Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

YAMAN LAHI FOUNDATION, INC. - EMILIO AGUINALDO COLLEGE,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. EB Case No. 497
(CTA Case No. 7655)

Members:
ACOSTA, PJ,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
PALANCA-ENRIQUEZ,
FABON-VICTORINO,
MINDARO-GRULLA, and
COTANGCO-MANALASTAS, *J.J.*

Promulgated:

FEB 07 2011 3:30 pm

x- -x

AMENDED DECISION

CASANOVA, J.:

For resolution is petitioner-Yaman Lahi Foundation, Inc. – Emilio Aguinaldo College's Motion for Reconsideration[1] filed on September 16, 2010, seeking reconsideration of this Court's Decision[2] (the "Assailed Decision") promulgated on August 26, 2010, the dispositive portion of which reads as follows:

> "**WHEREFORE**, premises considered and finding no reversible error in the assailed Resolutions dated September 30, 2008, February 25, 2009 and May 29, 2009, of the CTA *Second Division*, the instant Petition for Review is hereby **DISMISSED** for lack of merit.
>
> **SO ORDERED**."

---

[1] En Banc Rollo, pp. 384 - 391
[2] Ibid, pp. 361-376

Respondent-Commissioner of Internal Revenue filed her Comment/Opposition (To Motion for Reconsideration Re: Decision dated 26 August 2010) on October 18, 2010.

Petitioner seeks to reconsider the Decision, on the following grounds:

> **"WITH DUE RESPECT, THE HONORABLE COURT OF TAX APPEALS EN BANC ERRED IN FINDING THAT THE FILING OF THE PETITION FOR REVIEW IS PREMATURE IN VIEW OF THE ON-GOING RECEPTION OF RESPONDENT'S EVIDENCE."**

Petitioner contends that "the filing of the Petition for Review is proper and need not await the disposition of the CTA Second Division (now Third Division) of the issue on petitioner's deficiency final withholding tax on interest income because what is being assailed is the ruling of the CTA Second Division (now Third Division) that the alleged final tax on income (which is the payor's/bank's withholding responsibility) is not covered by the Tax Amnesty Law"[3].

Respondent, on the other hand, maintains that: i) petitioner's deficiency final tax on interest income for fiscal year ending May 31, 2003, is not covered by the Tax Amnesty Program under R.A. No. 9480; ii) that withholding tax liabilities are excepted from the coverage of the Tax Amnesty as provided in Section 8(1) of R.A. No. 9480, implementing regulations and revenue issuances. Hence, the said deficiency final tax assessment, being in the nature of a withholding tax, is not covered by the petitioner's tax amnesty availment; and iii) the arguments raised by petitioner are mere reiterations of its arguments in its Petition for Review.

---

[3] Motion for Reconsideration, par. 1, En Banc Rollo, p. 385

After taking a second hard look at the arguments posited by both parties, We find merit in petitioner's contention.

Pertinent to the resolution of the instant petition are Sections 1, 6 and 8 of R.A. 9480 (The Tax Amnesty Law of 2007), which are hereunder quoted for easy reference:

> "**Section 1. Coverage**. There is hereby authorized and granted a tax amnesty which shall cover all national internal revenue taxes for the taxable year 2005 and prior years, with or without assessments duly issued therefor, that have remained unpaid as of December 31, 2005; Provided, however, That the amnesty hereby authorized and granted shall not cover persons or cases enumerated under Setion 8 hereof.
>
> x x x x x x x x x
>
> **Section 6. Immunities and Privileges.** Those who availed themselves of the tax amnesty under Section 5 hereof, and have fully complied with all its conditions shall be entitled to the following immunities and privileges:
>
> > 1. The tax payer shall be immune from the payment of taxes, as well as addition thereto, and the appurtenant civil, criminal or administrative penalties under the National Internal Revenue Code of 1997, as amended, arising from the failure to pay any and all internal revenue taxes for taxable year 2005 and prior years.
>
> xxx xxx xxx.
>
> **Section 8. Exceptions.** The tax amnesty provided in Section 5 hereof shall not extend to the following persons or cases existing as of the effectivity of this Act:

> 1. **Withholding agents with respect to their withholding tax liabilities**;
>
> 2. Those with pending cases falling under the jurisdiction of the Presidential Commission on Good Government;
>
> 3. Those with pending cases involving unexplained or unlawfully acquired wealth under the Anti Graft and Corrupt Practices Act;
>
> 4. Those with pending cases filed in court involving violation of the Anti-Money Laundering Law;
>
> 5. Those with pending criminal cases for tax evasion and other criminal offenses under Chapter II of Title X of the National Internal Revenue Code of 1997, as amended, and the felonies of frauds, illegal exactions and transactions, and malversation of public funds and property under Chapter III and IV of Title VII of the Revised Penal Code; and
>
> 6. Tax cases subject of final executory judgment by the courts."

The question that now arises is whether or not petitioner is the withholding agent contemplated under Sec. 8(1) of the Tax Amnesty Law of 2007 (R.A. 9480) with regard to the deficiency final tax on interest income being assessed by the respondent.

As defined under Section 22(K) of the National Internal Revenue Code of 1997, the term 'withholding agent' means any person required to deduct and withhold any tax under the provisions of Section 57.

Section 57 prescribes the withholding tax on interest on bank deposits, deposit substitutes, royalties, etc. and the person obligated to withhold the same. Section 57 reads as follows:

> "**Section 57. Withholding of Tax at Source.** –
>
> (A) **Withholding of Final Tax on Certain Incomes**. – Subject to rules and regulations, the Secretary of Finance may promulgate, upon the recommendation of the Commissioner, requiring the filing of income tax return by certain income payees, the tax imposed or prescribed by Sections 24(B)(1), 24(B)(2), 24(C), 24 (D)(1); 25(A)(2), 25(A)(3), 25(B), 25(C), 25(D), 25(E); 27(D)(1), 27(D)(2), 27(D)(3), 27(D)(5); 28(A)(4), 28(A)(5), 28(A)(7)(a), 28(A)(7)(b), 28(A)(7)(c), 28(B)(1), 28(B)(2), 28(B)(3), 28(B)(4), 28(B)(5)(a), 28(B)(5)(b), 28(B)(5)(c), 33 and 282 of the Code on specified items of income shall be withheld by payor-corporation and/or person and paid in the same manner and subject to the same conditions as provided in Section 58 of this Code."

Likewise, Sec. 2.57 of Revenue Regulations No. 2-98 (implementing R.A. 8424 [The Tax Code of 1997] relative to the Withholding on Income subject to the Expanded Withholding Tax and Final Withholding Tax, x x x) categorically states that the liability for payment of the tax rests primarily on the payor as a withholding agent. Section 2.57 of Revenue Regulations No. 2-98 reads thus:

> "**Sec. 2.57. WITHHOLDING OF TAX AT SOURCE.**
>
> (A) **Final Withholding Tax** – Under the final withholding tax system the amount of income tax withheld by the withholding agent is constituted as a full and final payment of the income tax due from the payee of said income. <u>The liability for payment of the tax rests primarily on the payor as a withholding agent. Thus, in case of his failure to withhold the tax or in case of under withholding, the deficiency tax shall be collected from the</u>

> payor/withholding agent. xxx xxx xxx."
> (Underscoring supplied)

Clearly, therefore, under the aforequoted provisions of the NIRC of 1997 on withholding of final tax on interest income, as well as the revenue regulations implementing the same, petitioner is not the withholding agent obligated to deduct and withhold the final tax on the income of its deposits and, thus, does not fall under the exception enumerated in Section 8 of the Tax Amnesty Law of 2007 (R.A. 9480), more specifically, Section 8(1) thereof.

As aptly argued by the petitioner in its Motion for Reconsideration:

> "10. Applying the above-quoted provisions, should the withholding agent fails (sic) to withhold the deficiency tax, the deficiency tax shall be collected from the withholding agent and not from the payee thereof. Having control, custody or receipt of the funds, the withholding agents are the ones who deduct the withholding taxes when the income payments are paid or payable; and hence, should be held accountable for any deficiency thereof.
>
> 11. Accordingly, Petitioner cannot be held liable for the final withholding tax, if there is any, because Petitioner is not the payor of any income. Petitioner is not a withholding agent as to the final withholding tax, if any. At most, any deficiency that may result from the payor's (i.e. the bank's) non-withholding of tax should be subject to corporate income tax, at 20%, considering that the same is income to Petitioner. Such income tax liability is likewise covered by the Tax Amnesty Law.
>
> 12. Nonetheless, by holding that Petitioner's case is excluded from the coverage of Tax Amnesty Law, the CTA Second Division (now Third Division) is in effect categorizing Petitioner as a withholding agent, and at the same time the payee of the withholding tax.
>
> 13. This should not be the case, however, considering that the law did not envision for the taxpayer

> to be, both the payor and the payee with respect to the final tax on interest income. Otherwise, the purpose of the law in distinguishing the payor from the payee is rendered nugatory."

Thus, not being a withholding agent, the final deficiency tax on interest income for the year 2003 being assessed on petitioner should, likewise, be included in petitioner's availment of the tax amnesty under R.A. 9480 (The Tax Amnesty Law).

WHEREFORE, premises considered, petitioner's Motion for Reconsideration is hereby **GRANTED**. Accordingly, our Decision dated August 26, 2010 is hereby **RECALLED** and **SET ASIDE**. Thus, the Petition for Review filed in the above-captioned case is hereby **GRANTED**, and the assailed Resolutions dated September 30, 2008, February 25, 2009 and May 29, 2009 issued by the Former Second Division in CTA Case No. 7655 are hereby **SET ASIDE**, and a new one is hereby entered considering the Petition for Review dated July 10, 2007, as **WITHDRAWN** solely in view of petitioner's availment of the Tax Amnesty Law of 1997.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice