REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

GRAND PLAZA HOTEL CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE No. 7516

Members:

Acosta, *Chairperson.*
Bautista, *and*
Casanova, *JJ.*

Promulgated:

JUN 04 2009 3:00pm

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DECISION

ACOSTA, *PJ:*

The instant Petition for Review seeks the cancellation and withdrawal of Assessment Notice No. INC-01-000142 dated April 12, 2005 issued against petitioner Grand Plaza Hotel Corporation for deficiency income tax for taxable year 2001 in the amount of ₱765,103.84, inclusive of surcharge, interest and compromise penalties.

THE FACTS

As stipulated by the parties in the Joint Stipulation of Facts and Issues and as borne by the records of this case, the following are the undisputed facts:

Petitioner Grand Plaza Hotel Corporation is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office located at the 10th Floor, The Heritage Hotel, EDSA Extension, Pasay City, Metro Manila.[1]

Respondent Commissioner of Internal Revenue is the Head of the Bureau of Internal Revenue (BIR), the government agency created by law and charged with, among other powers and duties, the responsibility of assessing and collecting all national internal revenue taxes. Respondent holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.[2]

On April 13, 2005, petitioner received a Formal Letter of Demand and Details of Discrepancy and Audit Result/Assessment Notice No. INC-01-000142, all dated April 12, 2005, finding petitioner liable for deficiency income tax for the taxable year 2001 in an amount equivalent to ₱765,103.84, inclusive of penalties, surcharge, interest and compromise penalty[3], to wit:

Taxable income per return			187,210,934.00
Multiply by tax rate			32%
Tax due per return			59,917,098.95
less: tax paid for 1Q, 2Q, 3Q		46,244,036.75	
Tax paid per Form 1702		9,314,483.43	
Allowed CWT/Form 2307			
Claimed per return	4,358,578.75		
Less: disallowances on CWT	403,129.97	3,955,448.78	50,513,968.98
Deficiency income tax			403,129.97
add penalties			
surcharge			100,782.49
interest (up to 4-30-05)			245,191.38
compromise penalty			16,000.00
Total deficiency income tax			765,103.64

In the said Formal Letter of Demand, respondent alleged that pursuant to Sections 57, 58(B) and 58(D) of the National Internal Revenue Code, and Sec. 2.58.1 and 2.58.3 of Revenue Regulations 2-98, certain creditable withholding tax certificates claimed by petitioner as deduction or tax credit

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[1] Par 1.6, Joint Stipulation of Facts and Issues (JSFI), Rollo, p. 90, in relation to Par 4.1, Petition for Review, Rollo, p.7.
[2] *Ibid*, in relation to Par. 4.2, Petition for Review, Rollo, p. 8.
[3] Par. 1.1, *Ibid*, Rollo, p. 89.

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against the income tax liabilities for the taxable year 2001 are being disallowed.[4]

On May 4, 2005, within the prescriptive period for filing a protest, petitioner through its external auditor Fernandez Santos & Lopez filed a letter-protest to the Formal Letter of Demand. In its letter-protest, petitioner maintained that the assessment of deficiency income tax resulting from the disallowance of certain creditable withholding tax certificates were without basis in fact or law.[5]

On July 27, 2006, petitioner received from respondent a Final Decision on Disputed Assessment finding petitioner liable for deficiency income tax amounting to ₱749,269.51, both inclusive of interest.[6]

Attached to the Final Decision on Disputed Assessment was the Computation of Deficiency Income Tax.[7]

On August 28, 2006, petitioner filed this instant Petition for Review[8] praying that judgment be rendered finding the assessment against it for deficiency income tax for taxable year 2001 as null and void for having been issued without legal and/or factual bases; and, issuing an order withdrawing/canceling said assessment.

On September 26, 2006, respondent filed a Motion for Extension of Time to File Answer[9] which was granted in the Order[10] of the Court on September 27, 2006.

On October 12, 2006, a second Motion for Extension of Time to File Answer[11] was filed by respondent. The Court granted said Motion in the Order[12] dated October 13, 2006.

On November 9, 2006, respondent filed its Answer[13] which averred the following Special and Affirmative Defenses:

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[4] Par. 1.2, *Ibid*, p. 90.
[5] Par. 1.3, *Id.*
[6] Par. 1.4, *Id.*
[7] Par. 1.5, *Id.*
[8] Rollo, p. 4-34.
[9] Rollo, p. 37-39.
[10] Rollo, p. 41.
[11] Rollo, p. 42-44.
[12] Rollo, p. 46.
[13] Rollo, p. 49.

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3. Petitioner claimed a total creditable withholding tax (CWT), per Form 2307, of P4,358,578.75 for the year 2001. This amount is inclusive of the following:

    a. certificates for the year 2001 amounting to P3,955,448.78
    b. certificates for the year 1998 amounting to P35.00
    c. certificates for the year 1999 amounting to P3,086.77
    d. certificates for the year 2000 amounting to P389,051.75
    e. certificates on creditable VAT withholding amounting to P10,926.45; and,
    f. a variance in the amount in the certificates issued by Bankard, inc. for the 4th quarter amounting to P30.00.

4. Disallowances were made on items (b) (c) (d) and (f) in the preceding paragraph pursuant to Sections 5 and 58(B) & (D) of the National Internal Revenue Code of 1997 (1997 Tax Code), and Sections 2.58.1 and 2.58.3 of the Revenue Regulations 2-98 which provides that "the amount of creditable tax withheld shall be allowed as a tax credit against the income tax liability of the payee in the quarter of the taxable year in which income was earned or received."
5. Item (e) in paragraph 3 was disallowed pursuant to Section 114(C) of the 1997 Tax Code and Section 4.114 of Revenue Regulations 2-98 which provides for "withholding of creditable value-added tax". The certificates should have been applied as tax credits to the petitioner's VAT liability and not to its income tax liability.
6. Of the total creditable withholding tax certificates for the year 2001 amounting to ₱4,58,578.78, the amount of ₱3,955,448.78 was allowed [Item (a) of paragraph 3] while the amount of ₱403,129.97 [items (b) to (f)] was disallowed.
7. The penalties (surcharge, interest and compromise penalty) have been imposed to the provisions of Section 248 and 249 of the 1997 Tax Code and Revenue Memorandum Order 1-90.

    Hence, the disallowances on creditable withholding tax certificates resulted to a deficiency income tax in the amount of ₱765,103.84.

Pre-trial conference was set on November 24, 2006.[14] The Pre-trial briefs were filed by respondent on November 21, 2006[15] and petitioner on January 9, 2007[16].

On February 21, 2007, the Joint Stipulation of Facts and Issues (JSFI)[17] were filed by the parties. A corresponding Resolution[18] dated March 1, 2007 approved said JSFI and thereafter terminated the pre-trial.

During trial, both petitioner and respondent presented testimonial and documentary evidence in support of their respective positions.

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[14] Rollo, p. 56.
[15] Rollo, p. 57-62.
[16] Rollo, p.66-73.
[17] Rollo, p. 89-92.
[18] Rollo, p. 95.

On July 15, 2008, the Court issued a Resolution[19] which considered the Formal Offer of Evidence[20] belatedly filed by petitioner on June 23, 2008 to be a mere scrap of paper. On August 1, 2008, petitioner filed its Motion for Reconsideration[21] of the July 15, 2007 Resolution. Respondent accordingly filed its Opposition on the Motion for Reconsideration[22] on August 22, 2008.

On September 3, 2008, the Court issued a Resolution[23] granting the Motion for Reconsideration and resolving to admit certain documentary pieces of evidence of petitioner.

On October 3, 2008, respondent filed his Formal Offer of Evidence[24] to which a corresponding Resolution[25] was issued by the Court on December 8, 2008.

On March 4, 2009, the case was submitted for decision after petitioner and respondent submitted their respective Memoranda[26] on January 16, 2009 and January 12, 2009, respectively.

THE ISSUES

By agreement of the parties, the issues to be tried and resolved in this case are the following:

I

Whether or not the petitioner may carry-over the excess creditable withholding tax certificates for the taxable years 1998, 1999 and 2000 and claim the same as a deduction or tax credit against its income tax liabilities for the taxable year 2001.

II

Whether or not the Assessment was made and issued in accordance with the procedure laid down under the Tax Code and applicable Revenue Regulations.

III

Whether or not the petitioner was fully apprised of the factual and legal basis for the finding of deficiency income tax.

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[19] Rollo, p. 221.
[20] Rollo, p. 138-155.
[21] Rollo, p. 224-229.
[22] Rollo, p. 235-238.
[23] Rollo, p. 240-242.
[24] Rollo, p.245-247.
[25] Rollo, p. 249.
[26] Rollo, p. 253-260 and 266-278, respectively.

IV

Whether or not the Assessment is null and void.

V

Whether or not the right of the government to assess deficiency taxes had already prescribed at the time the Assessment was issued.

VI

Whether or not the petitioner is liable for deficiency income tax in the amount of ₱764,103.84 for the year 2001.

THE ARGUMENTS OF THE PARTIES

Petitioner's Arguments

Petitioner argues that it is entitled to carry-over the excess creditable withholding tax (CWT) withheld for the years 1998, 1999 and 2000 and to apply the same to petitioner's income tax liabilities for the taxable year 2001 pursuant to Section 76 of the National Internal Revenue Code (1997 Tax Code).

Petitioner, moreover, avers that the respondent failed to provide the petitioner with the legal and factual basis for the disallowance of the CWT certificates, making the assessment void pursuant to Section 228 of the 1997 Tax Code. Accordingly, petitioner invokes Revenue Regulations No. 12-99 which requires that the taxpayer must be informed in writing by the Revenue District Officer of the discrepancy or discrepancies in the taxpayer's payment of his internal revenue taxes, for purposes of 'Informal Conference". Petitioner believes that respondent's Formal Letter of Demand falls short of the requirements under the law and is null and void, thus, the right of government to assess the alleged deficiency taxes has already prescribed.

Respondent's Arguments

Respondent, on the other hand, alleges that particular items in the disallowances were in violation of Section 57 and 58(B) and (D) of the 1997 Tax Code, and Sections 2.58.1 and 2.58.3 of Revenue Regulations No. 2-98 (RR. 2-98).

Respondent also argued that the disallowance on certificates on creditable VAT withholding was based on Section 114(C) of the 1997 Tax Code and Section 4.114 of RR. 2-98.

THE DECISION OF THE COURT

Regularity of the Assessment

The Court deems it proper to resolve first the Second, Third, Fourth and Fifth issues as they are interrelated and generally pertain to the question on the regularity of the issuance of the assessment.

Petitioner is adamant in alleging that the assessment is null and void for violation of Section 228 of the 1997 Tax Code, after respondent failed to indicate in the Formal Letter of Demand the factual and legal basis of his findings.

The Court does not agree.

On the outset, Section 228 of the 1997 Tax Code provides that:

> **Section 228.** *Protesting of Assessment.* - When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: provided, however, That a preassessment notice shall not be required in the following cases:
>
> xxx xxx xxx
>
> **The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.**
>
> xxx xxx xxx

Accordingly, Revenue Regulation No. 12-99 implemented the above-quoted provision and further provided in Section 3.1.4 an elaboration of the same, thus:

> Section 3.1.4 Formal Letter of Demand and Assessment Notice – the formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. **The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the**

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> **assessment is based, otherwise, the formal letter of demand and assessment shall be void.** xxx. (Emphasis Ours)

In *Reyes vs. Commissioner of Internal Revenue*[27], the Supreme Court explained the rationale behind the second paragraph of Section 228 of the 1997 Tax Code, to wit:

> "The law imposes a substantive, not merely a formal, requirement. To proceed heedlessly with tax collection without first establishing the validity of the assessment is evidently violative of the cardinal principle in administrative investigations: that taxpayers should be able to present their case and adduce supporting evidence xxx"

Thus, respondent's Formal Letter of Demand must contain the facts and the laws used as basis for the assessment in order for the taxpayer to be given the opportunity to properly prepare his or her defense, otherwise, the Formal Letter of Demand is null and void.

In the case at bar, a meticulous review of the documents presented reveals that respondent complied with the requirements as set forth above. The Formal Letter of Demand contains the Details of Discrepancy where the law and the revenue regulations violated by petitioner were stated. The said Details are herein quoted as follows:

xxx xxx xxx

> Disallowances were made on items B, C, D & F above pursuant to Sec. 57, 58(B) & 58(D) of the National Internal Revenue Code (NIRC/RA 8424) and Sec. 2.58.1 & Sec. 2.58.3 of the Revenue Regulations 2-98 which states that: "The amount of creditable tax withheld shall be allowed as a tax credit against the income tax liability of the payee in the quarter of the taxable year in which income was carried or received".
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> Item E above was also disallowed pursuant to Sec. 114(C) of the National Internal Revenue Code (NIRC/RA 88424) and Sec. 4.114 of Revenue Regulations 2-98 which provides for "Withholding of creditable value-added tax". The Certificates should have been applied as tax credits to the VAT liability and not to the income tax liability of GPHC.
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> Of the total creditable withholding tax certificates for the year 2001, P3,955,448.78 was allowed (item A above) and P403,129.97 were disallowed (items B to F above. The penalties (surcharge, interest and compromise penalty) were imposed pursuant to the provisions of Section 248 and 249 of the National Internal Revenue Code (NIRC/RA 8424) and Revenue Memorandum Order 1-90.

[27] GR No. 163581, January 27, 2006

In a previous case, the Court has already ruled that an" assessment shall be valid even if the notice merely contains the amount of taxes being assessed without any details on how said amounts were arrived at, provided that the report of investigation on which the assessment was based has been sent to the taxpayer and that said report details the findings, the facts and the law on which the proposed assessment were based. The fact that the taxpayer was able to file a letter of protest and submit documents to support its claim based on the report of investigation is likewise indicative that the taxpayer has bee sufficiently informed of the basis of the assessment."[28]

When petitioner, in this case, was sufficiently apprised of the basis of the assessment with the facts and the law stated in both the Formal Letter of Demand and Details of Discrepancy, it was able to intelligently formulate its protest thereto, hence was properly informed of the assessment, The assessment by respondent, therefore, complies with the requirements set by law.

Juxtapose thereto, petitioner's claim of prescription on the right of government to assess it of deficiency taxes is clearly mistaken. Since the assessment was properly issued as discussed in the preceding paragraphs, the assessment shall stand as it is. The Formal Letter of Demand was properly issued within the period allowed by law and has not yet prescribed.

Disallowance of Creditable Withholding Tax Certificates

Proceeding to the heart of the controversy, the Court shall now determine whether petitioner is liable for the deficiency income tax in the amount of ₱764,103.84 for the year 2001.

Petitioner questions respondent's disallowance of the creditable withholding tax certificates for the year 1998, 1999 and 2000 by arguing that it may carry over the excess creditable withholding tax on the questionable creditable withholding tax certificates for taxable years 1998, 1999 and 2000 and claim the same as deduction or tax credit against its income tax for the taxable year 2001.

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[28] *Philippine Mining Service vs. CIR*, CTA Case No. 5995, October 15,2002.

[initials]

The Court finds the disallowance proper. The argument of petitioner is untenable.

Accordingly, Section 2.58.3 of Revenue Regulations No. 2-98 provides that "the creditable withholding taxes which was deducted and withheld on income payments shall be allowed as tax credit against the income tax liability only when it is shown that the income payment has been declared as part of the gross income, and the fact of withholding is established by a copy of the withholding tax statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld", to wit:

> SECTION 2.58.3. Claim for Tax Credit or Refund. —
> (A) The amount of creditable tax withheld shall be allowed as a tax credit against the income tax liability of the payee in the quarter of the taxable year in which income was earned or received.
> (B) Claims for tax credit or refund of any creditable income tax which was deducted and withheld on income payments shall be given due course **only when it is shown that the income payment has been declared as part of the gross income and the fact of withholding is established by a copy of the withholding tax statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom.** Proof of remittance is the responsibility of the withholding agent. (Emphasis Ours)

In this case, petitioner failed to show that the income on the questionable creditable withholding tax certificates for the years 1998, 1999 and 2000 were already declared in the income tax return of the previous years, for them to be carried over to the next years. In fact, other than the testimonial evidence, no proof was adduced by petitioner to sufficiently establish that it declared as part of its gross income the income coming from the questionable creditable withholding certificates. Not even the income tax returns for the said years were presented by petitioner. Thus, the disallowance of the creditable withholding taxes on the questionable creditable withholding certificates is proper.

Moreover, upon analysis of the evidence offered during trial, the Court found no reason to subscribe to the allegation of petitioner that the questionable creditable withholding tax certificates were indeed received by petitioner only in 2001. No adequate proof was introduced to sufficiently

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establish the same. The mere allegation without supporting proofs is not evidence in themselves.

As to the rest of the respondent's disallowances as provided in the assessment, petitioner did not contest the disallowance on the creditable VAT withholding tax certificates in the amount of ₱10,926.45 and the variance in the amount figure of the certificate issued by Bankard, Inc. for the 4th quarter in the amount of ₱30. Both, therefore, are deemed admitted by petitioner.

Finally, in closing, the Court would like to stress that assessments are prima facie presumed correct and made in good faith. It is the taxpayer and not the BIR who has the duty of proving otherwise. In the absence of proof of any irregularity in the performance of official duties, an assessment will not be disturbed. Failure to present proof of error in the assessment will justify judicial affirmance of said assessment.[29]

"**WHEREFORE**, the Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the assessment issued by respondent against petitioner on April 12, 2005 for deficiency income tax is hereby **UPHELD**. Petitioner is **ORDERED** to **PAY** the amount of ₱749,103.84, representing petitioner's deficiency income tax plus interest and surcharges, computed as follows:

Taxable income per return			187,210,934.00
Multiply by tax rate			32%
Tax due per return			59,917,098.95
less: tax paid for 1Q, 2Q, 3Q		46,244,036.75	
Tax paid per Form 1702		9,314,483.43	
Allowed CWT/Form 2307			
Claimed per return	4,358,578.75		
Less: disallowances on CWT	403,129.97	3,955,448.78	50,513,968.98
Deficiency income tax			403,129.97
add penalties			
surcharge			100,782.49
interest (up to 4-30-05)			245,191.38
Total deficiency income tax			**749,103.84**

In addition, petitioner is hereby **ORDERED** to **PAY** twenty percent (20%) delinquency interest on the total amount of ₱749,103.84 from July 27, 2006 until full payment thereof, pursuant to Section 249(c)(3) of the 1997 Tax Code, as amended.

[29] *CIR vs. CA*, 242 SCRA 313-314.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
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
Chairperson, First Division