do you say that out of the total amount of P3,279,383.68, the EWT due is only P91,742.27.
>
> A: According to the summary, the taxable amount of P475,000.00 was paid to corporations, so the corresponding Expanded Withholding Tax ('EWT') due is P23,750.00 (P475,000.00 x 5%). The taxable amount of P679,922.71 was paid to individuals, so the EWT due is P67,922.27 (P679,922.71 x 10%). Therefore, the total amount of EWT due is P91,742.27.

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[30] Exhibit "Q".

Q: Since you stated that the total amount paid for professional fees was P3,279,383.68 but that only P1,154,922.71 (P475,000.00 + P679,922.71) was taxable, how do you account for the remainder amounting to P2,124,460.97?

A: As shown in the summary under the heading 'Non-Taxable Amount', we paid the total amount of P537,200.00 to General Professional Partnerships ('GPP's'). Specifically, these GPP's were the ACCRA Law Office, Sycip Salazar Gatmaitan & Hernandez Law Office, and SGV & Co. We also paid a total of P21,545.52 as reimbursements for out-of-pocket expenses. Lastly, we paid a total of P1,565,715.45 to a non-resident foreign corporation for services performed outside the Philippines.

The Court cannot but agree with petitioner's contention that professional fees for services rendered by an individual are subject to 10% withholding tax, while professional fees for services rendered by a taxable corporation or juridical person are subject to only 5%, pursuant to Section 2.57.2 of Revenue Regulations No. 2-98. However, of the alleged combined taxable professional fees of P1,154,922.71, only the amount of P25,000.00 was duly substantiated[31] by documents of payments to a corporation. No additional and relevant supporting documents were adduced to prove that the remaining professional fees of P1,129,922.71 (P1,154,922.71 less P25,000.00) were also paid to juridical person or entity. Mere allegation to that effect *sans* supporting evidence is at most self-serving and does not deserve consideration. Well-settled is the rule that tax assessments are presumed to be correct

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[31] Exhibit "P-39".

unless the contrary is shown, and the burden of proof rests upon the taxpayer to overcome this presumption. While the determination of a deficiency tax by the Government is only *prima facie* correct, the duty to prove otherwise is on the taxpayer.[32] And petitioner utterly failed to discharge this burden. Thus, the imposition of 10% withholding tax rate on the remaining professional fees of P1,129,922.71 is sustainable.

As to the payment of professional fees to general professional partnership (GPPs) and out-of-pocket expenses/reimbursements in the amount of P537,200.00 and P21,545.52, respectively, the Court finds for petitioner.

Section 22(B) of the NIRC of 1997 defines general professional partnerships as partnerships formed by persons for the sole purpose of exercising their common profession, no part of the income of which is derived from engaging in any trade or business.

Corollarily, Sections 26 of the NIRC of 1997 and Section 2.57.5(B) of Revenue Regulations No. 2-98 provide as follows:

[32] H. Tambunting Pawnshop, Inc. v. Commissioner of Internal Revenue, C.T.A. EB No. 68 (C.T.A. Case No. 6238), April 24, 2006, citing Gutierrez v. Collector of Internal Revenue, L-19537, May 20, 1967; Tan Guan v. Court of Tax Appeals, L-23676, April 27, 1967; Republic v. Philippine Rabbit Bus Lines, Inc. L-26862, March 30, 1970.

> SEC. 26. *Tax Liability of Members of General Professional Partnerships.* – A general professional partnership as such shall not be subject to the income tax imposed under this Chapter. Persons engaging in business as partners in a general professional partnership shall be liable for income tax only in their separate and individual capacities. Xxx
>
> SECTION 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:
>
> xxx xxx xxx
>
> (B) Persons enjoying exemption from payment of income taxes pursuant to the provisions of any law, general or special, such as but not limited to the following: xxx

Clear from the foregoing that income payments made to a general professional partnership, as a juridical person, are exempt from income tax, *vis-à-vis* the expanded withholding tax. Its partners are the ones liable in their individual capacities for the payment of income tax, pursuant to Section 26 of the NIRC of 1997. The Supreme Court had the occasion to dwell on the matter in *Rufino R. Tan vs. Ramon R. del Rosario Jr., as Secretary of Finance and Jose U. Ong, as Commissioner of Internal Revenue*[33], thus:

