

Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

**YAMAN LAHI FOUNDATION, INC. -
EMILIO AGUINALDO COLLEGE,**
Petitioner,

EB Case No. 497
(CTA Case No. 7655)

- versus -

**COMMISSIONER OF INTERNAL
REVENUE,**
Respondent.

Members:

ACOSTA, PJ,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
PALANCA-ENRIQUEZ,
FABON-VICTORINO,
MINDARO-GRULLA, and
COTANGCO-MANALASTAS, J.J.

Promulgated:

AUG 26 2010

Adopted
9:16 a.m.

X-----X

DECISION

CASANOVA, J.:

This is an appeal, by way of Petition for Review¹, filed by petitioner Yaman Lahi Foundation, Inc. – Emilio Aguinaldo College, with the CTA *En Banc*, pursuant to Rule 8 of the Revised Rules of Court of Tax Appeals, seeking the nullification and setting aside of the Resolutions dated September 30, 2008², February 25, 2009³ and May 29, 2009⁴ of the CTA Second Division, with respect

¹ CTA En Banc Rollo, pp. 8-31

² Division Docket, pp. 263-265

³ Ibid, pp. 294-297

⁴ Ibid, pp. 329-332

to petitioner's alleged deficiency final tax on interest income; and, praying that a new resolution be entered ordering⁵:

"1. The cancellation of Petitioner's alleged deficiency final tax on interest income;

2. Upon the cancellation thereof, the withdrawal of the petition for review; and

3. The holding in abeyance of the proceedings in the Second Division of the Court of Tax Appeals pending the resolution of this Petition for Review."

The facts of the case, as jointly stipulated by the parties⁶, are as follows:

1. Petitioner is a non-stock, non-profit educational institution duly incorporated and existing under Philippine laws, with business address at 1113-1117 San Marcelino corner Gonzales Street, Paco, Manila.

2. Respondent is the duly appointed Commissioner of Internal Revenue, with powers, among others, to decide disputed assessments of internal revenue taxes and penalties imposed in relation thereto, with office address at the Fifth Floor, BIR National Office Building, Agham Road, Quezon City, where he may be served with summons and other legal processes.

3. On 14 September 2006, Final Assessment Notice No. 34-FY05/31/2003 ("FAN") for deficiency income tax, value-added tax, final tax on interest income and documentary stamp tax was issued by the Bureau of Internal Revenue ("BIR"), through its Revenue Region No. 6 Office for the taxable year

⁵ Petition for Review, En Banc Rollo, pp. 25-26

⁶ Joint Stipulation of Facts, Division Docket, pp. 96-100

ending 31 May 2003, against Petitioner, in connection with the investigation conducted pursuant to Letter of Authority No. 00086788 dated 5 April 2005 and was revalidated on 14 October 2005. The FAN was received by petitioner on 18 September 2006.

4. Pursuant to the FAN, Petitioner was assessed deficiency taxes in the aggregate amount of P24,585,953.54 broken down as follows:

a. Income Tax	P 17,888,004.37
b. Value-Added Tax	3,347,844.20
c. Final Tax on Interest Income	3,320,631.97
d. Documentary Stamp Tax	29,473.00

5. The respective assessments for these four (4) types arose from the following adjustment items:

a. Income Tax

i. Other Income	P 2,052,519.15
ii. Other Cash Collections	15,487,443.50
iii. Interest Income on Loans	17,348,717.75

b. Value-Added Tax

i. Other Income	P 2,052,519.15
ii. Other Cash Collections	15,487,443.50

c. Final Tax on Interest Income

Interest Income from Investments	P 8,907,113.46
-------------------------------------	----------------

d. Documentary Stamp Tax

Number of Graduating Students	P 14,310.00 <i>a</i>
----------------------------------	----------------------

6. The FAN was issued before the lapse of the fifteen (15) day period for the Petitioner to file its Protest against the PAN.

7. On 11 October 2006, Petitioner protested the FAN on legal and factual grounds.

8. The BIR failed to resolve the said protest within one hundred eighty (180) days from 13 December 2006.

9. Petitioner is a non-stock, non-profit educational institution, which operates the Emilio Aguinaldo College.

10. Being a non-stock, non-profit educational institution, Petitioner is not subject to taxes and duties on all its revenues and assets which are used actually, directly and exclusively for educational purposes, as provided for by Article XIV, Section 4(3) of the 1987 Philippine Constitution.

11. Further, Section 30 of the National Internal Revenue Code of 1997 (the "Tax Code") provides that, subject to certain exceptions, a non-stock and non-profit educational institution, such as Petitioner, shall not be taxed with respect to the income received by them as such, to wit:

Section 30. Exemptions from Tax on Corporations. - The following organizations shall not be taxed under this Title in respect to income received by them as such:

(A) x x x

x x x

(H) A non-stock and non-profit educational institution; 

X X X

Notwithstanding the provisions in the preceding paragraphs, the income of whatever kind and character of the foregoing organizations from any of their properties, real or personal, or from any of their activities conducted for profit regardless of the disposition made of such income, shall be subject to tax imposed under this Code.

12. No. 10 of Petitioner's Notes to Financial Statements for Fiscal Year ending 31 May 2003 reflected: i) loans payable balance of P19,700,000.00 to Social Security System until 29 October 2011; and ii) loans payable balance of P75,000,000.00 to Equitable PCIBank payable for 15 years or until 12 March 2018."

In his Answer⁷, filed on August 23, 2007, respondent interposed the following special and affirmative defenses⁸, to wit:

"6. The assessment is valid and correct and the petitioner has the burden of proof to impugn its validity (Behn Meyer & Co. vs. Collector of Internal Revenue, 27 Phil. 647). Thus, similarly held, tax assessments by examiners are presumed correct and made in good faith and the taxpayer has the duty to prove otherwise (Commissioner of Internal Revenue vs. Construction Resources of Asia, Inc., 145 SCRA 671); and assessments duly made by a BIR examiner and approved by her superior officers will not be disturbed (Gutierrez vs. Villegas, 8 SCRA 547).

7. The burden of proof is on the taxpayer contesting the validity or correctness of an

⁷ Division Docket, pp. 57-59

⁸ Answer, Division Docket, pp. 58-59

assessment to prove not only that the Commissioner of Internal Revenue is wrong but also that the taxpayer is right (Tan Guan vs. Court of Tax Appeals, et al., 19 SCRA 903 [1967]; Collector of Internal Revenue vs. Bohol Land Transportation Co., 107 Phil. 967 [1960]).

8. The BIR has issued Pre-Assessment Notice dated August 25, 2006 to Yaman Lahi Foundation, Inc. of 1113-1117 San Marcelino cor. Gonzales Streets, Paco, Manila and the same was duly received by the Petitioner. Other communications relative to the findings of the tax investigation, including Post Reporting Notices were also sent to Petitioner, thus, giving Petitioner an opportunity to respond/refute the same. In fact, Petitioner was able to file an administrative protest and eventually, a Petition for Review with the Court of Tax Appeals, concerning the disputed assessment."

On October 19, 2007, the parties submitted their Joint Stipulation of Facts⁹ which was subsequently approved by the Court per Resolution¹⁰ dated November 13, 2007.

The parties stipulated on the following issues for resolution of this Court:

(1) Whether or not the BIR's issuance of the FAN is null and void for failure to comply with the due process requirements, it having been issued prematurely since the BIR issued the same without awaiting for the lapse of the reglementary period for the Petitioner to file a protest against the PAN;

(2) Whether or not the FAN is bereft of legal and factual bases.

⁹ Division Docket, pp. 96-101

¹⁰ Ibid, p. 104

2.1 Whether or not the alleged deficiency income tax has factual and legal bases.

2.2 Whether or not it is proper for the BIR to impute interest income of P17,348,717.75.

2.3 Whether or not the alleged deficiency VAT has factual and legal bases.

2.4 Whether or not the alleged deficiency final income tax on interest income has factual and legal bases.

2.5 Whether or not the VAT and final income tax on interest income assessments have prescribed."

After presentation of its testimonial as well as documentary evidence, petitioner filed its Formal Offer of Evidence¹¹ on April 3, 2008. On April 29, 2008, respondent filed his Comment/Opposition to Petitioner's Formal Offer of Evidence¹². In a Resolution¹³ promulgated on May 21, 2008, the Court admitted petitioner's exhibits except Exhibits "A-2", "C-2", "D-2", "E-2", "F-2", "J-1" and "O-1" for failure of petitioner's counsel to have the same identified during trial; and, provisionally marked Exhibits "G-4", "J" and "J-1" for failure of petitioner's counsel to present the original for comparison.

On June 13, 2008, petitioner filed a Motion for Reconsideration¹⁴ seeking reconsideration of the Resolution dated May 21, 2008. 

¹¹ Division Docket, pp. 147-181

¹² Division Docket, pp. 182-185

¹³ Division Docket, pp. 188-189

¹⁴ Division Docket, pp. 194-201

On June 30, 2008, respondent filed his Comment/Opposition (To Petitioner's Motion for Reconsideration dated June 12, 2008)¹⁵.

On July 15, 2008, petitioner filed a Motion for Leave to File Reply (to Respondent's Comment/Opposition)¹⁶ which was granted by the Court in a Resolution¹⁷ promulgated on July 25, 2008. The same Resolution, likewise, granted petitioner's Motion for Reconsideration filed on June 13, 2008.

On July 29, 2008, petitioner filed an Omnibus Motion for Confirmation of Petitioner's Rights and Immunities Under the Tax Amnesty Act of 2007; Cancellation of Assessments; and Withdrawal of Petition for Review¹⁸ stating, among others, that it has availed of the tax amnesty under RA No. 9480 (Tax Amnesty Act of 2007) and praying that an Order be issued for: "i.) confirmation of Petitioner's rights and immunities under RA No. 9480 by confirming that all the issues are covered by RA No. 9480; ii.) cancellation of assessments; iii.) withdrawal of Petition for Review; and iv.) temporarily suspending the hearing of the case until this Omnibus Motion is resolved"¹⁹.

On August 13, 2008, respondent filed his Comment²⁰ (To Omnibus Motion for Confirmation of Petitioner's Rights and Immunities Under the Tax Amnesty 

¹⁵ Ibid, pp. 214-215

¹⁶ Ibid, pp. 218-219

¹⁷ Ibid, pp. 227-228

¹⁸ Ibid, pp. 229-234

¹⁹ Omnibus Motion for Confirmation of Petitioner's Rights and Immunities Under the Tax Amnesty Act of 2007; Cancellation of Assessments; and Withdrawal of Petition for Review, Prayer, Division Docket, p. 233

²⁰ Division Docket, pp. 250-251

Act of 2007; Cancellation of Assessments; and Withdrawal of Petition for Review) in compliance with the Order²¹ of the Court dated July 30, 2008.

On September 2, 2008, petitioner filed a Motion for Leave to File Reply²² (to Respondent's Comment) with attached Reply²³ (to Respondent's Comment).

On September 30, 2008, the Court promulgated a Resolution²⁴ the dispositive portion of which reads as follows:

"WHEREFORE, the present Petition for Review is hereby considered **WITHDRAWN**, insofar as petitioner's deficiency taxes on income tax, value-added tax and documentary stamp tax are concerned, subject to the provisions of RA 9480.

As regards the remaining issues on deficiency final withholding tax on interest income, let the initial presentation of the evidence for the respondent be set on October 15, 2008 at 9:00 a.m.

SO ORDERED."

On October 14, 2008, petitioner filed a Motion for Clarification and/or Partial Reconsideration²⁵ (Re: Resolution dated 30 September 2008). On November 4, 2008, respondent filed his Comment²⁶ (To Motion for Clarification 

²¹ Ibid, p. 244

²² Ibid, pp. 254-255

²³ Ibid, pp. 257-260

²⁴ Ibid, pp. 263-265

²⁵ Ibid, pp. 266-275

²⁶ Ibid, pp. 281-283

and/or Partial Reconsideration). Petitioner filed its Reply²⁷ (to Respondent's Comment) on November 26, 2008.

In a Resolution²⁸ promulgated on February 25, 2009, the Court denied petitioner's Motion for Clarification and/or Partial Reconsideration for lack of merit and set the initial presentation of the evidence for the respondent on March 9, 2009 at 9:00 a.m.

On March 26, 2009, petitioner filed an Omnibus Motion²⁹ (Re: Resolution dated 25 February 2009). Respondent filed his Comment³⁰ thereto on April 17, 2009. On April 28, 2009, petitioner filed a Motion to Admit Attached Reply³¹ (To Respondent's Comment dated 15 April 2009) together with attached Reply³² (To Respondent's Comment dated 15 April 2009).

In a Resolution³³ promulgated on May 29, 2009, the Court ruled as follows:

"WHEREFORE, premises considered, petitioner's "Omnibus Motion" is hereby **PARTLY GRANTED**. Accordingly, petitioner's deficiency assessments on its income tax, value-added tax, and documentary stamp tax are hereby **SET ASIDE** solely in view of petitioner's availment of the Tax Amnesty under RA 9480.

As regards the remaining deficiency amount on final withholding tax on interest income, let this case be set for 

²⁷ Ibid, pp. 284-291

²⁸ Ibid., pp. 294-297

²⁹ Ibid., pp. 299-310

³⁰ Ibid., pp. 313-314

³¹ Ibid., pp. 316-317

³² Ibid., pp. 319-326

³³ Ibid., pp. 329-332

commissioner's hearing before Atty. Jesus P. Inocando, Jr. on June 3, 2009 at 1:30 p.m. for the marking of respondent's documentary evidence. The initial presentation of evidence for the respondent is set on June 15, 2009 at 9:00 a.m."

On June 8, 2009, petitioner filed a Manifestation and Motion³⁴ stating therein that "it will elevate the denial of its Omnibus Motion (Re: Resolution dated 29 May 2009, to the Court of Tax Appeals *en banc*". Petitioner further prays that the proceedings in the instant case be held in abeyance until the Petition for Review to be filed by Petitioner is acted upon and resolved by the Court of Tax Appeals *En Banc*. Respondent filed his Comment/Opposition³⁵ (To Manifestation and Motion) on June 22, 2009.

On June 15, 2009, petitioner filed a Motion for Extension of Time To File Petition for Review³⁶ requesting for a fifteen (15) day extension or from June 16, 2009 to July 1, 2009, which Motion was granted by the Court *En Banc* in a Resolution³⁷ dated June 16, 2009.

On June 30, 2009, petitioner filed its Petition for Review³⁸ and on July 9, 2009, the Court *En Banc* promulgated a Resolution requiring the respondent to file his Comment on the Petition for Review.

The Court *En Banc*, in a Resolution³⁹ dated August 3, 2009, deemed the case "submitted for decision as of the date of promulgation of this resolution" 

³⁴ Ibid., pp. 335-339

³⁵ Ibid., pp. 343-344

³⁶ Ibid., pp. 384-396

³⁷ Ibid, p. 389

³⁸ Ibid, pp. 8-26

considering that, per verification with the Records Division dated July 29, 2009, no comment was filed by respondent within the given period”.

On July 27, 2009, respondent filed, through registered mail, his Comment/Opposition⁴⁰ (To Petition for Review). Petitioner filed its Motion to Admit Attached Reply⁴¹ (to Respondent’s Comment/Opposition dated 24 July 2009) and Reply⁴² (to Respondent’s Comment/Opposition dated 24 July 2009) on August 10, 2009.

On August 12, 2009, the Court *En Banc* promulgated a Resolution⁴³ setting aside the Resolution dated August 3, 2009; giving due course to the Petition for Review; and, requiring both parties to submit their respective memorandum within a non-extendible period of thirty (30) days from receipt of the Resolution, and, after which period, the instant Petition for Review shall be considered submitted for decision with or without such memoranda. Both parties filed their respective memorandum on September 22, 2009.

Hence, this Decision.

The issues can be simplified as follows:

“WHETHER OR NOT THE SECOND DIVISION
OF THE COURT OF TAX APPEALS COMMITTED
ERRORS OF LAW AND FACT WHEN IT RULED THAT
THE ALLEGED FINAL TAX ON PETITIONER’S

³⁹ Ibid, p. 308

⁴⁰ Ibid, pp. 309-310

⁴¹ Id., pp. 313-314

⁴² Id., pp. 316-320

⁴³ Id., p. 323

INTEREST INCOME (WHICH IS THE PAYOR'S/BANK'S
WITHHOLDING RESPONSIBILITY) IS NOT COVERED
BY RA NO. 9480."

Petitioner contends that the alleged deficiency final tax on interest income is covered by RA No. 9480 (The Tax Amnesty Law) considering that petitioner is not the withholding agent thereof.

In support of its contention, petitioner cites the provisions of Section 8 of RA No. 9480 in relation to Section 27(D)(1) of the 1997 Tax Code and Section 2.57 of Revenue Regulations No. 2-98.

Respondent, on the other hand, argues that "withholding tax liabilities are excepted from the coverage of the Tax Amnesty as provided in Section 8(1) of RA No. 9480, implementing regulations and revenue issuances. Hence, the said deficiency final tax, being in the nature of a withholding tax, is not covered by the petitioner's tax amnesty availment.

After a careful and thorough evaluation and consideration of the records of the case, the CTA *En Banc* finds no merit in the Petition.

The arguments raised by the petitioner in the instant Petition for Review are mere reiterations of its arguments in its Omnibus Motion (Re: Resolution dated 25 February 2009). 

In the Assailed Resolution⁴⁴ dated February 25, 2009, the CTA *Second Division* stated that:

"This Court must also stress that petitioner's deficiency final withholding tax on interest income is exempt from the application of RA 9480. Hence, trial on the merits is necessary for the determination of the issues involved." (Underscoring supplied)

Also, in the Assailed Resolution⁴⁵ dated May 29, 2009, the *Second Division* ruled as follows:

"x x x. Section 7 of Rule 15 of the Revised Rules of the Court of Tax Appeals provides that 'no party shall be allowed to file a second motion for reconsideration or for new trial of a decision, final resolution or order'. The Resolution dated February 23, 2009 (sic) is merely interlocutory in nature, and not a final resolution or decision disposing of the case; hence, the prohibition on the filing of a second motion for reconsideration does not apply." (Underscoring supplied)

Considering that the CTA *Second Division* has not yet disposed of the issue on petitioner's deficiency final withholding tax on interest income with finality since the hearing of the case, for reception of respondent's evidence, is still on-going, the filing of the instant Petition for Review is still premature. *ea*

⁴⁴ Division Docket, pp. 294-296

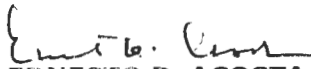
⁴⁵ Ibid, pp. 329-332

WHEREFORE, premises considered and finding no reversible error in the assailed Resolutions dated September 30, 2008, February 25, 2009 and May 29, 2009, of the CTA *Second Division*, the instant Petition for Review is hereby **DISMISSED** for lack of merit.

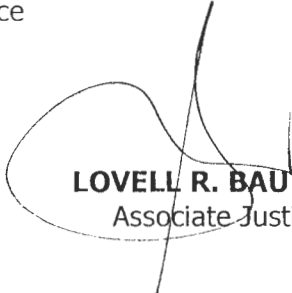
SO ORDERED.


CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

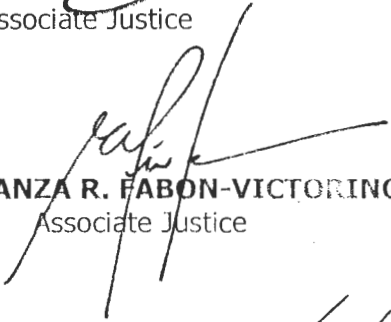

ERNESTO D. ACOSTA
Presiding Justice


JUANITO C. CASTANEDA, JR.
Associate Justice

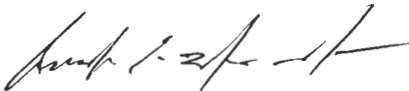

LOVELL R. BAUTISTA
Associate Justice


ERLINDA P. UY
Associate Justice


OLGA PALANCA-ENRIQUEZ
Associate Justice

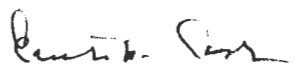

ESPERANZA R. FABON-VICTORINO
Associate Justice


CIELITO N. MINDARO GRULLA
Associate Justice


AMELIA C. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *en banc* before the case was assigned to the writer of the opinion of the Court.


ERNESTO D. ACOSTA
Presiding Justice