



Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

EDISON (BATAAN)  
COGENERATION CORPORATION,  
*Petitioner,*

G.R. No. 201665

- versus -

COMMISSIONER OF INTERNAL  
REVENUE,  
*Respondent.*

X ----- X

REPUBLIC OF THE PHILIPPINES,  
represented by the COMMISSIONER  
OF INTERNAL REVENUE,  
*Petitioner,*

G.R. No. 201668

Present:

- versus -

SERENO,<sup>\*</sup> C.J.,  
LEONARDO-DE CASTRO,<sup>\*\*</sup>  
PERALTA,<sup>\*\*\*</sup>  
DEL CASTILLO,<sup>\*\*\*\*</sup> and  
TIJAM, JJ.

EDISON (BATAAN)  
COGENERATION CORPORATION,  
*Respondent.*

Promulgated:

**AUG 30 2017**

X ----- X

DECISION

DEL CASTILLO, J.:

The findings and conclusions of the tax court are accorded great weight because of its expertise on the subject.<sup>1</sup>

Before us are consolidated Petitions for Review on *Certiorari*<sup>2</sup> under Rule

\* On leave.

\*\* On official leave per Special Order No. 2473 dated August 24, 2017.

\*\*\* Per August 23, 2017 Raffle; vice Justice Francis H. Jardeleza who recused from the case due to prior action as Solicitor General.

\*\*\*\* Acting Chairperson, per Special Order No. 2476 dated August 29, 2017.

<sup>1</sup> *Commissioner of Internal Revenue v. Liguiaz Philippines Corporation*, G.R. Nos. 215534 & 215557, April 18, 2016, 790 SCRA 79, 105-106.

<sup>2</sup> *Rollo* of G.R. No. 201665, pp. 10-39 and *Rollo* of G.R. No. 201668, pp. 8-30.

45 of the Rules of Court assailing the January 30, 2012 Decision<sup>3</sup> and the April 17, 2012 Resolution<sup>4</sup> 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 ₱84,868,390.16, broken down as follows:

Deficiency Tax Amount

Income Tax	₱65,571,268.01
Value-Added Tax	168,866.15
Withholding Tax on Compensation	128,087.84
Expanded Withholding Tax	79,066.13
Final Withholding Tax	18,921,102.03
TOTAL	₱84,868 390.16 <sup>5</sup>

On March 3, 2004, EBCC filed with the CIR a letter-protest dated March 2, 2004 and furnished the CIR with the required documents.<sup>6</sup>

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.<sup>7</sup> 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.<sup>8</sup>

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.<sup>9</sup>

<sup>3</sup> *Rollo* of G.R. No. 201665, pp. 42-60; penned by Presiding Justice Ernesto D. Acosta and concurred in by Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Olga Palanca-Enriquez, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla and Amelia R. Cotangco-Manalastas.

<sup>4</sup> *Id.* at 63-67.

<sup>5</sup> *Id.* at 44.

<sup>6</sup> *Id.* at 45.

<sup>7</sup> *Id.* at 47

<sup>8</sup> *Id.* at 47-48.

<sup>9</sup> *Id.* at 48.

***Ruling of the Court of Tax Appeals Former Second Division***

On November 30, 2010, the CTA Former Second Division rendered a Decision<sup>10</sup> 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.<sup>11</sup> Thus, the CTA Former Second Division cancelled and set aside the assessments for the deficiency EWT and the deficiency withholding tax on compensation.<sup>12</sup> As to the deficiency FWT, the CTA Former Second Division found EBCC liable to pay FWT in a reduced amount of ₱2,232,146.91.<sup>13</sup> The CTA Former Second Division agreed with EBCC that it was not liable for the deficiency FWT assessment of ₱7,707,504.96 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.<sup>14</sup> 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 ₱346,988.77 and P387,411.46, respectively, as these had already been remitted by EBCC.<sup>15</sup> 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 ₱128,087.84 and expanded withholding tax in the amount of ₱79,066.13 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 (₱2,232,146.91), representing deficiency final withholding tax, computed, as follows:

FWT Due per Assessment		₱10,227,622.72
Less: Substantiated FWT on interest on syndicated loans	₱734,400.23	
FWT on interest on foreign loan from Ogden	7,707,504.96	8,441,905.19
Basic deficiency FWT		₱ 1,785,717.53
Add: 25% Surcharge		446,429.38
Total Deficiency FWT		₱ 2,232,146.91

In addition, petitioner is ordered to pay: 

<sup>10</sup> Id. at 69-89; penned by Associate Justice Olga Palanca-Enriquez and concurred in by Associate Justice Juanito C. Castañeda, Jr. Associate Justice Erlinda P. Uy, on leave.

<sup>11</sup> Id. at 79-80.

<sup>12</sup> Id.

<sup>13</sup> Id. at 87.

<sup>14</sup> Id. at 81-83.

<sup>15</sup> Id. at 85-86.

1) deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency final withholding tax of ₱1,785,717.53 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 ₱2,232,146.91, 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.<sup>16</sup>

The CIR filed a Motion for Reconsideration while EBCC filed a Motion for Partial Reconsideration and/or Clarification.<sup>17</sup>

On April 7, 2011, the CTA Former Second Division issued a Resolution<sup>18</sup> denying both Motions.<sup>19</sup>

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.<sup>20</sup> 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.<sup>21</sup> In this case, the obligation to withhold the interest over the loan only commenced on June 1, 2002.<sup>22</sup> 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.<sup>23</sup> Thus, the CTA *En Banc* adopted the computation of the CTA Former Second Division.<sup>24</sup>

On April 17, 2012, the CTA *En Banc* denied the CIR's Motion for Reconsideration and EBCC's Motion for Partial Reconsideration.<sup>25</sup>

<sup>16</sup> Id. at 87-88.

<sup>17</sup> Id. at 48.

<sup>18</sup> *Rollo* of CTA Case No. 7104, Volume 2, pp. 1011-1015.

<sup>19</sup> *Rollo* of G.R. No. 201665, p. 48.

<sup>20</sup> Id. at 53-55.

<sup>21</sup> Id. at 54.

<sup>22</sup> Id. at 55.

<sup>23</sup> Id. at 55-59.

<sup>24</sup> Id.

<sup>25</sup> Id. at 63-67.

### Issues

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

#### **G.R. No. 201665**

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.<sup>26</sup>

#### **G.R. No. 201668**

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.<sup>27</sup>

#### **G.R. No. 201665**

#### ***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<sup>28</sup> that the original assessment of P10,227,622.72 was reduced to P7,384,992.52.<sup>29</sup>

#### ***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

<sup>26</sup> Id. at 288-289.

<sup>27</sup> Id. at 374.

<sup>28</sup> Id. at 134-135 (See Exhibit 4-a, BIR Records, pp. 756-760).

<sup>29</sup> Id. at 289-302.



the burden of proving the same.<sup>30</sup> 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.<sup>31</sup>

### **G.R. No. 201668**

#### ***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.<sup>32</sup> 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.<sup>33</sup> In addition, the CIR calls for the retroactive application of RR No. 12-01,<sup>34</sup> 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.<sup>35</sup> 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.<sup>36</sup>

#### ***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.<sup>37</sup> 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.<sup>38</sup> 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.<sup>39</sup> 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

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<sup>30</sup> Id. at 376-383.

<sup>31</sup> Id. at 374-376.

<sup>32</sup> Id. at 383-386.

<sup>33</sup> Id. at 386-402.

<sup>34</sup> Amended RR No. 02-98.

<sup>35</sup> Rollo of G.R. No. 201665, pp. 402-404.

<sup>36</sup> Id. at 398-402.

<sup>37</sup> Rollo of G.R. No. 201668, pp. 292.

<sup>38</sup> Id. at 294.

<sup>39</sup> Id. at 295-299.



provisions of RR No. 02-98.<sup>40</sup> 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.<sup>41</sup>

### Our Ruling

The Petitions lack merit.

#### **G.R. No. 201665**

***The CIR made no judicial admission that EBCC remitted the amount of ₱2,842,630.20 as payment for its FWT for the year 2000.***

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

SEC. 4. *Judicial Admissions.* – An admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made.

In this case, EBCC claims that the CTA *En Banc* erred in failing to consider the judicial admission made by the CIR in her Memorandum that EBCC remitted FWT in the amount of ₱2,842,630.20.

We do not agree.

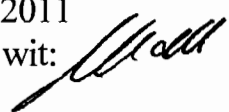
A careful reading of the Memorandum reveals that the alleged remittance of the amount of ₱2,842,630.20 was based on a Memorandum Report prepared by the revenue officers recommending the denial of EBCC's protest, which was issued prior to EBCC's filing of its Petition for Review before the CTA. In fact, there was no mention of such remittance in the Joint Stipulations of Facts and Issues by the parties and in the Answer filed by the CIR. Thus, we find no error on the part of the CTA *En Banc* in not considering such statement as a judicial admission.

Besides, the CTA Former Second Division, in its April 7, 2011 Resolution already explained how it computed EBCC's deficiency FWT, to wit:

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<sup>40</sup> Id. at 299-300.

<sup>41</sup> Id. at 300-302.



It must be emphasized that the assessment for deficiency FWT against [EBCC] in the amount of ₱10,227,622.72 is composed of FWT on Interest Payments on Syndicated Loan in Dollars in the amount of ₱2,520,117.76 and FWT on Interest on Loan Agreement with Ogden Power International Holdings, Inc. (Ogden) in the amount of ₱7,707,504.96. Since [EBCC] presented documentary evidence in support of its Petition for Review assailing respondent's assessments, the Court considered said documentary evidence in deciding the instant case. In other words, the Court did not consider outright the alleged withholding remittances of ₱2,842,630.20 as a deduction to [EBCC's] FWT liability, but first examined the supporting documents presented by [EBCC].

At the risk of being repetitive, although we found that [EBCC] is not liable to pay FWT on interest payment on loan from Ogden in the amount of ₱7,707,504.96; however, as regards the deficiency assessment of FWT on Interest Payments on Syndicated Loan in Dollars, in the amount of ₱2,520,117.76, the Court found that petitioner failed to present proof of withholding and/or remittance of FWT on its interest payments to UCPB and Sung Hung Kai Bank. Likewise, BIR Forms No. 2306 (Certificates of Final Income Tax Withheld), pertaining to petitioner's alleged interest payments to First Metro Investment Corporation and United Overseas Bank/Westmont Bank, were not considered by the Court for reasons stated in our Decision dated November 30, 2010.

Therefore, [EBCC's] contention that the amount of ₱2,842,630.20 should still be deducted from the deficiency assessment, as found by this Court in the amount of ₱1,785,717.53 is misplaced. As heretofore discussed, out of ₱2,520,117.76 deficiency FWT assessment on Interest Paid on Syndicated Loan in US Dollars, [EBCC] was able to substantiate FWT remittance in the total amount of ₱734,400.23 only. Thus, we found [EBCC] liable to pay basic deficiency FWT for the year 2000 in the amount of ₱1,785,717.53.<sup>42</sup>

Moreover, considering that EBCC filed the Petition for Review before the CTA to question the deficiency tax assessment issued by the CIR, it was incumbent upon EBCC to prove that the deficiency tax assessment had no legal or factual basis or that it had already paid or remitted the deficiency tax assessment as it is the taxpayer that has the burden of proof to impugn the validity and correctness of the disputed deficiency tax assessment.<sup>43</sup> In addition, it is a basic rule in evidence that the person who alleges payment has the burden of proving that payment has indeed been made.<sup>44</sup> More so, in cases filed before the CTA, which are litigated *de novo*, party-litigants must prove every minute aspect of their case.<sup>45</sup>

### **G.R. No. 201668**

***RR No. 02-98 provides that the term***



<sup>42</sup> Rollo of CTA Case No. 7104, Volume 2, pp. 1013-1015.

<sup>43</sup> *Cagayan Robina Sugar Milling Co. v. Court of Appeals*, 396 Phil. 830, 839 (2000).

<sup>44</sup> *Gumabon v. Philippine National Bank*, G.R. No. 202514, July 25, 2016.

<sup>45</sup> *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.*, 738 Phil. 335, 344 (2014).



***payable refers to the date the obligation becomes due, demandable or legally enforceable.***

Section 2.57.4 of Revenue Regulations No. 2-98 provides:

SEC. 2.57.4. *Time of Withholding.* - The obligation of the payor to deduct and withhold the tax under Section 2.57 of these regulations arises at the time an income is paid or payable, whichever comes first, the term 'payable' refers to the date the obligation becomes due, demandable or legally enforceable.

In this case, the CIR insists 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.

We are not convinced.

EBCC's loan agreement with Ogden stated that:

### 3. Repayment and Interest

3.1 The BORROWER shall repay the Loan to the LENDER (or as it may in writing direct) in sixteen (16) consecutive semi-annual [installments] of US DOLLARS EIGHT HUNDRED and EIGHTY ONE THOUSAND and TWO HUNDRED and FIFTY (US\$881,250.00) commencing on 1 June 2002 and thereafter on June 1 and December 1 of each year.

3.2 Interest shall accrue on the Loan from the date hereof until the date of repayment at a rate equal to the 90- day LIBOR rate plus 2.5%, subject to review every 90 days.

3.3 Notwithstanding the provisions of Clause 3.2 above, if the BORROWER fails to make payment of an amount due on a payment date, the BORROWER shall pay additional interest on such past due and unpaid amount from the due date until the date of payment at the rate of ½% per month.

3.4 The interest payable to the LENDER shall be exclusive of withholding tax and/or any other similar taxes which shall be to the account of the BORROWER. Every payment to the LENDER hereunder shall be net of any present or future tax assessment or other governmental charge imposed by any taxing authority of any jurisdiction.<sup>46</sup>

Clearly, EBCC's liability for interest payment became due and demandable starting June 1, 2002. And considering that under RR No. 02-98, the

<sup>46</sup> Rollo of G.R. No. 201665, pp. 82-83.



obligation of EBCC to deduct or withhold tax arises at the time an income is paid or payable, whichever comes first, and considering further that under the said RR, the term “payable” refers to the date the obligation becomes due, demandable or legally enforceable, we find no error on the part of the CTA *En Banc* in ruling that EBCC had no obligation to withhold any taxes on the interest payment for the year 2000 as the obligation to withhold only commenced on June 1, 2002, and thus cancelling the assessment for deficiency FWT on interest payments arising from EBCC’s loan from Ogden.


Neither do we find any reason for the retroactive application of RR No. 12-01, 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.” To begin with, this issue was never raised before the CTA. Thus, we cannot rule on this matter now. It is a settled rule that issues not raised below cannot be pleaded for the first time on appeal because a party is not allowed to change his theory on appeal; to do so would be unfair to the other party and offensive to rules of fair play, justice and due process.<sup>47</sup>

Moreover, as aptly pointed out by EBCC, whether it omitted to state a material fact or acted in bad faith in failing to present documents on its interest payments to show the exact date of payment is a factual issue, which is not allowed under Rule 45.

In any case, even if the first payment was due on January 4, 2001 as claimed by the CIR, EBCC would still not be liable, as the tax assessment pertained to taxable year 2000 and not 2001.

All told, we find no reason to reverse the January 30, 2012 Decision and the April 17, 2012 Resolution of the CTA in CTA EB Case Nos. 766 and 769.

We need not belabor that “findings and conclusions of the CTA are accorded the highest respect and will not be lightly set aside because by [its] very nature x x x, it is dedicated exclusively to the resolution of tax problems and has accordingly developed an expertise on the subject.”<sup>48</sup>

**WHEREFORE**, the Petitions are hereby **DENIED**. The assailed January 30, 2012 Decision and the April 17, 2012 Resolution of the Court of Tax Appeals in CTA EB Case Nos. 766 and 769 are hereby **AFFIRMED**. 

<sup>47</sup> *Balitaosan v. The Secretary of Education, Culture and Sports*, 457 Phil. 300, 304 (2003).

<sup>48</sup> *Commissioner of Internal Revenue v. Liguiaz Philippines Corporation*, supra note 1.

**SO ORDERED.**

  
**MARIANO C. DEL CASTILLO**  
*Associate Justice*

WE CONCUR:

*(On leave)*  
**MARIA LOURDES P. A. SERENO**  
*Chief Justice*

*(On official leave)*  
**TERESITA J. LEONARDO-DE CASTRO**  
*Associate Justice*

  
**DIOSDADO M. PERALTA**  
*Associate Justice*

  
**NOEL GIMENEZ TIJAM**  
*Associate Justice*

**ATTESTATION**

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**MARIANO C. DEL CASTILLO**  
*Associate Justice*  
*Acting Chairperson*

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.



**ANTONIO T. CARPIO**  
*Acting Chief Justice*<sup>49</sup>

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<sup>49</sup> Per Special Order No. 2475 dated August 29, 2017.

