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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

FIRST LEPANTO TAISHO INSURANCE CORPORATION, *Petitioner,*	C.T.A. EB NO. 563 (C.T.A. Case No. 6200)
	Members:
- versus -	ACOSTA, *PJ* CASTAÑEDA, JR. BAUTISTA, UY, CASANOVA, PALANCA-ENRIQUEZ, FABON-VICTORINO, MINDARO-GRULLA, and COTANGCO-MANALASTAS, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: MAR 01 2011 Apolinario 11:00 a.m.

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DECISION

Fabon-Victorino, J.:

This appeal, by way of Petition for Review filed by petitioner First Lepanto Taisho Insurance Corporation, seeks to set aside the (1) Decision[1] of the Court in Division in CTA Case No. 6200 dated May 21, 2009, partially granting the petition and accordingly

[1] En Banc Rollo, pp. 36-64.

directing petitioner to pay respondent Commissioner of Internal Revenue (CIR) of its tax liabilities in the reduced amount of PHP1,994,390.86 and the Resolution[2] dated October 29, 2009, denying its *Motion for Partial Reconsideration,* for lack of merit.

The Parties:

Petitioner First Lepanto-Taisho Insurance Corporation, now known as FLT Prime Insurance Co., is a non-life insurance corporation organized and existing under our laws, with business address at 16th Floor, Pearl Center Building, Valero Street, Salcedo Village, Makati City. It is deemed a Large Taxpayer under Revenue Regulations No. 6-85, as amended by Revenue Regulations No. 12-94, effective 1994.

Respondent, on the other hand, is the Commissioner of Internal Revenue empowered to decide disputed assessments and to implement and enforce the provisions of the National Internal Revenue Code (NIRC) and other tax laws.

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[2] En Banc Rollo, pp. 65-71.

The Factual Antcedents:

The pertinent facts, as found by the Court in Division, are as follows:

> Petitioner filed its corporate income tax return for taxable year ending December 31, 1997 on April 15, 1998. Thereafter, on October 30, 1998, petitioner received a Letter of Authority (LOA 1997 000019830) dated October 29, 1998 from respondent, authorizing the examination of petitioner's books of accounts and other accounting records for all internal revenue taxes for the period from 1997 and "unverified prior years".
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> On December 29, 1999, respondent issued internal revenue tax assessments for deficiency income, withholding, expanded withholding, final withholding, value-added, and documentary stamp taxes against petitioner for taxable year 1997, which were received by petitioner on January 28, 2000.
>
> Respondent claims that the aforesaid Assessment Notices came about due to the following reasons:
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> 1. Assessment Notice No. ST-INC-97-0220-99 for deficiency income tax was issued on account of the failure of petitioner to comply with the additional requirement for deductibility under Section 29 (j) of the NIRC on its disallowed (a) representation and entertainment expenses of P704,000.00, transportation expenses of P333,000.00, lodging expenses of P1,286,356.00, commissions of P905,428.46, direct loss expense of P1,212,742.93, repair and maintenance expenses of P702,988.59, and travelling expenses of P340,041.45; (b) disallowed profit commission expense of P1,363,133.64 and interest expense of P33,002.54 (total of

P1,396,136.18) for being prior year expenses pursuant to Section 76 of Revenue Regulation No. 2; (c) disallowed representation expenses and licenses paid of P36,175.75 which runs counter to BIR Ruling 043-96, and fines and penalties for civil and criminal liabilities which are not allowed as deductions; and (d) overstatement of non-taxable income in the amount of P133,347.00;

2. Assessment Notice No. ST-WC-97-0221-99 arose due to petitioner's failure to withhold tax on (a) Director's Bonus of P500,000.00; (b) Fixed Transportation expense of P333,000.00; (c) Lodging expense of P1,286,356.00; and (d) Fixed Representation expense of P704,000.00;

3. Assessment Notice No. ST-EWT-97-0218-99 was issued due to under-withholding on: (a) commissions of P130,615.44 (direct business) and P774,813.02 (profit commission expense); (b) adjuster's fees of P1,212,742.93; (c) occupancy costs of P9,403.81; (d) repairs and maintenance costs of P702,988.59; and (e) purchases of furniture and equipment in the amount of P5,974,477.15;

4. Assessment Notice No. ST-FT-97-0219-99 came about because of petitioner's failure to withhold final withholding tax in the amount of P299,521.84 from "dividends and computerization expenses paid to foreign companies in violation of Section 50 of the NIRC";

5. Assessment Notice No. ST-VAT-97-0222-99, arose from petitioner's error in the computation of the gross receipts and failure to subject the Settling Fee of P2,678,801.00 and the Salvage Recovery of P1,658,617.42 to ten percent (10%) value-added tax (VAT); and

6. Assessment Notice No. ST-DST-97-0217-99 was issued on account of petitioner's failure to adopt the lump sum method of paying documentary stamp tax (DST) to the BIR an amount sufficient to cover their expected DST liabilities for the month, and the consequent late payment of the tax.

The aforesaid assessment notices were accompanied by a Formal Letter of Demand signed by Assistant Commissioner for Enforcement Service, Percival T. Salazar dated December 29, 1999, with an attachment labeled as "Details of Discrepancies."

On February 24, 2000, petitioner sent a Letter dated February 22, 2000 protesting the assessment notices and alleging the following defenses:

1. Income Tax (Assessment Notice No. ST-INC-97-0220-99) — Petitioner avers that payments for light and water facilities were not included in the items subject to withholding tax as these income payments are not subject to withholding tax; and that prior years expenses amounting to P1,396,136.18 consisted of profit commission expense for 1995 and 1996 in the amount of P1,363,133.64 and interest reserve pertaining to the third and fourth quarters of 1996 in the amount of P33,002.54;

2. Expanded Withholding Tax (Assessment Notice No. ST-EWT-97-0218-99) — Petitioner claims that it had withheld the correct expanded withholding taxes on the income payments for services of casuals and purchases, as evidenced by BIR Form No. 1743-IR, Annual Information Return of Income Tax Withheld on Compensation, Expanded and Final Withholding Taxes, including attachments; and

3. Documentary Stamp Tax (Assessment Notice No. ST-DST-97-0217-99) —

According to petitioner, it overpaid its DST liabilities and there was no previous demand for its payment from which any interest should be charged.

On April 24, 2000, petitioner submitted all the relevant documents in support of its protest through a Letter dated April 19, 2000. Respondent had one hundred eighty (180) days from April 24, 2000 or until October 21, 2000 within which to resolve the administrative protest as mandated by Section 228 of the NIRC of 1997, as amended. However, the 180-day prescriptive period lapsed without respondent's resolution of petitioner's protest. And to protect its interest, petitioner elevated the matter, by way of the instant Petition for Review, before this Court on November 20, 2000.

In his Answer dated January 17, 2001, respondent interposes the following Special and Affirmative Defenses, to wit:

5. He reiterates and repleads the preceding paragraphs of this Answer as part of his Special and Affirmative Defenses.

6. The assessments in question were issued in accordance with law and pertinent regulations.

7. Under Section 29 (j) of the National Internal Revenue Code (NIRC), any amount paid shall be allowed as a deduction only if it is shown that the tax required has been deducted and withheld. Verification disclosed that the following expenses were not subjected to withholding tax:

Representation & Entertainment	P 704,000.00
Traveling (Transportation)	333,000.00
Traveling (Lodging/Subsistence)	1,286,356.00
Commissions	905,428.46
Direct Loss Expense	1,212,742.93
Occupancy Cost	9,403.81
Rep. & Maint/Cont./others	702,988.59
Traveling	340,041.45

8. Under Section 76 of Revenue Regulations No. 2, the expenses, liabilities, or deficit of one year cannot be used to reduce the income of a subsequent year. A taxpayer has the right to deduct all authorized allowances and it follows that if he does not within any year deduct certain expenses, losses, interests, taxes or other charges, he can not deduct them from the income of the next or any succeeding year. Verification disclosed that the following expenses were prior year's expense, hence, should be disallowed:

Profit Commission Expense	P 1,363,133.64
Interest Expense	33,002.54

9. Petitioner claimed as deduction 25% surcharge for late payment of documentary stamp tax amounting to P36,173.75. Under BIR Ruling 043-96, fines and penalties for civil and criminal liabilities are not allowable deductions.

10. According to the investigation, there was an overstatement of non-taxable income of P133,347.00 since there was an erroneous computation of non-taxable income thus, the disallowance of the overclaim of non-taxable income, as follows:

Non-taxable income per ITR	P 35,858,191.00
Non-taxable income per audit	35,724,844.35
Overstated non-taxable income	133,347.00

11. Under Revenue Memorandum Circular No. 16-83, fixed or variable transportation, representation/ entertainment and other allowances, which are given to an employee or officer of an employee shall be treated as compensation income subject to withholding. Furthermore, gross compensation income includes but is not limited to the following income items: a) salaries, wages, honoraria; b) bonuses,

c) allowances and other income of similar nature. Verification showed that the following taxable compensation income were not included in the computation of the correct compensation tax due from the various officers of the petitioner:

Director's Bonus	P 500,000.00
Fixed Transportation Allowance	333,000.00
Lodging/Subsistence Allowance	1,286,356.00
Fixed Representation Allowance	704,000.00

12. Under Revenue Regulation No. 12-94, there shall be withheld a creditable income tax at the rates herein specified for each class of payee from certain items of income payments to person residing in the Philippines. Reconciliation of the income payments subject to withholding tax per income tax return and withholding tax return showed under withholding on the following accounts:

Commissions-Direct Business	P 130,615.44
Profit Com. Expense	774,813.02
Direct Loss Exp. - Adjuster's Fees	1,212,742.93
Occupancy Costs - Office Premises	9,403.81
Rep. & Maint./Comm./Ads	702,988.59
Increase in Furniture, Fixture & Equip.	5,974,477.15

13. Under Section 50 of the NIRC, a final tax imposed on dividends and expenses paid to foreign corporations shall be withheld by the payor-corporation. Investigation disclosed that the petitioner failed to withheld the final withholding tax on dividends and computerization expense paid to foreign companies.

14. Under Section 100 (a) National Internal Revenue Code, there shall be levied on every sale of goods, a value-added tax equivalent to 10% of the gross selling price of the goods sold. Furthermore, under VAT Ruling No. 217-89, the sales

of used transportation equipment, machineries and scrap materials are subject to VAT. Investigation disclosed that an under-statement arose from an erroneous computation of the gross receipts and failure to subject the following income to VAT:

Settling Fee/Salvage Recovery	P 2,678,801.00
Salvage Recovery - Loss Recovery	1,494,384.01
Salvage Recovery - Other income	164,233.41

15. Under Section 248 (d) of the NIRC, in the case of failure to affix the proper documentary stamp to a document, there shall, for every violation, be imposed, in addition to the amount of documentary stamp tax required to be paid, an amount equivalent to 25% of such unpaid amount. Furthermore, under Section 249 (a) of the NIRC, there shall be assessed and collected on any unpaid amount of tax, interest at the rate of 20% per annum. For failure to adopt the lump sum method of paying documentary stamp tax an amount sufficient to cover their expected DST liabilities for the month, surcharges and interest were imposed upon the petitioner.

16. All presumptions are in favor of the correctness of tax assessments."

During trial, petitioner and respondent presented their respective evidence. On February 15, 2008, petitioner filed a Motion for Partial Withdrawal of Petition for Review praying for the partial withdrawal of the petition assailing the following Assessment Notice Nos. ST-INC-97-0220-99; ST-VAT-97-0222-99; and ST-DST-97-0217-00, due to its availment of the Tax Amnesty Program. Finding said motion to be meritorious, the Court granted the partial withdrawal of the aforesaid Assessment Notices and directed the parties to file their simultaneous memoranda on the remaining issue of deficiency withholding taxes in the Resolution dated March 31, 2008.

Petitioner filed its Memorandum on June 2, 2008, raising its defenses against Assessment Notice Nos. ST-WC-97-0221-99, ST-EWT-97-0218-99, and ST-FT-97-0219-99; while respondent, filed its Memorandum on June 3, 2008. Thereafter, this case was deemed submitted for decision in the Resolution dated June 10, 2008.

After the parties rested, the Court in Division disposed of the case on May 21, 2009, in this wise:

WHEREFORE, in the view of the foregoing considerations, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, petitioner is hereby **ORDERED TO PAY** deficiency withholding tax on compensation, expanded withholding tax, and final tax in the reduced amount of P1,994,390.86, computed as follows:

	Basic Tax	Surcharges	Interest	Total
Deficiency Withholding Tax on Compensation ST-WC-97-0221-99	P 774,200.55	P 193,550.14	P 312,227.34	**P 1,279,978.03**
Deficiency Expanded Withholding Tax ST-EWT-97-0218-99	132,724.02	33,181.01	53,526.27	**219,431.30**
Deficiency Final Withholding Tax ST-FT-97-0219-99	299,391.84	74,847.96	120,741.73	**494,981.53**
TOTALS	**P1,206,316.41**	**P 301,579.11**	**P 486,495.34**	**P 1,994,390.86**

In addition, petitioner is hereby **ORDERED TO PAY** twenty percent (20%) delinquency interest on the amount of P1,994,390.86, computed from February 1, 2000 until full payment thereof, pursuant to Section 249(c) of the NIRC of 1997, as amended.

SO ORDERED.

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Not satisfied with the judgment, petitioner filed a "Motion for Partial Reconsideration" on June 17, 2009, but the Court in Division stood firm on its Decision and denied it on October 29, 2009, for lack of merit, thus:

WHEREFORE, premises considered, respondents *Motion for Partial Reconsideration (Re: Decision promulgated May 21, 2009)* and petitioner's *Motion for Partial Reconsideration* are hereby **DENIED** for lack of merit.

SO ORDERED.

Hence, this Petition for Review filed on November 19, 2009, raising the following issues for the resolution of the Court *En Banc,* to wit:

The Issues

I. WHETHER THE COURT IN DIVISION ERRED IN HOLDING PETITIONER LIABLE FOR DEFICIENCY WITHHOLDING TAXES

ON COMPENSATION UNDER ASSESSMENT NO. ST-WC-97-0021-99.

II. WHETHER THE COURT IN DIVISION ERRED IN HOLDING PETITIONER PARTIALLY LIABLE FOR DEFICIENCY EXPANDED WITHHOLDING TAXES UNDER ASESSMENT NO. ST-EWT-97-0218-99.

III. WHETHER THE COURT IN DIVISION ERRED IN HOLDING PETITIONER LIABLE FOR DEFICIENCY FINAL WITHHOLDING TAXES UNDER ASSESSMENT NO. ST-FT-97-0219-99.

IV. WHETHER THE COURT IN DIVISION ERRED IN HOLDING PETITIONER LIABLE FOR DELINQUENCY INTEREST UNDER SECTION 249(C)(3).

In compliance with the Resolution dated December 9, 2009, respondent filed its Comment/Opposition to the Petition for Review on January 5, 2010 paving the way for the issuance of the Resolution dated January 11, 2010, giving due course to the petition and directing the parties to file their respective memoranda, within thirty (30) days from notice.

On March 1, 2010, the petition was deemed submitted for decision.

The Ruling of the Court En Banc

The petition lacks merit.

A fastidious examination of the arguments in the instant petition shows that they were merely lifted from petitioner's *Motion For Partial Reconsideration* filed with the Court in Division. There is nothing in the petition that was not considered and passed upon by the Court in Division in the impugned Decision and Resolution. But if only to disabuse petitioner's mind, the Court *En Banc* will discuss them in *seriatim*.

PETITIONER IS LIABLE FOR DEFICIENCY WITHHOLDING TAX ON COMPENSATION:

On director's bonuses:

Petitioner contends that it is not liable to pay Withholding Tax on Compensation on the payment of Php500,000.00 Director's Bonus since the said amount was already subjected to Expanded Withholding Tax. The recipient directors, namely, Rodolfo Bausa, Voltaire Gonzales, Felipe Yap and Catalino Macaraig, Jr. were not its employees, hence, the director's fees they received were not compensation income subject to withholding tax. The best proof is the very same *Alpha List* relied upon by the Court in Division in ruling that Directors Shuichi, Ueda, Diaz, Watada and Yong were employees of petitioner.

As explained by the Court in Division in the assailed Decision, the proposition suffers from defect, thus:

> "A scrutiny of petitioner's 1997 alphalist of employees that were subjected to withholding tax on compensation shows that the names of Mizuroya Shuichi, Naoki Ueda, Matsuo Watada, Constancio Diaz and Micky Yong were included therein. Clearly, these directors/officers were employees of petitioner. On the other hand, while the names of Voltaire Gonzales, Rodolfo Bausa, Felipe Yap and Catalino Makaraig Jr. do not appear in the said alphalist, such absence does not automatically establish their non-employment by petitioner, as additional supporting evidence should have been presented to clearly prove that they were indeed not employees of petitioner. In view thereof, the directors' bonuses in the amount of P500,000.00 should have been subjected to withholding tax on compensation pursuant to Section 2 (2) of Revenue Regulations No. 12-86, instead of the expanded withholding tax.
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> xxx xxx xxx

Furthermore, Section 5 of Revenue Regulations No. 12-86 [3] defines "employee" as follows:

[3] Amending pertinent provisions of the Revenue Regulations 6-82, as amended, otherwise known as the Withholding Tax Regulations on Compensation.

> "An individual, performing services for a corporation, whether as an officer and director, or merely as **a director whose duties are confined to attendance at and participation in the meetings of the Board of Directors**, is an **employee**." (*Emphasis supplied*)

As pointed out by Court in Division, petitioner was utterly unable to submit or adduce evidence to bolster its claim that the above named directors were not its employees. Allegations are not evidence upon which a conclusion may be hinged if not inferred.

On transportation expense,
subsistence and lodging
allowance and
representation allowance:

Petitioner claims that the transportation, subsistence and lodging, and representation expense represent reimbursements of actual expenses incurred by its key officers in relation to the conduct of business as a non-life insurance company. That being the case, they should not be deemed compensation of its key officers subject to withholding tax.

This is untenable.

Revenue Memorandum Circular No. 16-83,[4] states that fixed or variable transportation, representation/entertainment and other allowances given to a public officer or employee, or officer or employee of a private entity, shall be treated as compensation income, subject to withholding as prescribed in Sec. 2(c) of Revenue Regulations 6-82.

Section 2 of Revenue Regulations No. 9-83,[5] however modified the foregoing provision by laying down specific conditions for the foregoing amounts paid either as advances or reimbursements for transportation, representation and other *bona fide* ordinary and necessary expenses incurred or reasonably expected to be incurred by the employee in the performance of his duties in order that they may not to be considered compensation subject to withholding tax, to wit: 1) It is for ordinary and necessary travelling and representation or entertainment expenses paid or incurred by the employee in the pursuit of the trade or business of the employer; and 2) The employee is required to, and does, make an accounting/liquidation for such expense in accordance with the specific requirements of substantiation for each category of expense.

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[4] Treatment of Fixed or Variable Transportation, Representation/Entertainment and Other Allowances under Sec. 2(c) of Revenue Regulations No. 6-82.
[5] Supplemental Regulations to Revenue Regulations No. 6-82.

The said supplemental Revenue Regulations further states that if the reimbursements or advances exceed the actual expenses, the excess if not returned to the employer constitutes taxable compensation.

Precisely the Court in Division held, thus:

> "Accordingly, **in order that said expenses may not be subjected to withholding tax, it must first be established that they are reimbursement for actual expenses. In the instant case, there was no showing that the transportation, representation, and lodging and subsistence expenses allegedly incurred by its General Manager and expatriates, were actually reimbursements of valid company expenses. What was merely presented as evidence was the Schedule of Transportation Expenses, without the pertinent source documents. This Schedule does not at all prove that the amounts indicated therein are actually reimbursements for the aforementioned expenses.** What should have been presented at the very least, were the reimbursement forms/vouchers with attached sales invoices/official receipts, with appropriate tracing to a specific general ledger entry to prove actual reimbursements for said expenses. Failing in this regard, these allowances are hereby treated as employee's compensation income subject to withholding tax." (*Emphasis supplied*)

Clearly, petitioner's failure to substantiate its claim negates its assertion that the said transportation, representation, and lodging and subsistence expenses were ordinary and necessary in the pursuit of its trade and business and that said allowances were mere reimbursements of actual expenses incurred for its benefit.

PETITIONER PARTIALLY LIABLE FOR DEFICIENCY EXPANDED WITHHOLDING TAXES:

On commission expense:

Petitioner maintains that it was able to establish that the payment of insurance commissions amounting to Php905,428.36 were made to various insurance companies and not to agents or brokers. That being so, the said amount should not be subjected to 5% expanded withholding tax under RR 6-85 which provides for the list of taxpayers whose income earned are subjected to withholding tax.

Petitioner rests its claim on the testimonies of its witnesses Mina Infante and Leticia Tagle, its Vice President for Finance and the Court commissioned Independent Certified Public Accountant (ICPA), respectively. Both testified to the effect that the recipients of the commission expenses were the insurers who were not agents or brokers or that the payees of the commissions were insurance companies and not agents or brokers.

The Court *En Banc* cannot agree more with the Court in Division in saying that:

> "Petitioner failed to submit documentary evidence such as, but not limited to, reinsurance agreements/contracts to buttress its claim that the amount of P905,428.36 arose from reinsurance activities that gave rise to reinsurance commissions not subject to withholding tax. In the absence of clear and convincing proof that the recipients of these commissions are insurance agencies which are not agents or brokers, the Court cannot give credence to petitioner's claim that such commission expenses are not to be subjected to expanded withholding tax. Consequently, the deficiency withholding tax on commission in the amount of P51,802.19 is hereby sustained."

And as pointed out by respondent that while the premium statements presented by petitioner disclosed the amount of premiums paid to a certain payee, it did not indicate the character of the payee - whether it was an agent/broker or a re-insurance company. On the other hand, the Summary of Income Payments filed with the BIR was plainly self-serving, the author being the petitioner itself. Without more, the said piece of evidence cannot be given any probative value or credence.

Additional documentary evidence such as, but not limited to, reinsurance agreements/contracts should have been adduced to reinforce petitioner's claim that the amount of Php905,428.36 arose from reinsurance activities which gave rise to reinsurance commissions not subject to withholding tax. In the absence of any clear and convincing proof that the recipients of the commissions were insurance agencies and not mere agents or brokers, petitioner's claim must necessarily fail.

On direct loss expense:

Petitioner also finds flaws in the ruling of the Court in Division on its liability for withholding tax albeit in the reduced amount of Php17,404.39. Petitioner pulls strength on the report of the ICPA that it even over-withheld the amount of Php3,390.36. The relevant documents examined by the ICPA substantiate its claim that it over-withheld the taxes on transactions categorized as direct loss expense.

The argument is so lame.

Firstly, the Court is not bound by the findings of the ICPA. The report submitted by the ICPA is but a tool or guide to aid the Court in the resolution of the case. The determination of the merit or the probative value of such report is still within the province of the Court. Secondly, the Court is free to adapt or disregard, completely or partially, the findings of the ICPA. It can even make its own audit and evaluation of the documents pertinent to the case presented during the trial in order to intelligently resolve the conflict brought before it.

The record reveals that the amount of direct loss expense claimed as deduction per Income Tax Return (ITR) is Php3,939,891.73, while the amount subjected to withholding tax as appearing in the withholding tax return is only Php2,727,148.80. Evidently, a discrepancy in the amount of Php1,212,742.93 (Php3,939,891.73 - Php2,727,148.80) exists precisely the assessment for deficiency expanded withholding tax by respondent.

Petitioner also asserts that payments to adjusters are composed of professional fees and out-of-pocket expenses. While the professional fees were subjected to withholding taxes, the out-of-pocket expenses, being in the nature of reimbursement of expenses and not income payments, were not.

But the out-of-pocket expenses and fees exempt from tax and duly supported with pertinent documents amounts to only Php864,655.12. Thus, of the total discrepancy of Php1,212,742.93, there still exists an amount of Php348,087.81

(Php1,212,742.93 - Php864,655.12) that should be subjected to expanded withholding tax. It is therefore not erroneous to state that petitioner is still liable for deficiency expanded withholding tax of Php17,404.39 on direct loss expanse. Verily, petitioner failed to discharge the burden of proving the contrary.

On occupancy cost:

Contrary to petitioner's contention, the payments for light and water are not included in the items subject to withholding tax. Documents indicate that the total Occupancy cost claimed as deduction is Php3,403,355.00 [6] consisting mainly of rental cost of office premises, light and water, repairs and maintenance of leasehold, and rental of facilities.[7] But as found by the Court in Division, petitioner's occupancy cost subject to withholding tax has an aggregate amount of only P3,139,006.17. Of the said amount, P3,040,950.00 is for the rental of office premises while the P98,056.17, for the rental of facilities.

The deficiency tax stemmed from the withholding and remittance of taxes by petitioner amounting to only Php156,480.11, corresponding to Php3,129,602.36 of the total

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[6] Schedule 1 of Exhibit "B".
[7] BIR Records, p. 89.

occupancy cost subject to withholding tax. Therefore, the amount of Php9,403.81 (Php3,139,006.17 - Php3,129,602.36), was not subjected to the five percent (5%) expanded withholding tax for which petitioner is liable.

On service/ contractors and purchases:

Again, petitioner refers to the parties' "Joint Stipulation of Facts" dated March 22, 2001, particularly paragraph 21 thereof, which the Court approved on March 30, 2001, stating as follows:

> *"21. With reference to Assessment Notice No. ST-EWT-97-0218-99, Petitioner withheld the correct expanded withholding taxes on the following income payments, to wit: (a) services of casuals; and (b) purchases, as evidenced by BIR Form 1743-IR, Annual Information of Income Tax Withheld on Compensation, Expanded and Final Withholding Taxes, including attachments, evidencing withholding of the expanded withholding tax on these items."*

Petitioner posits that the stipulation of facts does not warrant presentation of further evidence to substantiate it. To require otherwise renders the duly approved "Joint Stipulation of Facts" nugatory.

The theory is infirmed. The Court in Division traversed the issue in this fashion:

> "As ruled by this Court in the case of Oceanic Wireless Network, Inc. vs. Commissioner of Internal Revenue,[8] a judicial stipulation as to the facts is conclusive between the parties as long as it stands and such facts are not subject to contradiction by showing the facts to be otherwise than as agreed upon. However, the binding effect of the facts applies only to the parties in agreement; it is no more binding on the Court than any other evidence in the case.
>
> It is clear from the foregoing that this Court is not bound by the stipulation of facts made by both parties and the same may be duly disregarded. Accordingly, this Court ruled as to the correct amount of deficiency withholding taxes on Service/Contractors and Purchases based on the evidence presented; giving it more weight than the admission made by the parties in their *Joint Stipulation of Facts*. Petitioner's assertion that it did not withhold taxes on cost of repairs and maintenance because these were just minor repairs gave petitioner the burden to prove the same in Court. However, as what this Court stated in the Decision, petitioner failed to substantiate the said allegation."

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[8] Oceanic Wireless Network, Inc. vs. Commissioner of Internal Revenue, CTA EB No. 76, June 22, 2006, citing Ireland vs. Stalaum, 162 Neb. 630, 77 N.W. 2d 155 (1956)

PETITIONER LIABLE FOR DEFICIENCY FINAL WITH-HOLDING TAXES

The Petitioner also implores to set aside the deficiency final withholding taxes assessment in the amount of Php299,391.84, exclusive of interests and surcharges, from its payments of dividends and computerization expenses to foreign entities. Contrary to the ruling of the Court in Division, it was able to adduce evidence to prove remittance of the corresponding final withholding taxes on the said income payments justifying its plea to invalidate the assessment of deficiency final withholding tax of Php493,981.53.

Petitioner relies on its the Annual Information Return of Income Tax Withheld on Compensation, Expanded and Final Withholding Taxes for the year 1997 together with a Schedule of 1997 Final Withholding Tax, which allegedly shows that it withheld the treaty rate of ten (10%) percent on the cash dividend paid to Matsui Marine & Fire Insurance Co. Ltd., its non-resident foreign corporation stockholder. The said document according to petitioner shows that it withheld the 35% tax on the income payment made to the Malaysian entity.

But the contrary appears.

As observed by the Court in Division, **petitioner failed to present proof of remittance to establish that it had remitted the final tax on dividends paid as well as the payments for services rendered by the Malaysian entity**. The Annual Information Return of Income Tax Withheld on Compensation, Expanded and Final Withholding Taxes for the year 1997 together with a Schedule of 1997 Final Withholding Tax is not proof enough to establish petitioner's claim. Note that the Schedule of Final Withholding Tax, without any accompanying documents to support the claim of remittance, is not sufficient to assail the assessment made by respondent. Basic is the rule that he who alleges must prove it by preponderance of evidence and any allegation or assertion not so substantiated is, at best, a self-serving statement or declaration which is inadmissible in evidence for being hearsay.[9]

For reason only known to it, petitioner failed to present evidence of the claimed remittance. It must be stressed that an assessment cannot be cancelled based on mere allegations. There must be concrete or solid proof of such claim as "taxes are the lifeblood of the Government and their prompt and certain

[9] Victory Liner, Inc. vs. Court of Appeals, 293 SCRA 378.

availability are an imperious need."[10] In the absence of material documents to show the alleged remittance, the Court *En Banc* finds no reason to modify much less reverse the ruling of the Court in Division that petitioner is liable for deficiency final withholding tax.

PETITIONER LIABLE FOR DELINQUENCY INTEREST UNDER SECTION 249(C)(3) OF THE 1997 NIRC

Petitioner contends that the Formal Letter of Demand sent by the BIR imposed only the basic deficiency withholding taxes and not delinquency interest under Section 249(C) of the 1997 NIRC. Further, the *ratio decidendi* of the assailed decision does not provide the payment of the twenty percent (20%) delinquency interest ordered in the dispositive portion of the assailed Decision. That being the case, the directive to pay delinquency interest pursuant to Section 249(C)(3) of the 1997 NIRC should be deleted from the decretal portion of the assailed Decision.

The contention is specious.

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[10] Vera vs. Fernandez, No. L-31364, March 30, 1979; 89 SCRA 199, 204.

Undisputedly, petitioner failed to comply with the Formal Letter of Demand sent by respondent as it did not pay the deficiency taxes specified therein. Section 249(C)(3) of the 1997 NIRC is explicit that interest at the rate prescribed by the rules shall be charged for the failure of the taxpayer to pay the assessment, thus:

> "SEC. 249. Interest. —
>
> xxx xxx xxx
>
> "(C) **Delinquency Interest**. — In case of failure to pay:
>
> xxx xxx xxx
>
> "(3) A deficiency tax, or any surcharge or interest thereon on the due date appearing in the notice and demand of the Commissioner, there shall be assessed and collected on the unpaid amount, interest at the rate prescribed in Subsection (A) hereof until the amount is fully paid, which interest shall form part of the tax. (*Underscoring supplied*)

Relevant on the issue is the cited ruling in Philippine Refining Company (now known as "Uniliver Philippines [PRC], Inc.) vs. Court of Appeals, et al.,[11] where the Supreme Court ruled that delinquency interest should still be imposed from the time demand

[11] G.R. No. 118794, May 8, 1996.

was made by the BIR even if the assessment was appealed to the CTA, to wit:

> As correctly pointed out by the Solicitor General, the deficiency tax assessment in this case, which was the subject of the demand letter of respondent Commissioner dated April 11, 1989, should have been paid within thirty (30) days from receipt thereof. By reason of petitioner's default thereon, the delinquency penalties of 25% surcharge and interest of 20% accrued from April 11, 1989. The fact that petitioner appealed the assessment to the CTA and that the same was modified does not relieve petitioner of the penalties incident to delinquency. xxx"

Since petitioner failed to pay the corresponding deficiency taxes within thirty (30) days from receipt of the demand letter, the Court deems it proper to direct petitioner to pay delinquency interest of 20%.

Finally, petitioner may have forgotten that the dispositive portion or the *fallo* is what actually constitutes the judgment of the court in a particular case. It is the only repository of the dispositions in the case. Precisely courts are reminded to be extremely cautious in crafting the decretal portion of the decision.

It has to be clear without equivocation and complete as to its contents as obtaining in this case. [12]

WHEREFORE, premises considered, the petition for review is hereby **DENIED,** for **LACK OF MERIT**. The assailed Decision and the Resolution dated 13 July 2009 and 30 September 2009 respectively, are hereby **AFFIRMED** *in toto*.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

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[12] People v. Buban, 512 SCRA 500.

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
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