REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FIRST DIVISION

PLATINUM PLANS, PHIL. INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 7878

Members:

ACOSTA, *Chairperson*
UY, *and*
FABON-VICTORINO, *JJ.*

Promulgated:

SEP 07 2011 ; 2:00 pm

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DECISION

UY, J.:

This is a Petition for Review filed by Platinum Plans, Phil., Inc., seeking (1) the cancellation of its deficiency withholding tax assessment in the total amount of ₱ 13,493,140.17, inclusive of penalties, for taxable year 2002, and (2) the lifting of the Warrants of Garnishment issued by respondent against its bank accounts.

THE FACTS

Petitioner Platinum Plans, Phil, Inc. is a corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal business address at Unit 1005 Tektite West Tower, PSE Center, Exchange Road, Pasig City.

It is registered with the Bureau of Internal Revenue (BIR) under Taxpayer Identification Number (TIN) 000-512-613-000 on June 27, 1994.[1]

Respondent is the Commissioner of the BIR, duly appointed and empowered to perform the duties of her office, including, among others, the power to decide, cancel and abate the tax liabilities, pursuant to Section 204(B) of the National Internal Revenue Code (NIRC) of 1997. She holds office at the BIR National Office Building, Diliman, Quezon City.[2]

On April 3, 2007, petitioner received from respondent a Preliminary Assessment Notice covering taxable year 2002, finding petitioner liable for the following:[3]

DEFICIENCY	AMOUNT
Income Tax	₱ 52,627,861.17
Value-added Tax	₱ 367,557,600.00
Documentary Stamp Tax	₱ 3,728,271.97
Expanded Withholding Tax	₱ 7,012,004.87
Withholding Tax on Compensation	₱ 6,368,368.24
Penalties on Late Remittances	₱ 87,767.06
Compromise Penalty	₱ 75,000.00

Subsequently, a Formal Letter of Demand dated April 4, 2007 was later issued by respondent against petitioner. The said Formal Letter of Demand, which was received by petitioner on December 11, 2007, states the following tax liabilities:[4]

A. DEFICIENCY INCOME TAX				
Taxable Income per FS				₱ 3,559,692.00
Add:	Disallowed expense			
	1.	Salaries & wages - not subjected to withholding tax (Note I)	₱ 61,827,480.00	
	2.	Income payments not subjected to EWT (Note VI)	52,110,467.50	

[1] Joint Stipulation of Facts and Issues (JSFI), Par. 1, Facts Admitted, Docket, p. 153. Exhibits "A" and "B".
[2] JSFI, Par. 2, Facts Admitted, Docket, pp. 153 to 154.
[3] JSFI, Par. 3, Facts Admitted, Docket, p. 154. Exhibit "C".
[4] JSFI, Par. 4, Facts Admitted, Docket, p. 154. Exhibit "D".

	3.	Transfer of revaluation increment in Property & equipment acquired from Trust Fund	32,068,659.00	
	4.	Donation - excess of limitation allowed by law (Note II)	36,502.60	
	5.	Professional Fee - (Note III)	624,133.25	146,667,242.35
Net Income per investigation				₱ 150,226,934.35
Rate of Tax				32%
Tax Due				₱ 48,072,618.09
Less:	Tax credit/paid			
	Tax Paid per tentative return		₱ 781,208.00	
	Excess carry over prior year		23,813.00	
	Quarterly Payment		65,634.00	
	Excess MCIT		246,067.00	1,116,722.00
Basic				₱ 46,955,896.09
Interest up to May 15, 2007				38,034,276.56
Compromise				25,000.00
Total Income Tax Deficiency				**₱ 85,015,173.56**
B. DEFICIENCY VALUE-ADDED TAX (VAT)				
Per FS				
	Gross Receipts for the year (Note V)		₱ 2,258,283,285.00	
	Less:	Trust Fund deposited/accrued Increase/decrease (ARL)-Trust Fund expense	152,307,136.00	
				₱ 2,105,976,149.00
	PPD Income		₱ 10,081,747.00	
	Amendment Fee		4,147,554.00	
	Other Income		816,749.00	15,046,050.00
	Other operating Income			
		Entrance processing fee		1,224,870.00
	Total VATable Transaction			₱ 2,122,247,069.00
	Less:	Income subjected to VAT per VAT Returns		80,399,291.22
	Income not subjected to VAT			₱ 2,041,847,777.78
	Rate of VAT			10%
	Income not subjected to VAT			₱ 204,184,777.78
	Interest up to May 20, 2007			179,682,604.44
	Compromise			25,000.00
	Total Deficiency VAT			**₱ 383,892,382.22**
C. DEFICIENCY DOCUMENTARY STAMP TAX (DST)				
	Per FS (Monthly Balances)			
		Installment Contract Receivable (DR) (Total Contract Amount for the Year) – Note IV		₱ 2,305,003,402.00
	DST Rate			.001
	DST Due			₱ 2,305,003.40
	DST paid per Forms 2000			224,513.53
	Basic DST Due			₱ 2,080,489.87

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	Interest up to May 15, 2007		1,789,221.29
	Compromise		25,000.00
	Total Deficiency DST Due		**₱ 3,894,711.16**

D. DEFICIENCY WITHHOLDING TAX		
1. DEFICIENCY ON EXPANDED WITHHOLDING TAX (EWT)		
a. Per FS		
Commission	₱ 40,257,558.00	
Rate of Tax	10%	
Withholding Tax Due	₱ 4,025,755.80	
Per Alpha list		
Less w/holding tax on:		
Brokers & agents ₱ 115,751.96		
Insurance adjusters 550,297.43	666,049.39	
Basic		₱ 3,359,706.41
b. Per FS		
Advertising Expense	₱ 6,790,225.00	
Repairs & Maintenance	2,088,477.00	
Security, Janitorial, Messengerial & Clerical Service	6,286,123.00	
	₱ 15,164,825.00	
Rate	2%	
Withholding Tax Due		303,296.50
c. Per FS		
Rentals	₱ 16,040,244.00	
Rentals per Alpha list	13,584,027.50	
	₱ 2,456,216.50	
Rate	5%	
Withholding Tax Due		122,810.83
d. Per FS		
Director's Fee	₱ 390,025.00	
Rate	10%	
Withholding Tax Due		39,002.50
e. Per FS		
Prizes/Award	₱ 502,337.00	
Rate	20%	
Withholding Tax Due		100,467.40
Total Withholding Tax (Basic)		**₱ 3,925,283.64**
Interest up to May 10, 2007		3,375,743.93
Compromise		25,000.00
Total Deficiency EWT		**₱ 7,326,027.56**
2. DEFICIENCY WITHHOLDING TAX ON COMPENSATION		
Per Alpha list		
Total Amount of tax withheld on compensation		₱ 3,592,291.38

Tax consequences of taxable compensation per alpha list where no tax had been withheld		1,315,584.24
Total tax that should have been withheld		₱ 4,907,875.62
Per Withholding Tax Return (Form 1601C)		
Total Amount Paid		1,345,134.04
Basic		₱ 3,562,741.58
Interest up to May 10, 2007		3,074,645.98
Compromise		16,000.00
Total Deficiency Withholding tax on Compensation		**₱ 6,653,387.56**
3. PENALTIES ON LATE REMITTANCES		
1. Late Payment should be remitted October 10, 2002		
September withholding tax on compensation,		
paid on October 11, 2002	₱ 108,545.22	
Surcharge		₱ 27,136.31
Interest		60.30
Compromise		16,000.00
Total Amount Due		₱ 43,196.60
2. Late Payment should be remitted October 10, 2002		
September withholding tax on EWT,		
paid on October 11, 2002	₱ 114,028.48	
Surcharge		₱ 28,507.12
Interest		63.34
Compromise		16,000.00
Total Amount Due		₱ 44,570.46
TOTAL PENALTIES DUE		**₱ 87,767.06**
E. COMPROMISE PENALTY		
1. Late filing & payment 3rd quarter ITR		₱ 25,000.00
2. Non-filing of alpha list on compensation & EWT – Form 1604CF & 1604E		25,000.00
3. Schedule of Input & Output Taxes		25,000.00
Total		**₱ 75,000.00**

Thirty-one (31) days after said Formal Letter of Demand was received by petitioner, or on January 11, 2008, petitioner opposed the same by filing a Letter of Protest.[5]

On February 13, 2008, petitioner availed of the tax amnesty pursuant to Republic Act (R.A.) No. 9480, and paid its tax amnesty liability with BDO-EPCI, Inc., Bel-Air-Gil Puyat Branch.[6]

[5] JSFI, Par. 5, Facts Admitted, Docket, p. 154. Exhibit "E".

On February 4, 2009 and February 6, 2009, respondent respectively issued Warrants of Garnishment (Nos. 217 and 219) addressed to the Head Office and all branches of Banco de Oro (BDO) and of Bank of the Philippine Islands (BPI), stating that there is due from petitioner the sum of ₱ 486,944,448.83 as deficiency internal revenue taxes.[7]

After being informed of respondent's Warrants of Garnishment, petitioner, on March 2, 2009, visited respondent's office and was informed that its protest letter dated January 8, 2008 over the Formal Letter of Demand was denied.[8]

On March 6, 2009, petitioner filed the instant Petition for Review.

In her Answer,[9] respondent made the following Special and Affirmative Defenses:

> "6. The assessment for the year 2002 for deficiency Income Tax (IT), Value-Added Tax (VAT), Documentary Stamp Tax, and Withholding Tax (WT) were issued in accordance with law and regulations.
>
> 7. Respondents respectfully submits that this Honorable Court has no jurisdiction to entertain this instant case in view of petitioner's failure to comply with the period required by law in filing AN administrative protest pursuant to Revenue Regulation No. 12-99, implementing Section 228 of the 1997 Tax Code, specifically Section 3.1.5 of said regulation. The said rules provides that the 'taxpayer or his duly authorized representative may protest administratively against the Formal Letter of Demand and Assessment Notices within thirty (30) days from the date of receipt thereof'.
>
> In this case, petitioner failed to file administrative protest within thirty (30) days from the date of receipt of respondent's Formal Letter of Demand (FLD) and Assessment Notices (FAN). Petitioner alleges in its petition for review that it had receipt of respondent's FAN and FLD on December 11, 2007 and filed its protest on January 11, 2008. Petitioner's admission shows that its administrative protest was filed thirty one (31) days after the receipt of respondent's FAN and FLD. Clearly, the 30 day reglementary period within which to file a protest had already lapsed. Petitioner should file its administrative protest **on or before January 10, 2008**, counting 30 days from receipt thereof on December 11, 2007. Hence, petitioner's deficiency internal

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[6] JSFI, Par. 6, Facts Admitted, Docket, p. 154. Exhibits "F", "G", "H" and "J".
[7] JSFI, Pars. 7 and 8, Facts Admitted, Docket, pp. 154 to 155. Exhibits "L" and "M".
[8] Exhibit "Q".
[9] Docket, pp. 97 to 106.

revenue taxes become final, executory and demandable, and respondent had legal basis for the issuance of a Warrant of Garnishment against petitioner's bank accounts.

8. Petitioner's availment and full compliance with the conditions of tax amnesty pursuant to Republic Act No. 9480 have no effect on petitioner's deficiency internal revenue tax assessments where the same have become final, executory and demandable on January 11, 2008 prior to the filing of petitioner its application of tax amnesty program of the government on February 13, 2008. Respondent's deficiency tax assessments are already accounts receivable of respondent or assets of the government as provided under Question 4 and Answer 4 of Revenue Memorandum Order No. 69-2007, which provides basic questions and answers to clarify the issues concerning the Tax Amnesty Program under Republic Act No. 9480.

9. Petitioner argues that respondent's right to assess petitioner's deficiency internal revenue tax assessment has already prescribed as provided for under Section 203 of the 1997 Tax Code.

Respondent begs to disagree.

The right of the respondent to assess petitioner for deficiency Income Tax (IT), Value-Added Tax (VAT) Documentary Stamp Tax (DST) and Withholding Tax (WT) for the year 2002 has not prescribed pursuant to Section 222(a) of the 1997 Tax Code; thus:

> '**SEC. 222.** ***Exceptions as to Period of Limitation of Assessment and Collection of Taxes. -***
>
> (a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission: Provided, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof. (underscoring supplied)
>
> (b) xxx xxx xxx
>
> (c) xxx xxx xxx
>
> (d) xxx xxx xxx
>
> (e) xxx xxx xxx.'

The abovementioned provision finds application to the present case because respondent discovered that petitioner made a false return with intent to evade taxes and failure to file returns based on the result of the investigations made by respondent's revenue officers on the books of accounts and pertinent records and documents submitted by petitioner. Respondent's revenue officers audit findings are as follows:

A. Deficiency, Income Tax

1. Petitioner failed to withhold taxes on Salaries and Wages leads respondent's revenue officers to disallow the amount of P61,827,480.00 in accordance with Section 34(K) of the 1997 Tax Code.

2. Portions of Donations in the amount P429,411.16 was disallowed in excess of the limitation allowed under Section 34 (H)(1) of the 1997 Tax Code.

3. Professional fees in the amount of P624,133.25 which was subjected to withholding taxes but was not declared as expense was considered as underdeclared income sales.

4. Transfer of revaluation increment in property & equipment which represents an increase in the value of the assets, was recognized in the Retained Earnings but not in the income account. Since no recognition was made in the income account, the property if later sold would be valued based on the increase value since original value cannot be traced due to transfer of revaluation increment in property & equipment. Such being the case, Transfer of revaluation increment in property and equipment was disallowed to collect taxes on such increases, as this increase cannot be traceable if property is later sold.

B. Deficiency Value-Added Tax (VAT)

As non-life insurance company, petitioner is subject to value added taxes on its gross receipts pursuant to Section 108 (A) of the 1997 Tax Code. Verification disclosed that petitioner failed to subject all its income to value added taxes in the amount of P2,041,847,777.78.

C. Deficiency Documentary Stamp Taxes (DST)

On pre-need plans, the value or amount of plan is subjected to DST pursuant to Section 186 of the 1997 Tax Code. Respondent discovered petitioner has been deficient in paying DST in the amount of P2,080,489.87.

D. Deficiency Withholding Tax

Going over the tax compliance as withholding taxes concern, it was discovered that there are some income payments which petitioner failed to withhold in pursuant to Revenue Regulation No. 2-98 and Revenue Regulations No. 6-2001 as amended. Likewise, it was also discovered that petitioner failed to withhold taxes on compensation, such being the case, taxes due together with the penalties shall be collected from the petitioner in accordance with Section 80(A) of the 1997 Tax Code.

Based on the above findings, it was disclosed that petitioner's 2002 Income Tax Return (ITR) was false because petitioner did not present substantial documentary evidence to contest the disallowance of the abovementioned expenses. Respondent's findings indicate that petitioner had a manifest intent to evade its true taxable income in order to pay lesser income tax. Respondent's investigation also disclosed that petitioner had undeclared taxable income in the total amount of P98,509,375.41 as compared to taxable income declared in its 2002 financial statements in the amount of P3,559,692.00. Thus, for the year 2002, petitioner filed a false annual income return **with intent to evade tax.**

Likewise, petitioner evidently failed to file Value-Added Tax (VAT) Returns and report the amount of P2,258,283,285.00 as its gross sales for the year 2002. It is also failed to file DST returns and its payment amounting to P2,080,489.87, and WT returns and payment of its deficiency expanded withholding taxes in the amount of P3,925,283.64, and deficiency withholding tax on compensation in the amount of P3,562,741.58. Hence, for **failure to file VAT, DST, and WT returns and for filing a false income tax return for the year 2002, the corresponding taxes may be assessed at any time within ten (10) years after the discovery of such omission or fraud** pursuant to Section 222(a) of the 1997 Tax Code.

10. Respondent further submits that Section 203 of the 1997 Tax Code does not apply to petitioner's deficiency withholding tax assessments because petitioner was not assessed for internal revenue taxes directly related in the operation of its business, but for its liability as withholding agent for failure to withhold, account for and remit the deficiency expanded and compensation withholding taxes as required by Revenue Regulation No. 2-98 and Revenue Regulations No. 6-2001 as amended.

Moreover, there is nothing under the 1997 Tax Code that provides for the period of limitation to assess withholding agents for failure to withhold, account for and remit any tax imposed by the said tax code.

> 11. The presumptions, therefore, that respondent's deficiency internal revenue tax assessments against petitioner is correct and made in good faith should apply and be given weight and consideration."

In the proceedings before this Court, petitioner presented testimonial and documentary evidence in support of its petition, while respondent's counsel, Atty. Leo Mauricio, manifested that he will not present any evidence for respondent.[10]

Upon submission of petitioner Memorandum[11] on September 13, 2010 and respondent's Manifestation[12] stating that respondent intends to adopt the relevant facts, proceedings, issue, and discussion declared in her Answer, this case was submitted for decision in the Resolution dated September 20, 2010.[13]

Hence, this Decision.

THE ISSUES

The parties submitted the following issues[14] for this Court's resolution:

> "1. Whether or not the respondent's right to assess petitioner's deficiency tax has already prescribed.
>
> 2. Whether or not the petitioner's alleged deficiency taxes, save withholding taxes, should be deemed moot and academic due to petitioner's availment of Tax Amnesty.
>
> 3. Whether or not respondent has legal basis for the issuance of Writs of Garnishment against petitioner.
>
> 4. Whether or not the findings of the Respondent that gave rise to the Assessment is valid."

Considering the legal effects of a valid availment of the Tax Amnesty under R.A. No. 9480 by petitioner, this Court will first resolve the second issue.

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[10] Minutes of hearing held on July 13, 2010, Docket, p. 214.
[11] Docket, pp. 226 to 251.
[12] Docket, pp. 252 to 255.
[13] Docket, p. 257.
[14] Docket, p. 155.

Petitioner's arguments

Petitioner argues that the right of the respondent to assess deficiency taxes against petitioner has already prescribed; that its alleged deficiency taxes, save withholding taxes, should be deemed moot and academic due to its availment of tax amnesty; that respondent has no legal basis for the issuance of writs of garnishment against petitioner; and that the findings of respondent that gave rise to the assessment are invalid.

Respondent's counter-arguments

Respondent contends, in her Answer, that the subject assessments have become final, executory and demandable. Thus, this Court is allegedly without jurisdiction to entertain the present appeal; and the availment of petitioner, and its full compliance with the conditions, of tax amnesty under R.A. No. 9480 is of no moment because said assessments are already deemed accounts receivable of the BIR or assets of the government.

Furthermore, according to respondent, the applicable prescriptive period for the subject assessments is ten (10) years, pursuant to Section 222(a) of the NIRC of 1997. And finally, respondent asserts that anent the deficiency withholding tax assessments, Section 203 of the NIRC of 1997 is not applicable.

THE COURT'S RULING

Availment of tax amnesty under R. A. No. 9480.

Section 6 of R.A. No. 9480 provides as follows:

> "SEC. 6. *Immunities and Privileges.*— **Those who availed themselves of the tax amnesty under Section 5 hereof, and have fully complied with all its conditions** shall be entitled to the following immunities and privileges:

(a) **The taxpayer shall be immune from the payment of taxes, as well as additions thereto, and the appurtenant civil, criminal or administrative penalties under the National Internal Revenue Code of 1997, as amended, arising from the failure to pay any and all internal revenue taxes** for taxable year 2005 **and prior years**.

(b) The taxpayer's Tax Amnesty Return and the SALN as of December 31, 2005 shall not be admissible as evidence in all proceedings that pertain to taxable year 2005 and prior years, insofar as such proceedings relate to internal revenue taxes, before judicial, quasi-judicial or administrative bodies in which he is a defendant or respondent, and except for the purpose of ascertaining the networth beginning January 1, 2006, the same shall not be examined, inquired or looked into by any person or government office. However, the taxpayer may use this as a defense, whenever appropriate, in cases brought against him.

(c) The books of accounts and other records of the taxpayer for the years covered by the tax amnesty availed of shall not be examined: *Provided*, That the Commissioner of Internal Revenue may authorize in writing the examination of the said books of accounts and other records to verify the validity or correctness of a claim for any tax refund, tax credit (other than refund or credit of taxes withheld on wages), tax incentives, and/or exemptions under existing laws.

All these immunities and privileges shall not apply where the person failed to file a SALN and the Tax Amnesty Return, or where the amount of networth as of December 31, 2005 is proven to be understated to the extent of thirty percent (30%) or more, in accordance with the provisions of Section 3 hereof." *(Emphases supplied)*

It is clear from the foregoing that only those who (1) availed themselves of the tax amnesty, and (2) have complied with all its conditions, shall be entitled to the immunities and privileges stated in the law.

During trial, in support of its tax amnesty availment, petitioner submitted and formally offered in evidence the following documents:

Description	Exhibit
Notice of Availment of Tax Amnesty	"F"
BDO BTR-BIR Deposit Slip	"G"
Tax Amnesty Payment Form (BIR Form No. 0617)	"H"
Tax Amnesty Return (BIR Form No. 2116)	"I"
Statement of Assets, Liabilities and Networth (SALN) as of December 31, 2005	"J"
Audited Financial Statements as of December 31, 2005	"K"

However, in the Resolution dated May 6, 2010,[15] this Court denied the admission of Exhibits "I" and "K" due to petitioner's failure to present the originals thereof for comparison. Nevertheless, the Court notes in respondent's Comment to petitioner's Formal Offer of Evidence, no objection to the admission to Exhibits "I" and "K" were interposed therein. We quote the pertinent paragraph in said Comment, to wit:

> "3. He interposes no objection to the admission of exhibits "A", "B", "C", "D", "E", "F", "G", "H", "I", "J", "K", "L", "M", "N", "O". "P", "Q", "R-1 to R-9", "S-1 to S-12", "U", "W", "Y", "Y-1", "Z", and "Z-1", without however, admitting their relevancy, materiality and probative value and the validity of the purposes for which said exhibits are offered in evidence."[16]

Moreover, absence of the originals of said Exhibits should not be considered as an indication that petitioner failed to establish its entitlement to the privileges and immunities stated in R.A. No. 9480, since respondent herself effectively admitted that petitioner availed, and have fully complied with the conditions, of the tax amnesty under R.A. No. 9480, to wit:

> "8. **Petitioner's availment and full compliance with the conditions of tax amnesty pursuant to Republic Act No. 9480** have no effect on petitioner's deficiency internal revenue tax assessments where the same have become final, executory and demandable on January 11, 2008 prior to the filing of petitioner its application of the tax amnesty program of the government on February 13, 2008. Respondent's deficiency tax assessments are already accounts receivable of respondent or assets of the government as provided for under Question 4 and Answer 4 of Revenue Memorandum Order No. 69-2007, which provides basic questions and answers to clarify the issues concerning the Tax Amnesty Program under Republic Act No. 9480."[17] *(Emphasis supplied)*

Thus, while it was admitted that petitioner availed of and have fully complied with the conditions of the tax amnesty, respondent takes the stand that such

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[15] Docket, pp. 209 to 210.
[16] Comment to Petitioner's Formal Offer of Evidence, Docket, pp. 203-204, at p. 204
[17] Answer, Par. 8, Docket, p. 100.

circumstances have no legal effect since the subject deficiency tax assessments are already accounts receivable of respondent or assets of the government.

The pertinent question then is this: is respondent correct in claiming that these supposed "accounts receivable" are beyond, or excluded from, the coverage of the tax amnesty under R.A. No. 9480, so as not to entitle the taxpayer, who availed and have fully complied with the conditions thereof, from the privileges and immunities stated therein?

We rule in the negative.

Section 8 of R.A. No. 9480 is clear as to whom and in what cases shall the tax amnesty not extend to. Said Section reads:

> "SEC. 8. *Exceptions*.— The tax amnesty provided in Section 5 hereof shall not extend to the following persons or cases existing as of the effectivity of this Act:
>
> (a) Withholding agents with respect to their withholding tax liabilities;
>
> (b) Those with pending cases falling under the jurisdiction of the Presidential Commission on Good Government;
>
> (c) Those with pending cases involving unexplained or unlawfully acquired wealth or under the Anti-Graft and Corrupt Practices Act;
>
> (d) Those with pending cases filed in court involving violation of the Anti-Money Laundering Law;
>
> (e) Those with pending criminal cases for tax evasion and other criminal offenses under Chapter II of Title X of the National Internal Revenue Code of 1997, as amended, and the felonies of frauds, illegal exactions and transactions, and malversation of public funds and property under Chapters III and IV of Title VII of the Revised Penal Code; and
>
> (f) Tax cases subject of final and executory judgment by the courts."

As can be gleaned from the foregoing provision, the so-called "accounts receivable" is not one of the exceptions to the tax amnesty under RA 9480.

For being contrary to R.A. No. 9480, respondent cannot validly invoke Q-4 A-4 of Revenue Memorandum Order No. 69-2007 dated November 5, 2007, *viz*:

> **Q-4 Does availment of the TAP have an effect on assessments against the taxpayer/availer where such assessments have become final and executory prior to the said availment?**
>
> A-4 No. Amnesty availment will not have an effect on assessments against said taxpayer where the said assessments have become final and executory prior to the amnesty availment considering that these assessments are already accounts receivable of the BIR or assets of the government."

Nowhere in R.A. No. 9480 can one find support for the foregoing administrative interpretation. In fact, with or without a tax assessment, except for the persons or cases enumerated under Section 8, a taxpayer may be covered by the tax amnesty, so long as the internal revenue taxes for taxable year 2005 and prior years "remained unpaid as of December 31, 2005",[18] without further qualification.

As a general rule, contemporaneous construction is resorted to for certainty and predictability in the laws, especially those involving specific terms having technical meanings. However, courts will not hesitate to set aside such executive interpretation when it is clearly erroneous, or when there is no ambiguity in the rule, or when the language or words used are clear and plain or readily understandable to any ordinary reader.[19]

In fine, it is clear that petitioner's deficiency income tax, VAT, and DST liabilities for taxable year 2002 were totally extinguished by its availment and full compliance with the conditions of the tax amnesty under R.A. No. 9480.

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[18] Section 1, RA 9480.
[19] *Energy Regulatory Board vs. Court of Appeals, et al.*, G.R. Nos. 113079 114923, April 20, 2001.

Prescription on certain withholding tax assessments.

Anent the subject deficiency withholding tax assessments, Section 8 in relation to Section 1, both of R.A. No. 9480, are clear that withholding agents, with respect to their withholding tax liabilities, is not covered by the tax amnesty. Thus, the issue pertaining to prescription will be confined to such assessments.

Sections 203 and 222 of the NIRC of 1997 state the periods of limitation upon the assessments to be issued by the BIR, to wit:

> "SEC. 203. *Period of Limitation Upon Assessment.*—Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided*, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day."
>
> "SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collections of Taxes.*—
>
> (a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission: *Provided*, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.
>
> (b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.
>
> xxx xxx xxx."

Section 203 of the NIRC of 1997 mandates the government to assess internal revenue taxes within three (3) years from the last day prescribed by law for the filing of the tax return or the actual date of filing of such return, whichever comes later. Hence, an assessment notice issued after the three-year prescriptive period is no longer valid and effective. Exceptions however are provided under Section 222 of the NIRC of 1997,[20] to wit: (1) in the case of a false or fraudulent return with intent to evade tax or of failure to file a return, and (2) when the three-year period is extended upon a valid written agreement between the Commissioner of Internal Revenue and the taxpayer executed before the expiration thereof.

While respondent argues that this Court is without jurisdiction to entertain the present appeal because of petitioner's failure to file its protest within the 30-day period prescribed by law to file the same,[21] such argument will hold true only if it is established that the subject assessments were timely issued. And the timeliness of the issuance of the said assessments will depend on the applicability of either Section 203 or Section 222(a) to the instant case.

Respondent contends that Section 203 of the NIRC of 1997 is not applicable to withholding tax assessments.[22] However, in a number of cases,[23] the Supreme Court has applied the said provision involving such kind of assessments. Thus, there can be no merit to said contention.

Be that as it may, respondent does not deny that the withholding tax assessments were issued beyond the three-year prescriptive period, but she claims that:

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[20] *Commissioner of Internal Revenue vs. Kudos Metal Corporation,* G.R. No. 178087, May 5, 2010.
[21] Answer, Par. 7, Docket, pp. 99 to 100.
[22] Answer, Par. 10, Docket, pp. 104 to 105.
[23] *Philippine Journalist, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 162852, December 16, 2004; *Commissioner of Internal Revenue vs. FMF Development Corporation*, G.R. No. 167765, June 30, 2008; *Commissioner of Internal Revenue vs. Kudos Metal Corporation,* G.R. No. 178087, May 5, 2010.

> "xxx for ***failure to file* VAT, DST, and *WT returns* and for filing a false income tax return for the year 2002, the corresponding taxes may be assessed at any time within ten (10) years after the discovery of such omission or fraud** pursuant to Section 222(a) of the 1997 Tax Code."[24] *(Italics supplied)*

Thus, according to respondent, since there was failure on the part of petitioner to file the withholding tax returns for taxable year 2002, respondent's stance is that the 10-year period under Section 222(a) should be applied in issuing the subject deficiency withholding tax assessments. Correspondingly, said assessments are allegedly not yet time-barred.

We do not entirely agree.

In computing the deficiency EWT assessment, respondent deducted the amounts of ₱ 115,751.96 and ₱ 550,297.43 representing EWT per Alphalist on payments to brokers and agents as well as insurance adjusters, respectively, and the amount of ₱ 13,584,027.50 representing rentals per Alphalist. The same holds true as regards the subject deficiency withholding tax on compensation where the amount of ₱ 1,345,134.04 representing the total amount paid *"Per Withholding Tax Return (Form 1601)"* were likewise deducted to determine such deficiency withholding tax.

Thus, with respect to the deficiency withholding tax assessments where such deductions were recognized, it cannot be said that petitioner failed to file the corresponding withholding tax returns. The applicable prescriptive period then for the said assessments is only three (3) years as prescribed under Section 203 of the NIRC of 1997, determined as follows:

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[24] Answer, Docket, pp. 103 to 104.

MONTHLY REMITTANCE RETURN OF CREDITABLE INCOME TAXES WITHHELD (EXPANDED)-BIR FORM NO. 1601-E[25]			
Period covered (2002)	**Date of actual filing**	**Last day prescribed by law to file the return**[26]	**Last day to assess under Section 203 of the NIRC of 1997**
January 2002	Februay 11, 2002	Februay 10, 2002	Februay 11, 2005
February 2002	March 11, 2002	March 10, 2002	March 11, 2005
March 2002	April 10, 2002	April 10, 2002	April 10, 2005
April 2002	May 10, 2002	May 10, 2002	May 10, 2005
May 2002	June 10, 2002	June 10, 2002	June 10, 2005
June 2002	July 10, 2002	July 10, 2002	July 10, 2002
July 2002	August 12, 2002	August 10, 2002	August 12, 2005
August 2002	September 11, 2002	September 10, 2002	September 11, 2005
September 2002	October 11, 2002	October 10, 2002	October 11, 2005
October 2002	November 11, 2002	November 10, 2002	November 11, 2005
November 2002	December 10, 2002	December 10, 2002	December 10, 2005
December 2002	January 13, 2003	January 10, 2002	January 13, 2006
MONTHLY REMITTANCE RETURN OF INCOME TAXES WITHHELD ON COMPENSATION-BIR FORM NO. 1601-C[27]			
Period covered (2002)	**Date of filing**	**Last day prescribed by law to file the return**[28]	**Last day to assess under Section 203 of the NIRC of 1997**
January 2002	Februay 11, 2002	Februay 10, 2002	Februay 11, 2005
February 2002	March 11, 2002	March 10, 2002	March 11, 2005
March 2002	April 10, 2002	April 10, 2002	April 10, 2005
April 2002	May 10, 2002	May 10, 2002	May 10, 2005
May 2002	June 10, 2002	June 10, 2002	June 10, 2005
June 2002	July 10, 2002	July 10, 2002	July 10, 2002
July 2002	August 12, 2002	August 10, 2002	August 12, 2005
August 2002	September 11, 2002	September 10, 2002	September 11, 2005
September 2002	October 11, 2002	October 10, 2002	October 11, 2005
October 2002	November 11, 2002	November 10, 2002	November 11, 2005
November 2002	December 10, 2002	December 10, 2002	December 10, 2005
December 2002	January 13, 2003	January 10, 2002	January 13, 2006

Considering that the withholding tax assessments were issued on April 4, 2007 and were received by petitioner only on December 11, 2007,[29] the same are no longer valid and effective.

Consequently, the following withholding assessments must perforce be cancelled because of prescription: (1) the deficiency EWT on Commission in the amount ₱ 3,359,706.41 and Rentals in the amount of ₱ 122,810.83 (including the corresponding interest imposed thereon), (2) the penalties on late remittances in the

[25] In these Returns, remittances of withholding tax on rentals and payment to brokers/agents are reflected. Exhibits "R-1" to "R-9", and BIR Records, pp. 141 to 152.
[26] Section 58(A), NIRC of 1997; Cf.: Section 2.58(A)(2), Revenue Regulations No. 2-98.
[27] Exhibits "S-1" to "S-12". BIR Records, pp. 167 to 178.
[28] Section 58(A), NIRC of 1997; Cf.: Section 2.58(A)(2), Revenue Regulations No. 2-98.
[29] JSFI, Par. 4, Facts Admitted, Docket, p. 154. Exhibit "D".

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total amount of ₱ 87,767.06, and (3) the deficiency withholding tax on compensation in the amount of ₱ 6,653,387.56.

The remaining withholding tax assessments are already final, executory and demandable. Compromise penalties should not be imposed.

As regards the remaining deficiency EWT assessments, there is no showing that petitioner filed the appropriate returns therefore. Thus, the applicable period to assess is ten (10) years, as prescribed under Section 222(a) of the NIRC of 1997.

And considering petitioner's failure to file a protest within the reglementary period of thirty (30) days from the time the withholding tax assessments were received, said remaining deficiency EWT assessments have become final, executory and demandable. Hence, petitioner is still liable for the payment of ₱ 823,545.50, representing deficiency EWT assessment and the corresponding interest thereon, determined as follows:

DEFICIENCY ON EWT		
a. Per FS		
Advertising Expense	₱ 6,790,225.00	
Repairs & Maintenance	2,088,477.00	
Security, Janitorial, Messengerial & Clerical Service	6,286,123.00	
	₱ 15,164,825.00	
Rate	2%	
Withholding Tax Due		303,296.50
b. Per FS		
Director's Fee	₱ 390,025.00	
Rate	10%	
Withholding Tax Due		39,002.50
c. Per FS		
Prizes/Award	₱ 502,337.00	
Rate	20%	
Withholding Tax Due		100,467.40
Total Withholding Tax (Basic)		**₱ 442,766.40**

Interest up to May 10, 2007[30]		380,779.10
Total Deficiency EWT		**₱ 823,545.50**

Anent the imposition of compromise penalties, the same should be cancelled. This must be so because compromise penalties are only amounts suggested in settlement of criminal liability, and may not be imposed or exacted on the taxpayer in the event that a taxpayer refuses to pay the same.[31] In other words, compromise penalties imply mutual agreement between the taxpayer, on one hand, and the Commissioner of Internal Revenue, on the other.[32] Thus, as there is no indication that petitioner is willing to pay the said amounts, the same should not be imposed.

WHEREFORE, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, the following withholding tax assessments are hereby **CANCELLED**: (1) the deficiency EWT on Commission in the amount ₱ 3,359,706.41 and Rentals in the amount of ₱ 122,810.83 (including the corresponding interests imposed thereon), (2) the penalties on late remittances in the total amount of ₱ 87,767.06, (3) the deficiency withholding tax on compensation in the amount of ₱ 6,653,387.56, and (4) all compromise penalties.

Likewise, the Warrant of Garnishment dated February 4, 2009 (No. 217) addressed to BDO, and the Warrant of Garnishment dated February 6, 2009 (No. 219) addressed to BPI, are both **LIFTED**.

However, petitioner is hereby **ORDERED** to pay respondent the amount of **EIGHT HUNDRED TWENTY THREE THOUSAND FIVE HUNDRED FORTY FIVE PESOS AND FIFTY CENTAVOS (₱ 823,545.50)**, representing deficiency EWT,

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[30] Proportionate amount of interest on the remaining deficiency withholding tax assessments, computed as follows: ₱ 3,375,743.93 x ₱ 442,766.40 divided by ₱ 3,925,283.64.

[31] Revenue Memorandum Order No. 1-90.

[32] Refer to *Dr. Felisa L. Vda. De San Agustin, in substitution of Jose Y. Feria, in his capacity as Executor of the Estate of Jose San Agustin vs. Commissioner of Internal Revenue*, G.R. No. 138485, September 10, 2001.

including the corresponding interests thereon, on the following income payments: Advertising Expense; Repairs and Maintenance; Security, Janitorial, Messengerial & Clerical Service; Director's Fees; and Prizes/Award; all for taxable year 2002.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CERTIFICATION

I hereby certify that the decision was reached after due consultation with the members of the division of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Justice