REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

## *THIRD DIVISION*

MONEYLINE TELERATE (PHILIPPINES), INC.,
*Petitioner,*

- versus -

COMMISSIONER OF INTERNAL REVENUE,
*Respondent,*

C.T.A. Case No. 7658

Members:

Bautista, *Chairperson*
Palanca-Enriquez,
Cotangco-Manalastas, *JJ.*

Promulgated:

FEB 4 2011

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# D E C I S I O N

COTANGCO-MANALASTAS, J.:

Before the Court is a Petition for Review filed on July 17, 2007 by Moneyline Telerate (Philippines), Inc., praying for the cancellation and termination of the Audit Result/Assessment Notice issued by respondent on the alleged deficiency income taxes, withholding taxes, and penalties in the total amount of P29,045,255.49.

## STATEMENT OF FACTS

Petitioner Moneyline Telerate (Philippines), Inc., is a domestic corporation existing under and by virtue of Philippine laws, with principal address at 9th floor, Tower One, The Enterprise Center, 6766, Ayala Avenue corner Paseo de Roxas, Makati City.[1]

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) who is vested with authority to administer and enforce national internal revenue laws. She holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

On December 23, 2005, respondent sent to petitioner a Preliminary Assessment Notice, together with the Details of Discrepancies, assessing petitioner for deficiency income tax, expanded withholding tax, withholding of value-added tax (VAT), final withholding tax, and capital gains tax for taxable year 2002 as follows:[2]

| DEFICIENCY TAXES | AMOUNT |
|---|---|
| Income Tax | P 4,537,598.89 |
| Expanded Withholding Tax | 118,461.16 |
| Withholding of Value-added Tax | 8,883,372.02 |
| Final Withholding Tax | 13,325,058.03 |
| Capital Gains Tax | 1,008,020.52 |
| Total | P 27,872,510.62 |

On March 15, 2006, petitioner protested the above-mentioned Preliminary Assessment Notice and requested a reinvestigation.[3]

Respondent replied to petitioner's protest in the form of a Formal Assessment Notice (FAN), together with the Details of Discrepancies, which was received by petitioner on September 25, 2006.[4] In the said notice, respondent granted petitioner's request for reinvestigation but disclosed that the reinvestigation still found petitioner liable to pay the alleged deficiencies in income tax, expanded

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[1] Exhibits "A" and "BBB"
[2] Exhibit "B"
[3] Exhibit "C"
[4] Exhibits "D" and "D-1"

withholding tax, withholding of value-added tax, and final withholding tax in the aggregate amount of P29,045,255.49 for taxable year 2002.[5]

Due to respondent's findings on the above-mentioned tax deficiencies, petitioner filed with Revenue Region No. 8 its formal protest on October 25, 2006[6] disputing the FAN, detailing its position, and submitting documentary evidence to refute the findings of respondent.[7]

On December 20, 2006, petitioner submitted additional documents with the BIR to further support its position against the deficiency assessment as mentioned in petitioner's letter dated December 18, 2006.[8]

Respondent failed to act on petitioner's protest on the FAN, prompting petitioner to file the instant Petition for Review on July 17, 2007.

Respondent filed her Answer[9] through registered mail on September 13, 2007, raising the following Special and Affirmative Defenses:

> "5. The assessments in question were made and issued in accordance with law, rules and regulations.
>
> 6. Verification disclosed that expenses incurred in 2001 amounting to P71,174,000.27 were claimed as deduction in the computation of net taxable income for taxable year 2002 in violation of Section 34(A)(1)(a) in relation to Section 45 of the 1997 Tax Code.
>
> 7. Results of the re-investigation showed that petitioner as the distributor had an agreement with Money Telerate International (MTI) regarding data provision and related costs, Section 2.2 which provides that 'MTI shall invoice Distributor (petitioner) for all data charges for each calendar month within fifteen (15) days following the end of such month. Distributor shall pay within thirty (30) days following its receipt of any invoice from MTI xxx.' Relative thereto, MTI would already known (*sic*) about its obligation for 2001 as early as January 15, 2002, long enough for the expenses to be included in it 2001 income tax

[5] Exhibit "D"
[6] Exhibit "E-1"
[7] Exhibit "E"
[8] Exhibits "F" and "F-1"
[9] Docket, pp. 52-55

return. Moreover, the cost allocated for the period October 18 to December 31, 2001 was posted on January 31, 2002 which would have given the petitioner ample time to include said cost in its 2001 income tax return before the latter was filed on April 9, 2003 as verified from the BIR's Integrated Tax System database.

8. Verification revealed petitioner's several expenses in the total amount of P1,431,386.94 were not subjected to expanded withholding tax, hence, do not qualify as valid deductions from gross income pursuant to Section 34(K) of the 1997 Tax Code.

9. Creditable withholding tax in the amount of P16,002.29 was disallowed during original investigation as well as after reinvestigation in view of petitioner's failure to (present) proof, particularly BIR Form 2307 (Certificate of Creditable Taxes Withheld at Source) in accordance with Section 2.58.3 of Revenue Regulations No. 2-98, as amended.

10. Petitioner's excess tax credit (overpayment) amounting to P3,597,655.00 has been recaptured since this amount has already benefited the succeeding taxable year by claiming it as 'prior years excess tax credit' which is a deduction against its income tax liability for the year 2003.

11. Original investigation disclosed that petitioner failed to file and pay the corresponding withholding on VAT arising from payments of services made by petitioner to MTI for the year 2002, hence, petitioner is liable to pay the 10% withholding VAT in accordance with Section 4.102-1(b) of Revenue Regulations No. 7-95.

12. Results of reinvestigation disclosed that no proof was presented to conclude any fund transfer other than payment of royalties to MTI. Petitioner's contention that the royalty is waived until June 30, 2002 is unacceptable considering that the photocopy of the Interim Distribution Agreement bears no signature of the parties involved. Moreover, waivers made by and between parties are self-serving, hence, it could not be given due course. The respondent is not bound thereto and can still impose the corresponding tax based on the nature of the transactions involved, otherwise, the government shall be deprived of its power to tax simply by making private contracts in order to evade taxes.

13. Verification revealed that petitioner failed to file and pay the corresponding withholding tax due on royalty payments amounting to P48,160,873.20 made by petitioner to MTI during the year 2002, hence, subject to the final withholding tax of 15% on royalties pursuant to Revenue Regulations No. 2-98, as amended.

> 14. All presumptions are in favor of the correctness of the tax assessment. (**Interprovincial Autobus vs. Collector of Internal Revenue, 98 Phil. 290**)."

On September 24, 2007, a Notice of Pre-Trial Conference was issued by this Court setting the case for Pre-Trial Conference on October 19, 2007 and requiring both parties to be present at the pre-trial and to file with the Court and serve on the adverse party their pre-trial briefs.[10]

After filing on separate dates their pre-trial briefs,[11] the parties filed their Joint Stipulation of Facts and Issues on November 13, 2007.[12] Subsequently, in a Resolution dated November 14, 2007, the Joint Stipulation of Facts and Issues was approved by this Court and the pre-trial was considered terminated.[13]

During trial, petitioner presented and formally offered Exhibits "A" to "LLL". Said exhibits were subsequently admitted in a Resolution dated October 31, 2008.[14]

Respondent was also able to present and formally offer her documentary and testimonial evidence, which were marked as Exhibits "1" to "8". Said exhibits were admitted in a Resolution of this Court dated October 5, 2009.[15]

The case was submitted for decision on February 23, 2010, taking into consideration petitioner's Memorandum filed on January 8, 2010, sans memorandum for respondent.[16]

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[10] Docket, p. 56
[11] Docket, pp. 57-69
[12] Docket, pp. 80-86
[13] Docket, p. 88
[14] Docket, p. 247
[15] Docket, p. 291
[16] Resolution dated February 23, 2010, docket, p. 339

## ISSUES

The parties submitted the following issues[17] for this Court's disposition:

"1. Whether or not the Petition for Review was filed within the prescribed period of time;

2. Whether or not Petitioner has incurred expenses in 2001 in the amount of Php7,174,000.27 that were claimed as deductions in 2002;

3. Whether or not the Petitioner failed to withhold the corresponding expanded withholding tax on its several expenses (software royalties, payments to prime contractors/subcontractors, professional fees and rentals) in the total amount of Php1,431,386.94 (which is the difference between Php14,460,936.91 amount of income payment and Php13,029,549.97 amount subjected to EWT);

4. Whether or not Petitioner has royalty payments in the amount of Php48,160,873.20 that were not subjected to value-added tax and final withholding tax."

## DISCUSSION/RULING

The first stipulated issue involves the timeliness of the appeal filed by petitioner with this Court. In addressing the said issue, this Court found instructive Section 228 of the NIRC of 1997, as amended, the relevant parts of which read:

"SEC. 228. *Protesting of Assessment.* –

xxx xxx xxx

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the

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[17] Docket, pp. 84-85

> taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable."

Applying the periods provided in the above-quoted provision, records reveal that petitioner filed its protest letter[18] with the BIR on October 25, 2006, which is exactly 30 days from the receipt of the Formal Assessment Notice or from September 25, 2006[19]. Hence, petitioner timely filed its protest.

Subsequently, petitioner submitted its supporting documents on December 20, 2006.[20] Counting from the said date, respondent had 180-days or until June 18, 2007 to decide on the protest. However, in this case, there is no indication that respondent acted on petitioner's protest. Thus, counting from the date of the expiration of the 180-day period or from June 18, 2007, petitioner had 30 days or until July 18, 2007, within which to file its appeal before this Court. Clearly, the instant Petition for Review, which was filed with this Court on July 17, 2007, was filed within the prescriptive period provided by law.

After determining the timeliness of the filing of the instant Petition, this Court shall now proceed with the disposition of the remaining issues which delve on the correctness and propriety of the assessment issued by respondent against petitioner.

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[18] Exhibit "E"
[19] Exhibit "D-1"
[20] Exhibit "F-1"

**1. DEFICIENCY INCOME TAX – P4,733,575.90**

Respondent subjected petitioner to deficiency income tax amounting to P4,733,575.90 for the year 2002, inclusive of statutory increments, computed as follows:[21]

| | | | | | |
|---|---|---|---|---|---|
| Net Loss per Return | | | | | P (68,433.00) |
| Add: | Discrepancies per Audit | | | | |
| | 2001 Expenses claimed during the year (Sch. 1) | | | P7,174,000.27 | |
| | Expenses not subjected to withholding tax (Sch. 2) | | | 1,431,386.94 | 8,605,387.21 |
| Taxable Income | | | | | P8,536,954.21 |
| Add: | Net Operating Loss carry-over (NOLCO) | | | | 68,433.00 |
| Taxable Income per Audit | | | | | P8,605,387.21 |
| Tax Due at 32% | | | | | P2,753,723.91 |
| Less: | Tax paid per return | | | | |
| | Taxes paid for the first three quarters | | | P3,321,553.00 | |
| | Tax credits | | P276,102.00 | | |
| | Less: Unsupported tax credits | P 16,002.29 | | | |
| | Carried over to 2003 | 3,597,655.00 | 3,613,657.29 | 3,337,555.29 | (16,002.29) |
| Basic Tax Due | | | | | P2,769,726.20 |
| Add: | Interest at 20% (4.16.03 to 10.31.06) | | | | 1,963,849.70 |
| **Total amount due** | | | | | **P4,733,575.90** |

*A. Expenses incurred in 2001 claimed as deduction in 2002 – P7,174,000.27*

The bulk of the income tax deficiency is on the disallowance of expenses amounting to P7,174,000.27. Respondent contends that this expense cannot be deducted in 2002 as this was incurred by petitioner in 2001. The afore-mentioned expense relates to the distributorship agreement between Moneyline Telerate International (hereinafter referred to as "MTI-US"), which provides that MTI-US shall invoice petitioner for all data charges for each calendar month within fifteen (15) days following the end of such month, and that petitioner shall pay the same within 30 days following receipt of such invoice. This would mean that MTI would already

[21] Exhibit "D"

have known about its obligation for 2001 as early as January 15, 2002, long enough for the expenses to be included in its 2001 income tax return.[22]

Respondent further contends that since a cost allocation for October 18 to December 31, 2001 was posted in the books of petitioner in January 31, 2002, such an expense should have been recognized and deducted in 2001.[23]

Petitioner, on the other hand, admits that it has a distributorship agreement with MTI-US regarding data provision and related costs. The said agreement provides in part that MTI-US shall invoice petitioner for all the data charges for each calendar month within fifteen (15) days following the end of such month and that petitioner shall pay within thirty (30) days following its receipt of any invoice from MTI-US. However, petitioner disagrees with the assertion of respondent that it would have already known about its obligation for 2001 as early as January 15, 2002. It should be noted that the agreement provides for an alternative date for the payment of data charges, which is the date at such other time as may be agreed upon by MTI-US and petitioner, to wit:[24]

> "Section 2.2. Invoicing and Settlement Costs
>
> (a) MTI shall invoice Distributor for all Data Charges for each calendar month within fifteen (15) days following the end of such month, **or at such other time as may be mutually agreed upon by MTI and Distributor**, xxx
>
> (b) Distributor shall pay within thirty (30) days following its receipt of any invoice from MTI pursuant to paragraph (a), **or at such other time as may be mutually agreed upon by Distributor and MTI**, xxx". (*Emphasis supplied*)

Applying the afore-quoted contractual provision, petitioner affirms the fact that MTI-US availed of the second option as petitioner received the billing invoice

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[22] Annex "A" of Exhibit "D"
[23] Par. 12, Facts Admitted, Joint Stipulation of Facts and Issues, docket, p. 83
[24] Exhibit "EE"

from the latter only in May 2002, the date after the 2001 Income Tax Return had been filed with the BIR.

Petitioner likewise disputes the agreement that the cost allocated for the period covering October 18 to December 31, 2001 was "posted and recorded" on January 31, 2002. It avers that the posting date indicated as January 31, 2002 is the posting date as per instruction of MTI-US. Petitioner had no choice but to comply with the said instruction, being an entity bound to the global policy of its head office.

Notwithstanding the same posting advice of the MTI-US, petitioner opted not to include the said data charge for taxable year 2001, on the ground that the same is still disputed and is not yet fully determined. The fact that petitioner had not yet received the billing statement from MTI-US until May 2002, it could not reasonably be expected to have known its liability with reasonable accuracy as of December 31, 2001, or even up to the last day of filing of the 2001 Income Tax Return with the BIR. Consequently, petitioner claimed the charges as deductible expense only upon receipt of the billing invoice in May 2002, which is also the same date when the amount of the charges had been finalized.[25]

Under Section 34 of the NIRC of 1997, as amended, which allows as deduction all the ordinary and necessary expenses paid or incurred in carrying on any trade or business during the taxable year, three necessary conditions are imposed for the deductibility of business expenses, namely: (1) the expense must be ordinary and necessary; (2) it must be paid or incurred within the taxable year; and (3) it must be paid or incurred in carrying on a trade or business.[26] "Paid" or "incurred" means that expenses are deductible in the year that they are actually paid out by a taxpayer who

[25] Exhibit "E", pages 2 to 4
[26] Collector of Internal Revenue vs. Philippine Education Co., 99 Phil 319, May 30, 1956

keeps his books on the actual receipts basis and deductible in the year incurred, although not actually paid by a taxpayer who keeps his books on the accrual basis.[27]

Petitioner, whose records are kept on the accrual basis, does not dispute that the expenses in question were incurred in prior year or in 2001. But it is argued that the final amount of data charges was only determined via receipt of the billing invoice in May 2002; thus, it was claimed as expense only in year 2002. To support its allegations, petitioner offered in evidence the "Invoice for Data Provision and Related Costs" dated December 2002. Such invoice shows that the billing for the expenses for the covered period of October 18 to December 31, 2001 was only received on December 31, 2002.

However, this Court cannot give credence to petitioner's claim. Such claim cannot substantiate the allegation that such billing was made known to petitioner at a later date and was received by petitioner on December 31, 2002. Likewise, the said billing is unverifiable and self-serving, if not dubious, and can be contrived easily considering that nothing in the said documentary evidence will prove that it was indeed issued by MTI-US, absent any certification therefrom. This document therefore merits very little weight.

In addition, there are inconsistencies as to the date of its receipt. In the protest letter[28], petitioner stated that it received the billing invoice from MTI-US only in **May 2002.** While per Judicial Affidavit[29] of witness Eunice Ooi, she testified that the billing for expenses for the covered period of October 18 to December 31, 2001 was

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[27] Paper Industries Corporation of the Philippines vs. Commissioner of Internal Revenue, CTA Case No. 3458, January 29, 1988
[28] Exhibit "E"
[29] Exhibit "DDD", page 6

only received on **December [illegible], 2002**. No other document to substantiate and clarify petitioner's allegation was presented to convince this Court otherwise.

Let this Court stress that assessments are presumed correct and made in good faith and the taxpayer has the duty to prove otherwise.[30] In the absence of clear and convincing proof to support the allegations laid down by petitioner, the findings of respondent shall be deemed proper.

***B. Expenses not subjected to withholding tax – P1,431,386.94***

Section 34(K) of the NIRC of 1997, provides:

> "SEC. 34. *Deductions from Gross Income.* xxx
>
> (K) *Additional Requirements for Deductibility of Certain Payments.* — Any amount paid or payable which is otherwise deductible from, or taken into account in computing gross income or for which depreciation or amortization may be allowed under this Section, shall be allowed as a deduction only if it is shown that the tax required to be deducted and withheld therefrom has been paid to the Bureau of Internal Revenue in accordance with this Section, Sections 58 and 81 of this Code."

Pursuant to the foregoing provision, in computing gross income, only income payments which were subjected to the expanded withholding tax shall be allowed as deductible expenses. For the alleged failure of petitioner to subject several expenses to expanded withholding tax, respondent disallowed petitioner's expenses in the total amount of P1,431,386.94. The disallowed expenses are detailed as follows:[31]

| | **Income Payment** | **Subjected to EWT** | **Difference** |
|---|---|---|---|
| Software Royalties | P 570,917.47 | P 521,376.47 | P 49,541.00 |
| Prime Contractors/Sub-Contractors (Corp) | 5,898,681.44 | 5,824,321.50 | 74,359.94 |
| Professional Fees (Corporate Payees) | 63,461.00 | | 63,461.00 |
| Rentals (Real Prop-Corporate Payee) | 7,927,877.00 | 6,683,852.00 | 1,244,025.00 |
| TOTAL | **P14,460,936.91** | **P13,029,549.97** | **P1,431,386.94** |

[30] Commissioner of Internal Revenue vs. Construction Resources of Asia, Inc., *et al.*, G.R. No. L-68230, November 25, 1986

[31] Annex "A" of Exhibit "D"

The amount of P1,247,025.00, representing the bulk of P1,431,386.94, is attributable to Rentals (Real Property-Corporate Payee). Petitioner alleged that the supposed "Rentals" include the amount of P1,147,668.13, representing condominium dues paid to The Enterprise Center Condominium Corporation (TECCC); which is not subject to expanded withholding tax. To support such payment of condominium dues, petitioner submitted various copies of TECCC's invoices and official receipts, as well as petitioner's creditor's vouchers[32] evidencing payment of condominium dues.

In various rulings[33], the BIR held that association/condominium dues, membership fees and other assessment/charges collected from the members, which are merely held in trust and which are to be used solely for administrative expenses in implementing their purpose(s), *viz.*, to protect and safeguard the welfare of the owners, lessees and occupants; provide utilities and amenities for their members, and from which the Corporation could not realize any gain or profit as a result of their receipt thereof are not includible in said corporation's gross income. As a consequence, the same are not subject to income tax and to withholding tax. Thus, petitioner's contention that the condominium dues paid to TECCC are not subject to expanded withholding tax is correct.

As to the professional fees, petitioner admits that it made an income payment of professional fees during 2002 that amounted to P63,461.00, but out of the said total payments, P36,235.00 was subsequently removed from the books through the reversing entry made on the same year due to the fact that the said fees were not cost

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[32] Exhibits "II" to "TT-2"

[33] BIR Ruling No. [DA-(C-301)746-09] dated December 8, 2009; BIR Ruling No. [DA-(C-253)648-09] dated November 4, 2009; BIR Ruling No. [DA-(C-137)393-09] dated July 22, 2009; BIR Ruling No. [DA-(C-032)137-09 dated March 5, 2009; BIR Ruling No. [DA-(C-016) 079-08] dated July 28, 2008, BIR Ruling No. 103-94 dated May 16, 1994, BIR Ruling No. DA-470-98 dated November 3, 1998, BIR Ruling No. DA-008-00 dated January 5, 2000, and BIR Ruling No. DA-362-00 dated October 23, 2000

of petitioner. However, petitioner failed to present relevant documents to support its allegations. Therefore, the disallowance of professional fee in the amount of P63,461.00 remains.

With regard to software royalties and prime contractors/subcontractor in the amount of P49,541.00 and P74,359.94, respectively, petitioner did not offer any documentary evidence or proof to dispute the same. *Ergo*, the disallowances shall likewise remain.

Based on the foregoing, the total disallowances amount to P283,718.81, computed as follows:

| | |
|---|---|
| Software Royalties | P 49,541.00 |
| Prime Contractors/Sub-Contractors (Corp) | 74,359.94 |
| Professional Fees (Corporate Payees) | 63,461.00 |
| Rentals (P1,244,025.00-P1,147,668.13) | 96,356.87 |
| TOTAL | **P 283,718.81** |

### *C. Net Operating Loss Carry-Over (NOLCO) – P68,433.00*

Respondent treated the net operating loss carry-over (NOLCO) of P68,433.00 as addition to petitioner's taxable income, taking into account that petitioner's operation showed taxable income instead of a net operating loss as previously claimed in its Income Tax Return. Respondent argues that considering that the tax benefit of this amount has already been forwarded to succeeding periods as provided for under Section 34(D)(3) of the NIRC of 1997, the same has been disallowed.

The Formal Assessment Notice issued to petitioner clearly shows that there was no operating loss from a previous year (2001), as in fact, the net operating loss is from the current year (2002). Since the alleged net operating loss carry-over of P68,433.00 did not come from the year 2001, the same did not result in a tax benefit to petitioner in 2002, *i.e.*, no reduction of tax liability because of NOLCO. There being no tax benefit in 2002 there is nothing in 2002 which should be added back to prejudice petitioner. Besides, respondent failed to present evidence to prove that petitioner used its 2002 net loss as NOLCO in the succeeding year. Granting, for the sake of argument, that petitioner actually deducted its 2002 net loss as NOLCO in the succeeding year 2003 and the said deduction was not proper as petitioner did not incur net loss, the same can only be the subject of assessment when it was claimed as deduction in the year 2003 and not in the year 2002, for such is beyond the scope of the present assessment. Therefore, adding back the net loss of P68,433.00 to petitioner's taxable income for the year 2002 is erroneous.

***D. Unsupported creditable withholding taxes -- P16,002.29***

Creditable withholding tax of P16,002.29 was disallowed by respondent for petitioner's failure to present proof, particularly BIR Form 2307 (Certificate of Creditable Taxes Withheld at Source). Records reveal however that the amount of P10,816.76 was properly supported by Certificate of Creditable Taxes Withheld.[34] Thus, only the amount of P5,185.53 appears to be unsupported and should be disallowed as tax credit.

***E. Amount carried over to succeeding year - P3,597,655.00***

Petitioner's claim for excess tax credit (overpayment) amounting to P3,597,655.00 has been recaptured by respondent since this amount has already benefited the succeeding taxable year by claiming it as "prior years excess tax credit", which is a deduction against the income tax liability for taxable quarters/years immediately succeeding the taxable quarters/years in which the excess credit arose.

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[34] Annex "5", BIR Records, pp. 430 to 433

As already enunciated the amount of P3,597,655.00 represents petitioner's excess tax payments for the year 2002. This means that any tax benefit derived therefrom redounds to the succeeding year (2003). Since the tax benefit will be in the succeeding year, at most, it may only be assessed in the said succeeding year.

After taking into account all the valid disallowances from petitioner's claimed deductions from gross income for taxable year 2002, petitioner would still be in a net loss position and would not result to any deficiency tax, as shown below:

| | | | |
|---|---|---|---|
| Net Loss per Return | | | P (68,433.00) |
| Add: Disallowances | | | |
| 2001 Expenses claimed during the year | | P7,174,000.27 | |
| Expenses not subjected to withholding tax | | 283,718.81 | 7,457,719.08 |
| Taxable Income | | | P 7,389,286.08 |
| Tax Due at 32% | | | P 2,364,571.55 |
| Less: Tax Credits | | | |
| Tax Payments for the first three quarters | | P3,321,553.00 | |
| Creditable Tax Withheld per BIR Form 2307 | P276,102.00 | | |
| Less: Unsupported tax credits | 5,185.53 | 270,916.47 | 3,592,469.47 |
| **Total amount due** | | | P(1,227,897.92) |

In sum, respondent's deficiency income tax assessment against petitioner for taxable year 2002 in the amount of P4,733,575.90 should be cancelled and/or withdrawn.

## 2. DEFICIENCY EXPANDED WITHHOLDING TAX – P130,632.94

As earlier discussed, petitioner failed to withhold and remit the corresponding withholding taxes due on certain income payments during the year; hence, the assessment of deficiency expanded withholding tax shall be upheld but in the reduced amount of P16,909.24, computed as follows:

| | Income Payment not subjected to EWT | Rate | EWT Still Due |
|---|---|---|---|
| Software Royalties | P 49,541.00 | 0.15 | P 7,431.15 |
| Prime Contractors/Sub-Contractors (Corp) | 74,359.94 | 0.02 | 1,487.20 |
| Professional Fees (Corporate Payees) | 63,461.00 | 0.05 | 3,173.05 |
| Rentals (Real Prop-Corporate Payee) | 96,356.87 | 0.05 | 4,817.84 |
| **TOTAL** | **P 283,718.81** | | **P 16,909.24** |

### 3. DEFICIENCY WITHHOLDING VAT – P9,672,418.66

Petitioner was assessed for deficiency withholding on VAT in the amount of P9,672,418.66 for its purported failure to file and pay the corresponding VAT arising from payments of services made by petitioner to Moneyline International during 2002 in the amount of P4,816,087.32, to wit:[35]

| | | | |
|---|---|---|---|
| Basic Withholding on VAT Due (Sch. 4) | | | P 4,816,087.32 |
| Add: | 25% Surcharge | 1,204,021.83 | |
| | Interest at 20% (1.16.03 to 10.31.06) | 3,652,309.51 | 4,856,331.34 |
| **Total Amount Due** | | | **P 9,672,418.66** |

| **Schedule 5[36] - Withholding of VAT** | | | | |
|---|---|---|---|---|
| Fund Transfer/Payment to Moneyline Intl. | **USD** | **Peso** | **Rate** | **Tax due** |
| JV 05/002 | P500,000.00 | P24,666,995.56 | 10% | P2,466,699.56 |
| JV 05/002 | 200,000.00 | 10,465,724.75 | 10% | 1,046,572.48 |
| JV 07/001 | 100,000.00 | 5,042,864.25 | 10% | 504,286.43 |
| JV 7/005 | 150,000.00 | 7,602,635.58 | 10% | 760,263.56 |
| CV 03/29 | 7,500.00 | 382,653.06 | 10% | 38,265.31 |
| **Withholding VAT Due** | | **P48,160,873.20** | | **P4,816,087.32** |

Respondent asserts that based on several journal and cash vouchers found during the investigation documenting fund transfer or payments by petitioner to MTI-US, petitioner paid royalties or payments for the services rendered by MTI-US in 2002. As such, respondent held that based on Section 4.102-1(b) of Revenue Regulations No. 7-95, petitioner should have filed and paid the corresponding

[35] Exhibit "D"
[36] Annex "A" of Exhibit "D"

withholding tax on VAT on such payments amounting to P4,816,087.32. Respondent also argues that petitioner's contention that the royalty is waived until June 30, 2002 is unacceptable. Waivers made by and between parties are self-serving; hence, it could not be given due course.

Petitioner, on the other hand, contends that no royalty or license payments were made by petitioner to MTI-US for there was an agreement that petitioner will only reimburse Money Telerate International (MTI) for its allocable share of certain global costs and therefote, royalty payable to MTI pursuant to Section 5.1 of the Master Data Distribution Agreement[37] shall be waived until June 30, 2002, or such later time as the parties may otherwise agree. In support thereto, petitioner offered the "Interim Data Distribution Agreement"[38]. Since the royalty payments were waived, the purported fund transfer payments of MTPI as payment for the royalties and license fees were not made during the effectivity of the waiver and the company did not record or authorize any fund transfer.

Subsequent to the termination of the said interim contract, a new contract was entered into with Moneyline Telerate Singapore and the same waived the collection of royalty. Such agreement is the Global Sublicense Agreement[39]. Petitioner likewise presented its various Journal Vouchers and Check Voucher[40] cited in the FAN. Petitioner explains that the journal vouchers represent petitioner's allocable share of certain global costs (and not royalty payments); while the check voucher represents payment to Philippine Pastries, Inc. for food served during a training. As such, the

[37] Exhibit "FF"
[38] Exhibit "FF-1" and "FF-2"
[39] Exhibit "GG"
[40] Exhibits "GGG" to ""KKK-3"

vouchers mentioned in the FAN refer to reimbursements for allocable share and not royalty payments.

With all the evidence, documentary and testimonial, presented by petitioner, this Court finds for petitioner.

The contention of respondent failed to convince this Court to disregard the waivers embodied in the above-mentioned agreements.

Notably, under Section 30, Rule 132 of the Rules on Evidence, every instrument duly acknowledged or proved and certified as provided by law, may be presented in evidence without further proof, the certificate of acknowledgment being *prima facie* evidence of the execution of the instrument or document involved. Considering that the agreements presented were notarized and duly authenticated by the Philippine Consular Office in New York, the said documents presented by petitioner were deemed by this Court sufficient to prove the existence of the agreement between petitioner and Moneyline Telerate International (MTI) as well as the agreement between petitioner and Moneyline Telerate Singapore. As a result, this Court may rightfully consider the waivers contained in the said agreements.

In addition, nothing on the face of the vouchers will show that the fund transfers were made as payment of royalties. In fact, readily apparent on the face of the journal vouchers are the annotations, more or less in the following language – "Payment to US for global costs under the interim data distribution agreement dated Oct 01. Cost relocation/reimbursements yet to be finalized & agreed."

On the other hand, the Check Voucher in the amount of P7,500.00 (erroneously indicated in the FAN as US Dollar and converted to P382,653.06) represents payment to Philippine Pastries, Inc. for food served during a training, which is evident from the description thereon and is also supported by an official receipt[41].

Clearly, the fund transfers made to MTI were for payment of global cost or cost of sales for the services petitioner received from MTI, but in no way pertain to the royalty or license payments for the use of service, and should therefore not be subjected to withholding of VAT.

## 4. DEFICIENCY FINAL WITHHOLDING TAX – P14,508,627.99

There being an alleged fund transfer payment of royalties made by petitioner to Moneyline Telerate International during the year 2002 amounting to P48,160,873.20, respondent assessed petitioner for deficiency final withholding tax due in the amount of P14,508,627.99, inclusive of increments, pursuant to Revenue Regulations No. 2-98, in relation to Article 13 of RP-USA Tax Treaties. The amount of P14,508,627.99 is computed as follows:

| | | | |
|---|---|---|---|
| Basic Final Withholding Tax Due (Sch. 5) | | | P 7,224,130.98 |
| Add: | 25% Surcharge | P 1,806,032.75 | |
| | Interest at 20% (1.16.03 to 10.31.06) | 5,478,464.26 | 7,284,497.01 |
| **Total Amount Due** | | | **P 14,508,627.99** |

| Schedule 5[42] | | | | |
|---|---|---|---|---|
| **Fund Transfer/Payment to Moneyline Intl.** | **USD** | **Peso** | **Rate** | **Tax due** |
| JV 05/002 | P 500,000.00 | P24,666,995.56 | 15% | P3,700,049.33 |
| JV 05/002 | 200,000.00 | 10,465,724.75 | 15% | 1,569,858.71 |
| JV 07/001 | 100,000.00 | 5,042,864.25 | 15% | 756,429.64 |
| JV 7/005 | 150,000.00 | 7,602,635.58 | 15% | 1,140,395.34 |
| CV 03/29 | 7,500.00 | 382,653.06 | 15% | 57,397.96 |
| **Final WithholdingTax Due** | | **P48,160,873.20** | | **P7,224,130.98** |

[41] Exhibit "KKK-1"

[42] Annex "A" of Exhibit "D"

In relation to the previous elucidation on the absence of royalty payment as the same was waived between the parties, the duty to withhold final tax thereon did not arise. Thus, the assessment of deficiency final withholding tax shall be cancelled.

In recapitulation, the deficiency income tax, withholding VAT, and final withholding tax assessment should be cancelled. However, the deficiency expanded withholding tax assessment should be upheld but in the reduced amount of P21,136.55 pursuant to Sections 57 and 58 of the NIRC of 1997, including the 25% surcharges imposed thereon, computed as follows:

| | |
|---|---|
| Basic EWT Still Due | P 16,909.24 |
| Add: 25% Surcharge | 4,227.31 |
| **Total Amount Due** | **P 21,136.55** |

**WHEREFORE**, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. The deficiency income tax, withholding VAT, and final withholding tax assessments for taxable year 2002 are hereby **CANCELLED.** On the other hand, the deficiency expanded withholding tax assessment is hereby **UPHELD** in part. Accordingly, petitioner is hereby **ORDERED to PAY** respondent Commissioner of Internal Revenue the reduced amount of **TWENTY ONE THOUSAND ONE HUNDRED THIRTY SIX PESOS AND 55/100 (P21,136.55)**, representing deficiency expanded withholding tax for taxable year 2002.

In addition, petitioner is hereby **ORDERED to PAY**:

(a) deficiency interests at the rate of twenty percent (20%) *per annum* on basic expanded withholding tax computed from January 25, 2003 until full payment thereof pursuant to Section 249(B) of the NIRC of 1997; and

(b) delinquency interests at the rate of twenty percent (20%) *per annum* on the total deficiency taxes of P21,136.55 and on the 20% deficiency interest which have accrued as aforestated in (a), computed from October 31, 2006 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997.

**SO ORDERED.**

AMELIA R. COTANGCO- MANALASTAS
Associate Justice

**WE CONCUR:**

LOVELL R. BAUTISTA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

## ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

## CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice