

THIRD DIVISION

[G.R. No. 193100, December 10, 2014]

**SAMAR-I ELECTRIC COOPERATIVE, PETITIONER, VS.
COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.**

DECISION

VILLARAMA, JR., J.:

At bar is a petition for review on certiorari of the Decision^[1] of the Court of Tax Appeals *En Banc* (CTA EB) dated March 11, 2010 and its Resolution^[2] dated July 28, 2010 in C.T.A. EB Nos. 460 and 462 (C.T.A. Case No. 6697) affirming the May 27, 2008 Decision^[3] and the January 19, 2009 Amended Decision^[4] of the CTA's First Division, and ordering petitioner to pay respondent Commissioner of Internal Revenue (CIR) deficiency withholding tax on compensation in the aggregate amount of P2,690,850.91, plus 20% interest starting September 30, 2002, until fully paid, pursuant to Section 249(c) of the National Internal Revenue Code (NIRC) of 1997.

The following facts are undisputed as found by the CTA's First Division and adopted by the CTA EB:

Samar-I Electric Cooperative, Inc. (Petitioner) is an electric cooperative, with principal office at Barangay Carayman, Calbayog City. It was issued a Certificate of Registration by the National Electrification Administration (NEA) on February 27, 1974 pursuant to Presidential Decree (PD) 269. Likewise, it was granted a Certificate of Provisional Registration under Republic Act (RA) 6938, otherwise known as the Cooperative Code of the Philippines on March 16, 1993, by the Cooperative Development Authority (CDA).

Respondent Commissioner of Internal Revenue is a public officer authorized under the National Internal Revenue Code (NIRC) to examine any taxpayer including inter alia, the power to issue tax assessment, evaluate, and decide upon protests relative thereto.

On July 13, 1999 and April 17, 2000, petitioner filed its 1998 and 1999 income tax returns, respectively. Petitioner filed its 1997, 1998, and 1999 Annual Information Return of Income Tax Withheld on Compensation, Expanded and Final Withholding Taxes on February 17, 1998, February 1, 1999, and February 4, 2000, in that order.

On November 13, 2000, respondent issued a duly signed Letter of Authority (LOA) No. 1998 00023803; covering the examination of petitioner's books of account and other accounting records for income and withholding taxes for the period 1997 to 1999. The LOA was received by petitioner on November 14, 2000.

Petitioner cooperated in the audit and investigation conducted by the Special Investigation Division of the BIR by submitting the required documents on December 5, 2000.

On October 19, 2001, respondent sent a Notice for Informal Conference which was received by petitioner in November 2001; indicating the allegedly income and withholding tax liabilities of petitioner for 1997 to 1999. Attached to the letter is a summary of the report, with an explanation of the findings of the investigators.

In response, petitioner sent a letter dated November 26, 2001 to respondent maintaining its indifference to the latter's findings and requesting details of the assessment.

On December 13, 2001, petitioner executed a Waiver of the Defense of Prescription under the Statute of Limitations, good until March 29, 2002.

On February 27, 2002, a letter was sent by petitioner to respondent requesting a detailed computation of the alleged 1997, 1998 and 1999 deficiency withholding tax on compensation.

On February 28, 2002, respondent issued a Preliminary Assessment Notice (PAN). The PAN was received by petitioner on April 9, 2002, which was protested on April 18, 2002. Respondent's Reply dated May 27, 2002, contained the explanation of the legal basis of the issuance of the questioned tax assessments.

However, on July 8, 2002, respondent dismissed petitioner's protest and recommended the issuance of a Final Assessment Notice.

Consequently, on September 15, 2002, petitioner received a demand letter and assessments notices (Final Assessment Notices) for the alleged 1997, 1998, and 1999 deficiency withholding tax in the amount of [P]3,760,225.69, as well as deficiency income tax covering the years 1998 to 1999 in the amount of [P]440,545.71, or in the aggregate amount of [P]4,200,771.40.

Petitioner filed its protest and Supplemental Protest to the Final Assessment Notices on October 14, 2002 and November 4, 2002, respectively. But on the Final Decision on Disputed Assessment issued on April 10, 2003, petitioner was still held liable for the alleged tax liabilities.

[5]

The CTA EB narrates the following succeeding events:

On May 29, 2003, the Petition for Review was filed by SAMELCO-I with the Court in division.

On May 27, 2008, the assailed Decision partially granting SAMELCO-I's petition was promulgated.

Dissatisfied, both parties sought reconsideration of the said decision. CIR filed the "Motion for Partial Reconsideration (Re: Decision dated 27 May 2008[.])" on June 13, 2008. On the other hand, SAMELCO-I's "Motion for Reconsideration" was filed on June 17, 2008.

On January 19, 2009, the Court in division promulgated its Amended Decision which denied CIR's motion and partially granted SAMELCO-I's motion.

Thereafter, CIR and SAMELCO-I filed their "Motion for Extension of Time to File Petition for Review" on February 6, 2009 and February 11, 2009, respectively. Both motions were granted by the Court.^[6]

The following issues were raised by the parties in their petitions for review before the CTA EB. In C.T.A. EB 460, herein respondent CIR raised the following grounds:

- I. Whether or not SAMELCO-I is entitled to tax privileges accorded to members in accordance with Republic Act No. 6938, or the Cooperative Code, or to privileges of Presidential Decree (PD) No. 269.
- II. Whether or not SAMELCO-I is liable for the minimum corporate income tax (MCIT) for taxable years 1998 to 1999.
- III. Whether or not SAMELCO-I is liable to pay the total deficiency expanded withholding tax of [P]3,760,225.69 for taxable years 1997 to 1999.^[7]

On the other hand, petitioner SAMELCO-I raised the following legal and factual errors in C.T.A. EB No. 462, viz.:

- I. The Court in Division gravely erred in holding that the 1997 and 1998 assessments on withholding tax on compensation (received by SAMELCO-I on September 15, 2002), have not prescribed even if the waiver validly executed was good only until March 29, 2002.
- II. The Court in Division erred in holding that CIR can validly assess within the ten (10)-year prescriptive period even if the notice of informal conference, PAN, formal letter of demand, and assessment notice mention not a word that the BIR is invoking Section 222 (a) of the 1997 Tax Code [then Sec. 223, NIRC], due to alleged false withholding tax returns filed by [SAMELCO-I] as the same assertions were mere afterthought to justify application of the 10-year prescriptive period to assess.
- III. The Court in Division failed to consider that CIR made no findings as to SAMELCO-I's filing of a false return as clearly manifested by the non-imposition of 50% surcharge on the 1997, 1998 and 1999 basic withholding tax deficiency in the PAN, demand notice and even in the assessment notice other than interest charges.
- IV. The Court in Division erred in not holding that given SAMELCO-I's filing of its 1997, 1998, and 1999 withholding tax returns in good

faith, and in close consultation with the BIR personnel in Calbayog City where SAMELCO-I's place of business is located, the latter should no longer be imposed the incremental penalties (surcharge and interest).

V. The Court in Division failed to rule that since there was no substantial under remittance of 1998 withholding tax as the basic deficiency tax per amended decision is less than 30% of the computed total tax due per return, SAMELCO-I did not file a false return.

VI. The Court in Division overlooked the fact that for taxable year 1999, [SAMELCO-I] remitted the amount of [P]844,958.00 as withholding tax in compensation instead of [P]786,702.43 as indicated in Page 8, Annex C of the CTA (1st Division) Decision.

VII. The Court in Division erred in failing to declare as void both the formal letter of demand and assessment notice on withholding tax on compensation for 1997 taxable year, given its non-compliance with Section 3.1.4 of RR 12-99.^[8]

On February 26, 2009, the CTA EB consolidated both cases. After the filing of the respective Comments of both parties, the cases were deemed submitted for decision. The CTA EB found that the issues and arguments raised by the parties were "mere reiterations of what have been considered and passed upon by the Court in division in the assailed Decision and the Amended Decision."^[9] It ruled that SAMELCO-I is exempted in the payment of the Minimum Corporate Income Tax (MCIT); that due process was observed in the issuance of the assessments in accordance with Section 228 of the Tax Code; and that the 1997 and 1998 assessments on deficiency withholding tax on compensation have not prescribed. Finding no reversible error in the Decision and the Amended Decision, the CTA EB ruled, viz.:

WHEREFORE, premises considered, We deny the petitions for lack of merit. Accordingly, We **AFFIRM** the May 27, 2008 Decision and the January 19, 2009 Amended Decision promulgated by the First Division of this Court.

SO ORDERED.^[10]

Petitioner moved for reconsideration. In a Resolution dated July 28, 2010, the CTA EB denied the motion. Petitioner now comes to this Court raising the following assignment of errors:

A. The Honorable CTA *En Banc* gravely erred in holding that respondent sufficiently complied with the due process requirements mandated by Section 228 of the 1997 Tax Code in the issuance of 1997-1999 assessments to petitioner, even if the details of discrepancies on which the assessments were factually and legally based as required under Section 3.1.4 of Revenue Regulations (RR) No[.] 12-99, were not found in the Formal Letter of Demand and Final Assessment Notice (FAN) sent to petitioner, in clear violation of the doctrine established in the case of

Commissioner of Internal Revenue vs. Enron Subic Power Corporation, G.R. No. 166387, January 19, 2009, applying Section 3.1.4 of RR 12-99 in relation to Section 228 NIRC.

B. The Honorable CTA *En Banc* erred in holding that respondent observed due process notwithstanding the missing Annex "A-1" that was meant to show Details of Discrepancies and to be attached to BIR's Letter of Demand/Final Notice dated September 15, 2002, which was not furnished to petitioner and worse, a file copy of which is not even found in the BIR records as part of its Exhibit "16" and neither is the same found in the CTA records.

C. In deciding that the 1997 and 1998 withholding tax assessments have not yet prescribed, the Honorable CTA *En Banc* failed to consider the singular significance of the Waiver of the Defense of Prescription validly agreed upon and executed by the parties.

D. The Honorable CTA *En Banc* erred in holding that respondent can validly assess within the ten (10)-year prescriptive period even if the Notice of Informal Conference, PAN, and Final Letter of Demand (dated September 15, 2002), mentioned not a word as to the falsity of the returns filed by petitioner, but as an afterthought that was raised rather belatedly only in the Answer and during the trial.

E. The Honorable CTA *En Banc* erred in holding as valid the **1997** deficiency withholding tax assessment being anchored on RR 2-98 (as cited in Notice of Informal Conference and PAN), as the said RR 2-98 governs compensation income paid beginning January 1, 1998.^[11]

We shall resolve the instant controversy by discussing the following two main issues *in seriatim*: whether the 1997 and 1998 assessments on withholding tax on compensation were issued within the prescriptive period provided by law; and whether the assessments were issued in accordance with Section 228 of the NIRC of 1997.

On the issue of prescription, petitioner contends that the subject 1997 and 1998 withholding tax assessments on compensation were issued beyond the prescriptive period of three years under Section 203 of the NIRC of 1997. Under this section, the government is allowed a period of only three years to assess the correct tax liability of a taxpayer, *viz.*:

SEC. 203. *Period of Limitation Upon Assessment and Collection.* – Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided*, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.