

REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY

FORMER SECOND DIVISION

SILKAIR (SINGAPORE) PTE. C.T.A. CASE NO. 7578
LTD.,

Petitioner, Members:

- versus -

CASTAÑEDA, JR., Chairperson,
UY, and
PALANCA-ENRIQUEZ, JJ.

COMMISSIONER OF
INTERNAL REVENUE,
Respondent.

Promulgated:

FEB 11 2010

✓ 11:05 a.m.

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D E C I S I O N

PALANCA-ENRIQUEZ, J.:

The determinations and assessments of the Bureau of Internal Revenue are presumed correct and made in good faith. The taxpayer has the duty of proving otherwise. In the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed. Even an assessment based on estimates is *prima facie* valid and lawful where it does not appear to have been arrived at arbitrarily or capriciously. The burden of proof is upon the complaining party to show

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clearly that the assessment is erroneous. Failure to present proof of error in the assessment will justify the judicial affirmance of said assessment (*Gutierrez vs. Villegas*, 8 SCRA 527; *Marcos II vs. Court of Appeals*, 273 SCRA 66-67).

THE CASE

This is a Petition for Review filed by Silkair (Singapore) PTE. Ltd. (hereafter “petitioner”) praying for the reversal of the Final Decision on Disputed Assessment dated November 27, 2006 rendered by the Commissioner of Internal Revenue.

THE PARTIES

Silkair (Singapore) Pte. Ltd. is a foreign corporation duly existing under the laws of Singapore and is duly registered with the Philippine Securities and Exchange Commission (SEC), as a representative office. It is likewise registered with the Civil Aeronautics Board (CAB), as a foreign carrier authorized to operate in the Philippines.

Respondent Commissioner of Internal Revenue, on the other hand, is the official authorized under *Section 4 of the NIRC of 1997, as amended*, 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, BIR Road, Diliman, Quezon City.

THE FACTS

On June 23, 2006, petitioner received an undated Preliminary Assessment Notice (PAN) from the BIR Large Taxpayers District Office (LTDO)-Cebu assessing it for alleged tax deficiencies in the aggregate amount of P92,183,782.86, inclusive of penalties and surcharges, relative to the result of the examination of its accounts for fiscal year ending March 31, 2004, in accordance with BIR Letter of Authority (LOA) Nos. 2000 00067375 and 00067384, dated August 16, 2005 and October 17, 2005, respectively.

On September 18, 2006, petitioner likewise received an undated Formal Letter of Demand, with a revised computation of alleged tax deficiencies in the amount of P93,381,506.19, inclusive of interest and penalties. Said tax deficiencies arose due to the following:

a. *Deficiency Income Tax* – disallowance of petitioner's claim for creditable withholding taxes amounting to P648,315.08 since the withholding tax certificates bear the name of Royal Winds, Inc., instead of Silkair. Interests amounting to P280,934.57 were charged on the disallowed creditable withholding taxes.

b. *Deficiency Percentage Tax* – discrepancy between the reported Gross Philippine Billings in its income tax return and percentage tax returns.



c. *Deficiency Expanded Withholding Tax* – failure to withhold tax from payments it made in favor of Royal Winds Inc. in the amount of P15,677,476.19, Philippine Airlines in the amount of P153,323.00, Cebu Pacific Catering in the amount of P4,202,083.76, and other parties in the aggregate amount of P5,263,637.42. The alleged total withholding tax due amounted to P1,759,938.77. Interests amounting to P879,969.38 were also charged.

d. *Deficiency Withholding Tax on Compensation* – failure to withhold the amount of P484,876.68 from the income payments made by petitioner to its personnel. Interests and penalties amounting to P246,807.15 were likewise imposed.

e. *Deficiency Fringe Benefits Tax* – failure of petitioner to pay taxes on the fringe benefits it granted to its personnel. Interests and penalties amounting to P170,739.97 were charged.

f. *Deficiency Branch Profit Remittance Tax* – failure of petitioner to pay the required tax amounting to P88,650,751.28, inclusive of interests and penalties, for the remittances made to its parent company in Singapore allegedly amounting to P529,073,535.24 based on the Gross Philippine Billings as reported and attached to the Final Income Tax Return for the year ended March 31, 2004, pursuant to Section 28(b)(5) of the NIRC of 1997, as amended.

On September 21, 2006, petitioner paid some of the assessments, in the aggregate amount of P438,966.81, for the following tax deficiencies: (1) expanded withholding tax in the amount of P74,632.05; (2) percentage tax in the amount of P1,520.22; and (3) fringe benefit tax in the amount of P362,814.54. Thereby, reducing the deficiency tax assessment to P92,926,960.66.



On September 22, 2006, petitioner filed an administrative protest with the BIR LTDO-Cebu to contest the validity of the assessments.

On January 29, 2007, petitioner received respondent's Final Decision on Disputed Assessment dated November 27, 2006, which adjusted the deficiency tax assessment to P15,352,055.39, inclusive of interests and penalties, computed as follows:

Tax Type		Amount (Peso)
Income Tax		
Basic Tax	648,315.08	
Interest	324,151.06	972,466.14
Expanded Withholding Tax		
Basic Tax	846,522.67	
Interest	479,690.53	1,326,213.20
Withholding Tax – Compensation		
Basic Tax	484,876.68	
Surcharge	1,895.05	
Interest	275,233.98	
Compromise Penalty	2,000.00	764,005.71
Branch Profit Remittance		
Basic	8,776,803.57	
Surcharge	2,194,200.89	
Interest	1,243,365.88	
Compromise penalty	25,000.00	12,239,370.34
Penalty – No books of accounts and F/S		50,000.00
Total Tax Deficiencies		15,352,055.39

On January 31, 2007, petitioner settled its tax liabilities as regards the income tax and expanded withholding tax deficiencies through the availment of the abatement program of the BIR under *R.R. No. 15-2006* and its implementing regulations under *Revenue Memorandum Order (RMO) No. 23-2006*; thus, leaving the alleged deficiency withholding tax

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on compensation in the amount of P764,005.71 and deficiency branch profit remittance tax in the amount of P12,239,370.34, as contested.

On February 28, 2007, petitioner filed the instant Petition for Review.

On August 30, 2007, respondent filed his Answer, alleging the following:

“6. Remittances to Singapore were not subjected to Branch Profit Remittance Tax (BPRT). This is in violation of Section 28 (A) (5) of the National Internal Revenue Code of 1997 (NIRC of 1997) which provides thus:

‘SEC. 28. Rates of Income Tax on Foreign Corporations. -

(A) Tax on Resident Foreign Corporations. -

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(5) Tax on Branch Profits Remittances. – Any profit remitted by a branch to its head office shall be subjected to a tax of fifteen percent (15%) which shall be based on the total profits applied or earmarked for remittance without any deduction for the tax component thereof (except those activities which are registered with the Philippine Economic Zone Authority). The tax shall be collected and paid in the same manner as provided in Sections 57 and 58 of this Code: Provided, That interest, dividends, rents, royalties, including remuneration for technical services, salaries, wages, premiums, annuities, emoluments or other fixed or determinable annual, periodic or casual gains,



profits, income and capital gains received by a foreign corporation during each taxable year from all sources within the Philippines shall not be treated as branch profit unless the same are effectively connected with the conduct of its trade or business in the Philippines.'

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7. Petitioner's contention that it is not subject to BPRT just like Air France which was ruled as exempt from BPRT on account of its treaty is untenable. The ruling in favor of Air France cannot be applied to petitioner since each country has its own independent treaty with the Republic of the Philippines and not interdependent with each other.

8. There was error in the computation of withholding tax on compensation. This is in violation of Sections 76, 77, 78 and 79 of the NIRC of 1997 and Revenue Regulations No. 17-2003. Petitioner claims that it erroneously filled up the amount of tax base on the return filed (which was the basis of the computation of the deficiency tax) but did not submit any other documents to support its protest such as payroll or alpha list or proof of payment to its employees.

9. 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.



10. 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*)."

Petitioner presented Moises Visperas, Jr., its Tax Consultant, and Clavel Viacrusis, its Accountant, as witnesses, and documentary evidence, marked as *Exhibits "A" to "L"*, inclusive of their submarkings, which were all admitted by the Court in a Resolution dated September 5, 2008, except for *Exhibits "E-2" and "E-4"*, which were denied admission for failure to present the original copies for comparison.

On July 14, 2008, counsel for petitioner manifested that petitioner availed of the Tax Amnesty. Hence, on July 24, 2008, petitioner filed a "Motion to Partially Withdraw Petition for Review", which was granted by the Court in a Resolution dated January 14, 2008, insofar as the deficiency branch profit remittance tax for fiscal year ending March 31, 2004 is concerned.

Respondent, on the other hand, presented Alicia Socorro T. Abutazil, the BIR Acting Chief of the Assessment Division of the LTDO-Cebu, as witness, and documentary evidence, marked as *Exhibits "1" and*



“2”, inclusive of their submarkings, which were all admitted by the Court in a Resolution dated January 12, 2009.

Thereafter, both parties were granted thirty (30) days from notice, within which to file their simultaneous memoranda, afterwhich the case shall be deemed submitted for decision. On February 16, 2009, petitioner filed its Memorandum; while respondent filed his Memorandum on February 18, 2009.

Hence, the case was deemed submitted for decision.

ISSUES

As stipulated upon by the parties, the following are the issues for this Court's consideration:

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WHETHER OR NOT PETITIONER'S REMITTANCES ARE SUBJECT TO BRANCH PROFIT REMITTANCE TAX (BPRT). IF IN THE AFFIRMATIVE, WHETHER OR NOT BPRT SHOULD BE BASED AT THE NET EFFECTIVE REMITTANCE OF PHP14,019,811.93.

II

WHETHER OR NOT THERE WAS ERROR IN THE COMPUTATION OF WITHHOLDING TAX ON COMPENSATION.



Remaining Issue
To Be Resolved

Considering that the Court already granted petitioner's "Motion to Partially Withdraw Petition for Review" insofar as its deficiency branch profit remittance tax for fiscal year ending March 31, 2004 is concerned, the remaining issue to be resolved is:

Whether or not the Final Decision on Disputed Assessment of respondent against petitioner, finding it liable for deficiency withholding tax on compensation in the amount of P764,005.71 is supported by law and evidence.

Petitioner Silkair's
Arguments

Petitioner claims that both the Preliminary Assessment Notice and the Final Decision on Disputed Assessment did not provide the facts and the law, rules and regulations or jurisprudence on which the assessment was based, in violation of *Section 228 of the NIRC of 1997, as amended*, and *Revenue Regulations No. 12-99*; that petitioner was at a loss as to how or where the deficiency withholding tax on compensation came from due to the total defect in the PAN. Accordingly, respondent's assessment for deficiency withholding tax on compensation against petitioner is null and void.



**Respondent CIR's
Counter-Arguments**

Respondent CIR, on the other hand, counter-argues that for failure of petitioner to withhold and remit the correct withholding tax on payments to managers Geoffrey Wong Sing Luk and Ronnie Lau, petitioner was assessed for deficiency withholding tax on compensation, exclusive of penalties and interests, pursuant to *Sections 79 and 80(A) of the NIRC of 1997, as amended*.

Respondent CIR further contends that petitioner failed to submit proof in support of the alleged mathematical error in the filing of BIR Form No. 1601-C for the period July 2003, pertaining to Geoffrey Wong Sing Luk; and for petitioner's failure to maintain books of accounts and financial statements, a penalty was charged pursuant to *Section 232 of the NIRC of 1997, as amended*.

THE COURT'S RULING

We deny the Petition.

The second paragraph of *Section 228 of the NIRC of 1997, as amended*, is clear and mandatory. It provides, as follows:

"SEC. 228. Protesting of Assessment.-

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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."