> Partnerships are, under the Code, either 'taxable partnerships' or 'exempt partnerships.' xxx
>
> 'Exempt partnerships,' upon the other hand, are not similarly identified as corporations nor even considered as independent taxable entities for income tax purposes. A general *professional* partnership is such an example. Here, the partners themselves, not the partnership (although it is

[33] G.R. Nos. 109289 and 109446, October 3, 1994.

still obligated to file an income tax return [mainly for administration and data]), are liable for the payment of income tax in their *individual* capacity computed on their respective and distributive shares of profits. In the determination of the tax liability, a partner does so as an *individual*, and there is no choice on the matter. In fine, under the Tax Code on income taxation, the general professional partnership is deemed to be no more than a mere mechanism or a flow-through entity in the generation of income by, and the ultimate distribution of such income to, respectively, each of the individual partners.

After careful examination of the pertinent supporting documents[34] in relation to the above-quoted provisions of law and jurisprudence, this Court finds that the amount of P548,638.04 (P537,200.00 plus P11,438.04), representing professional fees paid to general professional partnerships and out-of-pocket expenses duly supported by pertinent documents, should not be subjected to withholding tax; while the remaining out-of-pocket expenses/reimbursements of P10,107.48 (P21,545.52 less P11,438.04) should be subject to 10% withholding tax. The details of the amount of P548,638.04 are as follows:

Payee	**Exhibit**	**Amount**	
		GPPs	**Out-of-Pocket Expenses/Reimbursements**
ACCRA Law Office	P-2	P 30,000.00	
ACCRA Law Office	P-4	36,000.00	
ACCRA Law Office	P-7		P 5,936.54
ACCRA Law Office	P-9	30,000.00	
ACCRA Law Office	P-11	30,000.00	
ACCRA Law Office	P-13	30,000.00	
ACCRA Law Office	P-15	30,000.00	
ACCRA Law Office	P-17	30,000.00	

[34] Exhibits "P-2" to "P-38".

ACCRA Law Office	P-19	36,000.00	5,501.50
ACCRA Law Office	P-25	36,000.00	
ACCRA Law Office	P-28	36,000.00	
ACCRA Law Office	P-31	78,000.00	
ACCRA Law Office		(30,000.00)	
SGV & Co.	P-37	140,000.00	
Sycip Salazar	P-38	25,200.00	
TOTAL		**P 537,200.00**	**P 11,438.04**

The same is true insofar as the amount of P1,565,715.45 allegedly paid to a non-resident foreign corporation for services performed outside the Philippines. Petitioner was unable to establish that the transaction involved a non-resident foreign corporation and the payments were for services rendered outside the Philippines. That being the case, it should be subject to a 10% withholding tax.

To recapitulate, petitioner shall be subject to deficiency expanded withholding tax on professional fees in the amount of P271,824.56, computed as follows:

Payments made to:		**Tax rate**	**EWT**
Corporation	25,000.00	5%	1,250.00
Individual	P 1,129,922.71	10%	P 112,992.27
Out-of-Pocket Expense/Reimbursement	10,107.48	10%	1,010.75
Others	1,565,715.45	10%	156,571.54
Total	**P2,730,745.64**		**P 271,824.56**

Courier Freight:

For courier freight, respondent claims that petitioner paid a total amount of P111,679.67, hence, petitioner should have paid the corresponding one percent (1%) withholding tax as provided under R.R. No. 2-98 or in the amount of P1,116.80.

But petitioner asserts that it is inaccurate. Out of P111,679.67, the taxable amount is only P48,843.55. Ms. Rosita Beleno in her Sworn Statement[35] explained as follows:

> Q: As per the BIR, the taxable amount for courier freight is P111,679.67. According to your summary, it is P48,843.55. How do you account for the difference of P58,619.32?
>
> A: Firstly, Exhibits 'U-1' and 'U-2' show that a payment of P213.00 was made for registered mail. Secondly, Exhibit 'U-13' and 'U-14' show a payment of P2,430.12 made to a general professional partnership, the ACCRA Law Office, for out-of-pocket expenses. Lastly, Exhibit 'U-29' shows a payment of P55,976.20 made to a foreign, non-resident entity."

