



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **June 16, 2021** which reads as follows:*

“G.R. No. 191587 (Commissioner of Internal Revenue, Petitioner, v. Pacific Plans, Inc., Respondent.) – This Petition for Review on *Certiorari*¹ under Rule 45 seeks to reverse and set aside the Decision² dated 06 January 2010 and the Resolution³ dated 12 March 2010 of the Court of Tax Appeals (CTA) *En Banc* in C.T.A. E.B. No. 502. The CTA *En Banc* affirmed the Decision⁴ dated 09 February 2009 and Resolution⁵ dated 11 June 2009 of the CTA Division in C.T.A. Case No. 7537, which cancelled the assessment notices regarding the late payment of withholding taxes for the months of March and April 2005 by respondent Pacific Plans, Inc. (PPI).

Antecedents

Respondent PPI, a duly registered withholding agent of the Bureau of Internal Revenue (BIR), is a pre-need company that sells traditional open-ended educational plans. PPI was supposed to remit to the BIR creditable withholding taxes in the amount of P954,798.02 for the month of March 2005, which became due on 15 April 2005, and the amount of P952,377.71 for the month of April 2005, which became due on 16 May 2005. However, due to liquidity problems and

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238

¹ *Rollo*, pp. 10-30.

² *Id.* at 32-49; penned by Associate Justice Lovell R. Bautista and concurred in by Associate Justices Ernesto D. Acosta, Juanito C. Castañeda, Jr., Erlinda P. Uy, Caesar A. Casanova, and Olga Palanca-Enriquez of the *En Banc*, Court of Tax Appeals, Quezon City.

³ *Id.* at 51-54.

⁴ *Id.* at 150-173; penned by Associate Justice Olga Palanca-Enriquez and concurred in by Associate Justices Juanito C. Castañeda, Jr., and Erlinda P. Uy of the Second Division, Court of Tax Appeals, Quezon City.

⁵ *Id.* at 174-176.

foreseeing the impossibility of meeting its obligations to its planholders as they fall due, PPI filed, on 07 April 2005, a petition for corporate rehabilitation entitled "*In the Matter of: Petition for Corporate Rehabilitation with Prayer for Suspension of Payments of Pacific Plans, Inc.*" before the Regional Trial Court of Makati (Makati RTC), which was docketed as Special Proceedings No. M-6059.

The Makati RTC issued a Stay Order⁶ dated 12 April 2005, directing as follows:

- a) a stay in the enforcement of all claims, whether for money or otherwise, against petitioner PPI, its guarantors and sureties not solidarily liable with it;
- b) prohibiting PPI from making any payment of its liabilities as of the filing of the instant petition. PPI, however, is allowed to disburse the amount of at least P341 Million as tuition fee support to its availing planholders who agree to such support, and provided that such disbursement shall not entail any disposition of the covering assets (NAPOCOR bonds) in the Trust Fund; hence, availing planholders who agree to the proposed tuition fee support are directed to coordinate with PPI;
- c) prohibiting PPI from selling, encumbering, transferring or disposing in any manner any of its properties except in the ordinary course of business;
- d) prohibiting PPI's suppliers of goods and services from withholding supply of goods and services as long as PPI makes payments for the goods and services supplied after the issuance of this Stay Order; and
- e) directing the payment in full of all administrative expenses incurred after the issuance of this Stay Order.⁷

In the same order, the Makati RTC also appointed Mr. Mamerto A. Marcelo, Jr., a certified public accountant, as the rehabilitation receiver of PPI. Marcelo was tasked to closely oversee and monitor PPI's operations during the pendency of the rehabilitation proceedings.

Consequently, PPI sent a letter dated 15 April 2005 to the BIR Large Taxpayers Service, which was received on 18 April 2005, informing it of the Stay Order dated 12 April 2005. On 10 May 2005,

- over -

238

⁶ *Id.* at 323-327.

⁷ *Id.* at 326.

PPI received from the BIR a Collection Letter dated 03 March 2005 for unsettled withholding tax due for the month of March 2005 in the amount of ₱1,237,300.64, inclusive of surcharge, interest, and compromise penalty. In reply, PPI filed with the BIR a letter dated 16 May 2005, explaining that it is in the process of getting clearance from the court-appointed rehabilitation receiver for the payment of the withholding tax for the months of March and April 2005. The letter also requested for the waiver of surcharges and interest on the withholding tax due.

On 18 May 2005, after getting clearance from the rehabilitation receiver, PPI immediately paid the withholding taxes due for the months of March and April 2005, in the amounts of ₱954,798.02 and ₱952,377.71, respectively. Despite said payment, BIR sent a Final Notice of Seizure to PPI, dated 16 June 2005, imposing surcharge, interest, and compromise penalty in the amount of ₱282,502.62 for the late payment of withholding tax for the month of March 2005. Moreover, on 10 October 2005, PPI received a Collection Letter from BIR, imposing surcharge, interest, and compromise penalty in the amount of ₱259,665.85 for the late payment of withholding tax for the month of April 2005. In both instances, PPI requested BIR to reconsider the imposition of the penalty charges.

PPI then filed an Application for Abatement of Tax/Penalties for the late payment of withholding tax for the months of March and April 2005 on 06 October 2005 and 28 December 2005, respectively. On 17 March 2006, pending the decision of BIR on PPI's Application for Abatement, PPI received Assessment Notices Nos. QA-06-000122 and QA-06-000123, issued on 20 January 2006, imposing surcharge, interest, and compromise penalties in the amounts of ₱275,964.35 and ₱259,138.13 for the late payment of creditable withholding taxes for the months of March and April 2005, respectively.

On 04 April 2006, PPI filed a letter protesting the assessment. When the BIR failed to act on the protest, PPI filed on 30 October 2006 a petition for review before the CTA.

Ruling of the Court of Tax Appeals Division

On 09 February 2009, the CTA Division promulgated its Decision, the dispositive portion of which reads:

WHEREFORE, premises considered, the present Petition For Review is hereby **GRANTED**. Accordingly, Assessment Notices Nos. QA-06-000122 and QA-06-000123, representing surcharges, interests and compromise penalties for the late

- over -

payment of withholding taxes for the months of March and April 2005, in the amounts of ₱275,964.35 and ₱259,138.13, respectively, are hereby ordered **CANCELLED** and **SET ASIDE**.

SO ORDERED.⁸

The CTA Division held that PPI should not be held liable for surcharge and interest on the late payment of its creditable withholding tax in view of the Stay Order issued by the RTC Makati. It noted that the Stay Order, which prohibited the enforcement of all claims against PPI and also prohibited PPI from making any payments of its liabilities, was issued and received by PPI on 12 April 2005, before the due dates for the payment of its creditable withholding taxes for the months of March and April 2005.

Considering that the Stay Order does not make any distinction as to the claims enjoined and the liabilities prohibited from payment, the CTA Division maintained that such order is a justifiable reason for PPI not to pay the creditable withholding taxes due on 15 April 2005 and 15 May 2005. The CTA Division opined that it was only prudent for PPI to seek clearance first from the court-appointed rehabilitation receiver before effecting any payment of the said creditable withholding taxes. Moreover, it ruled that there is no basis for the imposition of the ₱20,000.00 compromise penalty since there is no showing that PPI consented thereto.

Petitioner Commissioner of Internal Revenue (CIR) moved for reconsideration, which the CTA Division denied in its Resolution dated 11 June 2009.⁹

Ruling of the CTA *En Banc*

The CTA *En Banc* affirmed the decision and resolution of the CTA Division, ruling that the payment of withholding taxes falls under the category of claim and liability, considering that it is for pecuniary considerations, and is thus covered in the Stay Order. Since PPI was legally restrained by the Stay Order, the CTA *En Banc* held that it should not be liable for civil penalties on its late payment of creditable withholding taxes for the months of March and April 2005.

The CTA *En Banc* found untenable the CIR's argument that PPI, as a withholding agent of the BIR, is under obligation to collect and remit the money it withheld in trust for the government and that

- over -

⁸ *Id.* at 172.

⁹ *Id.* at 174-176.

such obligation to pay the withholding taxes is not covered by the Stay Order. The CTA *En Banc* cited this Court's decision in *Abrera v. Barza*,¹⁰ where it was held that "even if the relationship is one of trust, there is no provision in the Interim Rules that a claim arising from a trust relationship is excluded from the Stay Order."¹¹

The CIR filed a motion for reconsideration, which was denied by the CTA *En Banc* in its Resolution dated 12 March 2010.¹²

Issue

The lone issue for Court's resolution is whether PPI is liable for surcharge, interest, and compromise penalties for the late payments of its creditable withholding taxes for the months of March and April 2005.

Ruling of the Court

The petition is denied for mootness.

A moot and academic case is one that ceases to present a justiciable controversy by virtue of supervening events, so that a declaration thereon will be of no practical use or value.¹³

The Court notes that on 21 September 2020, PPI submitted to the Court a certified true copy of the BIR Termination Letter dated 9 March 2011,¹⁴ pertaining to Assessment Nos. QA-06-000122 and QA-06-000123, issued on 20 January 2006, imposing surcharge, interest, and compromise penalties in the amounts of ₱275,964.35 and ₱259,138.13.

The BIR Termination Letter states:

TERMINATION LETTER
(ABATEMENT PROGRAM UNDER RR 3-2007)

Case No. TL-121-11-0000040

March 9, 2011

PACIFIC PLANS, INC.
2/F Grepalife Bldg., 221 Sen. Gil Puyat Ave., Makati City

- over -

238

¹⁰ 615 Phil. 595 (2009), G.R. No. 171681, 11 September 2009 [Per Peralta].

¹¹ *Rollo*, p. 46.

¹² *Id.* at 51-54.

¹³ *Dangerous Drugs Board v. Matibag*, G.R. No. 210013, 22 January 2020 [Per J. Caguioa].

¹⁴ Attached as Annex A of PPI's Compliance dated 18 September 2020.

Sir/Madam:

This refers to your availment of the **ONE TIME ADMINISTRATIVE ABATEMENT** of Surcharge & Compromise Penalties pursuant to the provisions of Section 204 of the Tax Code, as amended and implemented by Revenue Regulations No. 3-2007 Section 2(n) dated January 16, 2007, bearing on your internal revenue tax liabilities, to wit:

NAME OF TAXPAYER : PACIFIC PLANS, INC.
TIN : 000-799-984
ADDRESS : 2/F Grepalife Bldg., 221 Sen. Gil Puyat Ave., Makati City

DETAILS OF ASSESSMENT:

Assessment No.	Tax Type	Return Period	Surcharge	Interest	Compromise	Total	Remarks (paid updated amount of interest)
QA-06-000122 dated 01/20/2006	WE	03/31/2005	238,699.51	17,264.84	20,000.00	275,964.35	23,803.11
QA-06-000123 dated 01/20/2006		04/30/2005	238,094.43	1,043.70	20,000.00	259,138.13	1,571.42
Total			476,793.94	18,308.54	40,000.00	535,102.48	25,374.53

In this connection, we are pleased to inform you that in view of your availment of the aforesaid benefits granted under the special provisions of Section 204 of the National Internal Revenue Code (NIRC), as amended, and its implementing rules and regulations, and the payment of the total amount of **Twenty Five Thousand Three Hundred Seventy Four Pesos and 53/100 (P25,374.53)**, representing **ONE HUNDRED PERCENT (100%)** of the updated interest assessed under this **ABATEMENT PROGRAM**, the tax liability stated above is hereby **CLOSED** and **TERMINATED**.

Very truly yours,

KIM S. JACINTO-HENARES
 Commissioner of Internal Revenue

By: (signed)
ZENAIDA G. GARCIA
 Assistant Commissioner
 Large Taxpayers Service¹⁵

- over -

238

¹⁵ *Id.* Emphasis in the original.

To recall, PPI filed with the BIR Application for Abatement of Tax/Penalties for the late payment of withholding tax for the months of March and April 2005 on 06 October 2005 and 28 December 2005, respectively. The Abatement Applications were made pursuant to Section 204 of the National Internal Revenue Code, as amended, and implemented by Revenue Regulations No. 3-2007 (RR No. 3-2007).¹⁶ Section 4 of RR No. 3-2007, which reads:

SECTION 4. WHO MAY AVAIL – Any person/taxpayer, natural or juridical, may settle thru the abatement program any delinquent account or disputed assessment where the Assessment Notice has been released as of November 30, 2006, by paying an amount equal to One Hundred Percent (100%) or more of the Basic Tax assessed with the Accredited Agent Bank (AAB) of the Revenue District Office (RDO)/ Large Taxpayers Service (LTS)/Large Taxpayers District Office (LTDO) that has jurisdiction over the taxpayer. In the absence of an AAB, payment may be made with the Revenue Collection Officer/Deputized Treasurer of the RDO that has jurisdiction over the taxpayer. **After payment of the basic tax,¹⁷ the assessment for penalties/surcharge and interest shall be cancelled by the concerned BIR Office following existing rules and procedures. Thereafter, the docket of the case shall be forwarded to the Office of the Commissioner, thru the Deputy Commissioner for Operations Group, for issuance of Termination Letter.**

This Abatement Program shall include taxpayers who have already paid any portion of the increments (surcharge, interest, etc.) on their tax liabilities, provided, they will waive any claim for refund of paid amount in excess of 100% of the basic tax paid.

Taxpayers with existing tax case(s) on which the Presidential Commission on Good Government has/have an interest are not covered by this Program. (Emphasis supplied)

Clearly, the BIR acted favorably on PPI's Application for Abatement of Tax/Penalties for the late payment of withholding tax for the months of March and April 2005. As stated in the Termination Letter, upon payment by PPI of ₱25,374.53 representing 100% of the updated interest assessed under the Abatement Program, PPI's tax liability is deemed closed and terminated. In other words, the assessment for penalties/surcharge and interest issued against PPI, which is the subject of this case, was already cancelled.

- over -

238


¹⁶ Regulations Providing for the Policies, Guidelines and Procedures in the Implementation of the Expanded One-Time Administrative Abatement of all Penalties/Surcharges and Interest on Delinquent Accounts and Assessments.

¹⁷ Under Section 3(c) (5) of RR No. 3-2007, "Basic Tax Assessed" may refer to "[d]eficiency interest, if the assessment issued was for penalties only (interest and surcharge)."

WHEREFORE, the petition is hereby **DENIED** for being moot and academic.

SO ORDERED.”

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court
mll/22

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
238

The Solicitor General
134 Amorsolo Street, Legaspi Village
1229 Makati City

LITIGATION DIVISION
BUREAU OF INTERNAL REVENUE
Room 703, BIR National Office Building
Agham Road, Diliman
1101 Quezon City

Court of Tax Appeals
National Government Center
Diliman, 1101 Quezon City
(CTA EB No. 502)
(CTA Case No. 7537)

Atty. Rita Linda V. Jimeno
Counsel for Respondent
37th Floor, Rufino Pacific Tower
Corner V.A. Rufino Street, Legaspi Village
1229 Makati City

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