

Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

NESIC PHILIPPINES, INC.,

Petitioner,

CTA EB CASE NO. 524

(CTA Case No. 7012)

-versus-

Present:

ACOSTA, P.J.,

CASTAÑEDA, JR.

BAUTISTA

UY

CASANOVA

PALANCA-ENRIQUEZ

FABON-VICTORINO

MINDARO-GRULLA

COTANGCO-MANALASTAS, JJ.

**COMMISSIONER OF INTERNAL
REVENUE,**

Respondent.

Promulgated:

MAY 06 2010

3:02pm

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision is a Petition for Review for the Court *en banc* under Section 18 of Republic Act No. 1125¹, as amended by Republic Act No. 9282² of the Decision³ dated March 13, 2009, rendered by the former

¹ An Act Creating the Court of Tax Appeals.

² An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as amended, otherwise known as the Law Creating the Court of Tax Appeals, and for Other Purposes.

³ En Banc Docket, pp. 70-109. Penned by Associate Justice Erlinda P. Uy, concurred in by Associate Justice Juanito C. Castañeda, Jr. and Associate Justice Olga Palanca-Enriquez.

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Second Division of this Court in CTA Case No. 7012, and its Resolution⁴ dated August 6, 2009.

Petitioner seeks a reversal of both the aforesaid Decision and Resolution, the dispositive portions of which, respectively, read as follows:

Decision dated March 13, 2009:

"WHEREFORE, premises considered, the Petition for Review is **PARTIALLY GRANTED**. Accordingly, petitioner is hereby **ORDERED** to **PAY** deficiency value-added tax, expanded withholding tax, and fringe benefit tax in the sum of **FOUR MILLION SEVEN HUNDRED TWENTY FIVE THOUSAND FIFTY TWO and 72/100 PESOS (P4,725,052.72)**, computed as follows:

	VAT	EWT	FBT	Total
Basic Tax	2,291,941.38	28,645.97	192,504.18	2,513,091.53
Interest	2,015,652.56	25,428.20	170,880.43	2,211,961.19
Total	P 4,307,593.94	P 54,074.17	P 363,384.61	P 4,725,052.72

In addition, petitioner is hereby **ORDERED** to **PAY** twenty percent (20%) delinquency interest on the total amount of P4,725,052.72, counted from September 15, 2003 until full payment thereof, pursuant to Section 249(C) (3) of the NIRC of 1997.

SO ORDERED." (Italics supplied)

Resolution dated August 18, 2009:

"WHEREFORE, premises considered, petitioner's Motion for Partial Reconsideration (Re: Decision dated 13 March 2009) and Supplemental Motion for Reconsideration (To Petitioner's Motion for

⁴ Ibid., pp. 111-113.

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(459)

Reconsideration Dated April 2, 2009) are hereby **DENIED** for lack of merit.

SO ORDERED." (Italics supplied)

The facts quoted from the Decision of the former Second Division of this Court are undisputed, as follows:

*"Petitioner, Nesic Philippines, Inc., is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office address at 15th Floor, BPI Buendia Center, Sen. Gil Puyat Avenue, Makati City. Petitioner is primarily engaged in the business of providing specialty and technical services, including consultation services availing local skills, technical competence and know-how in the process, and providing technology applications in respect of planning, management, procurement, construction, evaluation, estimation, supervision, inspection, maintenance and operation, including testing and supervising them for quality purposes and other activities related, connected or incidental thereto, offering and selling on wholesale basis completed and finished products for use and consumption in the international market other than the Philippines"*⁵

*Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue, vested with authority to act as such, including, among others, to decide disputed assessments of internal revenue taxes and penalties imposed against taxpayers, pursuant to the provisions of the National Internal Revenue Code (NIRC). He holds office at the 5th Floor, Bureau of Internal Revenue (BIR) National Office Building, Agham Road, Quezon City.*⁶

*On August 29, 2003, petitioner received an undated Formal Letter of Demand covering the fiscal year ending March 31, 1999 for alleged deficiency VAT, EWT, and FBT, summarized as follows:*⁷

⁵ Par. 1, Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), 2nd Division Docket, p. 113.

⁶ Par. 2, Admitted Facts, JSFI, 2nd Division Docket, p. 114.

⁷ Exhibit "B", 2nd Division Docket, pp. 315-317; Pars. 3 and 6, Admitted Facts, JSFI, 2nd Division Docket, pp. 114-116.

DECISION

	VAT	EWT	FBT	Total
Basic Tax	3,348,362.04	116,876.89	1,133,263.81	4,598,502.74
Interest	2,939,192.20	103,564.61	1,004,185.06	4,046,941.87
Compromise	25,000.00	16,000.00	25,000.00	66,000.00
Total	P 6,312,554.24	P 236,441.50	P 2,162,448.87	P 8,711,444.61

Petitioner accepted the validity of some of the disallowed items of the foregoing assessments and made partial payments on September 26, 2003 amounting to P1,291,858.13, including increments, detailed below:

	VAT	EWT	FBT	Total
Basic Tax	323,044.90	64,355.26	273,145.94	660,546.10
Interest	285,872.61	57,478.94	243,960.48	587,312.03
Compromise	16,000.00	12,000.00	16,000.00	44,000.00
Total	P 624,917.51	P 133,834.20	P 533,106.42	P 1,291,858.13

On September 29, 2003, petitioner, through its tax consultant SGV & Company, filed with the BIR Large Taxpayers District Office-Makati City an administrative protest on the remaining assessments, on the ground that there was no factual and legal basis to support the same. The remaining amount of P7,419,586.58 is broken down as follows:

	VAT	EWT	FBT	Total
Basic Tax	3,025,317.14	52,521.63	860,117.87	3,937,956.64
Interest	2,653,319.59	46,085.67	760,224.58	3,459,629.84
Compromise	9,000.00	4,000.00	9,000.00	22,000.00
Total	P 5,687,636.73	P 102,607.30	P 1,629,342.45	P 7,419,586.48

Based on the details of discrepancies attached to the Formal Letter of Demand, petitioner's input VAT credits in the amount of P3,348,362.04 were disallowed due to alleged violations of Section 110(A) (Creditable Input Tax) of the NIRC, in relation to Section 113 (Invoicing and Accounting requirements for VAT-registered persons) and Section 237 (Issuance of Receipts or Sales or Commercial Invoices) of the same Code, and Section 4. 108-1 of

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466

the Revenue Regulations No. 7-95⁸. Respondent disallowed the said input VAT credits on the following grounds⁹:

Reason for Disallowance	Payment Slip	Journal Slip	Total Amount
No Sales Invoice/ OR	664,278.71	126,424.26	790,702.97
No address	860,535.39		860,535.39
No TIN per SI/OR	267,847.50	1,106,231.28	1,374,078.78
Purchase from Non-VAT	166,685.28	65,467.68	232,152.96
Stamped TIN	67,451.19		67,451.19
Unregistered invoices/OR	19,202.78		19,202.78
Exempt purchases	2,674.80		2,674.80
Not in taxpayer's name	1,402.42		1,402.42
No Supporting OR	160.75		160.75
	2,050,238.82	1,298,123.22	3,348,362.04

While petitioner accepted the validity of the disallowance of some of the input VAT credits mentioned above, petitioner disputed the validity of the disallowance of the following input tax credits¹⁰:

<i>Reason for Disallowance</i>	<i>Amount</i>
No Sales Invoices/OR	790,702.97
No Address	860,535.39
No TIN per SI/OR	1,374,078.78
Total -Protested VAT	<u>3,025,317.14</u>
Assessment (Basic Tax)	

Respondent alleged that the said input VAT credits may not be allowed for the reason that: (1) they are not supported by sales invoice/official receipts; (2) petitioner's address was not indicated in the invoices issued by petitioner's suppliers; and/or (3) the seller/s failed to indicate petitioner's tax identification number (TIN) in the supporting invoices/official receipts issued to petitioner.¹¹

With respect to the EWT assessments under the Formal Letter of Demand, petitioner accepted the validity of the assessment of deficiency EWT, except for three (3) items, namely:¹²

⁸ Also known as Consolidated Value-Added Tax Regulations.

⁹ Par. 11, Admitted Facts, JSFI, Second Division Docket, pp. 117-118.

¹⁰ Par. 12, Admitted Facts, JSFI, Second Division Docket, p. 118.

¹¹ Par. 13, Admitted Facts, JSFI, Second Division Docket, p. 118.

¹² Par. 14, Admitted Facts, JSFI, Second Division Docket, p. 119.

462

<u>Account Title</u>	<u>EWT Due</u>
Subcontractor's payroll-cash advance	23,499.40
Car rental	27,419.05
Seminar & other educational courses	1,603.17
Total	<u><u>52,521.62</u></u>

Lastly, as to the FBT assessments under the Formal Letter of Demand, petitioner accepted the validity of the assessment of the deficiency FBT, except for five (5) items of alleged fringe benefits, particularly¹³:

Fringe Benefit	FBT Due
For the period April to December 1998:	
Car rental	341,483.58
Playing rights	113,333.33
Telephone expenses	117,340.99
Plane tickets	50,813.31
Visa/Immigration processing	11,276.67
	P 634,247.88
For the period January to March 1999:	
Car rental	170,887.51
Telephone expenses	43,756.57
Visa/Immigration processing	11,225.91
Total	P <u><u>225,869.99</u></u>
	<u><u>860,117.87</u></u>

On November 28, 2003, petitioner submitted additional documents in support of its protest.

Due to the respondent's inaction and before it could be barred by prescription in accordance with Section 228 of the NIRC of 1997, petitioner filed a Petition for Review before this Court on June 25, 2004.

Respondent filed through registered mail an Answer on September 24, 2004, duly received by this Court on October 7, 2004,xxx." (Italics supplied)

¹³ Par. 27, Admitted Facts, JSFI, Second Division Docket, p. 119.

963

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After trial on the merits, this Court's former Second Division rendered the assailed Decision¹⁴. Not satisfied, petitioner filed a Motion for Partial Reconsideration with a Supplemental Motion for Reconsideration, which was denied in a Resolution¹⁵ dated August 06, 2009. Hence, petitioner filed the instant Petition for the Court en banc.

Petitioner submits the following **grounds**¹⁶ in support of the Petition for Review:

1. "Petitioner substantially complied with the invoicing requirements regarding VAT;
2. Petitioner is not liable for deficiency EWT on car rental payments and on seminars and other educational courses;
3. Petitioner is not liable for deficiency FBT on playing rights, airplane tickets, and visa and immigration processing for lack of legal basis; and
4. The assessments are invalid for failure of the Respondent to state the factual and legal basis for the same."

¹⁴ Supra, Note 3.

¹⁵ Supra, Note 4.

¹⁶ En Banc Docket, pp. 338

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464

On January 4, 2010, this case was submitted¹⁷ for decision. However, on April 5, 2010, petitioner filed a motion to defer resolution¹⁸ on this case, pending approval of petitioner's application for abatement with respondent CIR, and which application if approved would render this case moot and academic. Suffice it to say that this case stemmed from respondent's assessment for the fiscal year ending March 1999¹⁹. To defer resolution thereon would only further prolong the already protracted case both in the administrative and judicial level. Besides, there is no valid reason for this Court to allow further delay.

We discuss the grounds *in seriatim*.

1. Petitioner claims that there was substantial compliance with the invoicing requirements regarding Value Added Tax (VAT). Petitioner argues that this Court's former Second Division disallowed the amount of ₱47,150.95 out of the ₱58,735.39 because it was supported by an undated OR's and by documents other than an invoice. Thus, the difference of ₱11,584.44, which is supported by documents not found to have any omission, should not be included in the deficiency VAT assessment for FY 1999.

¹⁷ *Ibid.* p. 447

¹⁸ *Ibid.* pp. 448-456

¹⁹ *Supra*, Note 8.

Simply stated, petitioner states that this Court's former Second Division erred in disallowing the amount of ₱11,584.44 when only the amount of ₱47,150.95 was validly disallowed. We quote:

"xxx. A perusal of the documents however reveals that although the input tax in the amount of P58,735.39 are actually supported by sales invoices and/or official receipts, the following exceptions were found :

	<i>Exh.</i>	<i>Supplier</i>	<i>Input VAT</i>
1.	<i>Purchase of services supported by an undated OR T-12</i>	<i>CYO International</i>	<i>P 34,753.31</i>
2.	<i>Purchase of goods supported by documents other than an invoice T29 to T39</i>	<i>Jupiter Systems , Inc.</i>	<i>12,397.64</i>
		<i>TOTAL</i>	<i><u>P 47,150.95</u>^{"20}</i>

Petitioner's claim has no merit.

There is no issue on the disallowance of ₱47,150.95. Admittedly, this Court's former Second Division disallowed the total amount of ₱58,735.39 despite a finding of fact that only ₱47,150.95 was actually disallowed because those were the items supported by an undated official receipts and by documents other than an invoice. But a scrutiny of the records reveals that the amount of ₱11,584.44 should indeed be disallowed on the

²⁰ *Ibid.* p. 81

666

ground that it was also supported by an undated official receipt²¹. Input tax, when supported by an undated official receipt/invoice cannot be credited to an output tax. Aside from the fact that it violates the mandatory invoicing requirements prescribed by law, in an undated OR, it cannot be ascertained as to when or what period the transaction occurred. Thus, it was properly disallowed and included in the deficiency VAT assessment for FY 1999.

Anent the disallowance of ₱859,127.21 and ₱1,374,078.78 as input VAT on the ground that the invoices/official receipts have no addresses and Tax Identification Numbers (TIN), respectively, petitioner argues that the disallowance of input vat for violation of the invoicing requirements is a penalty not sanctioned by the NIRC. This is totally without merit. For an input tax to be creditable to output tax, the input tax should be evidenced by a VAT invoice or official receipt issued in accordance with Sec. 110(A)(1), Sec. 113 and Sec. 237 of the NIRC of 1997²², a mandatory requirement by law. This Court's former Second Division correctly held that:

²¹ Former Second Division Docket, p. 719

²² SEC. 110. Tax Credits-

(A) Creditable Input Tax.-

(1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax.

SEC. 113. Invoicing and Accounting Requirements for VAT-Registered Persons.-

(A) Invoicing Requirements.- A VAT-registered person shall, for every sale, issue an invoice or receipt. In addition to the information shall be indicated in the invoice or receipt:

(1) A statement that the seller is a VAT-registered person, followed by his taxpayer's identification number (TIN); and

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467

"The Court notes that Section 113 (A) of the NIRC of 1997, aside from making it mandatory for a VAT registered person to issue an invoice or receipt for every sale transaction, it also requires said person, in addition to the information required under 237 of the NIRC of 1997, to reflect the information that the seller is a VAT-registered person, followed by his TIN and the total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax.

The information referred to under Section 237 pertains to the following: the name, business style, if any and **address of the purchaser, customer or client, and where the purchaser is a VAT-registered person, in addition thereto, the invoice or receipt shall further show the Taxpayer's Identification Number (TIN) of the purchaser.**

xxx xxx xxx

Clearly from the tenor of the aforequoted legal provisions pertaining to VAT invoicing and accounting requirements, compliance therewith is mandatory as the word "**shall**" is used. The word "**shall**" is imperative, commonly operating to impose an obligation or duty which may be enforced; it is a word of command that must be given a compulsory meaning. Thus, the purchaser-taxpayer, petitioner in this case, is duty bound to ensure full compliance with the aforementioned invoicing requirements and petitioner's failure in this regard is thus fatal to its claim for the recognition of its input tax credits."²³ (Italics Supplied)

In the instant case, the alleged input VAT on purchases supported by invoices or official receipts with no address and TIN was properly disallowed because these purchases were not supported by "VAT

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- (2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax.

SEC. 237. Issuance of Receipts or Sales or Commercial Invoices.- All persons subject to an internal revenue tax shall , xxx, issue duly registered receipts or sales or commercial invoices,xxx, Provided, however, that in the case of sales, receipts or transfer is made by a person liable to value added tax to another person also liable to value added tax, xxx, receipts or invoices shall be issued which shall show the name, business style, if any, and address of the purchaser, customer or client: Provided, further, that where the purchaser is a VAT-registered person, in addition to the information herein required, the invoice or receipt shall further show the Taxpayer's Identification Number (TIN) of the purchaser.

²³ Former Second Division's Decision, pp.17-18.

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468

Invoices" under the contemplation of the mandatory invoicing requirements as provided by Section 113 and 237 of the NIRC. The VAT method of taxation, is invoice-based, thus, it necessitates mandatory compliance with the invoicing requirements which we find reasonable and in accord for the efficient collection of VAT.²⁴ Petitioner failed to comply with invoicing requirements regarding VAT.

2. Petitioner claims that it is not liable for deficiency EWT on car rental payments because only payments for the transportation of goods and merchandise are properly subject to EWT and not payments for transportation of passengers. Petitioner states that Section 2.57.2(E)(4)(e) of RR no. 2-98 is clear that only payments to transportation contractors of goods and merchandise are subject to 1% EWT. We quote:

"Section 2.57.2. Income payments subject to creditable withholding tax and rates prescribed thereon.- Except as herein otherwise provided, there shall be withheld a creditable income tax at the rates herein specified for each class of payee from the following items of income payments to persons residing in the Philippines:

xxx xxx xxx

(E) Income payments to certain contractors – On gross payments to the following contractors, whether individual or corporate- One percent (1%)

xxx xxx xxx

(4) Other contractors-

xxx xxx xxx

²⁴ Panasonic Communications Imaging Corporation of the Philippines vs. CIR, G.R. No. 178090, February 8, 2010;

(e) Transportation contractors which include common carriers for the carriage of goods and merchandise of whatever kind by land, air or water, where the gross payments by the payor to the same payee amounts to at least two thousand pesos (P2,000) per month, **regardless of the number of shipments during the month;**

A careful reading of the above-quoted provision reveals that it does not limit itself to payments for the transportation of goods and merchandise. As aptly discussed by this Court's former Second Division, the term "transportation contractors", whether for carriage of goods/merchandise or passengers, is the item subject to expanded withholding tax and the subsequent phrase "which include common carriers for the carriage of goods and merchandise" is a point of clarification that the payments thereto must "at least be two thousand pesos (P2,000.00) per month regardless of shipments during the month".

We quote:

"Section 2.57.2(E)(4)(e) of RR No. 2-98 speaks of **"transportation contractor" in the general sense as an item subject to expanded withholding tax.** The phrase "which include common carriers for the carriage of goods and merchandise of whatever kind" was added to expand the scope or coverage of "transportation contractors" to ensure the inclusion of the contract of goods and merchandise of whatever kind.

As defined in Black's Law Dictionary, "transportation" is the movement of goods or persons from one place to another, by a carrier. **The word "include" is also explained therein as follows: "term may, according to context, express an enlargement and have the meaning of and or in addition to, or merely specify a particular thing already included within general words theretofore used. Including within a statute is interpreted as a word of enlargement or of illustrative application as well as a word of limitation"**

Clearly from the foregoing definition, transportation contract is not limited to the carriage or movement of goods, but it

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470

DECISION

also refers to movement of persons, from one place to another. In other words, the phrase "transportation contractors" is a generic term, while the phrase "which include" is a point of clarification. Correspondingly, the phrase "common carriers for the carriage of goods and merchandise" does not restrict, but expands, the meaning of "transportation contractors". (Italics and emphasis supplied)

Section 2.57.2(E)(4)(e) of RR No. 2-98²⁵ is an exact replication of RR No. 13-86²⁶. Likewise, both in RR No. 8-85²⁷ and RR No.13-86 which amended Sec. 1(e)(2)(e) of RR No. 6-85²⁸, "transportation contractors" in general is the subject of expanded withholding tax. We quote:

RR No. 8-85

"(e) Transportation contractors, WHICH INCLUDE COMMON CARRIERS, for the carriage of goods and merchandise of whatever kind by land, air or water, PROVIDED THAT THE FREIGHT PAYMENT FOR SUCH SHIPMENT IS FIVE THOUSAND PESOS (P5,000) OR MORE."

RR No. 13-86

"(e) Transportation contractors which include common carriers for the carriage of goods and merchandise of whatever kind by land, air, or water where the gross payment by the payor to the same payee amounts to at least Two Thousand Pesos (P2,000.00) per month, regardless of the number of shipments during the month."

²⁵ Implementing Republic Act No. 8424, "An Act Amending The National Internal Revenue Code, as Amended" Relative to the Withholding on Income Subject to the Expanded Withholding Tax and Final Withholding Tax, Withholding of Income Tax on Compensation, Withholding of Creditable Value-Added Tax and Other Percentage Taxes.

²⁶ Amending Revenue Regulations No. 6-85, as amended by Revenue Regulations No. 8-85.

²⁷ Amending Revenue Regulations No. 6-85

²⁸ Revised and Consolidated Expanded Withholding Tax Regulations

"(e) Transportation contractors for the carriage of goods and merchandise of whatever kind by land, air, or water;"

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471

Based on these previous Revenue Regulations, we can infer the intent not to limit said provision to the carriage of goods and merchandise. The subject matter "transportation contractors" includes both carriage of goods/merchandise or passengers, as the said Revenue Regulations merely set a point of clarification with regard to common carriers for carriage of goods/merchandise.

As to the assessment of 1% Expanded Withholding Tax (EWT) on "seminars and other educational courses, petitioner alleges that a scrutiny of the documents presented would show that they presented documents to support the entire assessment of ₱1,603.17. Petitioner also states that supporting documents were presented to prove payment in the total amount of ₱157,300.00 which is more or less 1% of the total amount spent on Niponggo tutorial course. Petitioner argues then that Niponggo Tutorial Courses are not subject to 1% EWT.

Indeed, payments subject to 1% EWT pertain to certain contractors²⁹. Therefore, payments to Niponggo Tutorial Courses or

²⁹ Section 2.57.2(E)(4) of RR No. 2-98

SECTION 2.57.2. Income Payment Subject to Creditable Withholding Tax and Rates Prescribed Thereon. — Except as herein otherwise provided, there shall be withheld a creditable income tax at the rates herein specified for each class of payee from the following items of income payments to persons residing in the Philippines:

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seminars and or other educational courses which are akin to payments to professors/teachers/lecturers/instructors/resource persons as professional fees, teaching or lecture fees, are not subject to 1%EWT.

Petitioner alleges further that documents were presented to support the entire assessment of ₱1,603.17. But an examination of the records show that petitioner presented supporting documents only for the amount of ₱376.25 or income payments made to Mocom International for Niponggo tutorial courses. The findings of this Court's former Second Division on the deficiency EWT of ₱1,226.92 is therefore upheld.

3. Petitioner claims that it is not liable for deficiency fringe benefits tax on playing rights, airplane tickets, and visa and immigration processing because payments made thereon were legitimate business expenses. Petitioner argues that the playing rights at Sta. Elena Golf Club were used in entertaining clients and these did not benefit any particular managerial employee. As to the plane tickets, for Messrs. Katsumi Nagatsuna and Toshihiko Hashimoto, petitioner corporation's President and Vice-President, respectively, petitioner also argues that these plane tickets were solely for business meetings required by petitioner's parent

E. Income payments to certain contractors — On gross payments to the following contractors, whether individual or corporate — One percent (1%).

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473

company in Japan while the visa and immigration processing were solely for the convenience of petitioner.

The crux of the controversy as regards the deficiency fringe benefit tax on playing rights, airplane tickets, and visa and immigration processing of petitioner is whether these are legitimate business expenses or intended for the benefit of its managerial employee.

Suffice it to say that the intended beneficiary of these playing rights, airplane tickets, and visa and immigration processing of the expatriates families are the managerial employees or the expatriates, among whom are Messrs. Katsumi Nagatsuna and Toshihiko Hashimoto, petitioner corporation's President and Vice-President, respectively.

Indeed, petitioner failed to present sufficient evidence to prove that the playing rights at Sta. Elena Golf Club are used by petitioner primarily in entertaining prospective clients. Contrarily, it appears that it was petitioner corporation's President, Katsumi Nagatsuna,³⁰ who benefited in the playing rights at Sta. Elena Golf Club. While the playing rights are in the name of the petitioner, it appears that its managerial employees were the actual beneficiaries thereof.

³⁰ Former Second Division Docket, p. 732

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474

We find merit in the former Second Division's conclusion, which reads:

"xxx. While the sample contract shows that the playing rights were registered in the name of petitioner, however, the said contract was valid for the period from July 16, 2003 to July, 16, 2008, which is outside the period covered by the assessment, that is from April 1, 1998 to March 31, 1999. Moreover, the said contract provides for the transferability of the rights to a third party.

Thus, even granting that the contract pertained to the fiscal year under assessment, this Court cannot determine whether the playing rights were transferred to a third party or petitioner's employee. Hence, respondent's assessment shall stand³¹." (Italics supplied)

The foregoing is true with the visa and immigration processing expenses incurred by petitioner for the families of its employees. These expenses, by their nature, are personal expenses for the sole benefit of the employee concerned. Moreover, the plane tickets allegedly incurred for expatriate employees to attend business meetings abroad were bereft of proof and substantiation that the same is in furtherance of the petitioner's business interests. Petitioner failed to present evidence that its managerial employees (President Katsumi Nagatsuna and Vice-President Toshihiko Hashimoto) attended business meetings in their home country.

We quote with approval the findings by this Court's former Second Division:

³¹ Former Second Division's Decision, pp. 29-30.

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475

"The payment slips, official receipts issued by the travel agencies, and billing statements/request for official dispatch and allowances, did not coincide with the meetings scheduled in the notices issued to petitioner's president. Further, petitioner failed to prove that the said business meetings actually occurred and that its officers indeed attended the meetings. A certificate of appearance or a certificate of participation issued by NEC-Japan would have sufficed.³²"

Assessments are prima facie presumed correct and made in good faith. It is an elementary rule that absent the proof of irregularity in the performance of official duties, an assessment will not be disturbed. All presumptions are in favor of tax assessments. Certainly, failure to present proof of error in the assessment will justify judicial affirmance. (Commissioner of Internal Revenue vs. Court of Appeals, 242 SCRA 289). The former Second Division's findings on the deficiency fringe benefit tax on playing rights, airplane tickets, and visa and immigration processing are upheld.

4. Lastly, petitioner claims that the assessments are invalid for failure of respondent to state the factual and legal basis of his assessment, pursuant to Section 228 of the NIRC which provides that:

"Section 228. *Protesting of Assessment.*- xxx xxx xx

The taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

xxx xxx xxx"

³² Former Second Division's Decision, pp. 33-34.

Petitioner states that the details of discrepancies attached to the Formal Letter of Demand did not specify the reasons why EWT and FBT were assessed. Petitioner states further that while respondent cited the deficiency as violations of Section 2.57.2 of the RR No. 2-98 and 3-98, respondent did not specify with particularity the specific provision thereof since Section 2.57.2 of the RR No. 2-98 is very broad and covers a wide range of services/payments.

We find that the formal letter of demand ³³, details of discrepancies ³⁴ and the attachment thereto (schedule of expenses subject to FBT³⁵) have sufficiently informed petitioner of the facts and law upon which the assessment was made. Although Section 2.57.2 of the RR No. 2-98³⁶ is very broad and covers a wide range of services/payment, respondent indicated the percentage on which the EWT tax was based. By such indication, the taxpayer can infer the specific services/payments covered by the EWT to which petitioner can intelligently dispute said assessment. Said assessment was neither vague nor confusing, but rather specific enough to apprise petitioner of the facts and law which served as

³³ Former Second Division Docket, pp. 37-39

³⁴ Former Second Division Docket, pp. 40-41

³⁵ Former Second Division Docket, p. 42

³⁶ Supra, Note 22 .

basis for the assessment. Petitioner discussed exhaustively with particularity every point of the assessment in its protest letter³⁷.

In fine, we find no cogent reason to reverse the findings of the former Second Division.

WHEREFORE, the instant Petition for Review is **DENIED**. The Decision of the former Second Division of this Court in CTA Case No. 7012, dated March 13, 2009, and its Resolution dated August 6, 2009, are **AFFIRMED**. No pronouncement as to costs.

SO ORDERED.

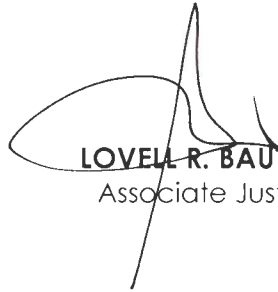
Cielito N. Mindaro-Grilla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

Ernesto D. Acosta
ERNESTO D. ACOSTA
Presiding Justice

³⁷Former Second Division Docket, pp. 43-51.


JUANITO C. CASTANEDA, JR.
Associate Justice

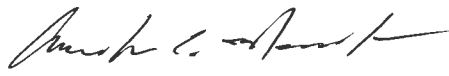

LOVELL R. BAUTISTA
Associate Justice


ERLINDA P. UY
Associate Justice

ON LEAVE
CAESAR A. CASANOVA
Associate Justice

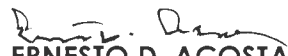

OLGA PALANCA-ENRIQUEZ
Associate Justice


ESPERANZA R. FABON-VICTORINO
Associate Justice


AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation among the members of the Court En Banc before the case was assigned to the writer of the opinion of the Court En Banc.


ERNESTO D. ACOSTA
Presiding Justice

