Republic of the Philippines
**COURT OF TAX APPEALS**
Quezon City

## *En Banc*

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|---|---|
| **COMMISSIONER OF INTERNAL REVENUE,** Petitioner, | **CTA EB Case No. 1073** (CTA Case No. 7787) |
| | Present: |
| - versus - | **DEL ROSARIO,** *PJ,* **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS,** *and* **RINGPIS-LIBAN,** *JJ.* |
| **SAN ROQUE POWER CORPORATION,** Respondent. | **Promulgated:** OCT 15 2014 3:39 p.m. |

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# DECISION

**CASANOVA, *J.*:**

This is an appeal, by way of a Petition for Review[1] filed by the Commissioner of Internal Revenue, from the Decision[2] dated April 30, 2013 and Resolution[3] dated September 13, 2013, both promulgated by the Court of Tax Appeal's (CTA) Special First Division in CTA Case No. 7787, entitled *"San Roque Power Corporation vs. Commissioner of Internal Revenue"*, which partially granted San Roque Power Corporation's Petition for Review by cancelling its deficiency final withholding tax (FWT) assessment, reducing its basic deficiency

[1] CTA *En Banc* Rollo, pp. 8- 24
[2] Annex "A", Petition for Review, CTA *En Banc* Rollo, pp. 25-56
[3] Annex "B", *Ibid.*, pp. 57-64

expanded withholding tax (EWT) assessment to ₱487,484.77 and ordering it to pay interests and surcharges.

Petitioner is the duly appointed Commissioner of Internal Revenue vested with the authority to act as such, including, *inter alia*, the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the tax laws. She holds office at the BIR National Office Building, Diliman, Quezon City.

Respondent San Roque Power Corporation is a domestic corporation engaged in the operation of a hydroelectric power generating plant located at Barangay San Roque, San Miguel, Pangasinan. It is registered with the Board of Investments on a pioneer status as new operator of hydroelectric power generating plant under Certificate of Registration No. 97-356 dated February 11, 1998.[4]

The facts of the case, as found by the CTA Special First Division, are as follows:[5]

> "On February 7, 2006, petitioner received Letter of Authority ('LOA') No. 00027833 dated February 22, 2006 issued by Revenue District Office (RDO) No. 06 of the Bureau of Internal Revenue (BIR), authorizing Revenue Officers Rodelio SJ Dacanay, Gregorio Z. Nipal, Almira Navarro, and Jinky Lim to examine its books of accounts and other accounting records relative to all internal revenue taxes for the period covering January 1, 2004 to December 31, 2004.
>
> Thereafter on April 4, 2007, petitioner received a Notice of Informal Conference dated April 3, 2007 issued by BIR RDO No. 06, finding petitioner to have deficiency withholding tax on compensation, expanded withholding tax (EWT), value-added tax, and final withholding tax (FWT), inclusive of applicable increments, for taxable year 2004 on the basis of the investigation of the aforesaid Revenue Officers, as follows:

[4] The Facts, Division Decision dated April 30, 2013
[5] Annex "A", The Facts, Petition for Review, CTA *En Banc* Rollo, pp. 25-33

| | |
|---|---|
| Withholding Tax on Compensation | ₱ 4,287,333.80 |
| Expanded Withholding Tax | 3,625,338.56 |
| Final Withholding Tax | 98,234,867.07 |
| Value-Added Tax | 4,614,888.03 |
| Total | **₱110,762,427.46** |

Although petitioner by then is under the jurisdiction of the BIR Large Taxpayer Services, petitioner opted, without objection from the BIR Large Taxpayer Services, that the examination of its books of accounts and other accounting records for all internal taxes for taxable year 2004 be continued by BIR RDO No. 06 as the latter has all the records pertinent to such examination.

In response to the issues raised by petitioner in its letter dated April 27, 2007, BIR RDO No. 06 conducted a re-investigation as contained in its letter dated August 6, 2007.

On November 21, 2007, petitioner received a second Notice of Informal Conference dated November 15, 2007, wherein BIR RDO No. 06 amended its assessment for alleged deficiency taxes for taxable year 2004, as follows:

| | |
|---|---|
| Deficiency Expanded Withholding Tax | ₱ 3,241,714.71 |
| Deficiency Fringe Benefits Tax | 6,109,673.68 |
| Deficiency Final Withholding Tax | 106,688,374.79 |
| Total | **₱116,039,763.18** |

Thereafter, on December 27, 2007, petitioner received a letter of even date from BIR RDO No. 06 informing petitioner that it will pursue the assessments reflected in the Notice of Informal Conference.

Subsequently, on January 2, 2008, petitioner received a copy of the Preliminary Assessment Notice (PAN) dated December 28, 2007 issued by BIR Revenue Region No. 1, enumerating the following tax deficiencies (inclusive of interest and late payment charges):

| | |
|---|---|
| Expanded Withholding Tax | ₱ 3,530,629.68 |
| Deficiency Final Withholding Tax | 107,699,106.77 |
| Deficiency Fringe Benefits Tax | 6,167,554.80 |
| Total | **₱117,397,291.25** |

On January 24, 2008, petitioner received copies of the Formal Letter of Demand and Assessment Notices dated January 14 and 15, 2008, respectively, which were issued or mailed by the BIR on January 15, 2008, for deficiency taxes under Assessment Notice Nos. WE-04-06-005-017-501-000, WF-04-06-005-017-501-000, and FBT-04-06-005-017-501-000, as follows:

| | |
|---|---|
| Expanded Withholding Tax | ₱ 3,365,719.78[6] |
| Final Withholding Tax | 108,822,142.29 |
| Fringe Benefits Tax | 6,231,867.15 |
| Total | **₱118,619,729.22** |

In its letter dated February 21, 2008 to BIR Revenue Region No. 1, petitioner protested the assessment and collection of purported deficiency taxes under Assessment Notice Nos. WE-04-06-005-017-501-000, WF-04-06-005-017-501-000, and FBT-04-06-005-017-501-000 dated January 15, 2008 and Formal Letter of Demand dated January 14, 2008, for being barred by prescription and bereft of factual and legal bases.

In a letter dated April 3, 2008 of the BIR Revenue Region No. 1, petitioner was informed that the letter of demand and assessment notices still stand and its request for cancellation was denied with finality.

Thus, on May 22, 2008, petitioner filed the instant Petition for Review to assail the aforesaid denial of its protest against respondent's Formal Letter of Demand dated January 14, 2008 and Assessment Notice Nos. WE-04-06-005-017-501-000, WF-04-06-005-017-501-000, and FBT-04-06-005-017-501-000, all dated January 15, 2005

[6] Should be 3,565,719.78

issued by BIR Revenue Region No. 1, of Calasiao, Pangasinan.

In her Answer filed on November 3, 2008, respondent interposes the following special and affirmative defenses:

> '6. Respondent adopts the abovementioned admissions and denials as part of his special and affirmative defenses.
>
> 7. The assessments for Withholding Tax on Compensation, Expanded Withholding Tax, Final Withholding Tax and Value-Added Tax respectively, were issued in accordance with law. In the Formal Letter of Demand, respondent clearly stated petitioner's tax liabilities, to wit:
>
> > 'Please be informed that after review of the investigation reports on your income, withholding and business tax liabilities the taxable year 2004 submitted by Revenue Officers Jinky Lim, Rodelio Dacanay and Gregorio Nipal under Letter of Authority No. 00027833 dated February 22, 2006, there have been found still due from you deficiency taxes as shown thereunder:
> >
> > **Assessment No.: WE-04-06-005-017-501-000**
> > Deficiency Expanded Withholding Tax ₱3,565,719.78
> >
> > **Assessment No.: WF-04-06-005-017-501-000**
> > Deficiency Final Withholding Tax ₱108,822,142.29
> >
> > **Assessment No.: FBT-04-06-005-017-501-000**
> > Deficiency Fringe Benefits Tax ₱6,231,142.29
> >
> > **TOTAL** **₱118,619,729.22**
>
> Please note that the interest will be adjusted if paid beyond February 12, 2008.
>
> The twenty-five percent (255) *[sic]* surcharge and twenty percent (20%) interest per annum was based on the provisions of Section 248 (A) and Section 249 (B) of the 1997 NIRC, while the compromise penalty was in accord with RMO 1-90 and Section 250 of the 1997 NIRC.

The narrative details covering the aforementioned discrepancies and the detailed computation of the deficiency taxes are shown at the back hereof as Annex A.'

Based on the foregoing, the assessment issued against petitioner is valid being supported by factual and legal bases.

An assessment contains a computation of tax liabilities and a demand for payment of such liability within a prescribed period. It is worthy to note that assessment notices need not be a full narration of facts and laws on which the assessment is made. It is enough that the petitioner be **substantially informed** of the law and facts on which the assessment for a tax liability is made. The Preliminary Assessment Notices received by petitioner indicated the amount of deficiency tax liability and a demand to pay within a prescribed period. The Supreme Court held that assessments simply required a computation of tax liabilities, the amount the taxpayer was to pay and a demand for payment within a prescribed period.

8. The right of respondent to assess petitioner for withholding taxes did not prescribe because the investigation upon petitioner's books and records has yet to conclude. That being the case, the right of respondent to assess petitioner is not barred by prescription and the filing of the Petition for Review is premature, pending the conclusion of the investigation.

In paragraph I(B) under the heading 'DISCUSSION', petitioner ratiocinated that it did not ask for a re-investigation and yet respondent's revenue officers conducted a re-investigation anyway. The truth is, the claimed 're-investigation' is a continuation of the investigation on petitioner's books and records. This fact is highlighted when petitioner said that, 'In sum, we respectfully object to the assessment for lack of factual and legal bases contrary to pertinent Bureau of Internal Revenue (BIR) rulings on the matter. We manifest that we reserve our right to submit additional documents should the need arises. Should you require the submission of additional documents, please let us know. By its own words, petitioner agreed that the investigation has not yet terminated, and that it shall comply with any request for the submission of documents should respondent's examiners deem it necessary. The use of the word 're-investigation' in this case did not denote the usage of a technical or legal term. It simply means to study again by close examination and systematic inquiry. At most, it is but a misnomer for continuing the investigation. The offer of petitioner to give additional documents so requested is but part of the investigation. The law allows the BIR access to all relevant or material records and data in the person of the taxpayer. It places no limit or condition on the type or form of the medium by which the record subject to the order of the BIR is kept. The purpose of the law is to enable BIR to get at the taxpayer's records in whatever form they may be kept. Thus, contrary to petitioner's belief, assessment on its books and records is not barred by prescription. The hurried resort to judicial remedy has only led to premature filing of the instant Petition for Review.'

9. In the absence of evidence to the contrary, assessments are presumed correct. In the case of *Commissioner of Internal Revenue vs. Bank of the Philippine Islands*, the Supreme Court held:

> 'Tax assessments by tax examiners are presumed correct and made in good faith. The taxpayer has the duty to prove otherwise. In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a Bureau of Internal Revenue examiner and approved by his superior officers will not be disturbed. All presumptions are in favor of the correctness of tax assessments.'

The burden of proof (sic) 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 also that the taxpayer is right. The presumption in favor of the correctness of tax assessments stands where evidence to the contrary is wanting."

After pre-trial held on December 4, 2008, the parties filed their Joint Stipulation of Facts and Issues on July 1, 2009. This was approved by the Court in the Resolution dated July 6, 2009.

Before the scheduled date of petitioner's initial presentation of evidence, petitioner filed a Motion to Set Case for Preliminary Hearing to Resolve Issue of Prescription on July 16, 2009. In line therewith, both parties manifested that they will not present evidence on the issue of prescription. In compliance with the Resolution dated August 24, 2009, respondent filed her Memorandum on September 28, 2009 while petitioner filed its Memorandum [Re: Issue of Prescription] on October 1, 2009.

In the Resolution dated November 13, 2009, the Former Second Division of this Court resolved the issue of prescription. Assessment Notice Nos. WE-04-06-005-017-501-000 and WF-04-06-005-017-501-000 for deficiency expanded withholding tax and deficiency final withholding tax covering the period of January to November 2004, and Assessment No. FBT 04-06-005-017-501-000 for deficiency fringe benefits tax for taxable year 2004 were CANCELLED AND SET ASIDE for having been issued beyond the prescriptive period. As to the remaining assessment for deficiency Expanded Withholding Tax and deficiency Final Withholding Tax for December 2004, the Court set the initial presentation of evidence for the petitioner on January 20, 2010.

A Motion for Reconsideration of the foregoing Resolution was filed by respondent on December 8, 2009, but the same was denied in the Resolution dated April 14, 2010 for lack of merit.

Meanwhile, respondent assailed the Court's Resolutions dated November 13, 2009 and April 14, 2010 before the Court of Tax Appeals *En Banc* by way of a Petition for Review, docketed as CTA EB No. 626, pursuant to Rule 8 of the Revised Rules of the Court of Tax Appeals. The Court *En Banc*, in its Decision promulgated on August 31, 2011, denied respondent's Petition for Review and affirmed in *toto* the Court's Resolutions dated November 13, 2009 and April 14, 2010. Respondent's Motion for Reconsideration on the Decision of the Court *En Banc* was likewise denied in the Resolution dated January 2, 2012.

During the trial of this case with respect to the remaining assessment for deficiency Expanded Withholding Tax and deficiency Final Withholding Tax for December 2004, both parties presented and offered their respective evidence. Petitioner's formally offered pieces of documentary evidence, as contained in its Offer of Documentary Evidence, were admitted in the Resolutions dated August 11, 2011 and October 10, 2011. Thereafter, respondent's formally offered evidence, as stated in her Formal offer of Evidence filed on February 29, 2012, were admitted in the Resolution dated April 13, 2012. With the submission of respondent's Memorandum on May 23, 2012 and petitioner's Memorandum on August 10, 2012, the instant Petition for Review was submitted for decision in the Resolution dated August 23, 2012." *(Citations Omitted)*

On April 30, 2013, the CTA Special First Division promulgated the assailed Decision, the dispositive portion reads as follows:

"**WHEREFORE**, in view of the foregoing considerations, the Petition for Review is **PARTIALLY GRANTED**. The deficiency final withholding tax for December 2004 is hereby **CANCELLED** and **SET ASIDE**, while the assessment for basic deficiency EWT for December 2004 is hereby **REDUCED** to ₱487,484.77.

Moreover, petitioner is hereby **ORDERED** to pay respondent the said basic deficiency EWT, and the following surcharge and interest, to wit:

1) surcharge in the amount of ₱121,871.19 (₱487,484.77 at 25%), pursuant to Section 248 (3) of the NIRC of 1997;

2) interest at the rate of 20% per annum on the basic deficiency EWT of ₱487,484.77, computed from January 15, 2005 until full payment thereof, pursuant to Section 249(A) of the NIRC of 1997; and

3) delinquency interest at the rate of 20% per annum on the basic deficiency EWT of ₱487,484.77, computed from February 14, 2008 until full payment thereof, pursuant to Section 249(C) (3) of the NIRC of 1997.

> Lastly, as regards the late remittance of the balance of the EWT on the Professional Fees (Consultancy Fees-Land) in the amount of ₱17,500.00, petitioner is hereby **ORDERED** to pay respondent interest thereon at the rate of 20% per annum from the date prescribed for its payment (i.e., on January 15, 2005) until the full payment of the said balance on February 26, 2008, equivalent to the amount of ₱10,902.50, pursuant to Section 249(A) of the NIRC of 1997.
>
> **SO ORDERED.**"

On May 28, 2013, petitioner herein filed her Motion for Partial Reconsideration, praying that the assailed Decision be reversed and set aside and a new one be rendered ordering San Roque Power Corporation to pay the amounts of ₱3,241,714.71 as deficiency EWT and ₱106,688,374.79 as deficiency FWT, including interests and surcharges, for taxable year 2004. Respondent herein filed its Comment/Opposition [To Respondent's Motion for Partial Reconsideration] on June 27, 2013.

Subsequently, respondent herein filed its Motion for Partial Reconsideration *via* registered mail on May 30, 2013, praying that the assailed Decision be reversed and set aside and a new one be rendered cancelling in its entirety the assessment for the remaining alleged deficiency EWT for the unprescribed month of 2004, as well as the interests and surcharges thereon. Petitioner herein did not file her Comment on respondent's Motion despite notice.

On September 13, 2013, the CTA Special First Division rendered the assailed Resolution denying both parties' Motions for Partial Reconsideration for lack of merit.

Hence, on October 24, 2013, petitioner filed the instant Petition for Review[7] with the Honorable Court *En Banc*.

Meanwhile, on November 5, 2013, respondent filed a Manifestation[8] stating that in view of the Court's denial of both parties Motions for Partial Reconsideration, respondent is complying with the judgment award promulgated last April 30, 2013.

[7] CTA *En Banc* Rollo, pp. 8-24
[8] *Ibid.*, pp. 68-71

On November 13, 2013, this Honorable Court noted respondent's Manifestation.[9]

Again, on November 14, 2013, respondent filed another Manifestation[10] reiterating its previous statement that it opted to settle the judgment award and caused the payment of the amount indicated therein on November 7, 2013 through the Electronic Filing and Payment System of the Bureau of Internal Revenue (BIR).

On December 18, 2013, this Honorable Court issued a Resolution[11] ordering respondent to file its Comment to the Petition for Review within ten (10) days from receipt of the said Resolution.

On February 28, 2014, respondent filed a Motion to Admit Attached Comment[12], explaining the reasons for the late filing of its comment, and begging the indulgence of this Honorable Court that the attached comment be admitted and considered.

Thereafter, in a Resolution[13] dated April 11, 2014, this Honorable Court granted respondent's Motion to Admit Comment and resolved to give due course to the instant Petition. The parties were given a period of thirty (30) days from notice thereof to file their respective Memorandum after which the instant Petition for Review shall be considered submitted for decision.

On May 5, 2014, petitioner filed a Manifestation[14], stating that she is adopting the arguments raised in the Petition for Review as her Memorandum. This Honorable Court noted the same in the *En Banc* Minute Resolution[15] dated May 27, 2014. Respondent, on the other hand, filed its Memorandum[16] *via* registered mail on May 29, 2014. However, finding the Memorandum to be insufficient in number of copies, this Honorable Court ordered respondent to submit, within ten

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[9] *En Banc* Resolution, Id., p. 72
[10] CTA *En Banc* Rollo, pp. 73-81
[11] *Ibid.*, pp. 83-84
[12] *Id.*, pp. 85-104
[13] *Id.*, pp. 106-107
[14] *Id.*, pp. 108-111
[15] *Id.*, p. 112
[16] *Id.*, pp. 114-132

(10) days from notice, additional nine (9) copies of the said Memorandum as required under A.M. No. 11-9-4-SC.[17]

On June 6, 2014, respondent filed a Manifestation[18] stating its compliance with this Honorable Court's order by submitting additional twelve (12) copies of its Memorandum. This Honorable Court noted respondent's Manifestation.

Accordingly, in the June 30, 2014 Resolution,[19] the instant case was deemed submitted for decision.

Petitioner raised the following Issues[20] in her Petition for Review, to wit:

> WHETHER OR NOT THE SPECIAL FIRST DIVISION ERRED WHEN IT REDUCED THE DEFICIENCY EXPANDED WITHHOLDING TAX ASSESSMENT.
>
> WHETHER OR NOT THE SPECIAL FIRST DIVISION ERRED WHEN IT CANCELLED THE DEFICIENCY FINAL WITHHOLDING TAX ASSESSMENT.

Petitioner primarily claims that, contrary to the CTA Special First Division's findings, her Motion for Partial Reconsideration is not *pro forma*. She insists that although a motion for reconsideration may reiterate issues already passed upon by the court, that by itself does not make it *pro forma*, as held in the case of Marina Properties Corporation vs. Court of Appeals, 355 Phil 705 (1998).

However, perusal of the records of the case reveal that the arguments raised by petitioner in the instant Petition for Review *En Banc* are mere reiterations of her position in her Memorandum dated May 23, 2012 and Motion for Partial Reconsideration dated May 28, 2013, both filed with the CTA Special First Division. Petitioner's arguments are quoted hereafter for ease of reference:

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[17] *En Banc* Minute Resolution, *Id.*, p. 134
[18] *Id.*, pp. 135-138
[19] *Id.*, pp. 162-163
[20] *Id.*, p. 17

As per petitioner's Memorandum dated May 23, 2012:

"**ARGUMENTS/DISCUSSIONS**

The total amount of Expanded Withholding Tax due per return amounted to P7,536,809.65. But upon examination of petitioner's 1601-E return filed, only the total amount of P6,767,597,21 (sic) was remitted since the amount of P769,212.61 was deducted in a staggered basis from the 2004 monthly remittance return of expanded withholding tax starting from the month of February up to November 2004. This deduction was alleged to have emanated from the July 2002 payments made by petitioner to Raytheon Ebasco Overseas Lt. wherein certain jobs covered by the invoice were allegedly cancelled, thus resulting to a reduced amount of the said invoice. However, there was no explanation from petitioner as to why said deduction was made for the year 2004, when in fact there was no over-remittance for the year 2003. Furthermore, only photocopies of the cancelled invoices, accounts payable vouchers and certain transmittals were provided by the representatives of petitioner.

Income payments made to payees subjected to 10% and 15% withholding amounted to P32,101,565.23, while per trial balance figures, there appeared legal fees of P30,814,479.98 and consultancy fees of P30,433,435.34 with a difference of P29,146,350.09. A breakdown of the legal fees per payee was provided, but there were no other supporting documents presented.

For the deficiency Final Withholding Tax, interest expense paid to foreign banks which were subjected to 10% final withholding tax amounted to P112,436,766.20. However, upon investigation, the total expense payment amounted to P582,809,588.24, with a difference of P470,372,822.04. The final withholding tax due thereon amounts to P47,037,282.20. Other payments made to non-resident foreign corporation which represents consultancy fees and commitment fees amounted to P63,577,654.07 subject to 32% final withholding tax of P20,344,849.30. Final Withholding Tax due amounted to P106,688,374.79, inclusive of the 20% interest of P39,306,243.34.

Petitioner argued that these interest payments represent payments made to petitioner's loans from Export-Import Bank of Japan (JEXIM)-Tranche C Senior Loans, Syndicated loans from private sector, guaranteed by JEXIM-Tranche B Senior Loans, and Syndicated loans from the private sector-Tranche C Senior Loans.

BIR Ruling No. DA-ITAD 2-99 dated 1 August 2003 was provided to support the exemption from the 10% final withholding tax on interest payments made to Tranche A and Tranche B Senior Loans, but the very loan agreements were not produced, hence, no verification was made as to the veracity of the final withholding tax paid as well as the payments made to Tranche A and Tranche B Senior Loans."

<u>As per petitioner's Motion for Partial Reconsideration dated May 28, 2013</u>:

"**ARGUMENTS/DISCUSSIONS**

Respondent would like to reiterate once again that the total amount of Expanded Withholding Tax due per return amounted to P7,536,809.65. But upon examination of petitioner's 1601-E return filed, only the total amount of P6,767,597,21 (sic) was remitted since the amount of P769,212.61 was deducted on a staggered basis from the 2004 monthly remittance return of expanded withholding tax starting from the month of February up to November 2004. This deduction was alleged to have emanated from the July 2002 payments made by petitioner to Raytheon Ebasco Overseas Lt. wherein certain jobs covered by the invoice were allegedly cancelled, thus resulting to a reduced amount of the said invoice. However, there was no explanation from petitioner as to why said deduction was made for the year 2004, when in fact there was no over-remittance for the year 2003. Furthermore, only photocopies of the cancelled invoices, accounts payable vouchers and certain transmittals were provided by the representatives of petitioner.

Income payments made to payees subjected to 10% and 15% withholding amounted to P32,101,565.23, while per trial balance figures, there appeared legal fees of P30,814,479.98 and consultancy fees of P30,433,435.34 with a difference of P29,146,350.09. A breakdown of the legal fees per payee was provided, but there were no other supporting documents presented.

For the deficiency Final Withholding Tax, interest expense paid to foreign banks which were subjected to 10% final withholding tax amounted to P112,436,766.20. However, upon investigation, the total expense payment amount to P582,809,588.24, with a difference of P470,372,822.04. The final withholding tax due thereon amounts to P47,037,282.20. Other payments made to non-resident foreign corporation which represents consultancy fees and commitment fees amounted to P63,577,654.07 subject to 32% final withholding tax of P20,344,849.30. Final Withholding Tax due amounted to P106,688,374.79, inclusive of the 20% interest of P39,306,243.34.

Petitioner argued that these interest payments represent payments made to petitioner's loans from Export-Import Bank of Japan (JEXIM)-Tranche C Senior Loans, Syndicated loans from private sector, guaranteed by JEXIM-Tranche B Senior Loans, and Syndicated loans from the private sector-Tranche C Senior Loans.

Although petitioner can legally rely on its duly issued BIR Ruling, nevertheless, it must prove that the facts on which the ruling is based likewise obtains in this case. Thus, it was fatal that the loan agreements were never presented to respondent's examiners for examination. Hence, no verification was made as to the veracity of the final withholding tax paid as well as the payments made to Tranche A and Tranche B Senior Loans."

*As per* petitioner's *Petition* for Review *En Banc dated October 24, 2013*:

"**ARGUMENTS/DISCUSSIONS**

xxx xxx xxx

Petitioner respectfully begs to disagree.

Although respondent can legally rely on its duly issued BIR Ruling, it must show that the facts obtaining in a certain situation are square with the facts on which the ruling is based. Simply stated, it must prove that the facts on which the ruling is based likewise obtains in this case. In the instant case, the loan agreement were never presented that's why petitioner assessed the deficiency taxes subject of this case. Thus, it was fatal that the loan agreements were never presented to petitioner's examiners for examination. Hence, no verification was made as to the veracity of the final withholding tax paid as well as the payments made to Tranche A and Tranche B Senior Loans.

Thus, for the deficiency Final Withholding Tax, interest expense paid to foreign banks which were subjected to 10% final withholding tax amounted to P112,436,766.20. However, upon investigation, the total expense payment amounted to P582,809,588.24, with a difference of P470,372,822.04. The final withholding tax due thereon amounts to P47,037,282.20. Other payments made to non-resident foreign corporation which represents consultancy fees and commitment fees amounted to P63,577,654.07 subject to 32% final withholding tax of P20,344,849.30. Final Withholding Tax due amounted to P106,688,374.79, inclusive of the 20% interest of P39,306,243.34.

Petitioner would like to reiterate once again that the total amount of Expanded Withholding Tax due per return amounted to P7,536,809.65. But upon examination of petitioner's 1601-E return filed, only the total amount of P6,767,597.21 was remitted since the amount of P769,212.61 was deducted on a staggered basis from the 2004 monthly remittance return of expanded withholding tax starting from the month of February up to November 2004. This deduction was alleged to have emanated from the July 2002 payments made by respondent to Raytheon Ebasco Overseas Lt. wherein certain jobs covered by the invoice were allegedly cancelled, thus resulting to a reduced amount of the said invoice. However, there was no explanation from respondent as to why said deduction was made for the year 2004, when in fact there was no over-remittance for the year 2003. Assuming that there was indeed an over-remittance, the same should have been accounted for and credited to the next succeeding year. Furthermore, only photocopies of the cancelled invoices, accounts payable vouchers and certain transmittals were provided by the representatives of respondent.

Income payments made to payees subjected to 10% and 15% withholding amounted to P32,101,565.23, while per trial balance figures, there appeared legal fees of P30,814,479.98 and consultancy fees of P30,433,435.34 with a difference of P29,146,350.09. A breakdown of the legal fees per payee was provided, but there were no other supporting documents presented. The subject audit of petitioner's revenue officers was for the year 2004, however, the supporting documents submitted pertains to the year 2002.

To reiterate, the loan and credit agreements as per BIR Ruling DA-ITAD-21-00 were never submitted to petitioner's revenue officers for validation and no invoices nor official

> receipts were presented to prove that the payments were actually made in line with the exempt credit agreement. What were submitted were mere credit schedule and an alleged entry in the ledger which were self-serving. The explanation on remittance discrepancy of cash dividend as due to the fluctuating exchange rate was not given credence since no comparison was made. Moreover, the consultancy agreement submitted was dated 20 August 2001 effective for a period of six (6) months from 1 September 2001 up to 8 February 2002. However, the year involved in the instant case is 2004."

Based from the foregoing, petitioner's arguments raised herein are mere rehash of the same facts and issues already analyzed, weighed and passed upon extensively in the assailed Decision and Resolution. Petitioner did not raise anything new to merit its reconsideration or reversal. Accordingly, this Court finds no reversible error to disturb the assailed Decision and Resolution both rendered by the CTA Special First Division.

**WHEREFORE,** the instant Petition for Review *En Banc* is hereby **DENIED** for lack of merit. The Decision and Resolution dated April 30, 2013 and September 13, 2013, respectively, rendered by the CTA Special First Division in CTA Case No. 7787, are both **AFFIRMED**.

**SO ORDERED.**

**CAESAR A. CASANOVA**
Associate Justice

WE CONCUR:

**ROMAN G. DEL ROSARIO**
Presiding Justice

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

**LOVELL R. BAUTISTA**
Associate Justice

**ERLINDA P. UY**
Associate Justice

**ESPERANZA R. FABON-VICTORINO**
Associate Justice

**CIELITO N. MINDARO-GRULLA**
Associate Justice

**AMELIA R. COTANGCO-MANALASTAS**
Associate Justice

**MA. BELEN M. RINGPIS-LIBAN**
Associate Justice

## CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation with the members of the Court *En banc* before the case was assigned to the writer of the opinion of the Court.

**ROMAN G. DEL ROSARIO**
Presiding Justice