With the supporting documents, the Court partially agrees with petitioner that the entire amount of P111,679.67 is not subject to expanded withholding tax. However, the amount of P55,976.20, is subject to tax for petitioner's failure to prove that it was made to a foreign non-resident entity.

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[35] Exhibit "SSS".

The total accounted courier freight amounts only to P107,462.87 (P48,843.55 + P58,619.32). It is therefore safe to conclude that the remaining unaccounted courier freight of P4,216.80 shall also be subject to expanded withholding tax. In sum, petitioner shall be liable for deficiency expanded withholding tax on courier freight in the amount of P1,090.37, computed as follows:

		WT Rate	EWT
Taxable as admitted by Petitioner	P 48,843.55	1%	P 488.44
Payment to Foreign Supplier	55,976.20	1%	559.76
Unaccounted Expense	4,216.80	1%	42.17
Total	**P 109,036.55**		**P 1,090.37**

Repairs and Maintenance:

Petitioner is also assessed for alleged deficiency EWT on its payments for repairs and maintenance. The deficiency EWT was arrived at by subjecting petitioner's total payments for such repairs and maintenance for the year 2000 in the amount of P359,163.94 to a tax rate of one percent (1%).

Petitioner counters that respondent's findings are grossly inaccurate having failed to consider that the payments listed under

"Repairs and Maintenance" include purchases of spare parts and other goods in the sum of P309,759.77. Petitioner explains that since it was not among the "Top 5,000 Corporations" at the time, it's purchases of spare parts and other goods shall not be subject to EWT, pursuant to Section 2.57.2(M)(3) of R.R. No. 2-98, which provides as follows:

> SECTION 2.57.2. *Income Payment Subject to Creditable Withholding Tax and Rates Prescribed thereon.* - xxx
>
> xxx xxx xxx
>
> (M) *Income payments made by the top five thousand (5,000) corporations* - xxx
>
> xxx xxx xxx
>
> (3) A corporation shall not be considered a withholding agent for purposes of this Section, unless such corporation has been determined and duly notified in writing by the Commissioner that it has been selected as one of the top five thousand (5,000) corporations.

But from the Schedule of Repairs and Maintenance prepared by petitioner it appears that not all of the non-taxable purchases were duly supported by documentary evidence. The amount of P78,240.75, from the alleged non-taxable repairs and maintenance of P309,759.77, in addition to the taxable amount of P49,404.17 as acknowledged by petitioner, shall be subject to EWT. The details of the findings are as follows:

Findings	Amount
1. Supporting documents not in the name of petitioner	
Exhibit "O-1"	180.00
Exhibit "O-2"	145.00
Exhibit "O-3"	60.00
Exhibit "O-12"	120.00
Exhibit "O-13"	60.00
Exhibit "O-20"	565.00
Exhibit "O-24"	170.00
Exhibit "O-25"	90.00
Exhibit "O-28"	60.00
Exhibit "O-29"	1,000.00
Exhibit "O-33"	800.00
Exhibit "O-34"	400.00
Exhibit "O-37"	1,139.75
Exhibit "O-38"	60.00
Exhibit "O-42"	49.00
Exhibit "O-45"	100.00
Exhibit "O-46"	122.00
Exhibit "O-47"	165.00
Exhibit "O-48"	210.00
Exhibit "O-49"	50.00
Exhibit "O-50"	140.00
Exhibit "O-53"	225.00
Exhibit "O-58"	200.00
Exhibit "O-59"	150.00
Exhibit "O-60"	550.00
Exhibit "O-61"	200.00
Exhibit "O-62"	100.00
Exhibit "O-64"	2,130.00
Exhibit "O-73"	900.00

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	Exhibit "O-77"	1,000.00
	Exhibit "O-78"	1,198.00
	Exhibit "O-79"	260.00
	Exhibit "O-81"	250.00
	Exhibit "O-82"	1,362.00
	Exhibit "O-83"	1,700.00
	Exhibit "O-86"	2,000.00
	Exhibit "O-91"	2,500.00
	Exhibit "O-92"	350.00
	Exhibit "O-93"	146.00
	Exhibit "O-94"	3,516.00
	Exhibit "O-97"	7,416.10
	Exhibit "O-98"	275.00
	Exhibit "O-111"	12,366.80
	Exhibit "O-125"	23,446.10
	Sub-total	**67,926.75**
2.	Without supporting documents	
	JV#1447	250.00
	JV#1447	1,362.00
	JV#1444	1,333.00
	JV#1444	915.00
	JV#1461	1,119.00
	JV#1735	1,940.00
	JV#1928	1,595.00
	JV#2003	1,800.00
	Sub-total	**10,314.00**
	TOTAL	**78,240.75**

Securities and Janitorial:

Respondent also says that out of P114,907.01 paid for security and janitorial services, petitioner should have paid a withholding tax of P1,149.07, pursuant to R.R. No. 2-98. But petitioner rejects it arguing that the taxable amount is only P111,839.09. The discrepancy of P3,067.92 was directly paid for the overtime work to Joey Siaron, an employee of the service agency employed by petitioner and not to the agency itself.

In support thereof, petitioner presented the approved Request for Payment form[36] for the overtime work of Joey Siaron. But this without more cannot sustain the claim that such payment was made directly to Joey Siaron. Moreover, there is nothing in the Request for Payment form that shows receipt of the said amount by Joey Siaron. In the absence of clear and convincing evidence, the finding of respondent on this item is in order.

Advertisement:

The assessed deficiency EWT on payments for advertisements amounting to P174.62 was arrived at by subjecting the said total

[36] Exhibit "R-29".

payments for the taxable year 2000 in the amount of P17,462.00 to a tax rate of one percent (1%).

However, petitioner claims that it has no deficiency EWT on payments for advertisements since the entire amount of P17,462.00 was paid to PLDT to include petitioner in its telephone directory. Since publication of telephone directory does not make PLDT an advertising agency, petitioner's payment does not fall within the coverage of Section 2.57.2(E)(4)(h) of R.R. No. 2-98.

This Court is not persuaded.

While it may be true that publication of telephone directory does not make PLDT an advertising agency, yet its income payment thereon is subject to EWT by virtue of Section 2.57.2(E)(4)(f) of R.R. No. 2-98, which provides:

> SECTION 2.57.2. *Income Payment Subject to Creditable Withholding Tax and Rates Prescribed Thereon.* xxx
>
> xxx xxx xxx
>
> (E) *Income payments to certain contractors.* – xxx
>
> xxx xxx xxx
>
> (4) *Other contractors* –
>
> xxx xxx xxx

> (f) Printers, bookbinders, lithographer and publishers except those principally engaged in the publication or printing of any newspaper, magazine, review or bulletin which appears at regular intervals, with fixed prices for subscription and sale.

Admittedly, PLDT advertised and published petitioner's telephone numbers in its directory and the payment made thereon was an income subject to EWT. Therefore, respondent's assessment of deficiency EWT on advertisement amounting to P174.62 has to be upheld.

Janitorial Services–HKGA:

Anent the alleged deficiency EWT of P237.49 on Janitorial Services-HKGA computed by subjecting the amount of P23,749.00 paid to Janitorial Services-HKGA for the year 2000 to a tax rate of one percent (1%), petitioner claims that the entire amount was paid in cash from petitioner's petty cash fund to individuals for janitorial services they had rendered and not to any janitorial agency. As this is amply supported by documents [37], the assessment for EWT on Janitorial Services–HKGA must necessarily be cancelled.

[37] Exhibits "V-1" to "V-48".

Rental:

This time, the claimed total rental payments of P12,665,421.52 was subjected to a tax rate of five percent (5%) giving rise to the deficiency EWT of P633,271.08 on the rental payments. Petitioner contends however that for the year 2000, its rental expense was only P7,383,571.11. Thus, the EWT due must only be P369,178.56, computed at the same rate of 5%.

Using the same documents as basis, particularly the Lease Agreements[38], this Court finds that petitioner's rental payments subject to EWT amounts to P7,579,439.49, with the corresponding EWT of P 378,971.97, computed as follows:

Lessor	Period	Reference	Monthly Rental (Net of VAT)	Rental for Year 2000	Total
Camira Holdings	8/15/99 - 10/14/00	Exhibit W-1	P85,000.00	P807,500.00	
	10/15/00 - 11/02/00		53,832.73	53,832.73	
	11/03/00 - 11/02/01	Exhibit W-2	79,500.00	159,000.00	
	Advance Rental			238,500.00	**P1,258,832.73**
Trixie Brothers	9/03/99 - 11/02/00	Exhibit W-3	40,860.63	408,606.30	
	11/03/00 - 11/02/01	Exhibit W-4	34,901.78	69,803.56	**478,409.86**
Ofelia Chean	9/03/99 - 11/02/00	Exhibit W-17	114,366.32	1,143,663.20	
	11/03/00 - 11/02/01	Exhibit W-18	97,687.89	195,375.78	**1,339,038.98**
Federico Galang	6/13/00 - 6/13/01	Exhibit W-31	100,000.00	1,200,000.00	**1,200,000.00**

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[38] Exhibits "W-1" to "W-38".

Pan American	7/25/99 - 7/24/00	Exhibit W-33	210,526.32		
	Advance Rental			2,640,000.00	
	7/25/00 - 7/24/01		231,578.95		**2,640,000.00**
Jobeliz Realty	9/01/99 - 2/28/00	Exhibit W-36			
	3/01/00 - 8/31/00		52,631.58	315,789.48	
	9/1/00 - 2/28/01	Exhibit W-37	57,894.74	347,368.44	
	3/01/01 - 8/31/01				**663,157.92**
TOTAL Rental subject to EWT					**P 7,579,439.49**
x EWT Rate					**5%**
EWT Due on Rentals					**P 378,971.97**

Hinged on the foregoing discussion, petitioner has deficiency EWT liability amounting to P 220,701.39, computed as follows:

	TAX BASE	EWT
Courier Freight	P 109,036.55	P 1,090.37
Repairs and Maintenance	127,644.92	1,276.45
Securities and Janitorial	114,907.01	1,149.07
Advertisement	17,462.00	174.62
Professional Fees	2,730,745.64	271,824.56
Rental Expense	7,579,439.49	378,971.97
Total EWT Due		**P 654,487.04**
Less: EWT Remitted		433,785.65
Deficiency EWT		**P 220,701.39**

WHEREFORE, the instant Petition for Review is **PARTIALLY GRANTED**. The compromise penalty imposed on petitioner in the amount of P1,000.00 is hereby **CANCELLED**, while the assessment for deficiency expanded withholding tax (EWT) issued by respondent against petitioner for taxable year 2000 is **MODIFIED.** Petitioner is hereby **ORDERED TO PAY** deficiency expanded withholding tax in the amount of **P601,404.77**, inclusive of interest and penalties, computed as follows:

BASIC DEFICIENCY EWT			**P 220,701.39**
Add:	25% Surcharge	P 55,175.35	
	20% Deficiency Interest (up to October 18, 2005)	208,850.03	
	20% Delinquency Interest (P220,701.39 + P55,175.35 + P208,850.03) x 20% - from February 23, 2004 to October 18, 2005	160,159.04	424,184.42
TOTAL AMOUNT DUE			**P 644,885.81**
Less:	Voluntary payment of deficiency EWT per Exhibit "GGG"[39]		
	Basic Tax	P 22,190.41	
	Interest up to October 18, 2005	21,290.63	43,481.04
AMOUNT STILL DUE			**P 601,404.77**

Additionally, petitioner is hereby **ORDERED TO PAY** respondent the following:

(a) deficiency interests at the rate of twenty percent (20%) *per annum* on basic expanded withholding tax of P198,510.98 (P220,701.39 less P22,190.41) computed from October 19, 2005 until full payment thereof, pursuant to Section 249(B) of the NIRC of 1997; and

(b) delinquency interest at the rate of twenty percent (20%) *per annum* on the total deficiency tax of P601,404.77 and on the 20% deficiency interest which have accrued as afore-stated in (a),

[39] The alleged "Voluntary Payment for 2000 Late Payment of Expanded Withholding Tax for Jorkims Corporation" (Exhibit "HHH") was not considered in the computation of EWT Still Due since this Court cannot ascertain if the said payment was indeed related to the EWT on the professional fees subject of the assessment.

computed from October 19, 2005 until full payment thereof, pursuant to Section 249(C) of the NIRC of 1997.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We concur:

ERNESTO D. ACOSTA
Presiding Justice

ERLINDA P. UY
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