Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

VICTORIA MANUFACTURING CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

EB Case No. 1094
(CTA Case No. 8187)

Members:
DEL ROSARIO, PJ,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
COTANGCO-MANALASTAS, and
RINGPIS-LIBAN, *J.J.*

Promulgated:

NOV 12 2014

x- 1:40 p.m. - - - -x

DECISION

CASANOVA, J.:

This is an appeal, by way of Petition for Review[1], filed by petitioner-Victoria Manufacturing Corporation, assailing the Decision[2] (the "Assailed Decision") dated June 28, 2013 and Resolution[3] (the "Assailed Resolution") dated November 12, 2013, both rendered by the CTA Special First Division and praying that this Court partially reverse the Assailed Decision and:

> "1. Allow Petitioner's Superintendence Expense in the amount of Php2,414,051.00 as a deductible expense for taxable year 2006 and cancel the deficiency income tax assessment resulting from its disallowance;

[1] En Banc Rollo, pp. 1-16
[2] Ibid, pp. 18-46
[3] Ibid, pp. 48-49

2. Cancel the deficiency income tax assessment pertaining to Petitioner's MERALCO refund in the amount of Php1,874,408.80; and

3. Cancel the deficiency expanded withholding tax assessment on Petitioner's Superintendence expense."

The facts of the case, as narrated in the Assailed Decision, are as follows:

"Petitioner Victoria Manufacturing Corporation is a domestic corporation organized and existing under Philippine laws, with principal office at Ever-Gotesco Compound, Ortigas Avenue Extension, Barangay Sta. Lucia, Pasig City.

On the other hand, respondent is the duly appointed head of the Bureau of Internal Revenue (BIR) vested with authority to administer all laws pertaining to internal revenue taxes and has the jurisdiction to decided *(sic)* disputed tax assessments. She holds office at the 5th Floor, BIR National Office Building, Diliman, Quezon City.

Records show that on August 22, 2007, respondent issued Letter of Authority No. 00065134, authorizing Revenue Officer Lilibeth M. Nazario to examine petitioner's books of accounts and other accounting records. As a result of this investigation, respondent sent a Notice for Informal Conference to petitioner.

Subsequently, respondent issued a Preliminary Assessment Notice, assessing petitioner for alleged deficiency income tax, deficiency VAT, and deficiency expanded withholding tax for taxable year 2006, as follows:

I. DEFICIENCY INCOME TAX

			AMOUNT
Net Income per return			P 3,030,054.00
Add:	Adjustments per investigation:		
	Undeclared sales/income	P 17,475,424.92	
	Income payments not subjected to withholding	2,414,051.00	
	Unaccounted sources of income	11,757,702.80	31,647,178.72
Taxable income per investigation			P 34,677,232.72

Income tax due thereon (35%)		P 12,137,031.45
Less: Allowable tax credits/payments:		
Prior year's excess credits	P 520,611.00	
Income tax payments per returns	88,108.00	
Creditable tax withheld per BIR Form No. 2307	1,058,097.00	
Total	P 1,666,816.00	
Less: Excess tax credits carried over to the Succeeding year	652,861.00	1,013,955.00
Deficiency income tax		P 11,123,076.45
Add: 20% Interest p.a. (04.17.07 to 12.04.09)		5,863,232.63
TOTAL AMOUNT DUE		**P 16,986,309.08**

II. DEFICIENCY VALUE-ADDED TAX (VAT)					
					AMOUNT
Taxable sales/receipts per VAT returns					P129,546,681.95
Add:	Adjustments per investigation:				
	Unaccounted sources of income				11,757,702.80
Taxable sales/receipts per investigation					P141,304,384.75
Output tax due thereon:					
January		₱ 11,305,006.02	10%	P 1,130,500.60	
February - December 2006		129,999,378.78	12%	15,599,925.45	P 16,730,426.06
Less: Allowable tax credits/payments:					
VAT payments per ITS				P 2,427,807.00	
Current input tax				13,603,071.19	
Total				P16,030,878.19	
Less: Excess input tax credits carried over to the succeeding period				690,482.55	15,340,395.64
Deficiency valued-added tax					P 1,390,030.42
Add: 20% Interest p.a. (01.26.07 to 12.04.09)					794,411.90
TOTAL AMOUNT DUE					**P 2,184,442.32**