Petitioner now questions the validity of the assessment for failure to state the facts and the law on which it was based, thus, leaving petitioner to be at loss on how respondent came up with the deficiency withholding tax assessment.

Records show:

1) In its Summary of Withholding on Compensation (*BIR*

Records, p. 450), respondent CIR made the following findings:

Period	Compensation	Tax W/held	Tax Remitted	Date Remitted	Surcharge	Interest	Compromise Penalty
April	236,662.74	68,485.41	68,485.41	6-May-03			
May	226,162.66	65,308.55	65,308.55	6-Jun-03			
June	204,192.17	61,571.50	61,571.50	11-Jul-03			
July	1,839,029.31	149,993.94	149,993.94	11-Aug-03			
August	104,057.88	33,648.51	33,648.51	11-Sep-03			
September	-						
October	-						
November	208,261.72	59,103.75	59,103.75	18-Dec-03	14,775.94	98.51	12,000.00
December	466,740.50	101,856.96	101,856.96	16-Jan-04			
January	166,189.58	49,410.67	49,410.67	13-Feb-04			
February	300,097.22	92,261.11	92,261.11	12-Mar-04			
March	200,084.64	60,257.08	60,257.08	13-Apr-04			
Total	3,951,478.42	741,897.48	741,897.48				

Deficiency Withholding Tax on Compensation	
Withholding Tax Due per Audit	
Total Compensation	3,951,478.42
Less: Personal Exemption	32,000.00
Net Taxable Income	3,919,478.42
Withholding Tax Due	3,884,478.42
Less: Amount remitted	741,897.48
Deficiency withholding tax on compensation	3,142,580.94
Add: Interest up to June 10, 2006	1,361,774.60
Total deficiency w/holding tax on compensation	4,504,355.54

The above Summary shows the source of petitioner's deficiency on its withholding tax on compensation.

Records show that petitioner was furnished by the BIR with a copy of this Summary of Withholding Tax on Compensation.

2) A perusal of the Summary of Discrepancy (*BIR Records, p. 451*) also shows the following:

Deficiency Withholding Tax on Compensation	
Withholding Tax Due per Audit	
Total Compensation	3,951,478.42
Less: Personal Exemption	32,000.00
Net Taxable Income	3,919,478.42
Withholding Tax Due	3,884,478.42
Less: Amount remitted	741,897.48
Deficiency withholding tax on compensation	3,142,580.94
Legal Basis: Sec. 78, 79, 80 and 81 of NIRC and RR 2-98	

This document shows the initial computation of the discrepancy, as found during the informal conference.

3) In a Letter dated April 26, 2006 (*BIR Records, p. 468*), petitioner's Tax Consultant, Moises M. Visperas, Jr., stated:

"On behalf of SILKair (Singapore) Pte. Ltd. Cebu Branch Office with office address at Suite 302, 3rd Floor, Cebu Holdings, Cardinal Rosales Avenue, Cebu Business Park, Cebu City, Philippines, I would like to initially submit the following arguments and documents in support of our position in response to the Summary of Discrepancies relative to your examination of accounts for the fiscal year ending March 31, 2004 in accordance with your Letter of Authority No. 2000 00067375 and 00067384 dated August 16, 2005 and October 17, 2005



which was received on April 18, 2006, and the revised summary which was received on April 19, 2006.

First of all, I would like to express my appreciation for the courtesy we received from your Ms. Alicia Socorro Abutazil as she gave in to our request for a soft copy of the supporting computations of the different categories of assessments. This indeed hastened the process of our review of the discrepancies.”

The above-quoted Letter, supported by *Annexes “A” and “B”*, pertains to Geoffrey Wong Sing Luk’s compensation income in the Philippines from January 1, 2003 to August 17, 2003, and Ronnie Lau’s compensation income in the Philippines from September 2003 to December 2003 (*BIR Records, pp. 459-460*).

4) On April 27, 2006, petitioner’s representative wrote a Letter to the BIR (*BIR Records, pp. 473-477*), copy of which was received by respondent CIR on April 27, 2006, which reads, as follows:

“On behalf of **SILKair (Singapore) Pte. Ltd. Cebu Branch Office with office address at Suite 302, 3rd Floor, Cebu Holdings, Cardinal Rosales Avenue, Cebu Business Park, Cebu City, Philippines**, and following our submission of our initial letter dated April 26, 2006 during the informal conference with your Revenue Officers Mr. Teodoro B. Amora, Jr. and Ms. Alicia Socorro Abutazil held yesterday at your office in response to the **original Summary of Discrepancies** relative to your examination of accounts for the fiscal year ending March 31, 2004 in accordance with your Letter of Authority No. 2000 00067375 and 00067384 which was received on April 18, 2006, and the **1st revised summary** which was received



on April 19, 2006 we would like to make additional supporting arguments and documents in reaction to the results of our discussions as well as our reaction to your examiner's 2nd revised summary of discrepancies which we received during said informal conference as follows:"

The above letter shows that petitioner made additional supporting arguments and submitted documents in reaction to the BIR examiner's 2nd Revised Summary of Discrepancies.

5) On the other hand, in its Summary of Withholding on Compensation (*BIR Records*, p. 483), respondent CIR made the following findings:

Monthly Computation of W/holding Tax Due					
Geoffrey Wong Sing Luk					
	Tax Base per return	W/holding Tax Due		Tax Deficiency	
		Per Silk Air	Per Inv		
April	236,662.74	68,485.41	71,962.18	3,476.77	
May	226,162.66	65,308.55	68,602.16	3,293.61	
June	204,192.17	61,571.50	61,571.60	0.10	
July	1,839,029.31	149,993.94	584,719.48	434,725.54	
August	68,741.58	33,648.51	18,227.41	(15,421.10)	
Add'l per Silkair	35,316.30		11,301.22	11,301.22	Additional income per schedule of Silkair
	2,610,104.76	379,007.91	816,384.05	437,376.14	
Ronnie Lau					
September	-				
October	-				
November	208,261.72	59,103.75	62,873.86	3,770.11	
December	466,740.50	101,856.96	145,587.07	43,730.11	
January	166,189.58	49,410.67	49,410.77	0.10	
February	300,097.22	92,261.11	92,261.22	0.11	
March	200,084.64	60,257.08	60,257.19	0.11	
	1,341,373.66	362,889.57	410,390.11	47,500.68	
Tax Deficiency	3,951,478.42	741,897.48	1,226,774.16	484,876.68	484,876.68
Add: Late payment (tax base per Silkair Schedule submitted – Annex B)					
		Tax Due	Surcharge	Interest	Penalty
September	60,834.98	15,697.30			
October	177,036.20	52,881.69			

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Total	237,871.18	68,578.99					
Tax Paid in Dec.		59,103.75					
Late payment not subjected to penalties		9,475.24	1,895.05	473.76	2,000.00	4,368.81	
Interest on tax deficiency (up to June 10, 2006)						210,113.23	
Total Withholding Tax Deficiency on Compensation						699,358.72	

Note: Taxpayer claim that except for the COLA, all other salaries of the manager was paid in Singapore and that the BIR form 2307 was erroneously filled up. However, no supporting documents were submitted to prove the figures submitted in annexes A & B as to the salaries and other allowances of the manager. The Revenue Officers have no other basis for tax base but the tax return which is presumed to be correct unless an amended return is filed.”

6) As a result of the investigation conducted pursuant to *LOA No. 00067384*, in their Memorandum dated April 27, 2006 (*BIR Records, p. 523*), the BIR Officers made the following observations:

“Withholding tax on compensation:

There is still withholding tax due on compensation paid to the Philippine Manager. The amount of deficiency was based on figures declared in the 1601C filed by the taxpayer. Although the taxpayer claim error in the figure declared, they did not submit supporting documents such as payroll or proof of payment made to the Manager to disprove the findings.

Withholding tax deficiency on compensation amounted to P484,876.68.”

From the foregoing, it is clear that there was an active exchange of correspondence between petitioner and respondent in the administrative proceeding in resolving petitioner’s protest on the assessments. The source of the factual basis was clearly identified in the assessment.



Petitioner was apprised and informed as to how the tax deficiency assessment was made. Records reveal that petitioner was clearly informed of the bases of the assessments during the informal conference and in the course of clarifying the issues regarding the PAN. In fact, petitioner was able to intelligently argue its position in its protest with regard to the findings of discrepancies against the subject assessment.

We, therefore, find that petitioner was accorded all the opportunity under the law to be heard and present its side and to adduce evidence in support thereof. In administrative proceedings, the essence of due process is simply an opportunity to explain one's side or opportunity to seek a reconsideration of the action or ruling complained of (*Audion Electric Co., Inc. vs. NLRC, 308 SCRA 340*). Accordingly, petitioner having been afforded all the opportunities under the law to present its side and adduce evidence to support its claim, was not denied due process. The assailed assessment having been issued in accordance with law is, therefore, valid in all respects.

We cannot, therefore, give credence to petitioner's claim that it was at a loss as to how or where the deficiency withholding tax on compensation came from.



Let it be emphasized that the purpose of *Section 228 of the 1997 NIRC, as amended*, is to give the taxpayer the opportunity to refute the findings of the examiner and give more accurate and detailed explanation regarding the assessments. If the purpose is served in the process of issuing an assessment, then the provision is deemed to have been complied with.

Furthermore, settled is the rule that tax assessments by tax examiners are presumed correct and made in good faith. All presumptions are in favor of the correctness of a tax assessment. It is to be presumed, however, that such assessment was based on sufficient evidence. Upon the introduction of the assessment in evidence, a *prima facie* case of liability on the part of the taxpayer is made. If a taxpayer files a petition for review in the CTA and assails the assessment, the *prima facie* presumption is that the assessment made by the BIR is correct, and that in preparing the same, the BIR personnel regularly performed their duties. This rule for tax initiated suits is premised on several factors other than the normal evidentiary rule imposing proof obligation on the petitioner-taxpayer: the presumption of administrative regularity; the likelihood that the taxpayer will have access to the relevant



information; and the desirability of bolstering the record-keeping requirements of the NIRC (*CIR vs. Hantex*, 454 SCRA 301).

In the case of *Marcos II vs. Court of Appeals, et al.*, supra, the Supreme Court ruled:

“It is not the Department of Justice which is the government agency tasked to determine the amount of taxes due upon the subject estate, but the Bureau of Internal Revenue, whose determinations and assessments are presumed correct and made in good faith. The taxpayer has the duty of proving otherwise. In the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed. Even an assessment based on estimates is prima facie valid and lawful where it does not appear to have been arrived at arbitrarily or capriciously. The burden of proof is upon the complaining party to show clearly that the assessment is erroneous. Failure to present proof of error in the assessment will justify the judicial affirmance of said assessment. In this instance, petitioner has not pointed out one single provision in the Memorandum of the Special Audit Team which gave rise to the questioned assessment, which bears a trace of falsity. Indeed, the petitioner’s attack on the assessment bears mainly on the alleged improbable and unconscionable amount of the taxes charged. But mere rhetoric cannot supply the basis for the charge of impropriety of the assessments made.”

Pursuant to the above decision of the Supreme Court, petitioner’s bare assertion that the PAN and the Final Decision on Disputed Assessment are void for alleged lack of computation or notes and for failure to specify what provision of the Tax Code was violated, cannot be sustained. Apparently, petitioner failed to appreciate the fact that



attached to the PAN and the Final Decision on Disputed Assessment were the Details of Discrepancies (*Exhibits "C-3" and "D-3"*) for the respective notices, which this Court considers as substantial compliance with the prescribed requisite of informing the taxpayer with the factual and legal basis on which the assessment was made, in accordance with the provisions of *Section 228 of the NIRC of 1997, as amended*.

The Final Decision on Disputed Assessment dated November 27, 2006 (*Exhibit "C-1"*) reads:

“ ▪ Deficiency Withholding Tax on Compensation – Tax due – P484,876.68 – There was error in the computation of withholding tax on compensation. This is in violation of Section 76-79 of the NIRC and RR 17-2003. Taxpayer claim that it erroneously filled up the amount of tax base on the return filed (which was the basis of computation for the deficiency tax) but did not submit any other document to support its protest such as payroll or alpha list or proof of payment to its employee.”

Petitioner should not limit itself only to the document entitled PAN, but rather to the entire notice furnished to apprise the taxpayer of its deficiencies and to the entire proceedings afforded to petitioner to give them due process. It is petitioner who is amiss of its duty to prove its contentions and contradict the findings of respondent since it was already informed of the deficiency as early as the informal conference. However, even in the proceedings of this case, petitioner failed to fully substantiate



its claim. Petitioner failed to prove proper withholding and remittance of the withholding taxes of its Country Managers. There was no evidence presented to prove that petitioner indeed withheld and paid the BIR the corresponding withholding taxes. The alleged error in the filing of BIR Form No. 1601-C, from which the error of computation arose, was not proven by petitioner.

The burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the Commissioner of Internal Revenue is wrong but the taxpayer is right (*Tan Guan vs. CTA*, 19 SCRA 903), otherwise, the presumption in favor of the correctness of tax assessment stands (*Sy Po vs. CTA*, 164 SCRA 524). The burden of proving the illegality of the assessment lies upon the petitioner alleging it to be so. In the present case, petitioner miserably failed to discharge this duty.

Furthermore, this objection to the assessment should have been raised with the BIR. The obvious intent of filing a claim to the Commissioner of Internal Revenue before seeking a judicial redress is to afford respondent CIR an opportunity to consider the taxpayer's claim first in the administrative level.

Failure to assert a question within a reasonable time warrants a presumption that the party entitled to assert it either has abandoned or



declined to assert it. It is too late for petitioner to raise said issue in this appeal. Thusly:

“To allow a litigant to assume a different posture when he comes before the court and challenge the position he had accepted at the administrative level, would be to sanction a procedure whereby the court - which is supposed to *review* administrative determinations - would not review, but determine and decide for the first time, a question not raised at the administrative forum. This cannot be permitted, for the same reason that underlies the requirement of prior exhaustion of administrative remedies to give administrative authorities the prior opportunity to decide controversies within its competence, and in much the same way that, on the judicial level, issues not raised in the lower court cannot be raised for the first time on appeal.” (*Aguinaldo Industries Corporation vs. Commissioner of Internal Revenue*, 136 SCRA 146)

Finding no reversible error, we affirm the assailed Final Decision on Disputed Assessment dated November 27, 2006 of the Commissioner of Internal Revenue.

WHEREFORE, premises considered, the present Petition for Review is hereby **DISMISSED** for lack of merit. Accordingly, petitioner Silkair (Singapore) PTE. LTD. is hereby **ORDERED TO PAY** the Commissioner of Internal Revenue the amount of **SEVEN HUNDRED SIXTY FOUR THOUSAND FIVE & 71/100 PESOS (P764,005.71)**, representing the deficiency withholding tax on compensation, plus twenty percent (20%) delinquency interest per annum from February 29, 2007



until fully paid, pursuant to *Section 249 (c)(3) of the NIRC of 1997, as amended.*

SO ORDERED.


OLGA PALANCA-ENRIQUEZ
Associate Justice

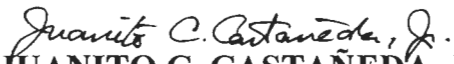
WE CONCUR:


JUANITO C. CASTAÑEDA, JR.
Associate Justice


ERLINDA P. UY
Associate Justice

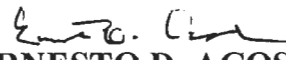
A T T E S T A T I O N

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

C E R T I F I C A T I O N

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.


ERNESTO D. ACOSTA
Presiding Justice