REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION
****

ASIAN TRANSMISSION CORPORATION, Petitioner,	**CTA Case No. 8366**
	Members:
- versus -	**DEL ROSARIO,** *Chairperson,* **UY,** and **MINDARO-GRULLA,** JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** AUG 30 2016 ; 10:28 a.m.

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RESOLUTION

UY, J.:

For resolution are the following:

1) Petitioner's **"PARTIAL MOTION FOR RECONSIDERATION *(of the Decision dated 16 March 2016)*"** filed on April 4, 2016, with respondent's **"COMMENT RE: Petitioner's Motion for Partial Reconsideration"** filed May 3, 2016; and

2) Respondent's **"MOTION FOR PARTIAL RECONSIDARATION** *(sic)* **Re: Decision dated March 16, 2016"** filed on April 4, 2016, with petitioner's **"COMMENT/OPPOSITION *(To Respondent's Motion for Partial Reconsideration)*"** filed on April 25, 3016.

The said Motions assail this Court's Decision dated March 16, 2016, the dispositive portion of which reads:

> "**WHEREFORE**, in light of the foregoing considerations, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, petitioner is **ORDERED TO PAY** respondent the amount of ₱3,999,957.67, representing basic deficiency withholding tax on compensation and the 25% surcharge imposed

under Section 248(3) of the NIRC of 1997, broken down as follows:

Basic Deficiency Withholding Tax on Compensation	₱ 3,199,966.14
25% Surcharge	799,991.53
Total	**₱ 3,999,957.67**

In addition, petitioner is **ORDERED TO PAY** delinquency interest at the rate of twenty percent (20%) per annum on the said total amount of ₱3,999,957.67, computed from July 31, 2011 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997.

SO ORDERED."

Petitioner's Motion:

In its Motion, petitioner mainly argues that its share on the monthly membership premiums for its employees' health care program, group insurance and retirement plan are not subject to withholding tax on compensation; and that the employees' uniforms provided by the employer are considered *de minimis* benefits not subject to withholding tax on compensation.

By way of comment, respondent counter-argues that petitioner, as withholding agent, is burdened by law to withhold and remit to the Bureau of Internal Revenue (BIR) the correct withholding tax.

Respondent's Motion:

For her part, respondent contends, in support of her Motion, that the obligation of petitioner to withhold the correct tax and to remit to the BIR proceeds from its duty as an agent of the government in the collection of taxes, not as a taxpayer, and such liability is further established under Section 251 of the National Internal Revenue Code (NIRC); and that petitioner is liable to pay its deficiency withholding tax on compensation in accordance with Sections 79 and 80 of the NIRC.

Petitioner avers, in its Comment, that assessments must be based on facts and not on mere presumptions; and that the additional penalty provided in Section 251 of the NIRC, as amended, applies only when there is a criminal conviction for willful violation of the law.

THE COURT'S RULING

Both Motions lack merit.

Petitioner's share on the monthly membership premiums for its employees' health care program, group insurance and retirement plan are subject to withholding tax on compensation.

In support of the contention that its share on the monthly membership premiums for its employees' health care program, group insurance and retirement plan are not subject to withholding tax on compensation, petitioner invokes Section 33(C)(2) of the NIRC.

We disagree with petitioner.

Section 33 of the NIRC of 1997 provides as follows:

> "SEC. 33. *Special Treatment of Fringe Benefit.*—
>
> (A) *Imposition of Tax.*— A final tax of thirty-four percent (34%) effective January 1, 1998; thirty-three percent (33%) effective January 1, 1999; and thirty-two percent (32%) effective January 1, 2000 and thereafter, is hereby imposed on the grossed-up monetary value of fringe benefit furnished or granted to the employee (except rank and file employees as defined herein) by the employer, whether an individual or a corporation (unless the fringe benefit is required by the nature of, or necessary to the trade, business or profession of the employer, or when the fringe benefit is for the convenience or advantage of the employer). xxx The grossed-up monetary value of the fringe benefit shall be determined by dividing the actual monetary value of the fringe benefit by sixty-six percent (66%) effective January 1, 1998; sixty-seven percent (67%) effective January 1, 1999; and sixty-eight percent (68%) effective January 1, 2000 and thereafter; xxx
>
> xxx xxx xxx

> (C) *Fringe Benefits Not Taxable.*— **The following fringe benefits are <u>not taxable under this Section</u>:**
>
> (1) Fringe benefits which are authorized and exempted from tax under special laws;
>
> (2) **Contributions of the employer for the benefit of the employee to retirement; insurance and hospitalization benefit plans**;
>
> (3) Benefits given to the rank and file employees, whether granted under a collective bargaining agreement or not; and
>
> (4) *De minimis* benefits as defined in the rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner.
>
> xxx xxx xxx." *(Emphases and underscoring supplied)*

A careful reading of the foregoing provision reveals that the fringe benefits which are *"not taxable"* under the same provision are, *inter alia*, the *"(c)ontributions of the employer for the benefit of the employee to retirement; insurance and hospitalization benefit plans".* It does not state, however, that the same fringe benefits are, at the same time, no longer subject to the ordinary income tax, and consequently, to withholding tax on compensation.

A tax exemption cannot arise from vague inference. Tax exemptions must be clear and unequivocal. A taxpayer claiming a tax exemption must point to a specific provision of law conferring on the taxpayer, in clear and plain terms, exemption from a common burden. Any doubt whether a tax exemption exists is resolved against the taxpayer.[1]

Thus, since the exemption granted under paragraph (C) of the above-quoted Section 33 specifically pertains to fringe benefits tax only, it does not follow that the same tax exemption extends to withholding tax on compensation on the same fringe benefits. Such being the case, the ruling of this Court that the withholding tax assessment on said fringe benefits stands.

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[1] *Digital Telecommunications Philippines, Inc. vs. City Government of Batangas, et al.*, G.R. No. 156040, December 11, 2008.

The withholding tax assessment on the* Employee Uniforms *is likewise sustained.

In contending that the employees' uniforms provided by petitioner are considered *de minimis* benefits not subject to withholding tax on compensation, petitioner points out that since the Court actually allowed, in the assailed Decision, the exemption of the *Rice Allowance* from withholding tax on compensation, it submits that there is no cogent reason why the amount of *Employee Uniforms*, be not similarly exempted therefrom.

Again, We disagree with petitioner.

It must be remembered that the withholding tax assessment on the deficiency withholding tax on compensation arising from the *Employee Uniforms* was upheld because *"the documents presented by petitioner failed to prove the number/listing of employees which were given with the uniforms, hence, the Court cannot verify whether said allowance was within the threshold per employee as set forth in xxx Section 2.78.1(A)(3)(d) of RR No. 2-98."* In contrast, this is not so in the case of the *Rice Allowance*. In the assailed Decision, We ruled as follows:

> "As for the *Rice Allowance*, petitioner's documents substantiating the same in the amount of ₱2,962,900.00 sufficiently established the fact of purchase of rice and the corresponding list of employees which were entitled for such benefit. Accordingly, the rice allowance given to each of petitioner's employees amounted to either ₱890 or ₱900 per month during 2001, well-within the threshold set forth in Section 2.78.1(A)(3)(c) of RR No. 02-98 as *de minimis* benefits. Thus, the *Rice Allowance* in the verified amount of ₱2,962,900.00 is exempt from withholding tax on compensation."

The difference in treatment lies on the fact that in the granting of the *Rice Allowance*, all employees are entitled thereto in approximately the same amount.

On the other hand, the giving of the *Employee Uniforms* is based on substantial distinctions. Relative thereto, petitioner offered and the Court admitted, among others, the following exhibits,[2] to wit:

[2] Petitioner's Formal Offer of Evidence, Docket, pp. 585 to 586, vis-à-vis Resolution

Exhibit	Description	Purpose
KK-1	Collective Bargaining Agreement (CBA) for Non Supervisory Labor Unit	To prove that the petitioner is contractually bound to provide each covered employee the following benefits: 1. Nine (9) sacks of Sinandomeng variety rice for the year 2001; 2. Five (5) pieces of uniform (polo jack) and three (3) pieces of pants every year for each male regular employee; 3. Two (2) shirts per year for monthly paid employees who spend sixty percent (60%) of their working hours in the production line; and 4. Five (5) sets of uniform with one (1) style only (slacks or skirts) for female employees; To prove that all other regular managerial and supervisory employees and other staff who are not covered by the Collective Bargaining Agreement (CBA) will receive the same number of uniforms indicated in the CBA for Non-Supervisory Labor Union.
KK-2	Collective Bargaining Agreement (CBA) for Bisig ng Asian Transmission Labor Unit	To prove that the petitioner is contractually bound to provide each covered employee the following benefits: 1. Ten (10) sacks of rice for the year 2001, provided that the price per sack shall not go beyond PhP920.00/sack (Sinandomeng); and 2. Fifteen (15) white shirts, and three (3) maong pants every year.

Based on the foregoing, it is evident that the grant of *Rice Allowance* to petitioner's employees for the year 2001 is nearly the same [*i.e.*, Nine (9) sacks for those covered by Exhibit "KK-1", and Ten (10) sacks for those covered by Exhibit "KK-2"]. However, We cannot say the same with the granting of the *Employee Uniforms* for

dated January 22, 2013, Docket, p. 875.

the same year. Specifically, the provision of Employee Uniforms to petitioner's employees covered by Exhibit "KK-1" is multifaceted, which is not like those covered by Exhibit "KK-2". Such being the case, *"the number/listing of employees which were given with the uniforms"* definitely requires verification. Considering however petitioner's failure to prove the same, the withholding tax assessment arising from the grant of the *Employee Uniforms* must likewise stand.

Respondent's Motion lacks merit.

In his Motion, respondent reiterates the supposed withholding tax liability of petitioner, pursuant to Sections 79, 80, and 251 of the NIRC of 1997. He insists that the obligation of petitioner to withhold the correct tax and to remit to the BIR proceeds from its duty as an agent of the government in the collection of taxes, not as a taxpayer.

Respondent's arguments are misplaced.

As can be gleaned from the assailed Decision, this Court did not rule that petitioner is not under obligation to withhold the correct tax and to remit to the BIR, nor did We state that petitioner is not an agent of the government in the collection of taxes. In fact, in the assailed Decision, We recognized the obligation of petitioner as a withholding agent and enforced its liability as such, albeit in a reduced amount than that assessed by the BIR.

In any event, respondent failed to specifically point out, in his Motion, as to which of the findings of the Court, in reducing petitioner's assessed withholding tax liability, is erroneous. Hence, respondent's Motion deserves scant consideration.

WHEREFORE, premises considered, the respective Motion for Reconsideration of the parties are **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice