Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

MISNET, INC., Petitioner,	**CTA EB CASE NO. 915** (CTA Case No. 8313)
-versus-	Present: DEL ROSARIO, *PJ.* CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS, and RINGPIS-LIBAN, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUL 15 2013

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DECISION

CASANOVA, *J.*:

This is an appeal, by way of Petition for Review[1], filed by petitioner-Misnet, Inc., praying that the Resolution[2] dated March 27, 2012, of the CTA First Division, granting respondent's Motion to Dismiss and, accordingly, dismissing petitioner's Petition for Review and the Resolution[3] dated June 22, 2012, denying petitioner's Motion for Reconsideration of the Resolution dated 27 March 2012, be set aside.

The facts of the case, as culled from the records, are as follows:

Petitioner is a domestic corporation duly organized and existing under the laws of the Philippines, with principal office address at 6/F

[1] En Banc Rollo, pp. 1-23
[2] Division Docket, pp. 180-185
[3] Ibid, pp. 201-205

The Valero Tower, 122 Valero Street, Salcedo Village, Makati City, Philippines.[4]

Respondent is the head of the Bureau of Internal Revenue ("BIR" for brevity), with office address at the Office of the Commissioner of Internal Revenue, BIR National Office Building, Quezon City, Philippines.[5]

On September 6, 2004, respondent issued Letter of Authority No. ("LOA") 43235 authorizing the examination of petitioner's books of accounts and other accounting records covering all internal revenue liabilities for the taxable year ending December 31, 2003.[6]

On May 19, 2005, respondent issued a Revalidation Notice[7] revalidating the LOA for failure of the examiners to serve the LOA immediately.[8]

On June 23, 2006, respondent issued a Notice for Informal Conference[9] with attached List of Tentative Deficiency Tax Due for 2003 in the total amount of P23,256,252.12, broken down as follows:

MISNET INC.
TENTATIVE DEFICIENCY TAX DUE
2003

TENTATIVE FINAL WITHHOLDING ON VALUE ADDED TAX DEFICIENCY			
TAX BASE			81,202,559.82
TAX DUE			8,120,255.98
ADD: SURCHARGE		2,030,064.00	
INTEREST		3,992,161.45	
COMPROMISE PENALTY		25,000.00	6,047,225.44
TOTAL			14,167,481.43
TENTATIVE FINAL INCOME TAX DEFICIENCY			
TAX BASE			81,202,559.82
TAX DUE			12,180,383.97
LESS: REMITTANCE			6,655,496.73
			5,524,887.24
ADD: INTEREST		2,716,200.32	
COMPROMISE PENALTY		25,000.00	2,741,200.32
BALANCE OF TAX DUE			8,266,087.56
TENTATIVE EXPANDED WITHHOLDING TAX DEFICIENCY			
EXPENSE	AMOUNT	RATE	TAX DUE
COST OF GOODS SOLD	28,373,468.26	0.02	567,469.37

[4] Petition for Review (CTA Case No. 8313), par. 1, Division Docket, p. 6
[5] Ibid, par. 2
[6] Ibid, par. 3; Annex "A" to Petition for Review, Division Docket, p. 25
[7] Annex "B" to Petition for Review
[8] Petition for Review, par. 4, Division Docket, p. 7
[9] Annex "D" to Petition for Review

LEGAL & PROFESSIONAL FEE	371,185.75	0.10	37,118.58
AUDIT FEE	132,000.00	0.10	13,200.00
ADS & PROMOS	77,942.49	0.02	1,558.85
RENT	80,000.00	0.05	4,000.00
TOTAL	29,034,596.50		623,346.79
LESS: REMITTANCE			85,221.96
BALANCE OF TAX DUE			538,124.83
ADD: INTEREST		264,558.31	
COMPROMISE PENALTY		20,000.00	284,558.31
TOTAL			822,683.14
SUMMARY OF DEFICIENCIES			
TENTATIVE FINAL WITHHOLDING ON VALUE ADDED TAX DEFICIENCY			14,167,481.43
TENTATIVE FINAL INCOME TAX DEFICIENCY			8,266,087.56
TENTATIVE EXPANDED WITHHOLDING TAX DEFICIENCY			822,683.14
TOTAL			23,256,252.12

Petitioner, in response to respondent's Notice For Informal Conference, submitted its position paper[10] on July 7, 2006 and, thereafter, on October 30, 2006, executed a Waiver of the Defense of Prescription Under The Statute of Limitations Of The National Internal Revenue Code.[11]

On November 29, 2006, petitioner received respondent's Preliminary Assessment Notice ("PAN")[12] dated November 27, 2006. The PAN stated that, after investigation, it was found that petitioner had deficiency expanded withholding tax and final withholding tax on VAT for 2003, broken down as follows:

EXPANDED WITHHOLDING TAX		
Basic Deficiency Tax Due (Schedule I)		P 1,099,438.40
Add: 20% Interest (01.16.04 to 12.22.06)		645,204.67
Total Amount Due		P1,744,643.07
FINAL WITHHOLDING TAX ON VAT		
Royalty Payments to Non-Resident Foreign Corporation		P52,182,617.56
Multiply by Tax Rate		10%
Basic Deficiency Final Withholding Tax on VAT		P 5,218,261.76
Add: 25% Surcharge	P1,304,565.44	
20% Interest (01.16.04 to 12.22.06)	3,062,333.34	4,366,898.78
TOTAL AMOUNT DUE		P 9,585,160.54

Petitioner protested the PAN thru a letter[13] dated December 14, 2006.

[10] Annex "E" to Petition for Review
[11] Annex "F" to Petition for Review
[12] Annex "G" to Petition for Review
[13] Annex "H" to Petition for Review

On January 22, 2007, respondent issued a Formal Assessment Notice[14] reiterating petitioner's deficiency Expanded Withholding Tax, Final Withholding Tax on VAT for taxable year 2003.

On February 9, 2007, petitioner paid the amount of P2,152.41 for certain undisputed assessments for Expanded Withholding Tax as evidenced by Payment Form (BIR Form No. 0605)[15] and DBP-BIR Tax Payment Deposit Slip[16] dated February 9, 2007. On the same date, petitioner filed a protest letter[17] dated February 7, 2007, to the Formal Assessment Notice dated January 22, 2007.

Respondent, in a letter[18] dated March 22, 2007, acknowledged receipt of petitioner's February 7, 2007 protest letter and payment in the amount of P2,152.41, and, further informed petitioner that its tax docket, has been forwarded to Revenue District Officer, RDO No. 049, North Makati for further verification, evaluation and necessary action.

On March 26, 2007, respondent sent a Tax Verification Notice (TVN)[19] No. 2003-00033961 informing petitioner that Revenue Officer Josephine Paralejas has been authorized to verify the supporting documents relative to petitioner's request for reinvestigation covering taxable year 2003.

On May 28, 2007, respondent reiterated the previous assessments of petitioner's deficiency expanded withholding tax and final withholding tax on VAT and compromise penalty for taxable year 2003, broken down as follows:

1. Deficiency Expanded Withholding Tax		P 1,781,873.55
2. Final Withholding Tax on VAT		9,773,875.76
3. Compromise Penalty		25,000.00
	TOTAL	P11,580,749.31

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[14] Annex "I" to Petition for Review
[15] Annex "J" to Petition for Review
[16] Annex "K" to Petition for Review
[17] Annex "L" to Petition for Review
[18] Annex "M" to Petition for Review
[19] Annex "N" to Petition for Review

On June 1, 2007, petitioner sent a letter[20] to RO Josephine Paralejas reiterating its protest to the PAN dated December 22, 2006 and FAN dated January 22, 2007.

In a letter[21] dated April 28, 2008, respondent informed petitioner that, after a thorough verification of the additional documents which it submitted relative to its internal revenue tax liabilities for taxable year 2003, a deficiency expanded withholding tax due amounting to P328,416.70, inclusive of increments was still found due and payable and final withholding tax on VAT amounting to P11,045,236.72, inclusive of increments and P25,000.00 compromise penalties. Petitioner filed its protest to respondent's letter on a letter[22] dated May 8, 2008.

On March 22, 2011, respondent issued a Final Decision on Disputed Assessment ("FDDA") which was received by petitioner on March 28, 2011, with Amended Assessment Notice dated March 22, 2011 and Details of Discrepancies attached thereto. The FDDA stated that, after reinvestigation, petitioner was still found liable for the following:

I. Expanded Withholding Tax	
Basic Tax Due	P 175,537.52
Add: Interest (01.16.04 to 04.22.11)	255,178.65
Total	P 430,716.17
II. Final Withholding of Value Added Tax	
(Assessment No. WF-43235-03-07-0073)	
Basic Tax Due	P 5,218,261.76
Add: 25% Surcharge	1,304,565.44
Interest (01.16.04 to 04.22.11)	7,585,779.97
Total Amount Due	P14,108,607.17
III. Compromise Penalty	
(Assessment No. MC-43235-03-07-0073)	P 25,000.00

On April 8, 2011, petitioner filed a request for reconsideration[23] of the FDDA and Amended Assessment Notice.

[20] Annex "O" to Petition for Review
[21] Annex "Q" to Petition for Review
[22] Annex "R" to Petition for Review
[23] Annex "T" to Petition for Review

In response to petitioner's request for reconsideration, respondent sent a letter-reply[24] dated May 9, 2011, denying petitioner's request and informing it that the case is now final, executory and demandable.

On May 27, 2011, petitioner filed a Petition for Relief from Judgment[25] with the respondent.

On June 29, 2011, petitioner received a Preliminary Collection Letter[26] dated June 22, 2011 which it deemed a denial of its Petition for Relief of Judgment. Hence, the filing of the instant Petition for Review.

In her Answer with Motion to Dismiss filed on September 7, 2011, respondent interposed the following Special and Affirmative Defenses:

> "7. She reiterates and repleads the preceding paragraphs of this answer as part of her Special and Affirmative Defenses;
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> 8. Section 228 of the 1997 Tax Code partly reads as follows:
>
> > '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 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

[24] Annex "U" to Petition for Review
[25] Annex "V" to Petition for Review
[26] Annex "W" to Petition for Review

lapse of the one hundred eighty (180)-day period; **otherwise, the decision shall become final, executory and demandable**.' [Emphasis supplied]

In the instant case, it is worth noting that petitioner received the Formal Assessment Notice (FAN) involving the assessed deficiency expanded withholding tax, final withholding of value-added tax and compromise penalty for taxable year 2003 on **January 23, 2007**. Then on **February 9, 2007**, petitioner in a Letter dated **February 7, 2007** filed an Administrative Protest against the subject Formal Assessment Notice (FAN) with the BIR. Thereafter, on **March 28, 2011**, petitioner received the Final Decision on Disputed Assessment dated March 22, 2011 of the respondent CIR. Hence, **counting from March 28, 2011, petitioner has thirty (30) days from the said date, or until April 27, 2011**, within which to file an appeal with this Honorable Court.

However, instead of filing a judicial appeal to the Court of Tax Appeals, petitioner just filed a Letter Reply dated 8 April 2011, on **April 11, 2011**, with the BIR Regional Director's Office, Revenue Region 8 Makati City, reiterating the same arguments in its administrative protest.

Obviously, petitioner violated the requirements under Section 228 of the 1997 Tax Code, considering the fact that its Petition for Review with the Court of Tax Appeals (CTA) was filed only on **July 29, 2011**, or **after ninety (93) *(sic)* days had lapsed from April 27, 2011**. Therefore, petitioner's judicial appeal with this Honorable Court has already prescribed. As such, the subject deficiency expanded withholding tax, final withholding of value-added tax and compromise penalty of petitioner for taxable year 2003 has already become final, executory and demandable, pursuant to Section 228 of the 1997 Tax Code. Consequently, this Honorable Court has no jurisdiction to act on the instant petition.

9. Well-settled is the rule that if the court has no jurisdiction over the nature of an action, its only jurisdiction is to dismiss the case. The court could not decide the case on the merits **(De Guzman, et al., vs. Escalona, et al., G.R.**

No. L-51773, May 16, 1980). The Court of Tax Appeals, being a court of special jurisdiction, can take cognizance only of matters that are clearly within its jurisdiction **(Allied Banking Corporation vs. Commissioner of Internal Revenue, G.R. No. 175097, February 5, 2010 citing Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue, G.R. No. 168498, 522 SCRA 144, 150)**.

10. Further, the Supreme Court in the case of **Ker & Company, Ltd. vs. CTA, et al., L-12396, January 31, 1962 and Commissioner of Internal Revenue vs. Joseph, et al., L-14034, August 30, 1962**, consistently ruled that:

> '**If a statutory remedy provides as condition precedent that the action to enforce must be commenced within a prescribed time, such requirement is jurisdictional and failure to comply therewith may be raised in a motion to dismiss.**' [Emphasis supplied]

11. Moreover, in the case of **Yao vs. Court of Appeals, et al., G.R. No. 132428, October 24, 2000**, the Supreme Court held and we quote:

> '**The right to appeal is not a constitutional, natural or inherent right.** It is a statutory privilege of statutory origin and, therefore available only if granted or provided by statute. Since the right to appeal is not a natural right nor part of due process, **it may be exercised only in the manner and in accordance with the provisions of law. Corollary, its requirements must be strictly complied with.**
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> **That an appeal must be perfected in the manner and within the period fixed by law is not only mandatory but jurisdictional.** Non-compliance with such legal requirements is fatal, for its *(sic)* renders the decision sought to be appealed final and executory, with the end result that no court can exercise appellate jurisdiction to review the decision.' [Emphasis supplied]

Thus, it must be emphasized that jurisdiction over the subject matter or nature of an action is fundamental for the court to act on a given controversy **(Commissioner of Internal Revenue vs. Villa, et al., G.R. No. L-23988,**

January 2, 1968), and is conferred only by law and not by the consent or waiver upon the court which, otherwise, would have no jurisdiction over the subject matter or nature of an action. Lack of jurisdiction of the court over an action or the subject matter of an action cannot be cured by the silence, acquiescence, or even by express consent of the parties **(Laresma vs. Abella, G.R. No. 140973, November 11, 2004)**.

12. On the other hand, assuming without admitting that this Honorable Court has jurisdiction to act on the instant petition, petitioner was assessed for deficiency expanded withholding tax, final withholding of value-added tax and compromise penalty, respectively, for taxable year 2003, for the reason that during the administrative investigation of its tax case by the BIR, petitioner failed to substantiate or submit supporting evidence against the BIR findings, more specifically shown under the Details of Discrepancies attached to the Formal Assessment Notice (FAN) dated January 22, 2007, the Preliminary Assessment Notice (PAN) dated November 27, 2006, and Final Decision on Disputed Assessment dated March 22, 2011 and BIR Letter Reply dated May 9, 2011, which are briefly discussed hereunder, viz:

A.) On Deficiency Expanded Withholding Tax (EWT):

- Petitioner failed to withhold and remit the proper expanded withholding tax due in the amount of P1,097,879.55, representing several income payments for computer services and domestic purchases of software, contractors on catering, repairs and maintenance and outside services, as well as professional fees, audit fee, ads and promo, in violation of Sections 57 and 58 of the 1997 Tax Code, as implemented by Revenue Regulations No. 2-98, as amended.

B.) On Deficiency Final Withholding Value-Added Tax (VAT):

- Petitioner failed to withhold the VAT on the royalty payments for the software application purchased from a Non-Resident Foreign Corporation, in violation of Section 114 (C) of the 1997 Tax Code, as

> implemented by Section 4.114(A)(3) of Revenue Regulations No. 2-98, as amended.
>
> - Petitioner clearly admitted in its Letter dated February 7, 2007, which was received by the BIR on February 9, 2007 that it did not withhold the VAT on its income payments to Microsoft Corporation and that it remitted the whole amount to Microsoft Corporation without deducting the VAT. Hence, petitioner being the payor or the person in control of the payment for the purchase of the software application is required to withhold and remit the 10% VAT, pursuant to Section 108(A)(1) of the 1997 Tax Code, even if it did not gain any tax benefit thereof.
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> **C.) On Compromise Penalty:**
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> - Petitioner failed to file the required return and pay/remit the final withholding on VAT in violation of Section 255 of the 1997 Tax Code, in relation to Section 108(A)(1) of the same Code. Hence, it was assessed a compromise penalty of P25,000.00, as suggested compromise penalty under RMO 1-90, in relation to Section 7(C) and 204(B) of the 1997 Tax Code.

13. Respondent fully complied with the due process requirement mandated under Section 228 of the 1997 Tax Code, as implemented by Revenue Regulations No. 12-99, when the disputed Preliminary Assessment Notice (PAN) dated November 27, 2006 and Formal Assessment Notice (FAN) dated January 22, 2007 were issued to herein petitioner. Records clearly show that petitioner was duly afforded an opportunity to controvert the initial findings of the respondent involving its deficiency taxes for taxable year 2003 through the issuance of a Notice for Informal Conference dated June 23, 2006 and Preliminary Assessment Notice (PAN) dated November 27, 2006. Likewise, petitioner was duly appraised by the respondent of the factual and legal basis *(sic)* on how and why he (respondent) arrived such a deficiency expanded withholding tax, final withholding of value-added tax and compromise penalty, respectively for taxable year 2003, through the issuance of the Details of Discrepancies attached to the Formal Assessment Notice (FAN) dated January 22, 2007, the Preliminary Assessment Notice (PAN) dated November 27, 2006 and Final Decision on Disputed Assessment dated March 22, 2011, as well as BIR Letter

Reply dated May 9, 2011 and other BIR Correspondence duly received by petitioner which are found in the BIR records of this case.

14. Petitioner was assessed by respondent CIR for deficiency expanded withholding tax, final withholding of value-added tax and compromise penalty for taxable year 2003 within the prescriptive period under Section 222(b) of the 1997 Tax Code, in view of the Waiver of the Defense of Prescription under the Statute of Limitations of the NIRC, duly executed by petitioner on **October 30, 2006, extending the period of limitations until March 15, 2007**.

15. On the other hand, assuming without admitting that the subject FAN was issued beyond the three (3) year prescriptive period under Section 203 of the 1997 Tax Code, the fact that petitioner failed to file the required withholding VAT return and pay/remit the final withholding on VAT for taxable year 2003 on its income payments to Microsoft Corporation, therefore, the assessed deficiency expanded withholding tax and final withholding of value-added tax of petitioner for taxable year 2003 were made within the ten (10) year prescriptive period under Section 222(a) of the 1997 Tax Code.

16. Petitioner's availment of the Enhanced Voluntary Assessment (EVAP) program for the year 2003 and the Tax Amnesty Program (TAP) covering the year 2005 and prior years, did not cover its assessed deficiency expanded withholding tax and final withholding of value-added tax for taxable year 2003 subject of the instant case since the EVAP availment cover its income tax liability only while the TAP covers all its internal revenue tax liabilities, except the withholding taxes.

17. The assessments issued against petitioner for deficiency expanded withholding tax, final withholding of value-added tax and compromise penalty, respectively, for taxable year 2003 were made in accordance with law and regulations.

18. All presumptions are in favor of the correctness of tax assessments issued by the respondent."

On September 28, 2011 petitioner filed its Comment/Opposition (On Respondent's Answer with Motion to Dismiss)[27].

On October 24, 2011, the Court promulgated a Resolution[28] denying respondent's Motion to Dismiss as the Motion does not contain a notice of hearing.

Petitioner filed its Pre-Trial Brief[29] on November 8, 2011, and its Amended Pre-Trial Brief[30] on November 21, 2011 while respondent filed her Pre-Trial Brief[31] on January 30, 2012.

In the January 31, 2012 hearing[32], respondent's counsel moved for Leave of Court to file a Motion to Dismiss. Respondent was given ten (10) days from the hearing date to file a Motion to Dismiss and petitioner was granted (10) days to file its comment thereto after which the Motion to Dismiss shall be submitted for resolution.

On February 9, 2012, respondent filed a Motion to Dismiss (for Lack of Jurisdiction of this Honorable Court)[33] with petitioner's Comment on The Motion to Dismiss Dated 7 February 2012[34] filed on February 20, 2012.

On March 27, 2012, a Resolution[35] was promulgated by the Court granting respondent's Motion to Dismiss and dismissing petitioner's Petition for Review for lack of jurisdiction.

Petitioner filed its Motion for Reconsideration of the Resolution dated 27 March 2012[36] on April 13, 2012 without respondent's comment thereto.

On June 22, 2012, the Court denied petitioner's Motion for Reconsideration of the Resolution dated 27 March 2012[37].

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[27] Division Docket, pp. 114-118
[28] Ibid, pp. 124-126
[29] Id., pp. 131-143
[30] Id., pp. 144-156
[31] Id., pp. 157-161
[32] Minutes of hearing held on January 31, 2012, Ibid, p. 162
[33] Id., pp. 165-171
[34] Id., pp. 176-178
[35] Id., pp. 180-185
[36] Id., pp. 186-191

On July 12, 2012, petitioner filed the instant Petition for Review. Respondent filed a Motion for Extension of Time to File Comment and was given up to September 17, 2012 to file her Comment to petitioner's Petition for Review.

On September 11, 2012, petitioner filed a Motion for Suspension of Collection of Disputed Assessment/Tax Liability[38].

On October 15, 2012, respondent filed her Comment/Opposition (A. To Petitioner's Motion for Suspension of Collection of Taxes) (B. To Petitioner's Petition for Review)[39].

In a Resolution[40] promulgated on November 12, 2012, this Court granted petitioner's Motion for Suspension subject to the posting of a surety bond and submission of the documents listed in the Resolution.

On November 28, 2012, petitioner filed a Manifestation[41] stating that, after exerting its best efforts to comply with the surety bond requirement set under this Court's Resolution dated November 12, 2012, petitioner is unable to procure the required bond due to financial constraints.

Respondent, subsequently, filed her Motion for Reconsideration[42] on December 13, 2012 which was noted by the Court per Resolution[43] dated January 15, 2013 as the resolution of the Motion was rendered moot and academic by the Resolution dated December 17, 2012.

In view of petitioner's Manifestation, this Court promulgated a Resolution[44] on December 17, 2012, cancelling and setting aside the Resolution dated November 12, 2012 granting petitioner's Motion for Suspension of Collection of Disputed Assessment/Tax Liability, and ordering the parties to file their respective memorandum within thirty (30) days from receipt of the resolution, after which, with or without

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[37] Id., pp. 201-205
[38] Id., pp. 419-422
[39] Id., pp. 464-472
[40] Id., pp. 485-490
[41] Id. pp. 491-492
[42] Id., pp. 493-503
[43] Id., pp. 508-509
[44] Id., pp. 505-506

said memoranda, the Petition for Review will be submitted for resolution.

On February 14, 2013, petitioner filed its Memorandum[45] while respondent filed her Memorandum[46] on February 13, 2013.

Hence, this Decision.

Petitioner submitted the following issues to be resolved by the Court, to wit:

> A. Whether or not petitioner is liable for Expanded Withholding Tax;
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> B. Whether or not payments made by petitioner to non-resident foreign corporations are considered royalties subject to withholding VAT;
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> C. Whether or not payments made by petitioner for software are classified as royalties under Revenue MC 44-2005;
>
> D. Whether or not Revenue Memorandum Circular No. 77-2003 has been filed as required by law;
>
> E. Whether or not RMC No. 77-05 *(sic)* can be given retroactive effect.
>
> F. Whether or not the Honorable First Division of the CTA gravely erred in disregarding the remedy of Petition for Relief in tax cases.

Petitioner contends that respondent's assessment of its alleged expanded withholding tax liability failed to specifically provide the facts and laws upon which the assessment is based, hence, the assessment is without force and effect; that payments made by petitioner to non-resident foreign corporations for software are not royalties under Revenue MC 44-2005, thus, not subject to withholding VAT; that, RMC No. 77-2003, not having been published nor filed with the University of

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[45] Id., pp. 521-546
[46] Id., pp. 510-520

the Philippines Law Center, as required under Sections 3 and 4, Book VII of the Administrative Code of 1987, the same cannot be given retroactive effect because doing so will impose liabilities not existing at the time of its passage; and, that, the Honorable First Division of the CTA gravely erred in disregarding the remedy of Petition for Relief in tax cases pursuant to Section 3 of Rule 1 of the Revised Rules of Court of Tax Appeals, Sections 1 to 3 of Rule 38 of the Rules of Court and the ruling of the Supreme Court in the case of *Gesulgon vs. NLRC*.

Respondent, on the other hand, avers that petitioner's failure to appeal the Final Decision on Disputed Assessment ("FDDA") dated March 22, 2011 to the Court of Tax Appeals within the statutory period rendered the subject deficiency taxes of petitioner for taxable year 2003 to become final, executory and demandable. As such, the subject tax assessment ceases to be a disputed one and, consequently, this Honorable Court has no jurisdiction to act on the instant petition; and, that petitioner violated the requirements under Section 228 of the 1997 Tax Code, in relation to Section 10 of Revenue Regulations No. 12-85, considering that its Petition for Review, docketed as CTA Case No. 8313, was filed only on July 29, 2011, or ninety three (93) days from April 27, 2011, the last day of the 30-day period to file an appeal with the CTA.

After a careful and thorough evaluation of the records of the case as well as the arguments of both parties in their memoranda, the Court *En Banc* finds no merit in the Petition for Review.

The records of the case indubitably show that the CTA First Division had correctly dismissed petitioner's Petition for Review (docketed as CTA Case No. 8313) for lack of jurisdiction.

Finding no reversible error in the Resolutions dated March 27, 2012 and June 22, 2012, of the CTA First Division, the same are both **AFFIRMED** and the instant Petition for Review is hereby **DISMISSED** for lack of jurisdiction.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice