REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

VICTORIAS FOODS CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8668

Members:

Castañeda, Jr., *Chairperson, and*
Casanova, *JJ.*

Promulgated:

OCT 17 2016 10:25 am

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RESOLUTION

CASTAÑEDA, JR., *J.:*

Submitted for resolution is the Motion for Partial Reconsideration filed by respondent Commissioner of Internal Revenue (CIR) on June 9, 2016 with Comment/Opposition filed by petitioner Victorias Foods Corporation (VFC) on August 2, 2016.

On May 20, 2016, the Court promulgated a Decision partially granting the Petition for Review which reduced VFC's total basic deficiency tax liability to ₱831,646.70. The dispositive portion of the assailed Decision reads:

> "**WHEREFORE**, premises considered, the Petition for Review is **PARTIALLY GRANTED**.
>
> Accordingly, Petitioner is **ORDERED TO PAY** the Respondent basic deficiency income and value-added tax for the fiscal year ending August 31, 2009 in the amount of One Million Thirty Nine Thousand Five Hundred Fifty Eight and 37/100 Pesos (₱1,039,558.37), inclusive of

25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, computed as follows:

Tax Type	Basic Deficiency	Surcharge (25%)	Total
Income tax	₱ 563,695.49	₱ 140,923.87	₱ 704,619.36
VAT	267,951.21	66,987.80	334,939.01
TOTAL	**₱ 831,646.70**	**₱ 207,911.67**	**₱1,039,558.37**

In addition, petitioner is likewise **ORDERED TO PAY**:

(a) 20% per annum deficiency interest pursuant to Section 249(B) of the NIRC of 1997, as amended, on the basic deficiency income tax, and value-added tax computed from December 15, 2009 and September 25, 2009, respectively, until full payment thereof ; and

(b) 20% per annum delinquency interest on the total amounts of ₱704,619.36 and ₱334,939.01 deficiency income tax and value-added tax, respectively, and on the deficiency interest which have accrued as stated in (a) computed from July 31, 2012[1] until full payment thereof, pursuant to Section 249(C) of the NIRC of 1997, as amended.

SO ORDERED."

In the Motion for Partial Reconsideration, the counsels for the Commissioner of Internal Revenue (CIR) state that the three-year prescriptive period in Section 203 of the National Internal Revenue Code of 1997, as amended (1997 NIRC), does not apply to the Expanded Withholding Tax (EWT) Assessment. They anchor this argument on the point that the EWT are "penalties and not taxes", thus, "are not covered by the period of limitation prescribed in Section 203 of the NIRC."[2]

The Court is not convinced.

[1] Formal Letter of Demand, Exhibit A-1, Docket Vol. II, pp. 272-273.
[2] Motion for Partial Reconsideration, Docket Vol. IV, pp. 2364-2367.

In the first place, it is clear from a reading of the letter dated October 1, 2012[3] that the OIC Regional Director himself recognized and invoked the *three-year* limitation set by Section 203, thus:

> "**This Office sustains the validity of the assessment since the same was issued within the period prescribed under the National Internal Revenue Code, and has factual and legal bases.**
>
> The deficiency income, value-added and withholding taxes were assessed *within the three-year period* prescribed by law. Section 203 of the 1997 National Internal Revenue Code (NIRC), as amended, provides that internal revenue taxes *shall be assessed within three (3) years after the last day prescribed by law for the filing of the return* except as provided in Section 222 thereof. Hence the periods to assess the following deficiency taxes for fiscal year ending August 31, 2009 are as follows:
>
> | **Kind of Tax** | **Last Day of Filing** | **Period to Assess** |
> |---|---|---|
> | Income Tax | December 15, 2009 | Not later than December 15, 2012 |
> | VAT (4th Quarter) | September, 25, 2009 | Not later than September 25, 2012 |
> | Withholding Tax (last month) | September 10, 2009 | Not later than September 10, 2012 |
>
> Since the Final Assessment Notices and Formal Letter of Demand were issued on July 6, 2012, the assessment was issued within the prescribed period under the National Internal Revenue Code." (underscoring supplied)

The counsels cannot, therefore, in a complete turnaround, contradict the unequivocal statements above and espouse a new theory.

Besides, this new theory has no basis in fact and in law.

A review of the Details of Discrepancy attached to the Formal Letter of Demand[4] indicates that the withholding tax deficiency actually pertain to *income payments* made by petitioner which it allegedly failed to subject to 1%, 2% and 10% withholding taxes pursuant to Revenue Regulations No. 2-98 (RR 2-98). Therefore, contrary to the inconsistent position taken by the counsels, the EWT assessment refers to the income taxes due on certain payments by

[3] Exhibit N, Denial Letter of OIC Regional Director dated October 1, 2012, Formal Offer of Evidence, Division Docket Vol. IV, p. 2163.
[4] Exhibit R-13, BIR Records, p. 860.

VFC to its suppliers of goods and services from which it should have withheld the same.

Section 57(A) and (B) of the 1997 NIRC provide that the payments enumerated therein are *income* payments subject to the withholding taxes. Thus, the taxes withheld from the enumerated income payments under Section 57 are classified as income taxes under "Title II – Tax on Income" of the 1997 NIRC:

> "**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 this 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.
>
> (B) *Withholding of Creditable Tax at Source.* — The Secretary of Finance may, upon the recommendation of the Commissioner, require the withholding of a tax on the items of income payable to natural or juridical persons, residing in the Philippines, by payor-corporation/persons as provided for by law, at the rate of not less than one percent (1%) but not more than thirty-two percent (32%) thereof, which shall be credited against the income tax liability of the taxpayer for the taxable year." (underscoring supplied)

RR 2-98, as amended, which was invoked as the legal basis for the EWT assessment in the Formal Letter of Demand[5] was precisely promulgated by the CIR to implement Section 57 of the 1997 NIRC.

Section 2.57 (B) of RR 2-98 makes it explicit that the transactions covered therein involve *income payments* subject to either final or creditable withholding taxes: *Je*

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[5] Exhibit R-13, Details of Discrepancy, BIR Records, p. 860.

> "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 on the said income. 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 payor/withholding agent. The payee is not required to file an income tax return for the particular income.
>
> The finality of the withholding tax is limited only to the payee's income tax liability on the particular income. It does not extend to the payee's other tax liability on said income, such as when the said income is further subject to a percentage tax. For example, if a bank receives income subject to final withholding tax, the same shall be subject to a percentage tax.
>
> (B) *Creditable Withholding Tax.* — Under the creditable withholding tax system, taxes withheld on certain **income payments** are intended to equal or at least approximate the tax due of the payee on said **income**. The income recipient is still required to file an income tax return, as prescribed in Sec. 51 and Sec. 52 of the NIRC, as amended, to report the income and/or pay the difference between the tax withheld and the tax due on the income. Taxes withheld on income payments covered by the expanded withholding tax (referred to in Sec. 2.57.2 of these regulations) and compensation income (referred to in Sec. 2.78 also of these regulations) are creditable in nature." (underscoring and emphases supplied)

To reiterate, the amounts required to be withheld from VFC's payments to its suppliers are *not* penalties. Based on RR 2-98, these are *income taxes* under the expanded withholding tax system.

Since the EWT assessed on the petitioner are considered income taxes, they are deemed *national internal revenue taxes* under Section 21 of the NIRC: *gr*

"**SECTION 21. Sources of Revenue.** - The following taxes, fees and charges are deemed to be national internal revenue taxes:

(a) Income tax;
(b) Estate and donor's taxes;
(c) Value-added tax;
(d) Other percentage taxes;
(e) Excise taxes;
(f) Documentary stamp taxes; and
(g) Such other taxes as are or hereafter may be imposed and collected by the Bureau of Internal Revenue." (underscoring supplied)

As internal revenue taxes, their assessments are subject to the three-year prescription under Section 203 of the 1997 NIRC.

After a careful review of the *other* grounds raised in the Motion for Partial Reconsideration and the corresponding Comment/ Opposition thereto, the Court finds no new matters were raised by the CIR that were not considered in the assailed Decision. Specifically, we note that with respect to the overstatement of NOLCO, disallowed purchases, disallowed expenses, overstatement of salaries and wages, unreported purchases of food ingredients, deficiency value-added tax and compromise penalties, respondent merely restated the points in the Answer[6] which was adopted as respondent's Memorandum.[7] Hence, respondent failed to raise any compelling reason to justify the reversal or modification of the Court's findings.

There being no compelling reason to disturb the May 20, 2016 Decision of the Court, the CIR's Motion for Reconsideration is **DENIED** for lack of Merit.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

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[6] September 25, 2013, Division Docket Vol. I, pp. 138-152.
[7] Manifestation dated June 9, 2015, Division Docket Vol. IV, p. 2320; Order dated June 17, 2015, Division Docket Vol. IV, p. 2324.

I CONCUR:

CAESAR A. CASANOVA
Associate Justice