III. DEFICIENCY EXPANDED WITHHOLDING TAX (EWT)			
	AMOUNT	**EWT RATE**	**EWT DUE**
Superintendence	P2,414,051.00	10%	P 241,405.10
Less: EWT remittances per returns			
Deficiency EWT			P 241,405.10
Add: 20% Interest p.a. (01.16.07 to 12.04.09)			139,287.44
TOTAL AMOUNT DUE			**P 380,692.54**

On December 21, 2009, petitioner filed a Letter of Protest dated December 17, 2009 against the Preliminary Assessment Notice.

Thereafter, respondent issued a Formal Letter of Demand with attached Assessment Notices all dated January 4, 2010 against petitioner for alleged deficiency income tax, deficiency VAT, and deficiency EWT in the amounts of ₱17,364,188.94, ₱2,231,665.27, and ₱388,893.70, respectively, for taxable year 2006, computed as follows:

I. DEFICIENCY INCOME TAX			
			AMOUNT
Net Income per return			P 3,030,054.00
Add:	Adjustments per investigation:		
	Undeclared sales/income	P 17,475,424.92	
	Income payments not subjected to withholding	2,414,051.00	
	Unaccounted sources of income	11,757,702.80	31, 647,178.72
Taxable income per investigation			P 34,677,232.72
Income tax due thereon (35%)			P 12,137,031.45
Less: Allowable tax credits/payments:			
Prior year's excess credits		P 520,611.00	
Income tax payments per returns		88,108.00	
Creditable tax withheld per BIR Form No. 2307		1,058,097.00	
Total		P 1,666,816.00	
Less: Excess tax credits carried over to the Succeeding year		652,861.00	1,013,955.00
Deficiency income tax			P 11,123,076.45
Add: 20% Interest p.a. (04.17.07 to 02.04.10)			6,241,112.49
TOTAL AMOUNT DUE			**P 17,364,188.94**

II. DEFICIENCY VALUE-ADDED TAX (VAT)				
				AMOUNT
Taxable sales/receipts per VAT returns				P129,546,681.95
Add: Adjustments per investigation:				
Unaccounted sources of income				11,757,702.80
Taxable sales/receipts per investigation				P141,304,384.75
Output tax due thereon:				
January	P 11,305,006.02	10%	P 1,130,500.60	
February-December 2006	129,999,378.78	12%	15,599,925.45	P 16,730,426.06
Less: Allowable tax credits/payments:				
VAT payments per ITS			P 2,427,807.00	
Current input tax			13,603,071.19	
Total			P16,030,878.19	
Less: Excess input tax credits carried over to the succeeding period			690,482.55	15,340,395.64
Deficiency valued-added tax				P 1,390,030.42
Add: 20% Interest p.a. (01.26.07 to 02.04.10)				841,634.85
TOTAL AMOUNT DUE				**P 2,231,665.27**

III. DEFICIENCY EXPANDED WITHHOLDING TAX (EWT)	AMOUNT	EWT RATE	EWT DUE
Superintendence	P 2,414,051.00	10%	P 241,405.10
Less: EWT remittances per returns			
Deficiency EWT			P 241,405.10
Add: 20% Interest p.a. (01.16.07 to 02.04.10)			147,488.60
TOTAL AMOUNT DUE			**P 388,893.70**

Petitioner received the subject Formal Letter of Demand and the attached Assessment Notices on January 7, 2010. On February 5, 2010, petitioner filed a Letter of Protest dated January 29, 2010 against the Formal Letter of Demand.

As shown by the Transmittal Letter dated March 25, 2010, petitioner transmitted documents in support of the protest against the Formal Letter of Demand to respondent on April 6, 2010.

On November 2, 2010, petitioner filed a Petition for Review before this Court, alleging, *inter alia*, that respondent did not act upon petitioner's protest letter within the prescribed one hundred eighty (180)-day period, the last day of which fell on October 3, 2010.

In her Answer filed on December 28, 2010, respondent raised the following special and affirmative defenses:

> '6. All presumptions are in favor of the correctness of the Assessment;
>
> 7. The Assessment/Demand Letter No. F43-355B dated 4 January 2010 for the year 2006 against the petitioner was issued in compliance with the provisions of section 228 of the National Internal Revenue Code, as amended and in accordance to existing Revenue Rules and Regulations relative to the right of the taxpayer/petitioner to be informed of the factual and legal bases upon which the assessment was made.
>
> 8. The herein Petitioner was fully appraised of the facts and the law on which the Final Assessment was issued. The Final Assessment Notice, Demand Letter and Details of Discrepancies which were all together sent at the same time to the Petitioner, contained, in detail, the manner of computation, the facts on which the assessment was based and the provisions of the law used in arriving at such deficiency assessment.
>
> 9. The herein petitioner failed to submit complete documents in support of their protest.

> 10. Verification disclosed an undeclared sales/income arising from the discrepancy on total amount of sales per books as compared to the amount declared in the financial statements and the unreported miscellaneous income hence the discrepancy amounting to P17,475,424.92 is subject to income tax pursuant to Section 31 and 27 of the NIRC of 1997, as amended.
>
> 11. Verification also disclosed that the petitioner failed to subject certain income payments to withholding tax as required under RR No. 2-98, as amended, thus disallowed as deductions from gross income pursuant to Section 34(K) of the NIRC, as amended.
>
> 12. Verification likewise disclosed that petitioner have inventories and miscellaneous income which were not accurately reported in the financial statements.
>
> 13. The deficiency value-added tax assessment is premised on the finding that the petitioner has an undeclared income, assessed pursuant to the provisions of Sec. 106 and 108 of the NIRC.
>
> 14. The 20% interest per annum has been imposed pursuant to the provisions of Section 249 (B) of the NIRC.
>
> 15. The 25% surcharge has been imposed pursuant to the provisions of Section 248 (A) of the NIRC.'

During the trial, both parties presented their respective oral and documentary evidence. Petitioner presented Alicia L. Acoba and Ria S. De Asis as witnesses. On the other hand, respondent presented her sole witness, Revenue Officer Lilibeth Nazario.

On October 3, 2012, the case was submitted for decision after petitioner and respondent filed their

Memorandum on July 25, 2012 and September 26, 2012, respectively."

On June 28, 2013, the Assailed Decision was rendered by the CTA Special First Division, the dispositive portion of which reads thus:

"**WHEREFORE**, in view of the foregoing considerations, the instant Petition for Review is hereby **PARTIALLY GRANTED**. The deficiency VAT assessment issued by respondent against petitioner for taxable year 2006 in the amount of ₱2,231,665.27 is hereby **CANCELLED** and **WITHDRAWN**. However, the deficiency income tax and EWT assessments for taxable year 2006 are partially **UPHELD** in the modified amount of ₱2,178,187.91, inclusive of the 25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, computed as follows:

	Basic Tax	**25% Surcharge**	**Total**
Income Tax	P 1,501,145.22	P 375,286.31	P 1,876,431.53
EWT	241,405.10	60,351.28	301,756.38
Total	**P1,742,550.32**	**P435,637.59**	**P2,178,187.91**

In addition, petitioner is hereby **ORDERED TO PAY** the following:

(a) deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency income tax of P1,501,145.22 computed from April 15, 2007 and EWT of P241,405.10 computed from January 15, 2007 until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended; and

(b) delinquency interest at the rate of twenty percent (20%) per annum on the total amount of P2,178,187.91 and on the deficiency interest which have accrued as afore-stated in (a) computed from February 4, 2010 until full payment thereof, pursuant to Section 249(C) of the NIRC of 1997, as amended.

SO ORDERED."

On July 23, 2013, respondent filed, through registered mail, her Motion for Reconsideration (For The Decision dated June 28, 2013) with petitioner's Comment to Respondent's Motion for Reconsideration filed on August 22, 2013. Petitioner filed, through registered mail on July 23, 2013, its Motion for Partial Reconsideration without any comment on the part of the respondent.

On November 12, 2013, a Resolution was promulgated by the CTA Special First Division denying both petitioner's Motion for Partial Reconsideration and respondent's Motion for Reconsideration (For The Decision dated June 28, 2013) for lack of merit.

Petitioner subsequently filed the instant Petition for Review on December 6, 2013.

On January 22, 2014, a Resolution[4] was promulgated by this Court ordering respondent to file her Comment to petitioner's Petition for Review within ten (10) days from receipt of the Resolution. However, per Records Verification Report[5] dated March 7, 2014, respondent failed to file her Comment.

On March 26, 2014, the parties were required to submit their simultaneous memoranda within a non-extendible period of thirty (30) days from receipt of the Resolution[6] promulgated on March 26, 2014.

Petitioner filed its Memorandum[7] on May 14, 2014 while respondent filed her Memorandum[8] on May 6, 2014.

The case was deemed submitted for decision per Resolution dated June 4, 2014.

Hence, this Decision.

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[4] Id., p. 101
[5] Id., p. 103
[6] Id., p. 105
[7] Id., pp. 117-128
[8] Id., pp. 107-116

Petitioner submitted the following issues for the resolution of the Court, to wit:

> 1. Whether or not petitioner is liable for deficiency income tax amounting to One Million Eight Hundred Seventy-Six Thousand Four Hundred Thirty-One and 53/100 Pesos (Php1,876,431.53) for taxable year 2006.
>
> 2. Whether or not petitioner is liable for Expanded Withholding Tax Amounting to Three Hundred One Thousand Seven Hundred Fifty-Six and 38/100 Pesos (P301,756.38) for taxable year 2006.

In support of its Petition, petitioner laid down the following arguments:

> 1. PETITIONER IS NOT LIABLE FOR THE DEFICIENCY INCOME TAX AMOUNTING TO ONE MILLION EIGHT HUNDRED SEVENTY-SIX THOUSAND FOUR HUNDRED THIRTY-ONE AND 53/100 PESOS (PHP1,876,431.53) FOR TAXABLE YEAR 2006.
>
> > 1.1 PETITIONER'S SUPERINTENDENCE EXPENSE IN THE AMOUNT OF PHP2,414,051.00 SHOULD NOT HAVE BEEN DISALLOWED AS A DEDUCTIBLE EXPENSE.
> >
> > 1.2 PETITIONER'S MERALCO REFUND IN THE AMOUNT OF PHP1,874,408.00 IS NOT TAXABLE INCOME OF PETITIONER.
>
> 2. PETITIONER'S SUPERINTENDENCE EXPENSE FOR TAXABLE YEAR 2006 IN THE AMOUNT OF PHP2,414,051.00 IS NOT SUBJECT TO EXPANDED WITHHOLDING TAX."

Respondent, on the other hand, submits that the assessment she made in her Formal Letter of Demand with regard to the deficiency Income Tax, deficiency Value-Added Tax and deficiency Expanded Withholding Tax are with legal and factual bases. Respondent further reiterated the same arguments proffered in her Motion for

Reconsideration (For the Decision dated June 28, 2013) dated July 23, 2013.

After a careful and thorough evaluation and consideration of the records of the case, the Court finds no merit in the Petition for Review.

The records of the case show that the CTA Special First Division had already fully and exhaustively resolved the issues in relation to the arguments raised in the Petition which We noted are mere rehash of the arguments proffered by petitioner in its Motion for Partial Reconsideration dated July 23, 2013.

There being no new matters or issues raised in the Petition for Review before Us, the Court *En Banc* finds no cogent reason to reverse the Assailed Decision dated June 28, 2013 and the Assailed Resolution dated November 12, 2013 of the CTA Special First Division.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

(On Leave)
ESPERANZA R. FABON-VICTORINO
Associate Justice

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
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