

SECOND DIVISION

[G.R. No. 182722, January 22, 2010]

**DUMAGUETE CATHEDRAL CREDIT COOPERATIVE [DCCCO],
REPRESENTED BY FELICIDAD L. RUIZ, ITS GENERAL MANAGER,
PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE,
RESPONDENT.**

D E C I S I O N

DEL CASTILLO, J.:

The clashing interests of the State and the taxpayers are again pitted against each other. Two basic principles, the State's inherent power of taxation and its declared policy of fostering the creation and growth of cooperatives come into play. However, the one that embodies the spirit of the law and the true intent of the legislature prevails.

This Petition for Review on *Certiorari* under Section 11 of Republic Act (RA) No. 9282,^[1] in relation to Rule 45 of the Rules of Court, seeks to set aside the December 18, 2007 Decision^[2] of the Court of Tax Appeals (CTA), ordering petitioner to pay deficiency withholding taxes on interest from savings and time deposits of its members for taxable years 1999 and 2000, pursuant to Section 24(B) (1) of the National Internal Revenue Code of 1997 (NIRC), as well as the delinquency interest of 20% per annum under Section 249(C) of the same Code. It also assails the April 11, 2008 Resolution^[3] denying petitioner's Motion for Reconsideration.

Factual Antecedents

Petitioner Dumaguete Cathedral Credit Cooperative (DCCCO) is a credit cooperative duly registered with and regulated by the Cooperative Development Authority (CDA).^[4] It was established on February 17, 1968^[5] with the following objectives and purposes: (1) to increase the income and purchasing power of the members; (2) to pool the resources of the members by encouraging savings and promoting thrift to mobilize capital formation for development activities; and (3) to extend loans to members for provident and productive purposes.^[6] It has the power (1) to draw, make, accept, endorse, guarantee, execute, and issue promissory notes, mortgages, bills of exchange, drafts, warrants, certificates and all kinds of obligations and instruments in connection with and in furtherance of its business operations; and (2) to issue bonds, debentures, and other obligations; to contract indebtedness; and to secure the same with a mortgage or deed of trust, or pledge or lien on any or all of its real and personal properties.^[7]

On November 27, 2001, the Bureau of Internal Revenue (BIR) Operations Group Deputy Commissioner, Lilian B. Hefti, issued Letters of Authority Nos. 63222 and

63223, authorizing BIR Officers Tomas Rambuyon and Tarcisio Cubillan of Revenue Region No. 12, Bacolod City, to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for the taxable years 1999 and 2000.^[8]

Proceedings before the BIR Regional Office

On June 26, 2002, petitioner received two Pre-Assessment Notices for deficiency withholding taxes for taxable years 1999 and 2000 which were protested by petitioner on July 23, 2002.^[9] Thereafter, on October 16, 2002, petitioner received two other Pre-Assessment Notices for deficiency withholding taxes also for taxable years 1999 and 2000.^[10] The deficiency withholding taxes cover the payments of the honorarium of the Board of Directors, security and janitorial services, legal and professional fees, and interest on savings and time deposits of its members.

On October 22, 2002, petitioner informed BIR Regional Director Sonia L. Flores that it would only pay the deficiency withholding taxes corresponding to the honorarium of the Board of Directors, security and janitorial services, legal and professional fees for the year 1999 in the amount of P87,977.86, excluding penalties and interest.^[11]

In another letter dated November 8, 2002, petitioner also informed the BIR Assistant Regional Director, Rogelio B. Zambarrano, that it would pay the withholding taxes due on the honorarium and *per diems* of the Board of Directors, security and janitorial services, commissions and legal & professional fees for the year 2000 in the amount of P119,889.37, excluding penalties and interest, and that it would avail of the Voluntary Assessment and Abatement Program (VAAP) of the BIR under Revenue Regulations No. 17-2002.^[12]

On November 29, 2002, petitioner availed of the VAAP and paid the amounts of P105,574.62 and P143,867.24^[13] corresponding to the withholding taxes on the payments for the compensation, honorarium of the Board of Directors, security and janitorial services, and legal and professional services, for the years 1999 and 2000, respectively.

On April 24, 2003, petitioner received from the BIR Regional Director, Sonia L. Flores, Letters of Demand Nos. 00027-2003 and 00026-2003, with attached Transcripts of Assessment and Audit Results/Assessment Notices, ordering petitioner to pay the deficiency withholding taxes, inclusive of penalties, for the years 1999 and 2000 in the amounts of P1,489,065.30 and P1,462,644.90, respectively.^[14]

Proceedings before the Commissioner of Internal Revenue

On May 9, 2003, petitioner protested the Letters of Demand and Assessment Notices with the Commissioner of Internal Revenue (CIR).^[15] However, the latter failed to act on the protest within the prescribed 180-day period. Hence, on December 3, 2003, petitioner filed a Petition for Review before the CTA, docketed as C.T.A. Case No. 6827.^[16]

Proceedings before the CTA First Division

The case was raffled to the First Division of the CTA which rendered its Decision on February 6, 2007, disposing of the case in this wise:

IN VIEW OF ALL THE FOREGOING, the Petition for Review is hereby PARTIALLY GRANTED. Assessment Notice Nos. 00026-2003 and 00027-2003 are hereby MODIFIED and the assessment for deficiency withholding taxes on the honorarium and per diems of petitioner's Board of Directors, security and janitorial services, commissions and legal and professional fees are hereby CANCELLED. However, the assessments for deficiency withholding taxes on interests are hereby AFFIRMED.

Accordingly, petitioner is ORDERED TO PAY the respondent the respective amounts of P1,280,145.89 and P1,357,881.14 representing deficiency withholding taxes on interests from savings and time deposits of its members for the taxable years 1999 and 2000. In addition, petitioner is ordered to pay the 20% delinquency interest from May 26, 2003 until the amount of deficiency withholding taxes are fully paid pursuant to Section 249 (C) of the Tax Code.

SO ORDERED.^[17]

Dissatisfied, petitioner moved for a partial reconsideration, but it was denied by the First Division in its Resolution dated May 29, 2007.^[18]

Proceedings before the CTA En Banc

On July 3, 2007, petitioner filed a Petition for Review with the CTA *En Banc*,^[19] interposing the lone issue of whether or not petitioner is liable to pay the deficiency withholding taxes on interest from savings and time deposits of its members for taxable years 1999 and 2000, and the consequent delinquency interest of 20% per annum.^[20]

Finding no reversible error in the Decision dated February 6, 2007 and the Resolution dated May 29, 2007 of the CTA First Division, the CTA *En Banc* denied the Petition for Review^[21] as well as petitioner's Motion for Reconsideration.^[22]

The CTA *En Banc* held that Section 57 of the NIRC requires the withholding of tax at source. Pursuant thereto, Revenue Regulations No. 2-98 was issued enumerating the income payments subject to final withholding tax, among which is "interest from any peso bank deposit and yield, or any other monetary benefit from deposit substitutes and from trust funds and similar arrangements x x x". According to the CTA *En Banc*, petitioner's business falls under the phrase "similar arrangements;" as such, it should have withheld the corresponding 20% final tax on the interest from the deposits of its members.

Issue

Hence, the present recourse, where petitioner raises the issue of whether or not it is liable to pay the deficiency withholding taxes on interest from savings and time

deposits of its members for the taxable years 1999 and 2000, as well as the delinquency interest of 20% per annum.

Petitioner's Arguments

Petitioner argues that Section 24(B)(1) of the NIRC which reads in part, to wit:

SECTION 24. *Income Tax Rates.* --

x x x x

(B) Rate of Tax on Certain Passive Income: --

(1) Interests, Royalties, Prizes, and Other Winnings. -- A final tax at the rate of twenty percent (20%) is hereby imposed upon the amount of interest from any currency bank deposit and yield or any other monetary benefit from deposit substitutes and from trust funds and similar arrangements; x x x

applies only to banks and not to cooperatives, since the phrase "similar arrangements" is preceded by terms referring to banking transactions that have deposit peculiarities. Petitioner thus posits that the savings and time deposits of members of cooperatives are not included in the enumeration, and thus not subject to the 20% final tax. To bolster its position, petitioner cites BIR Ruling No. 551-888^[23] and BIR Ruling [DA-591-2006]^[24] where the BIR ruled that interests from deposits maintained by members of cooperative are not subject to withholding tax under Section 24(B)(1) of the NIRC. Petitioner further contends that pursuant to Article XII, Section 15 of the Constitution^[25] and Article 2 of Republic Act No. 6938 (RA 6938) or the Cooperative Code of the Philippines,^[26] cooperatives enjoy a preferential tax treatment which exempts their members from the application of Section 24(B)(1) of the NIRC.

Respondent's Arguments

As a counter-argument, respondent invokes the legal maxim "*Ubi lex non distinguit nec nos distinguere debemos*" (where the law does not distinguish, the courts should not distinguish). Respondent maintains that Section 24(B)(1) of the NIRC applies to cooperatives as the phrase "similar arrangements" is not limited to banks, but includes cooperatives that are depositaries of their members. Regarding the exemption relied upon by petitioner, respondent adverts to the jurisprudential rule that tax exemptions are highly disfavored and construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing power. In this connection, respondent likewise points out that the deficiency tax assessments were issued against petitioner not as a taxpayer but as a withholding agent.

Our Ruling

The petition has merit.

Petitioner's invocation of BIR

*Ruling No. 551-888, reiterated in
BIR Ruling [DA-591-2006], is proper.*

On November 16, 1988, the BIR declared in BIR Ruling No. 551-888 that cooperatives are not required to withhold taxes on interest from savings and time deposits of their members. The pertinent BIR Ruling reads:

November 16, 1988
BIR RULING NO. 551-888
24 369-88 551-888

Gentlemen:

This refers to your letter dated September 5, 1988 stating that you are a corporation established under P.D. No. 175 and duly registered with the Bureau of Cooperatives Development as full fledged cooperative of good standing with Certificate of Registration No. FF 563-RR dated August 8, 1985; and that one of your objectives is to provide and strengthen cooperative endeavor and extend assistance to members and non-members through credit scheme both in cash and in kind.

Based on the foregoing representations, you now request in effect a ruling as to whether or not you are exempt from the following:

1. Payment of sales tax
2. Filing and payment of income tax
3. Withholding taxes from compensation of employees and savings account and time deposits of members. (Underscoring ours)

In reply, please be informed that Executive Order No. 93 which took effect on March 10, 1987 withdrew all tax exemptions and preferential privileges e.g., income tax and sales tax, granted to cooperatives under P.D. No. 175 which were previously withdrawn by P.D. No. 1955 effective October 15, 1984 and restored by P.D. No. 2008 effective January 8, 1986. However, implementation of said Executive Order insofar as electric, agricultural, irrigation and waterworks cooperatives are concerned was suspended until June 30, 1987. (Memorandum Order No. 65 dated January 21, 1987 of the President) Accordingly, your tax exemption privilege expired as of June 30, 1987. Such being the case, you are now subject to income and sales taxes.

Moreover, under Section 72(a) of the Tax Code, as amended, every employer making payment of wages shall deduct and withhold upon such wages a tax at the rates prescribed by Section 21(a) in relation to section 71, Chapter X, Title II, of the same Code as amended by Batas Pambansa Blg. 135 and implemented by Revenue Regulations No. 6-82 as amended. Accordingly, as an employer you are required to withhold the corresponding tax due from the compensation of your employees.

Furthermore, under Section 50(a) of the Tax Code, as amended, the tax