

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

COVANTA ENERGY PHILIPPINE
HOLDINGS, INC.

Petitioner,

-versus-

CTA CASE NOS. 7338 & 7365

Members:

CASTAÑEDA, JR., Chairperson
CASANOVA, and
MINDARO-GRULLA, J.J.

COMMISSIONER OF INTERNAL
REVENUE,

Respondent.

Promulgated:

JUL 27 2010

X-----X
3:25 p.m.

DECISION

MINDARO-GRULLA, J.:

These are two (2) Petitions for Review separately filed by petitioner Covanta Energy Philippine Holdings, Inc., docketed as CTA Case Nos. 7338 and 7365, but which were consolidated, both seeking the cancellation of the assessments for deficiency minimum corporate income tax, value-added tax, and expanded withholding tax for taxable year 2001, in the aggregate amount of P1,222,298.98, broken down as follows:

DECISION

	Basic	Interest	Compromise	Total
CTA Case No. 7338				
VAT	P 276,923.26	P 163,669.95	P 25,000.00	P 465,593.21
EWT	180,904.06	107,999.72	-	288,903.78
<i>Subtotal</i>	<i>P 457,827.32</i>	<i>P 271,669.67</i>	<i>P 25,000.00</i>	<i>P 754,496.99</i>
CTA Case No. 7365	Basic	Surcharge	Interest	Total
MCIT	P 257,900.03	P 64,475.00	P 145,426.96	P 467,801.99
TOTAL	P 715,727.35	P 336,144.67	P 170,426.96	P 1,222,298.98

Petitioner Covanta Energy Philippine Holdings, Inc. ("CEPHI") is a corporation duly organized and existing under Philippine laws, with principal office located at the 17th Floor, Robinsons Equitable Tower, ADB Avenue corner Poveda Street, Ortigas Center, Pasig City¹ and registered with the Bureau of Internal Revenue (BIR) Revenue District Office (RDO) No. 43.²

Respondent Commissioner of Internal Revenue ("CIR") is the official authorized under Section 4 of the National Internal Revenue Code (NIRC) of 1997 to assess and collect internal revenue taxes, as well as to decide disputed assessments, subject to the exclusive appellate jurisdiction of this Court. He holds office at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

Respondent issued Formal Letters of Demand and Assessment No. ~~111~~ dated December 6, 2004, assessing petitioner for deficiency

¹ Registered address per Certificate of Registration is 401 One Magnificent Mile Bldg., San Miguel Ave., San Antonio, Pasig City

² Annex "B", Petition for Review, CTA Case No. 7338, Docket, p. 19

value-added tax (VAT) and expanded withholding tax (EWT) for taxable year 2001, in the respective amounts of P465,593.21 and P288,903.78.³

Respondent based his findings of deficiency VAT on the following grounds:⁴

"Erroneous Computation of Output Tax – Verification showed that taxpayer did not compute the output tax based on gross receipts as required under Section 108 of the National Internal Revenue Code.

Disallowed Input Taxes – Verification showed that part of input taxes claimed were for the purchase of non-vat goods, while some were purchases properly attributable to its affiliates and subsidiaries in violation of Sec. 110 of the National Internal Revenue Code."

The deficiency VAT assessment is detailed as follows:

Accounts Receivable as of January 1, 2001		P 1,749,930.00
Add: Management Fee for the year		21,362,425.00
Total		P 23,112,355.00
Output Tax		P 2,311,235.50
Less: Creditable Input Tax		
Input Tax per General Ledger	P 1,840,258.33	
Less: Disallowed Input Taxes	22,424.74	
Add: Input Taxes from previous quarter	132,703.93	
Allowable Input Tax		P 1,950,537.52
VAT Due		P 360,697.98
Add: Input Tax carried over to next quarter		210,852.87
Less: VAT Paid per return		294,627.59
Deficiency Value-Added Tax		P 276,923.26
Add: Interest up to January 10, 2005		163,669.95
Compromise penalty for non-filing of Quarterly lists of Sales and Purchases		25,000.00
Total Deficiency Value-Added Tax		P 465,593.21

On the other hand, the basis of petitioner's alleged deficiency EWT is as follows:⁵

"Failure to withhold taxes – Verification showed that taxpayer failed to withhold on various income payments subject to expanded withholding tax in violation of Revenue Regulation 2-98."

³ Exhibits "YYYY" and "ZZZZ", inclusive of submarkings, CTA Case No. 7338, Docket pp. 556-560

⁴ Exhibit "YYYY-2", CTA Case No. 7338, Docket p. 558

⁵ Exhibit "ZZZZ-2", CTA Case No. 7338, Docket, p. 561

Account	Withholding Tax Due
Professional Fees	P 320,228.71
Rental Expense	371,522.69
Various contractors	79,480.67
Total EWT Due	P 771,232.07
Less: EWT remitted	590,328.01
Deficiency EWT	180,904.06
Add: Interest up to 01.10.05	107,999.72
Total Deficiency EWT	P 288,903.78

On January 19, 2005, petitioner filed two(2) separate protest letters addressed to respondent,⁶ on the assessments for VAT and EWT for taxable year 2001 in the aggregate amount of P754,496.99.

On January 21, 2005, petitioner received respondent's Formal Letter of Demand and Assessment Notice dated January 11, 2005, assessing petitioner for alleged deficiency minimum corporate income tax (MCIT) in the amount of P467,801.99.⁷

On February 16, 2005, petitioner filed a protest letter on the foregoing assessment, enumerating the factual and legal bases supporting its arguments against the subject assessment and requesting the withdrawal and cancellation of the same.⁸

Respondent failed however to render a decision on petitioner's protests, prompting petitioner to elevate its claims before this Court; which were docketed as CTA Case No. 7338 and CTA Case No. 7365.

⁶ Par. 3, Stipulation of Facts, Joint Stipulation of Facts and Issues, CTA Case No. 7338, Docket, p. 82

⁷ Annexes "C", "D", and "E", Petition for Review, CTA Case No. 7365, Docket, pp. 15-17

⁸ Annex "F", Petition for Review, CTA Case No. 7365, Docket, pp. 18-21

The Petition for Review docketed as CTA Case No. 7338 was filed on October 10, 2005, seeking the cancellation and withdrawal of the assessments for deficiency VAT and EWT for taxable year 2001 in the total amount of P754,496.99.

The Petition for Review docketed as CTA Case No. 7365 was filed on November 9, 2005, seeking the cancellation and withdrawal of the deficiency assessment for MCIT for taxable year 2001 in the total amount of P467,801.99.

On December 6, 2005, respondent filed his Answer⁹ for CTA Case No. 7338, interposing the following counter-arguments:

- "3. He SPECIFICALLY DENIES the allegations contained in paragraph 1 under the heading 'The Case'; paragraphs 3.4 and 3.5 under the heading 'Jurisdictional Allegations'; paragraph 5.1 under the heading 'The Issues'; paragraph 6.3 under the heading 'Discussion' (Computation of Output Tax); paragraphs 6.5, 6.6, 6.7 and 6.8 under the heading 'Discussion' (Disallowed Input Taxes), paragraph 6.9 under the heading 'Discussion' (Compromise Penalty), and paragraph 6.10 under the heading 'Discussion' (Expatriated Withholding Tax) of the Petition for being gratuitous and unfounded assertions of facts and/or law, the truth of the matter being that verification showed that petitioner did not compute the output tax based on gross receipts as required under Section 108 of the National Internal Revenue Code of 1997 which provides among others:

xxx xxx xxx

The term 'gross receipts' means the total amount of money or its equivalent representing the contract price, compensation, service fee, rental or

⁹ CTA Case No. 7338, Docket, pp. 46-52

royalty, including the amount charged for material supplied with the services and deposits and advanced payments actually or constructively received during the taxable quarter for the services performed or to be performed for another person, excluding value-added tax.

xxx xxx xxx'

Part of input taxes claimed were for the purchase of non-vat goods, while some were purchases properly attributable to its affiliates and subsidiaries in violation of Section 110 of the National Internal Revenue Code of 1997 which provides, among others:

'xxx xxx xxx

(2) The input tax on domestic purchase of goods or properties shall be creditable:

(a) To the purchaser upon consummation of sale and on importation of goods or properties; and

(b) To the importer upon payment of the value-added tax prior to the release of the goods from the custody of the Bureau of Customs.

However, in the case of purchase of services, lease or use of properties, the input tax shall be creditable to the purchaser, lessee or licensee upon payment of the compensation, rental, royalty or fee.

xxx xxx xxx'

The deficiency value-added tax was computed mainly from petitioner's failure to consider the Accounts Receivable which accrued on December 31, 2000 in the computation of the output tax and disallowance of some input taxes.

The income tax returns of foreign executives Oliver Cruz, Frank Sine and Timothy Davis and their respective schedules showing their income tax computation and income details were submitted on 28 July 2004 and 9 August 2004, respectively. The

documents proved that the rental and other expenses from which input taxes amounting to P372,632.80 were previously disallowed in the Post-Reporting Notice formed part of the foreign executives' compensation which was declared in their income tax return.

Verification further showed that petitioner failed to withhold on various income payments subject to expanded withholding tax in violation of Revenue Regulations 2-98.

Assessment of withholding taxes was based on the various contracts of lease and schedules of professional fees, rental expenses and repairs and maintenance accounts submitted by petitioner.

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. They will be presumed to have taken into consideration all the facts to which their attention was called (*CIR vs. Construction Resources of Asia, Inc.*, 145 SCRA 671). It is incumbent upon the taxpayer to prove the contrary (*Mindanao Bus Company vs. CIR*, 1 SCRA 538; *CIR vs. Tuazon, Inc.*, 173 SCRA 397) and failure to do so shall vest legality to respondent's actions and assessments.

Failure to present proof of error in the assessment will justify judicial affirmation of said assessment (*Delta Motors Co. vs. Commissioner*, CTA Case No. 3782, 21 May 1986; *Commissioner of Internal Revenue vs. Court of Appeals, et al.*, G.R. Nos. 104151 and 105563, 10 March 1995)."

On January 10, 2006, respondent filed his Answer¹⁰ for CTA Case No. 7365, alleging the following counter-arguments:

- "5. Verification by the Bureau of Internal Revenue examiners showed that petitioner failed to pay the Minimum Corporate Income Tax (MCIT) required under Section 27(E) of the National Internal Revenue Code of 1997 (NIRC of 1997) which is imposed whenever the corporation has zero or negative taxable income.

Section 27(E) of the NIRC of 1997 provides, thus:

¹⁰ CTA Case No. 7365, Docket, pp. 44-48 6

'Sec. 27. Rates of Income Tax on Domestic Corporations. –

xxx

(E) Minimum Corporate Income Tax on Domestic Corporations. –

(1) Imposition of Tax. – A minimum corporate income tax of 2% of the gross income as of the end of the taxable year, as defined herein, is hereby imposed on a corporation taxable under this Title, beginning on the fourth taxable year immediately following the year in which such corporation commenced its business operations, when minimum income tax is greater than the tax computed under Subsection (A) of this Section for the taxable year.

xxx'

Revenue Regulations No. 9-98 provides that *'for purposes of MCIT, the taxable year in which business operations commenced shall be the year in which the domestic corporation registered with the BIR'*.

Petitioner's Certificate of Registration with the BIR would show that it registered in 1997. Hence, petitioner became liable to MCIT beginning taxable year 2001.

Revenue Regulations No. 9-98 further provides that the 2% MCIT rate shall be imposed on corporation's 'gross income' which is defined for seller of services, such as petitioner, as gross receipts less sales returns, allowances, discounts and cost of services. And 'cost of services' is defined as all direct costs and expenses necessarily incurred to provide the services required by the customers and clients including (a) salaries and employee benefits of personnel, consultants and specialists directly rendering the service, and (b) cost of facilities directly utilized in providing the service such as depreciation or rental of equipment used and cost of supplies.

6

Petitioner avers that in order to provide its client the services specified in the alleged agreement it incurred expenses such as, but not limited to, salaries and employee benefits, office rentals, transportation, etc. which became part of its cost. However, as found by the BIR examiners petitioner was able to substantiate only the salaries and wages of its foreign executives but not the direct costs and expenses it claimed it incurred to provide the services required by its client. Hence, the latter is disallowed.

6. The assessment was issued in accordance with law and regulations;
7. All presumptions are in favor of the correctness of tax assessments. **(Commissioner of Internal Revenue vs. Construction Resources of Asia, Inc., 145 SCRA 671).**"

On March 27, 2006, petitioner filed a Motion to Consolidate CTA Case No. 7338 with CTA Case No. 7365¹¹, which was granted by this Court in a Resolution¹² dated April 28, 2006.

During trial, petitioner presented documentary and testimonial evidence, which were formally offered in its Formal Offer of Evidence on July 21, 2008.¹³

Respondent likewise filed his Formal Offer of Evidence¹⁴ on May 4, 2009, which was admitted by the Court in a Resolution¹⁵ dated June 22, 2009.

¹¹ CTA Case No. 7338, Docket, pp. 77-80

¹² CTA Case No. 7338, Docket, p. 95

¹³ CTA Case No. 7338, Docket, pp. 294-320

¹⁴ CTA Case No. 7338, Docket, pp. 729-732

¹⁵ CTA Case No. 7338, Docket, pp. 744-745

On October 7, 2008, petitioner filed a Supplemental Petition¹⁶ with respect to its availment of tax amnesty under Republic Act (R.A.) No. 9480.

On August 24, 2009, petitioner filed a Supplemental Formal Offer of Evidence,¹⁷ as to Exhibits "IIIIII" to "QQQQQ", representing the documents to prove its availment of the tax amnesty.

Upon admission of petitioner's supplemental documentary evidence, this Court ordered the parties to file their respective memorandum within thirty (30) days.¹⁸

On January 4, 2010, the consolidated cases were submitted for decision upon submission of respondent's Memorandum on December 9, 2009 and petitioner's Memorandum on December 17, 2009.

The jointly stipulated issues¹⁹ as stated in CTA Case No. 7338, are as follows:

"A. Deficiency VAT Assessment

- I. WHETHER PETITIONER CORRECTLY COMPUTED ITS OUTPUT TAX BASED ON GROSS RECEIPTS FOR THE TAXABLE YEAR 2001.
- II. WHETHER RESPONDENT ERRED IN DISALLOWING INPUT TAX IN THE AMOUNT OF ₱22,424.74.

¹⁶ CTA Case No. 7338, Docket, pp. 627-634

¹⁷ CTA Case No. 7338, Docket, pp. 762-766

¹⁸ CTA Case No. 7338, Docket, pp. 821-822

¹⁹ Stipulation of Issues, Joint Stipulation of Facts and Issues, CTA Case No. 7338, Docket, pp. 84-85

- III. WHETHER RESPONDENT ERRED IN IMPOSING A ₱25,000.00 COMPROMISE PENALTY FOR ALLEGED NON-FILING OF QUARTERLY LISTS OF SALES AND PURCHASES.
- IV. WHETHER PETITIONER IS LIABLE FOR DEFICIENCY VALUE-ADDED TAX FOR THE TAXABLE YEAR 2001 IN THE AMOUNT OF ₱465,593.21, INCLUSIVE OF INTEREST.

B. Deficiency EWT Assessment

- I. WHETHER PETITIONER IS LIABLE FOR DEFICIENCY EXPANDED WITHHOLDING TAX FOR THE TAXABLE YEAR 2001 IN THE TOTAL AMOUNT OF ₱288,903.78, INCLUSIVE OF INTEREST."

The issues²⁰ submitted by the parties for CTA Case No. 7365 are as follows:

- "I. WHETHER OR NOT PETITIONER RENDERS SERVICES PURSUANT TO A CONSULTANCY AND MANAGEMENT SERVICES AGREEMENT.
- II. WHETHER OR NOT PETITIONER'S COST OF SERVICES FOR 2001 CAN BE SUBSTANTIATED BY SUFFICIENT EVIDENCE.
- III. WHETHER OR NOT PETITIONER'S COST OF SERVICES FOR 2001 WAS GREATER THAN ITS GROSS RECEIPTS FOR THE SAME YEAR, THUS RESULTING IN A NEGATIVE GROSS INCOME FOR THE PETITIONER.
- IV. WHETHER OR NOT PETITIONER IS LIABLE FOR DEFICIENCY MINIMUM CORPORATE INCOME TAX AMOUNTING TO P476,801.99 FOR TAXABLE YEAR 2001."

²⁰ Stipulation of Issues, Joint Stipulation of Facts and Issues, CTA Case No. 7365, Docket, pp. 73-74 

On October 7, 2008, petitioner filed a Supplemental Petition manifesting that it availed of the tax amnesty under Republic Act No. 9480 on March 3, 2008. In a Resolution dated June 22, 2009, the Court held in abeyance the resolution of petitioner's availment of tax amnesty until the pertinent documents proving petitioner's application and compliance with the requirements of R.A. No. 9480 are submitted. Petitioner then filed its Supplemental Formal Offer of Evidence on August 24, 2009, submitting the following documents:

1. Exhibit "IIIII" – Notice of Availment of Tax Amnesty;
2. Exhibit "JJJJJ" – Tax Amnesty Payment Form (BIR Form No. 0617);
3. Exhibit "KKKKK" – UCPB BTR-BIR Deposit Slip;
4. Exhibit "LLLLL" – Tax Amnesty Return (BIR Form No. 2116);
5. Exhibit "MMMMM" – Petitioner's Statement of Assets, Liabilities and Networth as of December 31, 2005 (original declaration);
6. Exhibit "NNNNN" – Petitioner's Statement of Assets, Liabilities and Networth as of December 31, 2005 (amended declaration);
7. Exhibit "OOOOO" – Petitioner's Annual Income Tax Return for taxable year 2005;
8. Exhibit "PPPPP" – Petitioner's Audited Financial Statements as of December 31, 2005; and
9. Exhibit "QQQQQ" – Sworn Statement of Ms. Kristine Sta. Maria.

The foregoing exhibits were admitted by this Court on October 6, 2009.²¹

²¹ CTA Case No. 7338, Docket, pp. 821-822

At the outset, we address first the matter pertaining to petitioner's availment of tax amnesty.

It is imperative that petitioner's alleged availment of tax amnesty and compliance with the requirements thereof be resolved. Should the validity of petitioner's alleged availment of tax amnesty and compliance with the requirements thereof be resolved in its favor, the stipulated issues in CTA Case No. 7338 specifically A. Deficiency VAT Assessment, Nos. I, II, III and IV and the stipulated issues in CTA Case No. 7365, Nos. I, II, III and IV will be rendered moot and the only issue which remains to be resolved would be whether petitioner is liable for the deficiency expanded withholding tax amounting to P288,903.78 for the taxable year 2001 in CTA Case No. 7338.

A tax amnesty is a general pardon or intentional overlooking by the State of its authority to impose penalties on persons otherwise guilty of evasion or violation of a revenue or tax law. It partakes of an absolute forgiveness or waiver by the government of its right to collect what is due it and to give tax evaders who wish to relent a chance to start with a clean slate.²²

A taxpayer desiring to avail of the benefits of a tax amnesty must conform with the requirements specified under Section 2 of Republic Act (RA) No. 9480, effective May 24, 2007, which provides:

²² Commissioner of Internal Revenue vs. Marubeni Corporation, G.R. No. 137377, December 18, 2001

"SECTION 2. *Availment of the Amnesty.* – Any person, natural or juridical, who wishes to avail himself of the tax amnesty authorized and granted under this Act shall file with the Bureau of Internal Revenue (BIR) a notice and Tax Amnesty Return accompanied by a Statement of Assets, Liabilities and Networth (SALN) as of December 31, 2005, in such form as may be prescribed in the implementing rules and regulations (IRR) of this Act, and pay the applicable amnesty tax within six months from the effectivity of the IRR."

Revenue Memorandum Circular (RMC) No. 19-2008, entitled "Circularizing the Full Text of A Basic Guide on the Tax Amnesty Act of 2007 for Taxpayers Who Wish to Avail of the Tax Amnesty Pursuant to Republic Act No. 9480 (Tax Amnesty Act of 2007)", specified the forms required to be submitted, to wit:

1. Notice of Availment of Tax Amnesty;
2. Statement of Assets, Liabilities and Networth (SALN);
3. Tax Amnesty Return (BIR Form No. 2116); and
4. Payment Form (BIR Form No. 0617)."

The payment of the amnesty tax and the submission and accomplishment of the pertinent forms by the taxpayer shall be deemed full compliance with the provisions of RA No. 9480.²³

A careful examination of the records shows that petitioner duly complied with the requirements enumerated in RA No. 9480 as implemented by RMC No. 19-2008.

Further, RA No. 9480 mandates that after a taxpayer qualifies for tax amnesty, he shall be exempt from the payment of taxes, including civil,

²³ Section 6(3) of Revenue Memorandum Circular No. 55-2007

criminal or administrative penalties under the Tax Code. Section 6 of RA No. 9480 reads:

"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:

(a) The taxpayer shall be immune from the payment of taxes, as well as additions 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."

The foregoing is corroborated by respondent's witness, Ms. Dolores E. Somera, Assistant Chief of the Assessment Division of Revenue Region No. 9, who testified that petitioner availed of the tax amnesty granted under RA No. 9480 and that as a result, assessments on income and business taxes for taxable year 2005 and prior years, including the subject year 2001, are abated and only the deficiency tax assessment on withholding taxes remained due and enforceable.²⁴

With the petitioner's availment of tax amnesty and compliance with the said requirements under RA No. 9480, all the stipulated issues raised in CTA Case No. 7338 and CTA Case No. 7365 were rendered moot and academic, except the issue as to whether petitioner is liable for the deficiency expanded withholding tax amounting to P288,903.78.

²⁴ Exhibit "1", Par. 6, CTA Case No. 7338, Docket, pp. 737-738

Based on respondent's finding that petitioner failed to withhold taxes on various income payments subject to expanded withholding tax in violation of Revenue Regulations No. 2-98, respondent assessed petitioner for deficiency EWT in the amount P288,903.78 (inclusive of interest), computed as follows:

Account	Withholding Tax Due	
Professional Fees	P	320,228.71
Rental Expense		371,522.69
Various Contractors		79,480.67
Total EWT Due	P	771,232.07
Less: EWT Remitted		590,328.01
Deficiency EWT	P	180,904.06
Add: Interest up to 01.10.05		107,999.72
Total Deficiency EWT	P	288,903.78

The basic deficiency EWT assessment of P180,904.06 is further broken down as follows:

Account	EWT Due		EWT Withheld and Remitted		Deficiency EWT	
Professional Fees	P	320,228.71	P	207,071.86	P	113,156.85
Rental Expense		371,522.69		309,811.77		61,710.92
Various Contractors		79,480.67		73,444.38		6,036.29
Total	P	771,232.07	P	590,328.01	P	180,904.06

On November 15, 2005, petitioner partially paid the deficiency EWT assessment in the amount of P188,204.96 which included the following:²⁵

Basic tax	P	106,043.24
Interest		82,161.72
Total	P	188,204.96

²⁵ Exhibits "QQQQ" and "QQQQ-1", CTA Case No. 7338, Docket pp. 528-529

Consequently, in its Memorandum, petitioner's discussion of the deficiency EWT assessment pertained to professional fees only.

Thus, we find that respondent's deficiency EWT assessment on professional fees consisted of the following:²⁶

	Professional Fees Paid to	EWT Due	EWT Remitted per Alphalist	Difference
1	De Mesa	P 9,774.70	P -	P 9,774.70
2	J Beja	2,210.00	-	2,210.00
3	Jorkims Corp.	66,806.53	66,806.53	-
4	Lim	1,000.00	-	1,000.00
5	Luis Nakpil	46,031.51	46,031.51	-
6	Ma. Lourdes Mendoza	44,520.00	21,200.00	23,320.00
7	NSYNC	2,250.00	2,250.00	-
8	Various	50,244.70	-	50,244.70
9	R Manalo	800.00	-	800.00
10	Reyes	1,000.00	-	1,000.00
11	Ruben Orillaza	49,482.82	49,482.82	-
12	Suatengco	1,250.00	-	1,250.00
13	Sycip Salazar Gatmaitan	-	1,301.00	(1,301.00)
14	William Mercer	20,000.00	20,000.00	-
15	Woodward Clyde	24,858.44	-	24,858.44
	TOTAL	P 320,228.70	P 207,071.86	P 113,156.84

Petitioner avers that respondent's assessment of deficiency EWT on professional fees was erroneous. Petitioner's Accounting Assistant, Ms. Rosita A. Beleno, in her sworn statement, explained the item described as "various" in respondent's computation of deficiency EWT, in this wise:²⁷

"Q: Under the heading 'Professional Fee' in this computation, there is an item described as 'various' with income payments allegedly amounting to P502,447.04 and with alleged corresponding EWT of P50,244.70. Please tell us how the amount of P502,447.04 described as 'various' was arrived at, if you know?

A: In the Schedule of Professional Fees²⁸, there are several items described as 'Payroll' with no other details provided. So in the

²⁶ Exhibit "FFFFF", CTA Case No. 7338, Docket, p. 585

²⁷ Exhibit "OOOO", CTA Case No. 7338, Docket, p. 504

²⁸ Exhibits "EEEE" and "EEEE-1", CTA Case No. 7338, Docket, pp. 583-584

computation of deficiency EWT, the BIR lumped them all together under the title 'various'.

Q: xxx Who received these payments which were described as 'Payroll' in the Schedule of Professional Fees?

A: The majority of these payments under 'Payroll' were made to Mr. Ruben Orillaza, a consultant."

In support of the foregoing testimony, petitioner presented in evidence various Check Vouchers, Journal Vouchers, General Ledger Batch Listings, Payroll Register/Summary, Schedule of Consultancy Fee and Allowances and Monthly Remittance Returns of Creditable Income Taxes Withheld (Expanded) with Schedules of Tax on Compensation and Expanded. These documents showed that total professional fees paid by petitioner to Mr. Orillaza for taxable year 2001 amounted to P326,611.12 and the corresponding ten percent (10%) EWT of P32,661.12 was withheld and duly remitted to the BIR, detailed as follows:

Exhibits	Amount of Professional Fees Paid	Exhibits	EWT Withheld and Remitted
"GGGG" to "GGGG-4", "GGGG-6"	P 27,500.00	"III", "III-1"	P 2,750.00
"FFFF", "FFFF-2" to "FFFF-5"	27,500.00	"HHH", "HHH-1"	2,750.00
"EEEE" to "EEEE-5"	27,500.00	"GGG", "GGG-1"	2,750.00
"CCCC", "CCCC-2", "CCCC-4", "CCCC-5"	23,111.12	"EEE", "EEE-1"	2,311.12
"TTT" to "TTT-3"	32,000.00	"ZZ", "ZZ-1"	3,200.00
"NNN", "OOO" to "OOO-2"	32,000.00	"YY", "YY-1"	3,200.00
"KKKK", "KKKK-2", "KKKK-4", "KKKK-5", "VVVV" to "VVVV-5"	21,310.00	"KKK", "KKK-1"	2,131.00
"NNNN", "NNNN-2", "NNNN-3", "NNNN-5"	27,500.00	"MMM", "MMM-1"	2,750.00
"MMMM-1"	27,500.00	"LLL", "LLL-1"	2,750.00
"JJJJ", "JJJJ-1", "JJJJ-3"	13,750.00	"JJJ", "JJJ-1"	1,375.00
"III" to "III-2"	13,750.00	"JJJ", "JJJ-1"	1,375.00
"HHHH", "HHHH-3"	6,190.00	"JJJ", "JJJ-1"	619.00
"YYY", "ZZZ" to "ZZZ-2", "AAAA", "AAAA-1", B ¹ -2	32,000.00	"AAA", "AAA-1"	3,200.00
"SSSS", "SSSS-1" to "SSSS-2"	15,000.00	"KKK", "KKK-1"	1,500.00

Total	P 326,611.12	Total	P 32,661.12
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However, the Court noted that the payment to Mr. Orillaza in the amount of P15,000.00, as evidenced by Journal Voucher No. 2718²⁹, was not listed under "Payroll", but it was separately indicated in the Schedule of Professional Fees prepared by petitioner.³⁰

Ms. Beleno, in her sworn statement, also stated that another payment under "Payroll" was made to Institutional Synergy, Inc. in the amount of P45,500.00³¹, with corresponding expanded withholding tax of P2,250.00.³² Evaluation of the computation of deficiency EWT assessment showed, however, that respondent's examiner recognized the said income payment and the remittance of the related expanded withholding tax.

As regards the professional fees paid to Mr. De Mesa, Beja, and Manalo, petitioner was able to prove that the withholding taxes due thereon were duly remitted as evidenced by petitioner's Journal Vouchers, General Ledger Batch Listing, Security Bank Money Transfer Application Form, Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded), and Schedule of Tax on Compensation and Expanded, summarized as follows:

²⁹ Exhibit "SSSS", CTA Case No. 7338, Docket, p. 533

³⁰ Exhibit "EEEE-1", CTA Case No. 7338, Docket, p. 584

³¹ Exhibits "PPPP" to "PPPP-3", CTA Case No. 7338, Docket, pp. 524-527

³² Exhibit "TT", CTA Case No. 7338, Docket, pp. 397-399

Exhibits	Amount of Professional Fees Paid	Exhibits	EWT Withheld and Remitted
"RRRR" to "RRRR-2"	P 22,100.00	"KKK", "KKK-1"	P 2,210.00
"TTTT" to "TTTT-2"	8,000.00	"KKK", "KKK-1"	800.00
"UUUU" to "UUUU-2"	97,747.00	"KKK", "KKK-1"	9,774.70
Total	P 127,847.00	Total	P 12,784.70

In fine, petitioner's deficiency EWT liability for taxable year 2001 only amounts to P131,791.02, computed as follows:

Basic Deficiency EWT			P 180,904.06
Less:	EWT on Professional Fees Paid to		
	Ruben Orillaza	P 32,661.12	
	De Mesa	9,774.70	
	J. Beja	2,210.00	
	R. Manalo	800	45,445.82
Adjusted Basic Deficiency EWT			P 135,458.24
Add:	25% Surcharge ³³		33,864.56
	20% Deficiency Interest (01/10/02 to 01/10/05)		81,274.94
Total Amount Due on January 10, 2005			P 250,597.74
Add:	20% Deficiency Interest (01/11/05 to 11/15/05)		22,935.12
	20% Delinquency Interest (01/10/05 to 11/15/05)		
	P250,597.74 x .1698630	P 42,567.29	
	P 22,935.12 x .1698630	3,895.83	46,463.12
Total Amount Due on November 15, 2005			P 319,995.98
Less:	Amount Paid on November 15, 2005		
	Basic Tax	P106,043.24	
	Interest	82,161.72	188,204.96
Amount Still Due			P131,791.02

WHEREFORE, the instant Petitions for Review are hereby **PARTIALLY GRANTED**. Accordingly, the deficiency value-added tax and deficiency minimum corporate income tax assessments for taxable year 2001 issued against petitioner are **CANCELLED** and **WITHDRAWN**.

However, petitioner is **ORDERED TO PAY** respondent the amount of **ONE HUNDRED THIRTY-ONE THOUSAND SEVEN HUNDRED NINETY-ONE PESOS**

³³ Imposed pursuant to Section 248(3) of the NIRC of 1997

AND 02/100 (P131,791.02), representing deficiency expanded withholding tax, including the twenty-five percent (25%) surcharge imposed thereon.

Likewise, petitioner is **ORDERED TO PAY**:

(a) deficiency interest at the rate of twenty percent (20%) *per annum* on the basic deficiency EWT of P29,415.00³⁴ computed from November 16, 2005 until full payment thereof pursuant to Section 249(B) of the NIRC of 1997; and

(b) delinquency interest at the rate of 20% *per annum* of P131,791.02 which is the total amount still due and on the 20% deficiency interest which have accrued as afore-stated in paragraph (a) computed from January 10, 2005 until full payment thereof, pursuant to Section 249(C) of the NIRC of 1997.

SO ORDERED.


CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:


JUANITO C. CASTANEDA, JR.
Associate Justice


CAESAR A. CASANOVA
Associate Justice

³⁴ Adjusted basic deficiency EWT of P135,458.24 less P106,043.24, which represents the amount paid on November 15, 2005

ATTESTATION

I attest 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.


JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, 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