REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ENERGROW TRADING CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 6152

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
DEC 23 2003

x - x

DECISION

This is an appeal from the Final Decision on Disputed Assessment dated July 14, 2002, of herein respondent holding petitioner liable for deficiency income tax, withholding tax, expanded withholding tax and value-added tax, in the amounts of P353,079.42, P7,796.69, P64,584.94 and P309,203.63, respectively, for calendar year 1996.

The facts of the case as culled from the records are as follows:

Petitioner is a domestic corporation duly organized and existing under Philippine laws to engage in the business of trading, marketing and merchandising of fertilizers, with principal office at Ritz Tower 502B, Ayala Avenue, Makati City.

On November 11, 1998, the Regional Director of Revenue Region 8, Makati City, issued Letter of Authority No. 169638, authorizing Revenue Officers Rosemarie Talaman and Group Supervisor Evelyn Dinglasan to examine the books of accounts and other accounting records of Energrow Trading Corporation for all internal revenue taxes for calendar year 1996.

Consequently, the Regional Director of Revenue Region 8, Makati City issued a letter and Assessment Notices all numbered 00530-96-00-564 and dated January 20, 2000, assessing petitioner the amounts of P353,079.42, P7,796.69, P64,584.94 and P309,203.63, as deficiency income tax, withholding tax, expanded withholding tax and value-added tax, respectively, all for calendar year 1996 *(Exhibits 9, 10, 11, 12, 13 and 14 of the BIR Records)*.

Petitioner then filed a letter dated February 1, 2000, with the Bureau of Internal Revenue (BIR) protesting the subject assessments, except for the deficiency documentary stamp tax assessment which petitioner admitted.

On July 19, 2000, petitioner duly received a copy of the Final Decision on Disputed Assessment dated July 14, 2000, denying with finality petitioner's protest on the subject assessments.

In order to comply with the prescription period, petitioner filed with this court a petition for review of the subject assessments on August 14, 2000.

In his Answer filed on November 9, 2000, respondent asserted the following Special and Affirmative Defenses, to wit:

> "4. All presumptions are in favor of the correctness of tax assessments. The good faith of tax assessors and the validity of their actions are presumed (**Kischindchand Chellaram [Manila], Inc. vs. CTA**, *G.R. 60787, March 27, 1990*).
>
> 5. The assessments in question were made and issued in accordance with existing laws, rules and regulations."

The parties likewise stipulated the issues to be resolved by the court, namely:

1. Whether or not Section 9 of Revenue Regulations No. 6-85 (The Revised and Consolidated Expanded Withholding Tax Regulations), providing for non-deductibility of otherwise

deductible expenses when the tax to be withheld therefrom has not been paid to the BIR in accordance with Section 53,54,91 and 92 of the Tax Code is legal.

2. Whether or not the Office Occupancy Contribution and Allowance-Rustia of petitioner is subject to expanded withholding tax.
3. Whether or not the salaries and wages received by the employees of petitioner is subject to withholding tax.
4. Whether or not the intermediation income or commissions received by petitioner from its sales of fertilizers is subject to Value-Added Tax.
5. Whether or not petitioner is liable for deficiency income tax, deficiency withholding tax, deficiency expanded withholding tax and deficiency value-added tax in the amount of P353,079.42, P7,796.69, P64,584.94 and P309,203.63, respectively for calendar year 1996.

(*Page 120, CTA Records, Statement of Issues, Joint Stipulations of Facts and Issues.*)

After considering the attending facts, the evidence adduced and the applicable laws and jurisprudence, the court finds for the respondent.

Regarding the first issue, petitioner questions the legality of Section 9 of Revenue Regulations No. 6-85 which provides for non-deductibility of an otherwise deductible income. This court finds the same without merit.

Section 244 of the National Internal Revenue Code, as amended affords the Secretary of Finance, upon recommendation of the Commissioner of Internal Revenue

(CIR) with the authority "to promulgate all needful rules and regulations in connection with the implementation of the provisions of the Internal Revenue laws." And needless to say, the questioned regulation was promulgated by the Secretary of Finance by virtue of this statutory authority.

It is a principle of long-standing that a Revenue Regulation, the issuance of which is authorized by statute, has the force and effect of law (**Article 7, Civil Code; Arches vs. Bellosillo**, *20 SCRA 32*). Additionally, it is a widely accepted view in taxation that the interpretation placed upon a statute by executive officers, whose duty is to enforce it, is entitled to great respect by any courts of law. And courts will not interfere in matters which are addressed to the sound discretion of government agencies entrusted with the regulation of activities coming under the special technical knowledge and training of such agencies (**Sta. Ines Melale Forest Products Corporation vs. Macaraig, Jr.**, *299 SCRA 491*). Accordingly, such rules will always be presumed to be constitutional, and one who attacks it on the ground of unconstitutionality must convincingly prove its invalidity.

Hence, inasmuch as the petitioner failed to prove the illegality of the questioned regulation the court upholds the same as valid and legal.

The second and third issues shall be discussed jointly as they are interrelated.

Petitioner contends that the Office Occupancy Contribution is not subject to expanded withholding tax, since it is not a "rent" but a casual and arbitrary contribution of petitioner for maintenance in exchange for the goodness of the owner of the condominium unit who allegedly allowed petitioner usage of a small office space without rent. Still, this allegation is nothing but self-serving and lacking in factual and legal basis.

Inasmuch as Section 1(c) of Revenue Regulations No. 6-85 is the controlling provision on the matter, the same is quoted hereunder, thus:

> "(c) **Rentals.** - Where the gross rental paid or payable for the continued use of or possession of real property to which the payor or obligor has not taken or is not taking title or in which he has no equity, amounts to at least five hundred pesos (P500.00) - five per centum (5%)."

From the foregoing, it is correct to surmise that since petitioner is not taking title or equity for the continued use of the small office space in furtherance of its business, the Office Occupancy Contribution which is paid monthly by petitioner to the owner of the said office space, partakes the nature of a "rent". No amount of semantics will make it otherwise. Hence, it is subject to the 5% expanded withholding tax.

Similarly, petitioner's ratiocinations that the Allowance-Rustia which represents the president's travel, representation, gasoline and sales allowances/expenses in his added capacity as salesman of the company, and that the Salaries and Wages of petitioner's employees are not subject to expanded withholding tax or, is exempt from withholding tax are again self-serving claims devoid of any factual and legal foundation.

Section 21 of the NIRC, as amended, clearly provides that income tax shall be imposed upon taxable compensation, business and other income received during each taxable year from all sources, by every individual, whether a citizen of the Philippines or alien residing in the Philippines. Complimentary to this is the definition of the term "gross compensation income" which includes all income payments received as a result of an employer-employee relationship, such as salaries, wages, emoluments, honoraria, bonus and the like fringe benefits (monetary and non-monetary), allowances for transportation, representation, entertainment fees including director's fees, taxable pensions and retirement pay and other income of similar nature, including compensation paid in kind (**Revenue Regulations No. 6-82, as amended by Revenue Regulations No. 12-86**).

Moreover, for purposes of withholding tax, the term "compensation" means all remunerations for services performed by an employee for his employer unless specifically exempted under **Sections 27, 28 (b) and 71 of the Tax Code**, as amended. Fixed or variable transportation, representation and other allowances which are received by the officer or employee is compensation subject to withholding (**BIR Ruling No. 217-90** dated November 22, 1990**; BIR Ruling No. 066-84** dated April 3, 1984).

Clearly from the foregoing, the Allowance-Rustia representing the petitioner's president's travel, representation, gasoline and sales allowances/expenses in his added capacity as salesman of the company is included in the definition of "gross compensation income", and the Salaries and Wages of petitioner's employees fall within the category of the income, allowances and salaries sought to be covered by Chapter XIII of the NIRC withholding tax on wages, respectively. No play on semantics can make it otherwise.

Proceeding now to the fourth issue.

Petitioner alleges that it is solely engaged in the sales of fertilizers, an agricultural product, and that on occasions, on account of inadequate capital, petitioner just brought suppliers and buyers together and close the transaction between them, for which petitioner is given a share in the seller's margin. However, it is petitioner's theory that the intermediation fee or commission income it received from these transactions is not subject to VAT. Unfortunately, the same is again merely convenient allegations that are contrary to facts and laws.

Section 102 (a) of the NIRC, clearly provides, viz.:

> "There shall be levied, assessed and collected, a value-added tax equivalent to 10% of the gross receipts, derived from any person engaged in the sale of services. **The phrase "sale of services" means the performance of all kinds of services for others for a fee, remunerations or considerations,** including those performed or rendered by construction and service contractor, stock, real estate, commercial, custom and immigration brokers." (*Emphasis supplied*)

Giving support to the opinion of tax coverage of the questioned transactions is **BIR Ruling No. 051-89,** dated March 30, 1989, where it is ruled that a person acting as commission agent or broker, like herein petitioner, shall fall within the purview of a "commercial broker", where its gross receipts shall be subject to 10% value-added tax pursuant to **Section 102 of the Tax Code**, as amended by **E.O. No. 273** and as implemented by **Section 3 of Revenue Regulations No. 5-87**.

Although petitioner tried to make it appear that its share in the seller's margin was not VAT-taxable income, the facts and the law clearly point to the contrary. And no confusing title or terminology to describe it would exempt the same from the tax coverage.

We now proceed to the fifth issue.

Section 9 of Revenue Regulations No. 6-85 which is determinative of this issue is quoted hereunder for easy reference.

> **"Section 9. Requirement for deductibility.** - Any income payment, which is otherwise deductible manner under Section 30 and 57 of the Tax Code, as amended, **shall be allowed as a deduction from the payor's gross income only if it shown that the tax required to be withheld has been paid to the Bureau of Internal Revenue in accordance with Sections 53, 54, 91 and 93 of the Tax Code.**" (*Emphasis supplied*)

Inasmuch as it is admitted by petitioner in the Joint Stipulations of Facts and Issues that it failed to withhold the corresponding withholding tax due on the Office Occupancy Contribution, Allowance-Rustia and Salaries and wages of its employees, this makes said income payments not deductible from its gross income for failure to comply with the conditions set forth under the aforequoted Section 9 of Revenue Regulations No. 6-85 (now Section 2.58.5 of Revenue Regulations No. 2-98). Accordingly, the petitioner is liable for the withholding taxes under said regulation.

Finally, it is cardinal rule in taxation that exemptions from payment of taxes are highly disfavored in law, and the party claiming exemption must justify his claim by clear, positive, or express grant of such privilege by law. An exemption from common burden cannot be permitted to exist upon vague implication (**Collector of Internal Revenue vs. Manila Jockey Club, Inc.**, *98 Phil. 670*; **House vs. Posada,** *53 Phil.338*; **Asiatic Petroleum Co., vs. Llanes**, *49 Phil. 466*, cited in **Philippine Bank of Communications vs. Commissioner of Internal Revenue**, *CTA Case No. 2725, January 6, 1988*). In other words, petitioner's claim of exemption from payment of taxes cannot just be granted unless it is expressly provided for by law. The burden of proof is upon petitioner who claims a tax exemption in his favor to point out some provisions of law granting the exemption and to bring himself within the terms of those exempting provisions.

As correctly pointed out by the respondent, the fact that petitioner failed to identify any statutory provision explicitly granting exemption from payment of the subject tax assessments for calendar year 1996, the presumption that the said deficiency tax assessments were made in accordance with law and regulations are maintained.

WHEREFORE, in view of the foregoing, herein petition is **DENIED** and petitioner is ordered to pay the amounts of P353,079.42, P7,796.69, P64,584.94 and P309,203.63, as deficiency income tax, withholding tax, expanded withholding tax and value-added tax, respectively, for calendar year 1996, plus 25% surcharge and 20% interest per annum from July 19, 2000 until fully paid.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

We concur:

JUANITO C. CASTAÑEDA, JR.
Associate Judge

LOVELL R. BAUTISTA
Associate Judge

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge