

FIRST DIVISION**[G.R. No. 173373, July 29, 2013]****H. TAMBUNTING PAWNSHOP, INC., PETITIONER, VS.
COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.****D E C I S I O N****BERSAMIN, J.:**

To be entitled to claim a tax deduction, the taxpayer must competently establish the factual and documentary bases of its claim.

Antecedents

H. Tambunting Pawnshop, Inc. (petitioner), a domestic corporation duly licensed and authorized to engage in the pawnshop business, appeals the adverse decision promulgated on April 24, 2006,^[1] whereby the Court of Tax Appeals *En Banc* (CTA *En Banc*) affirmed the decision of the CTA First Division ordering it to pay deficiency income taxes in the amount of P4,536,687.15 for taxable year 1997, plus 20% delinquency interest computed from August 29, 2000 until full payment, but cancelling the compromise penalties for lack of basis.

On June 26, 2000, the Bureau of Internal Revenue (BIR), through then Acting Regional Director Lucien E. Sayuno of Revenue Region No. 6 in Manila, issued assessment notices and demand letters, all numbered 32-1-97, assessing Tambunting for deficiency percentage tax, income tax and compromise penalties for taxable year 1997,^[2] as follows:

Deficiency Percentage Tax

Taxable Sales/Receipts	P12,749,135.25
	=====
Percentage Tax due (5%)	P 637,456.76
Add: 20% Interest up to 7-26-00	320,513.24

Total Percentage Tax Due	P 957,970.00
	=====

Deficiency Income Tax

Taxable Net Income per Return	P 54,107.36
Adjustments per investigation Section 28	
Overstatement of gain/loss on auction sales	
Gain/Loss per F/S	P 4,914,967.50

Gain/Loss per Audit	133,057.40	4,781,910.00

Unsupported Security/Janitorial Expenses		
Per F/S	2,183,573.02	
Per Audit	358,800.00	1,824,773.02

Unsupported Rent Expenses		
Per F/S	2,293,631.13	
Per Audit	434,406.77	1,859,224.35

Unsupported Interest Expenses		1,155,154.28
Unsupported Management & Professional Fees		96,761.00
Unsupported Repairs & Maintenance		348,074.68
Unsupported 13th Month Pay & Bonus		317,730.73
Disallowed Loss on Fire & Theft		906,560.00

Taxable Net Income per Investigation		P 11,344,295.43
		=====
Income Tax Due (35%)		P 3,970,503.40
Less Income Tax Paid		18,937.57

Deficiency Income Tax		3,951,565.83
Add: 20% Interest to 7-26-00		1,799,938.23

Total Income Tax Due		5,751,504.06
		=====
Compromise Penalties		
Late Payment of Income Tax		25,000.00
Late Payment of Percentage Tax 20,000.00		
Failure to Pay Withholding Tax Return for the Months of April and May		24,000.00

		69,000.00
		=====

On July 26, 2000, Tambunting instituted an administrative protest against the assessment notices and demand letters with the Commissioner of Internal Revenue. [3]

On February 21, 2001, Tambunting brought a petition for review in the CTA, pursuant to Section 228 of the *National Internal Revenue Code of 1997*, [4] citing the inaction of the Commissioner of Internal Revenue on its protest within the 180-day period prescribed by law.

On October 8, 2004, the CTA First Division rendered a decision, the pertinent portion

of which is hereunder quoted, to wit:

In view of all the foregoing verification, petitioner's allowable deductions are summarized below:

<u>Particulars</u>	<u>Per Petitioner's Financial Statement</u>	<u>Per BIR's Examination</u>	<u>Per Court's Verification</u>
Loss on Auction Sale	P 4,914,967.50	P 133,057.40	P 133,057.40
Security & Janitorial Services	2,183,573.02	358,800.00	736,044.26
Rent	2,293,631.13	434,406.77	642,619.10
Expense			
Interest	1,155,154.28	-	1,155,154.28
Expense			
Professional & Management Fees	96,761.00	-	-
Repairs & Maintenance	348,074.68	-	329,399.18
13 th Month pay & Bonuses	317,730.73	-	317,730.73
Loss on Fire	906,560.00	-	-
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	-		
Total	P 12,216,452.34	P 926,264.17	P 3,314,004.95
	=====		=====

Apparently, petitioner is still liable for deficiency income tax in the reduced amount of P4,536,687.15, computed as follows:

Net Income Per Return		P 54,107.36
Add: Overstatement of Gain/Loss on Auction Sales		
Gain/Loss on Auction Sales per F/S	P4,914,967.50	
Gain/Loss on Auction Sales per Court's Verification	133,057.40	4,781,910.00

Unsupported Security/Janitorial Services		
Security, Janitorial Services per F/S	P2,183,573.02	
Security, Janitorial Services per Court's Verification	736,044.26	1,447,528.76

Unsupported Rent Expenses		
Rent Expenses per F/S	P2,293,631.13	
Rent Expenses per Court's Verification	642,619.10	1,651,012.03

Unsupported Management & Professional Fees		96,761.00
Unsupported Repairs & Maintenance (P348,074.68 - P329,399.18)		18,675.50
Disallowed Loss on Fire & Theft		906,560.00

Net Income		P 8,956,554.65
		=====
Income Tax Due Thereon		P 3,134,794.13
Less: Amount Paid		18,937.57

Balance		P 3,115,856.56
Add: 20% Interest until 7-26-00		1,420,830.59

TOTAL INCOME TAX DUE		P4,536,687.15
		=====

WHEREFORE, petitioner is ORDERED to PAY the respondent the amount of P4,536,687.15 representing deficiency income tax for the year 1997, plus 20% delinquency interest computed from August 29, 2000 until full payment thereof pursuant to Section 249 (C) of the National Internal Revenue Code. However, the compromise penalties in the sum of P49,000.00 is hereby CANCELLED for lack of legal basis.

SO ORDERED.^[5]

After its motion for reconsideration was denied for lack of merit on February 18, 2005,^[6] Tambunting filed a petition for review in the CTA En Banc, arguing that the First Division erred in disallowing its deductions on the ground that it had not substantiated them by sufficient evidence.

On April 24, 2006, the CTA *En Banc* denied Tambunting's petition for review,^[7] disposing:

WHEREFORE, the Court *en banc* finds no reversible error to warrant the reversal of the assailed Decision and Resolution promulgated on October 8, 2004 and February 11, 2005, respectively, the instant Petition for Review is hereby DISMISSED. Accordingly, the aforesaid Decision and Resolution are hereby AFFIRMED *in toto*.

SO ORDERED.

On June 29, 2006, the CTA *En Banc* also denied Tambunting's motion for reconsideration for its lack of merit.^[8]

Issues

Hence, this appeal by petition for review on *certiorari*.

Tambunting argues that the CTA should have allowed its deductions because it had been able to point out the provisions of law authorizing the deductions; that it proved its entitlement to the deductions through all the documentary and testimonial evidence presented in court;^[9] that the provisions of Section 34 (A)(1) (b) of the 1997 *National Internal Revenue Code*, governing the types of evidence to prove a claim for deduction of expenses, were applicable because the law took effect during the pendency of the case in the CTA;^[10] that the CTA had allowed deductions for ordinary and necessary expenses on the basis of cash vouchers issued by the taxpayer or certifications issued by the payees evidencing receipt of interest on loans as well as agreements relating to the imposition of interest;^[11] that it had thus shown beyond doubt that it had incurred the losses in its auction sales;^[12] and that it substantially complied with the requirements of Revenue Regulations No. 12-77 on the deductibility of its losses.^[13]

On December 5, 2006, the Commissioner of Internal Revenue filed a comment,^[14] stating that the conclusions of the CTA were entitled to respect,^[15] due to its being a highly specialized body specifically created for the purpose of reviewing tax cases;^[16] and that the petition involved factual and evidentiary matters not reviewable by the Court in an appeal by *certiorari*.^[17]

On March 22, 2007, Tambunting reiterated its arguments in its reply.^[18]

Ruling

The petition has no merit.

At the outset, the Court agrees with the CTA *En Banc* that because this case involved assessments relating to transactions incurred by Tambunting prior to the effectivity of Republic Act No. 8424 (*National Internal Revenue Code of 1997*, or NIRC of 1997), the provisions governing the propriety of the deductions was Presidential Decree 1158 (NIRC of 1977). In that regard, the pertinent provisions of Section 29 (d) (2) & (3) of the NIRC of 1977 state:

x x x x

(2) By corporation. — In the case of a corporation, all losses actually sustained and charged off within the taxable year and not compensated for by insurance or otherwise.