FILIPINAS SYNTHETIC FIBER CORPORATION, PETITIONER VS. COURT OF APPEALS, COURT OF TAX APPEALS AND COMMISSIONER OF INTERNAL REVENUE, RESPONDENTS.

G.R. Nos. 118498 & 124377. October 12, 1999

Ponente: PURISIMA, J.

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PURISIMA, J.:

Before the Court are two consolidated Petitions for Review on Certiorari under Rule 45 of the Revised Rules of Court seeking to set aside the Decisions of the Court of Appeals in CA-GR. SP Nos. 32922[1] and 32022.[2]

In G.R. No. 118498, the Court of Appeals culled the antecedent facts that matter as follows:

> "The basic operative facts are not in dispute, to wit: Filipinas Synthetic Fiber Corporation ..., a domestic corporation received on December 27, 1979 a letter of demand ... from the Commissioner of Internal Revenue ... assessing it for deficiency withholding tax at source in the total amount of P829,748.77, inclusive of interest and compromise penalties, for the period from the fourth quarter of 1974 to the fourth quarter of 1975. The bulk of the deficiency withholding tax assessment, however, consisted of interest and compromise penalties for alleged late payment of withholding taxes due on interest loans, royalties and guarantee fees paid by the petitioner to non-resident corporations. The assessment was seasonably protested by the petitioner through its auditor, SGV and Company. Respondent denied the protest in a letter dated 14 May 1985 ... on the following ground: "For Philippine internal revenue tax purposes, the liability to withhold and pay income tax withheld at source from certain payments due to a foreign corporation is at the time of accrual and not at the time of actual payment or remittance thereof", citing BIR Ruling No. 71-003 and BIR Ruling No. 24-71-003-154-84 dated 12 September 1984 as well as the decision of the Court of Tax Appeals ... in CTA Case No. 3307 entitled "Construction Resources of Asia, Inc., versus Commissioner of Internal Revenue". The aforementioned case held that "the liability of the taxpayer to withhold and pay the income tax withheld at source from certain payments due to a non-resident foreign corporation attaches at the time of accrual payment or remittance thereof" and "the withholding agent/corporation is obliged to remit the tax to the government since it already and properly belongs to the government. Since the taxpayer failed to pay the withholding tax on interest, royalties, and guarantee fee at the time of their accrual and in the books of the corporation the aforesaid assessment is therefore legal and proper."

On June 28, 1985, petitioner brought a Petition for Review[3] before the Court of Tax Appeals, docketed as CTA Case No. 3951. On June 15, 1993, the said court came out with its Decision, ruling thus:

> "IN VIEW OF THE FOREGOING, judgment is hereby rendered ordering petitioner to pay respondent the amount of P306,165.35 as deficiency withholding tax at source for the fourth quarter of 1974 to the third quarter of 1975 plus 10% surcharge and 14% annual interest from November 29, 1979 to July 31, 1980, plus 20% interest from August 1, 1980 until fully paid but not to exceed that which corresponds to a period of three (3) years pursuant to P.D. No. 1705.
>
> SO ORDERED."

With the denial of its motion for reconsideration, petitioner appealed the CTA disposition to the Court of Appeals, which affirmed in toto the appealed decision.

Dissatisfied therewith, petitioner found its way to this Court via the present Petition; contending that:

> "THE CA ERRED IN HOLDING THAT FILSYN'S LIABILITY TO WITHHOLD THE INCOME TAX FOR INTEREST, ROYALTIES AND DIVIDENDS, WHICH WERE PAYABLE TO NON-RESIDENT FOREIGN CORPORATIONS, ATTACHED UPON "SETTING-UP" OR ACCRUAL OF THESE AMOUNTS RATHER THAN WHEN SAID AMOUNTS BECOME DUE AND DEMANDABLE UNDER THE APPLICABLE CONTRACTS."

In G.R. No. 124377, what is being questioned by petitioner is the assessed deficiency withholding tax at source for the period from the fourth quarter of 1975 to the fourth quarter of 1976 amounting to P379,700.68.

The pivot of inquiry here is - whether the liability to withhold tax at source on income payments to non-resident foreign corporations arises upon remittance of the amounts due to the foreign creditors or upon accrual thereof.

It is petitioner's submission that the withholding taxes on the said interest income and royalties were paid to the government when the subject interest and royalties were actually remitted abroad. Stated otherwise, whatever amount has accrued in the books, the withholding tax due thereon is ultimately paid to the government upon remittance abroad of the amount accrued.

Section 53 of the National Internal Revenue Code, in force at that time (1975), reads:

> "Withholding Tax at source ...
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> x x x
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> (b) Non-resident aliens and foreign corporations - Every individual, corporation, partnership, or association, in whatever capacity acting, including a lessee or mortgagor of real or personal property, trustee acting in any trust capacity, executor, administrator, receiver, conservator, fiduciary, employer, and every officer or employee of the Government of the Republic of the Philippines having the control, receipt, custody, disposal, or payment of interest, dividends, rents, royalties, salaries, wages, premiums, annuities, compensation, remunerations, emoluments, or other fixed or determinable annual, periodical, or casual gains, profits, and income, and capital gains, of any non-resident alien not engaged in trade or business within the Philippines, shall (except in the case provided in sub-section (a) (1) of this Section) deduct and withhold from the annual, periodical, or casual gains, profits, and income, and capital gains, a tax equal to 30 per cent thereof.
>
> x x x
>
> (2) Non-resident foreign corporations - In the case of foreign corporations subject to tax under this Title, not engaged in trade or business within the Philippines, there shall be deducted and withheld at the source in the same manner and upon the same items as is provided in subsection (b) (1) of this section, as well as on remunerations for technical services or otherwise, a tax equal to thirty-five (35) per cent thereof. This tax shall be returned and paid in and subject to the same conditions as provided in Section 54."

On the other hand, Section 54 of the same law, provides:

> "Returns and payments of taxes withheld at source -
>
> (a) Quarterly return and payment of taxes withheld - Taxes deducted and withheld under Section 53 shall be covered by a return and paid to the Commissioner of Internal Revenue or his collection agent in the province, city, or municipality where the withholding agent has his legal residence or principal place of business, or where the withholding agent is a corporation, where the principal office is located. The taxes deducted and withheld by the withholding agent shall be held as a special fund in trust for the Government until paid to the

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> collecting officers. The Commissioner of Internal Revenue may, with the approval of the Secretary of Finance, require these withholding agents to pay or deposit the taxes deducted and withheld at more frequent intervals when necessary to protect the interest of the Government. The return shall be filed and the payment made within 25 days from the close of each calendar quarter ...”

The aforecited provisions of law are silent as to when does the duty to withhold the taxes arise. And to determine the same, an inquiry as to the nature of accrual method of accounting, the procedure used by the herein petitioner, and to the modus vivendi of withholding tax at source come to the fore.

The method of withholding tax at source is a procedure of collecting income tax sanctioned by the National Internal Revenue Code. Section 53 (c) of which, provides:

> “Return and Payment - Every person required to deduct and withhold any tax under this section shall make return thereof, ... for the payment of the tax, shall pay the amount withheld to the officer of the Government of the Philippines authorized to receive it. Every such person is made personally liable for such tax, and is indemnified against the claims and demands of any person for the amount of any payments made in accordance with the provision of this section.”

In the aforecited provision of law, the withholding agent is explicitly made personally liable for the income tax withheld under Section 54. In Phil. Guaranty Co., Inc. vs. Commissioner of Internal Revenue,[4] the Court, has ratiocinated:

> “The law sets no condition for the personal liability of the withholding agent to attach. The reason is to compel the withholding agent to withhold the tax under all circumstances. In effect, the responsibility for the collection of the tax as well as the payment thereof is concentrated upon the person over whom the Government has jurisdiction. Thus, the withholding agent is constituted the agent both the government and the taxpayer. With respect to the collection and/or withholding of the tax, he is the Government’s agent. In regard to the filing of the necessary income tax return and the payment of the tax to the Government, he is the agent of the taxpayer. The withholding agent, therefore, is no ordinary government agent especially because under Section 53 (c) he is held personally liable for the tax he is duty bound to withhold; whereas, the Commissioner of Internal Revenue and his deputies are not made liable to law.”

On the other hand, “under the accrual basis method of accounting, income is reportable when all the events have occurred that fix the taxpayer’s right to receive the income, and the amount can be determined with reasonable accuracy. Thus, it is the right to receive income, and not the actual receipt, that determines when to include the amount in gross income.”[5] Gleanable from this notion are the following requisites of accrual method of accounting, to wit: “(1) that the right to receive the amount must be valid, unconditional and enforceable, i.e., not contingent upon future time; (2) the amount must be reasonably susceptible of accurate estimate; and (3) there must be a reasonable expectation that the amount will be paid in due course.”[6]

In the case at bar, after a careful examination of pertinent records, the Court concurred in the finding by the Court of Appeals in CA GR. SP No. 32922 ‘that there was a definite liability, a clear and imminent certainty that at the maturity of the loan contracts, the foreign corporation was going to earn income in an ascertained amount, so much so that petitioner already deducted as business expense the said amount as interests due to the foreign corporation. This is allowed under the law, petitioner having adopted the ‘accrual method’ of accounting in reporting its incomes.”

All things studiedly considered, the Court is of the opinion, and holds, that the Court of Appeals erred not in ruling that:

> “x x x Petitioner cannot now claim that there is no duty to withhold and remit income taxes as yet because the loan contract was not yet due and demandable. Having “written-off” the amounts as business expense in its

> books, it had taken advantage of the benefit provided in the law allowing for deductions from gross income. Moreover, it had represented to the BIR that the amounts so deducted were incurred as a business expense in the form of interest and royalties paid to the foreign corporations. It is estopped from claiming otherwise now."[7]

WHEREFORE, the decisions of the Court of Appeals in CA GR. SP Nos. 32922 and 32022 are hereby AFFIRMED in toto. No pronouncement as to costs.

SO ORDERED.

Melo, (Acting C.J.), Vitug, and Panganiban, JJ., concur.

Gonzaga-Reyes, J., no part; spouse connected with counsel for petitioner.

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[1] Annex "A", Petition; Rollo, pp. 33-39; Penned by Justice Buenaventura J. Guerrero.

[2] Annex "A", Petition; Rollo, pp. 36-45; Penned by Justice Jamie M. Lantin.

[3] Annex "G", Petition; Rollo, pp. 68-72.

[4] 15 SCRA 1.

[5] 33A AmJur 2nd, Federal Taxation [1995], d 6200, p. 204.

[6] Ibid., d 6201 citing McGuirl Inc. Patrick vs. Com., 74 F2nd 729; Goergia School-Book Depository Inc., 1 TC 463; Corn Exchange Bank vs. US, 37 F2nd 34.

[7] CA GR. No. SP 32922.

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