REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

VISAYAS GEOTHERMAL POWER COMPANY, Petitioner,	**CTA EB No. 1291** **(CTA Case No. 8425)**
-versus-	Present: Del Rosario, *P.J.*, Castañeda, Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, Ringpis-Liban, and Manahan, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: APR 11 2017 2:48 p.m.

x---x

R E S O L U T I O N

CASTAÑEDA, JR., *J.*:

This resolves the "Motion for Reconsideration (Re: 21 September 2016 Decision of the Honorable Court of Tax Appeals – En Banc)" filed by petitioner Visayas Geothermal Power Company ("Petitioner" for brevity) on October 18, 2016, and the "Motion for Partial Reconsideration" filed by respondent Commissioner of Internal Revenue (CIR) through registered mail on October 18, 2016 and received by the CTA *En Banc* on October 26, 2016.

The dispositive portion of the Decision dated September 21, 2016 states:

> "**WHEREFORE,** premises considered, the Petition for Review *En Banc* is **PARTLY GRANTED.** Accordingly, the assailed Decision and the Resolution promulgated on

November 17, 2014 and on March 16, 2015, respectively, by the CTA First Division are **AFFIRMED with MODIFICATIONS.** The Compromise Penalties are **CANCELLED.** Management/Service fees amount to only ₱ 11,045,589.13.

Accordingly, petitioner (Visayas Geothermal Power Company) is ordered to pay respondent the total deficiency tax liability amounting to ₱3,451,746.60, inclusive of the 25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997, computed as follows:

	Final Withholding Tax	**Final Withholding of VAT**	**Total**
Management fees	₱ 11,045,589.13	₱ 11,045,589.13	
Tax rate	15%	10%	
Deficiency tax	₱ 1,656,838.37	₱ 1,104,558.91	₱ 2,761,397.28
Surcharge (25%)	414,209.59	276,139.73	690,349.32
Total	**₱ 2,071,047.96**	**₱ 1,380,698.64**	**₱ 3,451,746.60**

In addition, petitioner is likewise held liable to pay:

a) Deficiency interest at the rate of 20% per annum pursuant to Section 249(B) of the NIRC of 1997, as amended, on the basic deficiency final withholding tax and final withholding on value-added tax, computed from February 10, 2002, March 10, 2002, April 10, 2002, May 10, 2002, June 10, 2002, July 10, 2002, August 10, 2002, September 10, 2002, October 10, 2002, November 10, 2002, December 10, 2002 and January 15, 2003, until full payment thereof; and

b) Delinquency interest at the rate of 20% per annum on the total amounts due of ₱2,071,047.96 and ₱1,380,698.64 representing deficiency final withholding tax and final withholding on value-added tax, inclusive of the 25% surcharge thereon, respectively, and on the deficiency interest which have accrued as aforestated in (a), computed from July 15, 2006 until full payment thereof, pursuant to Section 249(C) of the NIRC of 1997, as amended.

SO ORDERED."

In its Motion for Reconsideration, petitioner's main grounds for resolution are the following: that the service fees paid by petitioner to MEHC are not Philippine-sourced income under the "source rule" principle of taxation; and that since the payments made to MEHC is considered sourced income outside the Philippines, the returns are not false that warrants application of the 10-year prescriptive period under Sections 203 and 222 of the Tax Code.

On the other hand, CIR moves for partial reconsideration of the September 21, 2016 Decision arguing that this Court should give more weight and credit to the BIR factual findings that the Management Service Fees paid by petitioner to MidAmerican Energy Holdings (CalEnergy Company, Inc.) for taxable year 2002 amounts to P50,870,007.59 rather than the amount of P11,045,589.13, representing the alleged management fees reported by petitioner in its Audited Financial Statements for the years ended December 31, 2002 and 2001 considering that such amount was clearly underdeclared. CIR also argues that the Formal Assessment Notices (FAN) for deficiency final withholding tax and final withholding on VAT issued by CIR to petitioner for taxable year 2002, are *prima facie* presumed correct and made in good faith.

Petitioner filed its "Comment/Opposition (to the Motion for Partial Reconsideration filed by Respondent Commissioner of Internal Revenue)" on November 16, 2016. Per Records Verification dated January 5, 2017, CIR failed to file comment on petitioner's Motion for Reconsideration.

Petitioner's Motion for Reconsideration and CIR's Motion for Partial Reconsideration were submitted for resolution on January 11, 2017.

After a careful review of the grounds raised by petitioner and by CIR, this Court finds that there is no valid or cogent reason to deviate from our findings and conclusions reached in the said Decision, thus, the motions are denied.

We emphasize that "there is no proof that the services were rendered in its Head Office in the United States. It is noteworthy to mention that the written correspondences (Exhibits "RR," "SS," "TT," "UU," "VV," and "WW," with all sub-markings), which were received through facsimile allegedly showing proof of the services rendered by MEHC on behalf of petitioner in its Head Office, were denied admission by the CTA 1st Division."[1] Petitioner also withdrew its "Manifestation with Motion for

[1] *Rollo*, p. 198; CTA *En Banc* Decision subject of these motions, p. 17.

Leave of Court to Present Additional Evidence (of Petitioner Visayas Geothermal Power Company)," which was duly noted by the CTA 1st Division.[2]

Anent the amount of management fees, petitioner presented sufficient evidence to show that the total amount of management fees is only P11,045,589.13, as stated in the Audited Financial Statements for the years ended December 31, 2002 and 2001 and duly supported by the invoices.

WHEREFORE, premises considered, petitioner's "Motion for Reconsideration (Re: 21 September 2016 Decision of the Honorable Court of Tax Appeals – En Banc)", and CIR's "Motion for Partial Reconsideration" are **DENIED** for lack of merit.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

(I maintain my Concurring and Dissenting Opinion.)
ROMAN G. DEL ROSARIO
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

(On Leave)
ERLINDA P. UY
Associate Justice

[2] *Rollo*, p. 72; Assailed Decision (CTA Case No. 8425), November 17, 2014, p. 26.

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice