# BENGUET CORPORATION, PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

*G.R. NO. 141212. June 22, 2006*

Ponente: CORONA, J.

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**CORONA, J.:**

Before us is a petition for review on certiorari[1] assailing the September 27, 1999 decision[2] and December 20, 1999 resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 42575 which affirmed the July 26, 1996 decision of the Court of Tax Appeals (CTA) in CTA Case No. 4795.[4]

Petitioner Benguet Corporation is a domestic corporation duly organized and existing under Philippine laws. On January 16, 1992, it received from respondent Commissioner of Internal Revenue[5] a letter dated January 10, 1992 demanding payment of P6,188,672.50, as unremitted withholding taxes on compensation of petitioner's executives for specified months from 1988 to 1991,[6] excluding penalties for late payment.[7]

In said letter, respondent stated that all the payment orders (POs) and confirmation receipts (CRs) reflected in petitioner's annual return submitted to respondent's Accounting Division were found to be fake, that is, not issued by the Bureau of Internal Revenue (BIR).[8]

In a letter dated January 24, 1992 filed on the same date with the BIR, petitioner protested the assessment by stating that it had promptly remitted its withholding taxes within their due dates.[9] Without answering petitioner's protest, the BIR Collection Service issued and served a warrant of distraint and/or levy to enforce collection of the assessment in the increased amount of P10,314,579.51, this time including penalties for late payment and a warrant of garnishment of the proceeds of the sale of petitioner's gold bars to the Central Bank[10] and its deposits at the Metropolitan Bank and Trust Company (MBTC).[11] Petitioner subsequently filed a written request for the lifting of the warrants and posted a surety bond for P10,500,000 to guarantee payment of the assessment. Consequently, the warrants were lifted.[12]

Respondent informed petitioner in a letter dated April 3, 1992 that the demand letter previously sent was considered final and unappealable.[13] Thus, on April 23, 1992, petitioner filed a "petition for review with urgent petition for issuance of injunction to restrain tax collection pending appeal" before the CTA.[14] The CTA granted petitioner's request for the issuance of injunction.[15]

Petitioner alleged that it was not delinquent in the payment of the withholding taxes on the compensation of its executives, as in fact the same had been duly remitted to the BIR through its confidential payroll agent, L.C. Diaz and Company.[16] The latter remitted the withholding taxes through 25 MBTC manager's checks totaling P6,188,673.21.[17] It stressed that these payments were evidenced by official POs and CRs issued by the BIR's authorized employees and agent banks.[18] The amounts covered by the MBTC checks were admittedly paid to the BIR for the account of petitioner and credited to the account of the BIR and/or the national treasury.[19]

Respondent, on the other hand, aside from asserting that the POs and CRs reflected in petitioner's annual return

were spurious, argued that the checks issued by petitioner for the payment of the withholding taxes on compensation were actually used for the purchase of loose documentary stamps by various taxpayers other than the petitioner as discovered by respondent's Special Projects Team.[20]

In a decision dated July 26, 1996, the CTA dismissed the petition and ordered petitioner to pay respondent the total amount of P10,314,579.50.[21] The CA affirmed the decision of the CTA.[22]

Both the CTA and CA ruled that there were no valid remittances of the withholding taxes. They found that, although the POs and CRs presented by petitioner were genuine,[23] the best evidence of payment were the checks remitted by petitioner through L.C. Diaz and Company. The dorsal side of these checks contained handwritten notes that they were used by different individuals and entities to purchase documentary stamps.[24] These notes were supported by the reports prepared by the BIR's Special Projects Team.

This petition[25] centers on one main issue: were there valid remittances to respondent by petitioner of its withholding taxes during the specified period? Stated otherwise, the question is what should be considered as the best evidence of payment (or non-payment) of the withholding taxes: the POs and CRs which indicated that payment was made as insisted by petitioner, or the dorsal notes on the checks and reports of the BIR team that no such payments were made (as ruled by the CTA and CA)?

In finding for respondent, the CA stated:

> A careful scrutiny of the MBTC checks x x x revealed that they were not used to pay withholding taxes but were used to purchase documentary stamps from the BIR, for on the dorsal side of the subject checks [are] the handwritten notes that they were used to pay documentary stamps x x x, the corroborating findings or written reports submitted by Manuel J. Seijo, Revenue Collection Agent, and the report dated February 16, 1994 submitted by Mrs. Rosario Beltran.
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> The foregoing reports [gathered] by Mr. Leogardio Tenorio, Assistant Chief of the Collection Performance and Audit Division of the BIR [and] one of the members of the Special Projects Team that conducted the investigation in the instant case, in addition to the annotations appearing on the dorsal sides of the checks, substantially established the fact that said checks were used in the purchase of documentary [stamps] and not in payment of petitioner's unremitted withholding taxes on compensation of its employees.
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> ...[Petitioner] never offered any explanation on how and why these things happened to its checks. Indeed, as borne out by the BIR Records, the MBTC checks of petitioner were actually remitted to the respondent's office but they were not remitted as payment for the subject withholding taxes, but as payment by different taxpayers for loose documentary stamps of different denominations. L.C. Diaz and Co. is the best party to shed light on this, as it was such company which was authorized by [petitioner] to handle the latter's remittances of withholding taxes to the BIR.
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> xxx xxx xxx
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> It cannot be denied that when petitioner entrusted to L.C. Diaz the remittance of said taxes to the BIR, the former is expected to exercise due diligence [and] extra vigilance in the handling of such remittances. The negligence of the agent is imputable to the principal. Evidently, the latter failed to do so. Petitioner therefore, should be held responsible for such omission or negligence. The alleged remittances cannot be considered as valid payments for the unremitted withholding taxes.[26]

The CTA's findings of fact, affirmed in toto by the CA, were informative:

> x x x [The] POs were later on verified by respondent's Special Projects Team as to have been used by different taxpayers for the purchase of documentary stamps. x x x [The] CRs were subsequently issued to different taxpayers other than the [petitioner] for various payments of documentary stamps. These facts were also


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verified by respondent's Special Projects Team.

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When checks are used for payments in settling obligations, the best evidence are the checks themselves. x x x [Considering] that the POs and CRs of petitioner, although seemingly genuine, do not appear in respondent's files/records,[27] the best evidence in proving petitioner's alleged payments are the MBTC checks x x x. A careful scrutiny of these checks, however, revealed that they were not used to pay withholding taxes. The checks themselves confirm respondent's Special Projects Team's findings that they were used to purchase documentary stamps from the BIR. For on the dorsal sides of the subject checks [are] handwritten notes that they were used to pay documentary stamps. As to how many pieces of documentary stamps were purchased for each denominations of P5.00 or P3.00, and even their respective serial numbers were also indicated at the back of each check.

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That petitioner's MBTC checks, Exhibits "A" to "A-24" are undeniably clear proofs of payments of documentary stamps, is corroborated by findings or written reports submitted by the Special Projects Team. x x x [The] report of Mr. Manuel J. Bello, Revenue Collection Agent, stating, among others that the following MBTC checks x x x were all personally handed to him by Mrs. Maria Bulaclac O. Aniel, District Collection Supervisor, RDO No. 33 x x x as payment for documentary stamps tax.

Another corroborating evidence, proving that the MBTC checks of petitioner were used to purchase loose documentary stamps, was the report, dated February 16, 1994, submitted by Mrs. Rosario Beltran x x x stating that the following checks were presented to her as payments for loose documentary stamps by the representative of L.C. Diaz and Co. named "CANTRE" or "CASTRE" on different dates x x x.

x x x The reports were gathered by Mr. Leodegario Tenorio, Assistant Chief of the Collection Performance and Audit Division of the BIR, who was also one of the members of the Special Projects Team that conducted the investigation of the instant case. Mr. Tenorio was presented as witness for the respondent. And in the hearing of May 19, 1994, he testified that in the course of his investigation, he discovered that "the checks which were used for payment of withholding taxes and wages of [petitioner] were not really used and submitted as payment for withholding taxes and wages. The same [checks were] used in payment of documentary stamps of different denomination."

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Petitioner presented the Payroll Head of L.C. Diaz, who testified that x x x petitioner's manager's checks are handed to their messenger. The latter, in turn, presents the form and the check to the collecting agent of the B.I.R. and later to the authorized bank. The messenger of L.C. Diaz was not presented to testify on this matter, or at least to rebut the reports of respondent's collecting agents that he or she presented the manager's checks of petitioner for the purchase by other taxpayers of loose documentary stamps.

Therefore, even if respondent also admitted that the checks were for the account of petitioner, said checks entered the coffers of the government not as [petitioner's] payments for withholding taxes, but as somebody else's payments for loose documentary stamps. No evidence was adduced as to how and why this happened.[28]

Petitioner contends that no witness ever identified the notes on the checks nor testified as to their veracity; therefore they were hearsay evidence with no probative value.[29] It avers that whatever anomaly occurred with the checks happened while they were already in the possession of the BIR or its agent banks.[30] It also denounces the BIR reports as hearsay.[31]

There is no merit in the petition.

Under our tax system, the CTA acts as a highly specialized body specifically created for the purpose of reviewing tax cases.[32] Accordingly, its findings of fact are generally regarded as final, binding and conclusive on this Court, especially if these are substantially similar to the findings of the CA which is normally the final arbiter of questions of fact.[33] Thus, such findings will not ordinarily be reviewed nor disturbed on appeal when supported by substantial evidence and in the absence of gross error or abuse on its part.[34]

By arguing that the POs and CRs should be believed over the BIR reports and the annotations at the back of the checks, petitioner is actually raising before us questions of fact. This is not allowed. A question of fact involves an examination of the probative value of the evidence presented. It exists when doubt arises as to the truth or falsehood of alleged facts.[35]

> It bears emphasis that questions on whether certain items of evidence should be accorded probative value or weight, or rejected as feeble or spurious, or whether the proofs on one side or the other are clear and convincing and adequate to establish a proposition in issue, are without doubt questions of fact. This is true regardless of whether the body of proofs presented by a party, weighed and analyzed in relation to contrary evidence submitted by the adverse party, may be said to be strong, clear and convincing. Whether certain documents presented by one side should be accorded full faith and credit in the face of protests as to their spurious character by the other side; whether inconsistencies in the body of proofs of a party are of such gravity as to justify refusing to give said proofs weight - all these are issues of fact. Questions like these are not reviewable by us. As a rule, we confine our review of cases decided by the CA only to questions of law raised in the petition and therein distinctly set forth.[36]

The CTA and CA gave credence to the annotations and reports and, these being questions of fact, we hold that their findings are conclusive. This Court is not mandated to examine and appreciate anew any evidence already presented below. Petitioner has not advanced strong reasons why we should delve into the facts. The findings of the CTA, as affirmed by the CA, are supported by substantial evidence.

Petitioner, as a withholding agent, is burdened by law with a public duty to collect the tax for the government. However, its payroll agent, L.C. Diaz and Company, failed to remit to the BIR the withholding taxes on compensation. Hence, no valid payment of the withholding taxes was actually made by petitioner. Codal provisions on withholding tax are mandatory and must be complied with by the withholding agent.[37] It follows that petitioner is liable to pay the disputed assessment.

WHEREFORE, the petition is hereby DENIED.

Costs against petitioner.

**SO ORDERED.**

Puno, (Chairperson), Sandoval-Gutierrez, Azcuna, and Garcia, JJ., concur.

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[1] Under Rule 45 of the Rules of Court.

[2] Penned by Associate Justice Mercedes Gozo-Dadole and concurred in by Associate Justices Ramon A. Barcelona and Demetrio G. Demetria of the Fourteenth Division of the Court of Appeals; rollo, pp. 12-24.

[3] Id., pp. 10-11.

[4] This case was decided before the CTA was elevated by law to the same level as the CA (RA 1125 as amended by RA 9282 [2004], Section 1.)

[5] At that time, it was Jose U. Ong; rollo, p. 13.

[6]LIST OF ALLEGED PAYMENTS OF WITHOLDING TAXES WITHOUT RECORDS IN THE BIR

Year Involved Month Amount Involved

1988 February P 99,419.56

1989 May P 244,623.25

July 250,951.96

September 260,803.87

October 271,676.00

November 259,970.75

December 466,052.22

1990 March P 225,979.42

April 217,960.62

May 220,174.42

June 226,847.18

July 224,038.21

August 223,851.42

September 227,850.67

October 226,052.50

November 231,806.28

December 166,553.62

1991 January P 235,156.56

February 263,022.03

March 263,211.87

April 265,758.27

May 266,628.27

June 297,964.66

July 275,930.12

August 276,389.48


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**TOTAL P6,188,672.50**

(Rollo, pp. 13-14.)

[7] Id., p. 13.

[8] Id., p. 14.

[9] Id., pp. 14-15.

[10] Now Bangko Sentral ng Pilipinas (BSP).

[11] Rollo, p. 15.

[12] Id.

[13] Id., pp. 15-16.

[14] Docketed as CTA Case No. 4795; rollo, p. 16.

[15] Rollo, p. 16.

[16] Id., p. 18.

[17] Id., pp. 14-15.

[18] Philtrust Bank and United Coconut Planters Bank; id., p. 56.

[19] Id., p. 66.

[20] Id., p. 44.

[21] Inclusive of penalties incident to late payment; id., p. 137.

[22] Id., p. 24.

[23] They were admitted to be genuine by respondent in its Reply to Request for Admission; id., pp. 21 and 125.

[24] Id., pp. 128-129.

[25] The issues submitted for resolution are the following:

> - Whether or not the CA Decision which held that [respondent's] own [POs] and [CRs]-which acknowledged receipt of petitioner's withholding tax payments-were not evidence of the fact of such payments, must be reversed for being contrary to law.
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> - Whether or not the CA Decision which held that the anonymous "handwritten notes" on the back of [petitioner's] checks and [respondent's] offer of evidence and internal reports-all based on those anonymous "handwritten notes"-were evidence that those checks were paid for documentary stamps purchased by unknown other parties, must be reversed for being contrary to law.
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> - Whether or not the CA gravely erred in failing to consider that the anonymous "handwritten notes" were made only on 8 of [petitioner's] 25 checks, and therefore could "affect" only those 8 checks, assuming without admitting that those anonymous notes could defeat the official BIR POs and CRs issued to [petitioner] for the withholding taxes in question; rollo, pp. 57-58.

[26] Id., pp. 21-22, citations omitted.

[27] Respondent's official records do not contain any data on petitioner's withholding tax payments for the taxable

periods subject of the disputed assessment. Instead, what appears on the records are documentary stamp payments of other entities and personalities which were purportedly evidenced by payment orders and confirmation receipts which bear exactly the same numbers as those in the hands of petitioner; id., p. 148.

[28] Underscoring in the original; id., pp. 125-135.

[29] Id., p. 64.

[30] Id., p. 67.

[31] Id., p. 65.

[32] Commissioner of Internal Revenue v. Solidbank Corporation, G.R. No. 148191, 25 November 2003, 416 SCRA 436, 460.

[33] Far East Bank and Trust Company v. Court of Appeals, G.R. No. 129130, 9 December 2005; Carrara Marble Phils., Inc. v. Commissioner of Customs, 372 Phil. 322, 333-334 (1999), citing Commissioner of Internal Revenue v. P.J. Kiener Co., Ltd., G.R. No. L-24754, 18 July 1975, 65 SCRA 142, 153.

[34] Phil. Refining Co. v. CA, 326 Phil. 680, 689 (1996), citations omitted.

[35] CIR v. B.F. Goodrich Phils., Inc., 363 Phil. 169, 176 (1999), citing Commissioner of Internal Revenue v. Court of Appeals, et al., G.R. No. 124043, 14 October 1998, 298 SCRA 83, 91, in turn citing Ramos, et al. v. Pepsi Cola Bottling Co. of the P.I., et al., 125 Phil. 701 (1967).

[36] Far East Bank and Trust Company v. Court of Appeals, supra at note 33, citing Paterno v. Paterno, G.R. No. 63680, 23 March 1990, 183 SCRA 630, 636-637.

[37] Commissioner of Internal Revenue v. CA, 361 Phil. 103, 118 (1999), citing Commissioner of Internal Revenue v. Malayan Insurance, 129 Phil. 165, 170 (1967).


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