

FIRST DIVISION

[G.R. No. 201665, August 30, 2017]

**EDISON (BATAAN) COGENERATION CORPORATION,
PETITIONER, V. COMMISSIONER OF INTERNAL REVENUE,
RESPONDENT.**

[G.R. No. 201668, August 30, 2017]

**REPUBLIC OF THE PHILIPPINES, REPRESENTED BY THE
COMMISSIONER OF INTERNAL REVENUE, PETITIONER, V.
EDISON (BATAAN) COGENERATION CORPORATION,
RESPONDENT.**

D E C I S I O N

DEL CASTILLO, J.:[*]

The findings and conclusions of the tax court are accorded great weight because of its expertise on the subject.^[1]

Before us are consolidated Petitions for Review on *Certiorari*^[2] under Rule 45 of the Rules of Court assailing the January 30, 2012 Decision^[3] and the April 17, 2012 Resolution^[4] of the Court of Tax Appeals (CTA) in CTA EB Case Nos. 766 and 769.

Factual Antecedents

On February 2, 2004, Edison (Bataan) Cogeneration Corporation [EBCC] received from the Commissioner of Internal Revenue (CIR) a Formal Letter of Demand and Final Assessment Notice dated January 23, 2004 assessing EBCC of deficiency income tax, Value Added Tax (VAT), withholding tax on compensation, Expanded Withholding Tax (EWT) and Final Withholding Tax (FWT) for taxable year 2000 in the total amount of P84,868,390.16, broken down as follows:

Deficiency Tax
Amount

Income Tax	P65,571,268.01
Value-Added	168,866.15
Tax	128,087.84
Withholding	79,066.13
Tax on	18,921,102.03
Compensation	P84,868
Expanded	390.16 ^[5]
Withholding	
Tax	
Final	
Withholding	

Tax
TOTAL

On March 3, 2004, EBCC filed with the CIR a letter-protest dated March 2, 2004 and furnished the CIR with the required documents.^[6]

Due to the inaction of the CIR, EBCC elevated the matter to the CTA via a Petition for Review, docketed as CTA Case No. 7104 and raffled to the Second Division of the CTA.

While the case was pending, EBCC availed itself of the Tax Amnesty Program under Republic Act (RA) No. 9480.^[7] Thus, in a November 7, 2008 Resolution, the CTA Second Division deemed the Petition partially withdrawn and the case closed and terminated with regard to EBCC's deficiency income tax and VAT for the year 2000.^[8]

On March 18, 2009, the CTA Second Division issued a Resolution setting aside the assessments against EBCC for deficiency income tax and VAT for the taxable year 2000 in view of its availment of the Tax Amnesty Program.^[9]

Ruling of the Court of Tax Appeals Former Second Division

On November 30, 2010, the CTA Former Second Division rendered a Decision^[10] partly granting the Petition. After reviewing the evidence on record, the CTA Former Second Division found EBCC to have paid the correct amount of EWT and withholding tax on compensation of its employees.^[11] Thus, the CTA Former Second Division cancelled and set aside the assessments for the deficiency EWT and the deficiency withholding tax on compensation.^[12] As to the deficiency FWT, the CTA Former Second Division found EBCC liable to pay FWT in a reduced amount of P2,232,146.91.^[13] The CTA Former Second Division agreed with EBCC that it was not liable for the deficiency FWT assessment of P7,707,504.96 on interest payments on loan agreements with Ogden Power International Holdings, Inc. (Ogden) for taxable year 2000 since its liability for interest payment became due and demandable only on June 1, 2002.^[14] Likewise cancelled and set aside were the deficiency tax assessments on loan interest payment of EBCC to Philippine National Bank and Security Bank Corporation in the amounts of P346,988.77 and P387,411.46, respectively, as these had already been remitted by EBCC.^[15] Thus:

WHEREFORE, premises considered, the instant Petition for Review is hereby PARTLY GRANTED. Accordingly, the assessments for deficiency withholding tax on compensation in the amount of P128,087.84 and expanded withholding tax in the amount of P79,066.13 for taxable year 2000 are hereby CANCELLED and SET ASIDE.

As regards the deficiency final withholding tax assessment against petitioner for taxable year 2000, the same is hereby AFFIRMED, with modification. Accordingly, petitioner is hereby ORDERED TO PAY respondent Commissioner of Internal Revenue the amount of TWO MILLION TWO HUNDRED THIRTY TWO [THOUSAND] ONE HUNDRED FORTY SIX AND 91/100 (P2,232,146.91), representing deficiency final withholding tax, computed, as follows:

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FWT Due per Assessment		P10,227,622.72
Less: Substantiated FWT on interest on syndicated loans	P734,400.23	
FWT on interest on foreign loan from Ogden	7,707,504.96	8,441,905.19
Basic deficiency FWT		P 1,785,717.53
Add: 25% Surcharge		446,429.38
Total Deficiency FWT		P2,232,146.91

In addition, petitioner is ordered to pay:

1) deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency final withholding tax of P1,785,717.53 computed from January 25, 2001 until full payment thereof: pursuant to Section 249(B) of the NIRC of 1997, as amended; and

2) delinquency interest at the rate of twenty percent (20%) per annum on the total deficiency final withholding tax of P2,232,146.91, and on the deficiency interest which have accrued as afore-stated in paragraph 1 hereof, computed from January 23, 2004 until full payment thereof, pursuant to Section 249(C) of the NIRC of 1997 as amended.

SO ORDERED.^[16]

The CIR filed a Motion for Reconsideration while EBCC filed a Motion for Partial Reconsideration and/or Clarification.^[17]

On April 7, 2011, the CTA Former Second Division issued a Resolution^[18] denying both Motions.^[19]

Both parties appealed to the CTA *En Banc*.

Ruling of the Court of Tax Appeals En Banc

On January 30, 2012, the CTA *En Banc* denied both appeals. It sustained the findings of the CTA Former Second Division that the assessment over EBCC's FWT on interest payments arising from its loan from Ogden was without basis as EBCC had no obligation to withhold any taxes on the interest payment for the year 2000.^[20] Under Revenue Regulation (RR) No. 02-98, the obligation to withhold only accrues when the loan is paid or becomes payable or when it becomes due,

demandable or legally enforceable, whichever comes first.^[21] In this case, the obligation to withhold the interest over the loan only commenced on June 1, 2002.^[22] As to the alleged interest payments on the syndicated loans in dollars, the CTA *En Banc* noted that EBCC failed to present sufficient evidence to prove the remittance of its payment.^[23] Thus, the CTA *En Banc* adopted the computation of the CTA Former Second Division.^[24]

On April 17, 2012, the CTA *En Banc* denied the CIR's Motion for Reconsideration and EBCC's Motion for Partial Reconsideration.^[25]

Issues

Hence, the instant consolidated Petitions under Rule 45 of the Rules of Court, with the following issues:

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I.

Whether the CTA *En Banc* erred in not recognizing [the CIR's] judicial admission that she reduced her assessment for deficiency FWT for taxable year 2000 from [P]10,227,622[.]72 to [P]7,384,922.52.

II.

Whether [EBCC] is raising a question of fact before the Honorable Court.^[26]

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I.

Whether x x x EBCC is liable for deficiency final withholding tax for the year 2000.

II.

Whether x x x Revenue Regulation No. 12-01 should be applied in this case.^[27]

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EBCC's Arguments

EBCC insists that it was not liable for any deficiency taxes for the year 2000 since it had already remitted the amount of P2,842,630.20 as payment for its FWT for 2000, and that no proof of such payment was necessary considering the CIR's admission in her Memorandum^[28] that the original assessment of P10,227,622.72 was reduced to P7,384,992.52.^[29]

The CIR's Arguments

The CIR, however, denies that she made any judicial admission of payment and maintains that in the absence of evidence of payment, EBCC was liable to pay the deficiency assessment as the party who alleges payment bears the burden of

proving the same.^[30] Moreover, the CIR claims that the issue raised by EBCC is a question of fact, which is not allowed in a Petition for Review on Certiorari under Rule 45 of the Rules of Court.^[31]

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The CIR's Arguments

As to the cancellation of the assessments against EBCC's FWT on its intercorporate loan from Ogden, the CIR argues that the assessment enjoys the presumption of validity and may only be disproved by evidence to the contrary.^[32] The CIR contends that EBCC was liable to pay the interest from the date of the execution of the contract on January 5, 2000, not from the date of the first payment on June 1, 2002, as the loan agreement clearly indicated that the interest was to be paid separately from the principal.^[33] In addition, the CIR calls for the retroactive application of RR No. 12-01,^[34] which provides that the withholding of final tax commences "at the time an income payment is paid or payable, or the income payment is accrued or recorded as an expense or asset, whichever is applicable in the payor's book, whichever comes first," on the ground that EBCC omitted a material fact and acted in bad faith when it refused to present documents on its interest payments to show the exact date of payment.^[35] In fact, based on the loan agreement, the CIR claims that the payment for the first interest period was due on January 4, 2001, not June 1, 2002.^[36]

EBCC's Arguments

EBCC, on the other hand, asserts that it was not required to withhold FWT at the end of taxable year 2000 as the interest payment became due and demandable only on June 1, 2002.^[37] And even if the first payment were due on January 4, 2001, such fact would not give rise to any liability for FWT in the year 2000 under RR No. 02-98.^[38] As to the retroactive application of RR No. 12-01, EBCC contends that this is the first time that such issue was brought up as it was not raised before the CTA.^[39] In addition, to allow the retroactive application of the RR No. 12-01 would be a clear violation of EBCC's right to due process as the Formal Letter of Demand was issued pursuant to the provisions of RR No. 02-98.^[40] Lastly, EBCC also points out that the issues of whether EBCC withheld certain facts or whether it acted in bad faith are factual in nature, which are not allowed in a Petition under Rule 45 of the Rules of Court.^[41]

Our Ruling

The Petitions lack merit.

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The CIR made no judicial admission that EBCC remitted the amount of P2,842,630.20 as payment for its FWT for the year 2000.

Section 4 of Rule 129 of the Rules of Court states: