REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MABUHAY VINYL CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5669

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

DEC 0 3 2002

x - x

DECISION

This case seeks the cancellation and withdrawal of the assessments issued by the respondent against petitioner for alleged deficiency withholding and income taxes covering the taxable years 1988 and 1989 in the aggregate amount of P776,993,983.92.

The facts as culled from the records are as follows:

Petitioner is a domestic corporation organized and existing under Philippine laws with principal office address at 3/F Gammon Centre (now Phil-Am Life), 126 Alfaro Street, Salcedo Village, Makati City.

On April 17, 1989, petitioner filed its Annual Income Tax Return for the taxable year 1988 declaring a net loss of P94,330,876 and a tax refundable in the amount of P449,602.00 representing quarterly payments made during the year (*Exhibit CC*). For the year 1988, petitioner accrued interest expenses and other charges in the amount of P288,085,515.00 (*Exhibit CC-12*).

561

Petitioner's Annual Income Tax Return for the taxable year 1989 was filed on April 16, 1990, declaring a net loss of P13,152,809.00 and a prior year's excess credit in the amount of P449,602.00 (*Exhibit DD*). For the year 1989, petitioner accrued interest expenses and other charges in the amount of P176,856,694.00 (*Exhibit DD-12*).

Prior to the subject taxable years, petitioner obtained several loans from various creditors, foreign and domestic, among which were those from the Development Bank of the Philippines (*DBP, for brevity*) and from certain creditors, with DBP as the guarantor (*par. 5, Joint Stipulation of Facts and Issues, p.66, CTA Records*).

From the period January 1976 until December 1986, DBP granted various financial assistance to herein petitioner in the form of guaranteed loans, direct industrial loans and peso and foreign currency denominated loans. These consisted of loans directly granted by DBP to petitioner or loans of petitioner from foreign creditors with DBP as guarantor, with an irrevocable guaranty. For failure of petitioner to pay its foreign creditors, DBP assumed the obligation for and in behalf of petitioner. Petitioner was indebted to DBP until June 30, 1986. Thereafter, these loans, including the other domestic loans, were transferred to the Asset Privatization Trust (APT) (*pp. 18 to 24, TSN, April 13, 2000*).

As of June 30, 1986, petitioner had an outstanding obligation with the DBP in the total amount of P981.48 million. Part of said obligations were loans obtained by petitioner from foreign creditors, which were guaranteed and assumed by DBP. Pursuant to Proclamation No. 50 dated December 8, 1986, mandating the transfer of non-performing assets of government financial institutions to the National Government through the Asset Privatization Trust (APT), these loans were transferred by DBP to

562

APT in January 1987 at a transfer price of P662.35 Million (as adjusted), broken down as follows:

Loans	P489.762 million
Equity	148.999
Contingent Account	23.488
Other Receivables	0.099
Transfer Price	**P662.348 million**

(*Exhibit CCCC*)

On November 21, 1990, Letter of Authority No. 0021383 was issued for the examination of petitioner's books of accounts and other accounting records pertaining to income and documentary stamp tax covering the taxable years 1988 and 1989 (*p. 1, BIR Records*). Petitioner executed various waivers of the defense of prescription under the statute of limitations of the National Internal Revenue Code (NIRC) (*pp. 394, 402 and 403, BIR Records*).

On March 10, 1994, the 1st Indorsement Letter of Asst. Regional Director Virginia L. Trinidad, Revenue Region No. 8, recommended the re-validation of the above-stated Letter of Authority (*p. 409, BIR Records*). Thus, on March 21, 1994, Letter of Authority No. 0040724 was issued authorizing the examination of petitioner's books of accounts and other accounting records for income and business tax cases covering the years 1988 and 1989 (*p. 413, BIR Records*)

In a Memorandum Report dated December 11, 1996, petitioner was found to be liable for deficiency income and withholding taxes in the following amounts:

	1988	1989
Income Tax (inclusive of interest & surcharges)	P179,465,670.12	P143,240,899.38
Withholding Tax (inclusive of interest & surcharges	209,603,939.30	123,799,685.80
TOTAL DEFICIENCY TAXES DUE	**P389,069,609.42**	**P267,040,585.18**

DEFICIENCY INCOME TAX - P179,465,670.12 for 1988
143,240,899.38 for 1989

The deficiency income tax in the amounts of P179,465,670.12 for 1988 and P143,240,899.38 for 1989 resulted from the disallowance of interest expense in the amounts of P299,434,499.00 for 1988 and P176,856,604.00 for 1989, which formed part of petitioner's deductions for the said years. Petitioner's interest expense was disallowed by the BIR for the following reasons:

"1. MVC has foreign currency denominated loans from different banks, foreign banks and foreign corporations enumerated hereunder:

	Name of Banks		Principal
1)	Banque Louis – Dreyfus	FF	17,849,359.80
2)	International Bank for Reconstruction & Dev. Credit Line	$	5,000,000.00
3)	Inter-Alpha Asia (Pacific) Limited		900,000.00
4)	Baring Brothers Asia Ltd.		900,000.00
5)	Development Bank of the Phils.		3,190,155.00
6)	NMB Bank of The Pacific Ltd.		1,420,814.11
7)	Bank of Indosuez		401,499.11
8)	Societe Generale		1,000,000.00

The withholding tax due from the interest income received by the above-mentioned banks were not withheld by MVC. The requirements for withholding of the withholding tax on interest income received by foreign corporations is required by Section 50 of the NIRC. Section 9 of Revenue Regulations No. 13-78 as amended by Revenue Regulations No. 6-78 and No. 5-82 also provides that "any income payments (sic) which is otherwise deductible under Sections 30 and 57 of the Tax Code, as amended shall be allowed as a deduction from the payor's gross income only if it is shown that the tax required to be withheld has been paid to the Bureau of Internal Revenue."

124

2. Section 29B of the National Internal Revenue Code provides that only interest paid or incurred/accrued within the taxable year is allowable as expense. In this case, the interest expenses claimed by MVC were not incurred as evidenced by the following facts enumerated hereunder, to wit:

    A) MVC classified its loans into two groups. The first group was the SWAP loan which was composed of loans from NMB Bank Pacific Limited, Banque Indosuez and Societe Generale. The second group was the DBP loans which were MVC's loan from different foreign banks, denominated in foreign currency but recorded by MVC in pesos. These loans were guaranteed by Development Bank of the Philippines, secured by the assets of MVC and income bonds were issued as evidenced by the Mortgage Participation Certificate as Mortgage Trust Indenture Market "B".

    B) On February 27, 1989, the National Government constituted the Asset Privatization Trust (APT) as its trustee over its Trust Properties, included among the trust properties is the DBP loan of MVC.

    C) MVC offered to settle its obligations under the DBP loan by effecting a Direct-Debt-Buy-Out (DDBO).

    D) On August 26, 1989 MVC paid APT the sum of Thirty Million Pesos (P30,000,000.00) as part of the DDBO settlement price (the deposit).

    E) On October 12, 1989 the Committee on Privatization approved the DDBO offer of MVC for Two Hundred Ninety One Million Six Hundred Eighty Eight Thousand Six Hundred Twenty Five Pesos (P291,688,625.00).

    F) On January 9. 1990 APT received the amount of Two Hundred Ninety One Million Six Hundred Eighty Eight Thousand Six Hundred Twenty Five Pesos (P291,688,625.00) as the full and complete payment for the DDBO price.

    G) On January 22, 1990 APT executed a Release and/or Cancellation of Mortgage Obligation which forever releases and discharges MVC from its Mortgage Obligation under or in connection with the DBP Loan and Mortgage Trust Indenture as mentioned above.

> The full and complete payment of MVC to APT for its loan of P1,548,033,725.19 was only P291,688,625.00. The interest expenses of P299,434,499.00 and P176,856,694.00 were never paid nor incurred by MVC."

Thus, the deficiency withholding tax due on the interest expense was computed as follows:

Deficiency withholding tax – Section 25 6A of NIRC

	1988	**1989**
Interest Expense	P299,434,499.00	P176,856,694.00
Rate of Tax	20%	20%
Withholding Tax on Interest Expense	P 59,886,839.80	P 35,371,338.80
Add: 50% Surcharge	29,943,419.90	17,685,669.40
25% Surcharge	14,971,709.95	8,842,834.70
Interest	104,801,969.65	61,899,842.90
Total Deficiency Withholding Tax	**P209,603,939.30**	**P123,799,685.80**

(*Exhibit 1*)

On April 16, 1997, respondent issued two pre-assessment notices for the years 1988 and 1989 in the following amounts:

		1988		**1989**
Deficiency income tax	*Exh. 3*	P234,828,909.40	*Exh. 4*	P173,110,140.60
Deficiency withholding tax	*Exh. 3*	277,725,219.40	*Exh. 4*	151,654,615.10

On May 5, 1997, petitioner, through counsel, filed its letter-reply and assailed the issuance of the pre-assessment notices on the following grounds:

1. The assessment for deficiency income taxes for the years 1988 and 1989 has prescribed.

> "For the year 1989, the income tax return was filed on 15 April 1990. The BIR, therefore, had until 15 April 1993 to issue an assessment. Note, too, that a waiver was issued last 20 July 1995 which was good until 30 September 1995. This, in effect, tolled the running of the prescriptive period. However, from 1 October 1995 to the present, no formal assessment has yet been issued. This amounts to a period of more than three (3) years even with the exclusion of the period of

waiver. Hence, pursuant to the aforementioned provision of the NIRC, the Commissioner of Internal Revenue has lost her power to assess and collect alleged deficiency income taxes for the year 1989, more so, for the year 1988."

2. Petitioner alleged that it obtained foreign currency denominated loans from different banks and foreign corporations which were guaranteed by the Development Bank of the Philippines (DBP). Petitioner defaulted in the payment of its loans to the foreign creditors. Petitioner contended that for the taxable years 1988 and 1989, the loans were no longer payable to the foreign creditors, but were already payable to DBP by virtue of DBP's subrogation to the rights of the foreign creditors. These loans were subsequently transferred by the National Government to the Asset Privatization Trust (APT). As a consequence thereof, the loans are no longer payable to any foreign creditor.

Petitioner further contended that the change from foreign creditors to the DBP is material for withholding tax purposes. It likewise explained that:

> "xxx For non-resident foreign corporations, "interest from foreign loans" is subject to the withholding tax system. For domestic corporations, withholding is only required when interest pertains to "interests on Philippine currency bank deposits and yield or any other monetary benefit from deposit substitutes and from trust fund and similar arrangements. xxx The interests on the DBP loans are not "interests on Philippine currency bank deposits" for MVC is not a bank, does not perform quasi-banking functions, and does not accept money deposits. Neither are said interests in the nature of " yield or any other monetary benefit from trust funds and similar arrangements" because MVC is a corporation engaged in the manufacturing of polyvinyl chloride. MVC is not engaged in the business of a trust fund. Neither may said interests be considered as interests from deposit substitutes since said loans came from traditional lending activities of DBP. Note that yield or monetary benefits derived by banks from traditional lending activities are not subject to the 15% withholding, but are treated as income and subject to the 35% corporate income tax."

The BIR records (*pp. 712, 713*) show that on January 16, 1998, Revenue Officer Josephine Madera issued a memorandum for the Chief of the Assessment Division of Revenue Region No. 8, Makati City, recommending the cancellation of the deficiency income tax assessment due to prescription but at the same time

J67

recommending the issuance of a demand notice for deficiency final withholding tax to enforce the collection thereof.

On January 23, 1998, respondent issued the subject assessment notices bearing Assessment Nos. 000234-88-393 and 000234-89-393, with attached Demand Letters, for deficiency withholding taxes covering the years 1988 and 1989, respectively, details of which are shown below:

TAX DUE	P 59,886,899.80
ADD: SURCHARGE 25% 50%	44,915.174.85
INTEREST	188,643,734.37
TOTAL	**P293,445,809.02**

TAX DUE	P 35,371,338.00
ADD: SURCHARGE 25% 50%	26,528.503.50
INTEREST	99,039,746.40
TOTAL	**P160,939,587.90**

(Exhibits 5 and 6)

On February 23, 1998, petitioner filed its protest letter and requested for a reconsideration of the aforementioned assessment notices. In said letter, petitioner assailed the deficiency assessments for final withholding tax for having been issued without legal or factual basis. It explained that the interest expense in the amount of P299,434,499.00 for 1988 and P176,856,694.00 for 1989 arose from loans guaranteed by and/or obtained from the DBP. It claimed that the interest paid on the DBP loans are not subject to the final withholding tax.

A. The DBP Loans are not foreign loans

> The DBP Loans are either loans directly granted by the DBP, or loans from domestic and foreign creditors which were guaranteed by DBP and which, at that time, were already assumed by DBP as guarantor thereby subrogating to and consolidating in the latter all rights of the creditors under said domestic and foreign loans. By way of clarification, certain loans which were initially payable to foreign creditors and which were guaranteed by the DBP subsequently became

168

payable to DBP when MVC defaulted on its loans and DBP was compelled to pay said loans to the foreign creditors. Thus, for the taxable years under consideration, which are 1988 and 1989, the loans were no longer payable to the foreign creditors, but were already payable to DBP pursuant to its subrogation to the rights of the foreign creditors. In fact, these DBP Loans were subsequently transferred by the National Government to the Asset Privatization Trust ("APT").

x x x x x x x x x

During the taxable years under consideration, which are 1988 and 1989, MVC no longer had any "foreign loans" since these had long been assumed by the DBP. These loan obligations between Mabuhay Vinyl and DBP were subsequently settled under a Direct-Debt-Buy-Out scheme approved by the Committee on Privatization for the amount of P291,688,625.00, which constituted full payment of Mabuhay Vinyl's obligations to DBP.

B. The interest on the "DBP Loans" are not "interest on Philippine currency bank deposits and yield or other monetary benefit from deposit substitutes and from trust fund and similar arrangements."

x x x x x x x x x

DBP, being a domestic corporation, withholding is required only when it pertains to "interest on Philippine currency bank deposit and yield or any other monetary benefit from deposit substitutes and from trust fund and similar arrangements."

x x x x x x x x x

Obviously, the interest on the DBP Loans are not "interest on Philippine currency bank deposits" because the debtor, MVC, is not a bank; neither does MVC perform quasi-banking functions; nor does it accept deposits.

x x x x x x x x x

Neither can the interest on the "DBP Loans" be considered as "yield or monetary benefits from deposit substitutes" because these are ordinary loans or traditional lending activities by the DBP.

x x x x x x x x x

It is clear from the foregoing that the DBP Loans, being evidences of indebtedness issued to institutional lenders, are exempt

569

from the registration of long-term commercial papers; and, for that matter, may be executed without the need of authorization from the SEC. This leads to the conclusion that the DBP Loans are not deposit substitutes; accordingly, the income therefrom is not subject to the final 20% withholding tax. This is the same conclusion reached earlier on the ground that the DBP Loans are considered as traditional lending.

C. The Assessments Have Already Prescribed

The records will show that the 50% fraud surcharge was imposed simply because there was no tax withheld on the interests on the DBP Loans. There is no other circumstance or situation which would indicate fraud other than the non-withholding of such tax.

x x x x x x x x x"

(*p. 759, BIR Records*)

Records show that respondent did not act on the foregoing protest, but issued two (2) Pre-Assessment Notices, both dated March 6, 1998, this time for deficiency income taxes covering the years 1988 and 1989. Details are shown below:

For 1988

INCOME TAX

Net Income per return as audited	P(94,330,876.00)
Proposed unallowable deductions and additional income:	
Interest expense of prior years	
Claimed in taxable year 1988	241,675,515.00
Proposed adjustment income	P 147,344,639.00
Less: Personal & Additional exemptions	-
Net Income subject to tax	147,344,639.00
Income tax due thereon	51,570,624.00
Less: amount already assessed/paid	449,602.00
Deficiency income tax	51,121,022.00
Add: 25% surcharge	12,780,255.00
Surcharge 50%	25,560,511.00
Interest 50%	89,461,788.50
TOTAL DEFICIENCY TAXES	**P 178,923,577.00**

570

For 1989

INCOME TAX

Net Income per return as audited	P(13,152,809.00)
Proposed unallowable deductions and additional income:	
Interest expense – already claimed in prior years	130,446,694.00
Proposed adjustment income	P 117,293,885.00
Less: Personal & Additional exemptions	-
Net Income subject to tax	117,293,885.00
Income tax due thereon	41,052,860.00
Less: amount already assessed/paid	-
Deficiency income tax	41,052,860.00
Add: 25% surcharge	10,263,215.00
Surcharge 50%	20,526,430.00
Interest	71,842,505.00
TOTAL DEFICIENCY TAXES	**P 143,685,010.00**

(pp. 762 and 763, BIR Records)

Petitioner filed its reply to the foregoing pre-assessment notices on March 27, 1998, questioning their validity/regularity on the following grounds:

1. The proposed assessments have already prescribed.

2. The proposed assessments were already covered by the previous pre-assessment notices dated April 16, 1997, which were no longer included in the final assessment notices dated January 23, 1998. Thus, the said assessments were deemed withdrawn and/or cancelled and should no longer be revived as the same have been finally settled.

3. The imposition of the 50% surcharge is totally baseless and unwarranted as there was no finding of fraud or falsity in the previous investigation which may warrant the imposition of the 50% surcharge.

(*p. 768, BIR Records*)

Unable to receive any action on the part of the respondent for more than 180 days from the time the protest was filed on February 23, 1998, petitioner elevated its case to this court via a Petition for Review on September 21, 1998. In paragraph 10 of its petition, petitioner alleged that it was likewise constrained to include in its petition the proposed assessments for deficiency income taxes for taxable years 1988 and 1989

371

even if no final assessment has been issued since they are dependent and directly connected with the issues involved in the disputed assessments on withholding tax.

Petitioner seeks for the cancellation and withdrawal of the subject assessments on the following grounds:

1. The right of respondent to assess the petitioner for the taxable years 1988 and 1989 has already prescribed.

2. The imposition of the 50% fraud surcharge on the deficiency assessment for withholding tax is without basis. It was imposed simply because there was no tax withheld on the interests on said loans. There is no other circumstance or situation which would indicate fraud other than the non-withholding of such tax. The belated imposition was apparently intended only to prolong the prescriptive period to ten (10) years.

3. The assessments are without factual and legal basis. The interest expense arose from loans directly granted by the DBP or loans from domestic and foreign creditors which were guaranteed by the DBP and which at that time were already assumed by DBP as guarantor thereby subrogating thereto and consolidating in the latter all the rights of the creditors under said domestic and foreign loans. Thus, for taxable years 1988 and 1989, the loans were no longer payable to the foreign creditors but were already payable to DBP pursuant to its subrogation to the rights of the foreign creditors. Thus, petitioner is not required and is under no legal obligation to withhold a final tax on the interests it accrued from its domestic loans because for domestic corporations, withholding is only required when interest pertains to "interest on Philippine currency bank deposits and yield or any other monetary benefit from deposit substitutes and from trust fund and similar arrangements."

   The interest on the DBP loans are not "interests on Philippine currency bank deposits" because the debtor/petitioner, is not a bank; neither does petitioner perform quasi-banking functions nor does it accept deposits. Neither are said interests in the nature of "yield or any other monetary benefit from trust funds and similar arrangements" because the petitioner is a corporation engaged in the manufacturing of polyvinyl chloride – not a trust fund. Neither may said interests be considered as "yield or monetary benefits from deposit substitutes" because said loans are ordinary loans or came from traditional lending activities of the creditor and the same does not fall within the context of deposit substitutes as defined in Section 20 (Y) (now Section 22 Y) of the NIRC. In the case of Orient Pacific Capital Investment Corporation, CTA Case No. 4113

572

> dated May 28, 1992, this Court has ruled that "interest income from an ordinary loan forms part of the gross income of the corporation and is subject to corporate income tax of 35% thereon pursuant to Section 24 of the NIRC, while interest on deposit substitutes is subject to a final tax of 15% x x x"
>
> Pursuant to Revenue Memorandum Circular No. 39-85, traditional lendings by banks investment and finance companies to the public are not considered as deposit substitutes and are therefore not subject to the 15% (now 20%) final withholding tax. Since the accrued interest is allegedly not subject to final withholding tax, the disallowance of interest expense for the taxable years 1988 and 1989 is without legal and factual basis.

In his Answer filed through registered mail on November 10, 1998, respondent raised the following Special and Affirmative Defenses:

> 1. The right of the respondent to assess the petitioner of the deficiency income and withholding taxes for the taxable years 1988 and 1989 have not yet prescribed pursuant to Sections 223 and 224 of the Tax Code.
>
> 2. The assessments in question were made and issued in accordance with existing laws, rules and regulations;
>
> 3. Interest expense paid on DBP loans is subject to withholding tax;
>
> 4. All presumptions are in favor of the correctness of the tax assessment **(Interprovincial Autobus, Inc. vs. Collector of Internal Revenue, 98 Phil. 290)**

The issues we are tasked to resolve have been jointly stipulated by the parties to be as follows:

1. Whether or not the right of the respondent to assess the petitioner has already prescribed;
2. Whether or not petitioner had filed the requisite monthly and annual withholding tax returns;
3. Whether or not petitioner had filed false income tax returns for taxable years 1988 and 1989;
4. Whether or not the assessment notices were validly issued against the petitioner;

373

5. Whether or not the interest in question is subject to final withholding tax;

6. Whether or not the pre-assessment notices for deficiency income taxes issued by the respondent on March 17, 1998 can be the subject of this Court's consideration.

As the first, second and third issues are interrelated, the same shall be discussed jointly.

The assessment notices issued by respondent against the petitioner for deficiency withholding taxes, both dated January 23, 1998, covered the taxable years 1988 and 1989 (*Exhibits 5 and 6*). Pursuant to Section 203 of the NIRC, respondent has three (3) years within which to assess internal revenue taxes. The three-year period is reckoned from the day the return was filed or after the last day prescribed by law for such filing.

However, Section 222 of the 1997 NIRC *[Section 223 of the 1977 NIRC]* provided for exceptions to the Period of Limitation of Assessment and Collection of Taxes under Section 203 of the same Code, to wit:

> 1. In case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed at any time within (10) years after the discovery of the falsity, fraud or omission;
>
> 2. If prior to the expiration of the time prescribed in Section 203 of the same Code, 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. This agreement may be extended by a subsequent written agreement made before the expiration of the period previously agreed upon.
>
> xxx xxx xxx"

In the instant case, petitioner was assessed on January 23, 1998 for deficiency withholding taxes for the years 1988 and 1989. Petitioner contended that respondent's right to assess its deficiency withholding taxes had already prescribed considering that

574

there is no other circumstance or situation which would indicate fraud other than the non-withholding of such tax. According to petitioner, what is obvious is that the interest on the subject loans are not subject to withholding; thus, the three (3) year prescriptive period provided in Section 203 of the NIRC should apply.

Respondent, on the other hand, argued that his right to assess petitioner for deficiency withholding taxes for the years 1988 and 1989 had not prescribed pursuant to Section 222 of the 1997 NIRC. He averred that for the calendar year ending December 31, 1988, petitioner did not file an Annual Withholding Tax Return. While petitioner filed its Annual Withholding Tax Return for the calendar year ending December 31, 1989, it, however, failed to mention its interest payments to DBP on which the withholding taxes were due. Hence, for failure to file a return for the year 1988 and for filing a false return for the year 1989, the corresponding taxes may be assessed at any time within ten (10) years after the discovery of such omission or falsity pursuant to Section 222 (a) of the Code.

Section 51 of the old National Internal Revenue Code (NIRC) provides:

> "**Sec. 51.** ***Returns and payment of taxes withheld at source.*** – (a) Quarterly returns and payment of taxes withheld. – Taxes deducted and withheld under Section 50 shall be covered by a return and paid to the Revenue District Officer, Collection Agent, or duly authorized Treasurer of the city, or municipality where the withholding agent has his legal residence or principal place of business, or where the withholding agent is a corporation, where the principal office is located. xxx xxx xxx The Commissioner of Internal Revenue may, with the approval of the Secretary of Finance, require these withholding agents to pay or deposit the taxes deducted or withheld at more frequent intervals when necessary to protect the interest of the Government. The return for final withholding tax shall be filed and the payment made within 25 days from the close of each calendar quarter xxx" (Emphasis supplied)

JTS

Upon the other hand, Revenue Regulations No. 5-85, in relation to Section 51 of the NIRC, provided for the synchronization of the time and manner of filing and remitting creditable and final income taxes withheld, pertinent portion of which reads:

> "SECTION 2. Monthly return and remittance of taxes withheld. – Taxes deducted and withheld on:
>
> xxx xxx xxx
>
> (iii) income subject to final withholding taxes, shall be remitted within ten (10) days after the end of each calendar month xxx"

A careful perusal of the records would reveal that for the years 1988 and 1989, petitioner duly filed its Annual Returns of Creditable Income Tax Withheld under the Expanded Withholding Tax System (*Exhibits M and Z*). And pursuant to the above-quoted Section 2 of Revenue Regulations No. 5-85, petitioner likewise filed its Monthly Remittance Returns of Income Taxes Withheld, reflecting its income payments subject to creditable tax (*Exhibits A to L and N to Y*). It is to be noted, however, that while the said returns provided for spaces on which final taxes withheld may be reflected, petitioner left these spaces blank. Instead, it filed separate monthly remittance returns reflecting its income payments subject to final tax and paid the corresponding final taxes withheld but only for the following months:

Exhibit	***Year/Month Covered***		**Date *Remitted***	**Amount *Paid***
BIR records, p. 620	1988	January	2/10/88	P 200,364.36
OO to OO-3		April	5/10/88	171,745.03
PP to PP-3		July	8/9/88	166,042.82
QQ to QQ-3		October	11/10/88	193,952.99
RR to RR-1	1989	January	2/13/89	203,951.06
SS to SS-3		April	5/9/89	213,784.26
TT to TT-2		July	8/10/89	233,984.22

JHC

For the months of February, March, May, June, August, September, November and December of 1988 and February, March, May, June, August, September, October, November and December of 1989, no monthly remittance returns reflecting its income payments subject to final tax were filed by petitioner. Clearly, under Section 222(a) of the 1997 NIRC *[Section 223(a) of the 1977 NIRC]*, for its failure to file the corresponding returns, the tax may be assessed at any time within ten (10) years after the discovery of the ***omission.*** Moreover, petitioner's failure to file the said monthly remittance returns as well as its annual withholding tax returns for the same years constitute willful neglect on the part of petitioner. Under Section 236 of Revenue Regulations No. 2, there is willful neglect in the case of a taxpayer who, being liable to file a return, knowingly delays the filing of such return. Where the filing of the return has been delayed for a considerable length of time, the delinquency will be presumed to be due to willful neglect. Consequently, the assessment notices issued on January 23, 1998 are not time-barred.

As to the rest of the monthly remittance returns reflecting petitioner's income payments subject to final tax, the same also failed to mention its interest payments to DBP on which the withholding taxes were due. And even if petitioner believed that the same are not subject to final tax, it could have reported the same as such in the annual information return/alpha list of income payments not subjected to withholding tax. Unfortunately, petitioner failed to do so. The court, therefore, finds the returns to have deviated from the truth, making the same ***false*** returns within the purview of Section 222(a) of the 1997 NIRC *[Section 223(a) of the 1977 NIRC]* and subject to the ten-year prescriptive period as well. In *Aznar vs. Court of Tax Appeals and Collector*

J77

of Internal Revenue, 58 SCRA 519, the Highest Tribunal made a pronouncement on the prescriptive period applicable to false returns:

> "xxx Our stand that the law should be interpreted to mean a separation of the three different situations of false return, fraudulent return with intent to evade tax, and failure to file a return is strengthened immeasurably by the last portion of the provision which segregates the situations into three different classes, namely – "falsity", "fraud" and "omission." That there is a difference between "false return" and "fraudulent return" cannot be denied. While the first merely implies deviation from the truth, whether intentional or not, the second implies intentional or deceitful entry with intent to evade the taxes due.
>
> The ordinary period of prescription of 5 years (*now 3 years*) within which to assess tax liabilities under Sec. 331 of the NIRC should be applicable to normal circumstances, but whenever the government is placed at a disadvantage so as to prevent its lawful agents from proper assessment of tax liabilities due to false returns, fraudulent returns intended to evade payment of tax or failure to file returns, the period of ten years provided for in Section 332(a) NIRC, from the time of the discovery of the falsity, fraud or omission even seems to be inadequate and should be the one enforced.
>
> There being undoubtedly false tax returns in this case, We affirm the conclusion of the respondent Court of Tax Appeals that Sec. 332(a) of the NIRC should apply and that the period of ten years within which to assess petitioner's tax liability had not expired at the time said assessment was made."

Moreover, the Supreme Court had ruled that the filing of deficient returns which prevent the Commissioner of Internal Revenue from computing the proper taxes is tantamount to non-filing. The Commissioner had to determine and assess the taxes on data obtained, not from the return, but from other sources (*Commissioner of Internal Revenue vs. Gonzales, 18 SCRA 757, 767*). Clearly, insofar as these false returns are concerned, the assessment notices issued on January 23, 1998 had not prescribed, reckoned from February 10, 1988, the earliest date of monthly remittance return filed by petitioner.

J78

We proceed to the issue on whether or not the assessment notices were validly issued against the petitioner.

Petitioner assailed the assessment notices for being invalid and void for failure to state the law and the facts on which they were based. It claimed that they were issued even if the right of respondent to assess petitioner had already prescribed and for having been issued without factual and legal basis.

Petitioner further asseverates that the subject interest payments/accruals are not subject to final withholding taxes for the simple reason that the creditors of the petitioner were local or domestic creditors. With regard to the minimal interest payments to foreign creditors, the taxes thereon were allegedly withheld and paid to the BIR by the petitioner. Lastly, petitioner contended that the presumption of correctness of the assessment cannot be invoked by the respondent for the presumption was easily and overly destroyed by the petitioner with its voluminous and highly plausible evidences.

Petitioner's assertions cannot be given credence.

Section 228 of the NIRC provides that the taxpayer shall be informed in writing of the law and the facts on which the assessment was based. A perusal of petitioner's letter-reply dated December 2, 1996 reveals that respondent issued an undated letter with the "Examiner's Report" attached therewith. While the subject Examiner's Report was not found in the records, it can be deduced from petitioner's reply-letter that it was substantially informed of the law and the facts on which the assessment was based (*p. 644, BIR Records*).

579

Moreover, in petitioner's letter addressed to the Chief of the Assessment Division dated May 5, 1997 (*pp. 702-705, BIR records*), it questioned the issuance of the pre-assessment notices on the following grounds:

> 1. The assessment for deficiency income taxes for the years 1988 and 1989 has prescribed.
>
> > "For the year 1989, the income tax return was filed on 15 April 1990. The BIR, therefore, had until 15 April 1993 to issue an assessment. Note, too, that a waiver was issued last 20 July 1995 which was good until 30 September 1995. This, in effect, tolled the running of the prescriptive period. However, from 1 October 1995 to the present, no formal assessment has yet been issued. This amounts to a period of more than three (3) years even with the exclusion of the period of waiver. Hence, pursuant to the aforementioned provision of the NIRC, the Commissioner of Internal Revenue has lost her power to assess and collect alleged deficiency income taxes for the year 1989, more so, for the year 1988."
>
> 2. Petitioner alleged that it obtained foreign currency denominated loans from different banks and foreign corporations which were guaranteed by the Development Bank of the Philippines (DBP). Petitioner defaulted in the payment of its loans to the foreign creditors. Petitioner contended that for the taxable years 1988 and 1989, the loans were no longer payable to the foreign creditors, but were already payable to DBP by virtue of DBP's subrogation to the rights of the foreign creditors. These loans were subsequently transferred by the National Government to the Asset Privatization Trust (APT). As a consequence thereof, the loans are no longer payable to any foreign creditor.

In the same letter, petitioner further contended that the change from foreign creditors to the DBP is material for withholding tax purposes. It explained that:

> "xxx For non-resident foreign corporations, "interest from foreign loans" is subject to the withholding tax system. For domestic corporations, withholding is only required when interest pertains to "interests on Philippine currency bank deposits and yield or any other monetary benefit from deposit substitutes and from trust fund and similar arrangements. xxx The interests on the DBP loans are not "interests on Philippine currency bank deposits" for MVC is not a bank, does not perform quasi-banking functions, and does not accept money deposits. Neither are said interests in the nature of " yield or any other monetary benefit from trust funds and similar arrangements" because MVC is a corporation engaged in the manufacturing of polyvinyl

> chloride. MVC is not engaged in the business of a trust fund. Neither may said interests be considered as interests from deposit substitutes since said loans came from traditional lending activities of DBP. Note that yield or monetary benefits derived by banks from traditional lending activities are not subject to the 15% withholding, but are treated as income and subject to the 35% corporate income tax."

In its protest letter dated February 23, 1998, petitioner was able to present its arguments assailing the assessment notices dated January 23, 1998 issued by respondent for petitioner's deficiency final withholding taxes for the years 1988 and 1989. "It bears stressing that the purpose of Section 228 of the 1997 Tax Code in requiring that the taxpayer be informed of the law and the facts on which the assessment is made is to give the taxpayer the opportunity to refute the findings of the examiner and give a more accurate and detailed explanation regarding the proposed assessment(s). The purpose of the said law having been served in the instant case, Section 228 of the 1997 Tax Code is deemed to have been complied with." (***Philippine Stock Exchange, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 5995, promulgated October 15, 2002, citing Belle Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5930, promulgated April 4, 2002***).

We proceed to the fifth issue.

The 1988 and 1989 deficiency withholding tax assessments arose from the alleged failure by petitioner to withhold 20% final tax on its claimed interest expenses of P299,434,499.00 and P176,856,694.00, respectively. Based on the records, however, the alleged 1988 interest expense of P299,434,499.00 included petitioner's loss on its sale of equipment amounting to P11,348,984.00 (*p. 129, BIR Records*). Since loss on sale of equipment is not interest expense subject to 20% final withholding tax, the same shall be outrightly disregarded. The remaining amount of P288,085,515.00 for the year 1988 and the amount of P176,856,694.00 in 1989 were

581

claimed as deductions by petitioner in its income tax returns for the said years under the account "Interest and Other Charges".

Below is a breakdown of the "Interest and Other Charges" account shown in petitioner's 1988 and 1989 ITR (*Exhibits CC-12 & DD-12; pp. 337-338, BIR Records*)

"Interest and Other Charges" per ITR	1988	1989
Interest Expense	P 225,823,302.00	P 175,438,897.27
Fines, Penalties & Other Charges	61,260,783.54	
Other Financial Charges	1,001,429.75	1,417,796.73
Total	P 288,085,515.29	P 176,856,694.00

Documents submitted by petitioner show that it recorded monthly accrued interest expenses relative to its SWAP/Other loans, DBP loans, and income bonds which amounted to P225,823,302.00 for taxable year 1988 and P175,438,897.27 for taxable year 1989 (*pp.77 & 273, BIR Records*).

The monthly interest accruals for SWAP/Other loans pertain to loans obtained from the following banks, namely: Societe Generale, NMB Bank Pacific Limited and Banque Indosuez, Inchem, Eka Aktiebolag and PDCP (*pp. 15, 21, 29, 35, 38, 47, 55, 62, 66, 67, 75, 223, 238, 248, 252, 256, 260, 265 & 270, BIR Records*)

A review of the Restructuring Agreements executed by Societe Generale and Banque Indosuez disclose that they are offshore banking units (OBUs) *(Exhibits LL-29 and MM-34)*. Both banks were referred to in the said agreements as Manila Offshore Branch with addresses located in Makati, Metro Manila. Clearly, the loans obtained from these banks are foreign currency loans granted by offshore banking units (OBUs). As a result, interest income earned from these foreign currency loans are subject to final withholding tax at the rate of 10% under Section 25(B)(4) of the NIRC, to quote:

> (4) *Offshore banking units.* - The provisions of any law to the contrary notwithstanding, income derived by off-shore banking units authorized by the Central Bank of the Philippines from foreign currency

582

> transactions with non-residents, other offshore banking units, local commercial banks, including branches of foreign banks that may be authorized by the Central Bank to transact business with offshore banking units shall be exempt from all taxes except taxable income from such transactions as may be specified by the Secretary of Finance, upon recommendation of the Monetary Board, to be subject to the normal income tax payable by banks: Provided, <u>That any interest income derived from foreign currency loans granted to residents</u> other than offshore banking units or local branches of foreign banks that may be authorized by the Central Bank of the Philippines to transact business with offshore banking units, <u>shall be subject only to a 10% tax</u>.
>
> Any income of non-residents from transactions with said offshore banking units shall be exempt from income tax.

However, as to the loans obtained by petitioner from NMB Bank Pacific Limited, there is no showing that it is an OBU. In fact, under the Restructuring Agreement between petitioner and NMB Bank (*Exhibit KK to KK-33*), "all communications and notices provided for hereunder shall be in writing and shall be (i) personally delivered, (ii) transmitted by postage prepaid mail (airmail if international) or (iii) transmitted by telex to the parties as follows:

xxx

> To the Creditor: NMB BANK Pacific Limited
> c/o 2501 Connaught Centre
> Hong Kong"

From the above, it may be inferred that NMB is a non-resident foreign corporation; hence, the imposable tax on the interest derived from said loans is 20% pursuant to Section 25(b)(5)(A) of the old NIRC (now Section 28(B)(5)(a) of the 1997 NIRC).

> "SEC. 25. **Rates of tax on foreign corporation**.
> (a) *Tax on resident foreign corporations.-*
> (b) *Tax on non-resident foreign corporations.-*
> xxx
> (5) Tax on certain incomes received by non-resident foreign corporations.-(A) Interest on foreign loans contracted on or after August 1, 1986 shall be subject to a 20% tax."

583

Moreover, in its Memorandum filed with this court on November 23, 2001, petitioner admitted that the SWAP Loans are indeed foreign loans. (*p.535, CTA Records*). It further averred that taxes on the interest income pertaining to this class of loans were duly withheld and paid by the petitioner to the BIR.

During the hearing held on January 17, 2000, petitioner's witness, Mr. Tarrobal, testified on the following, to wit:

Atty. Pastrana's Direct Examination of petitioner's witness, Mr. Tarrobal:

> Q: Do you recall, Mr. Witness, if that obligations to Societe General, Banque Indosuez, and NMB Bank Pacific Limited was paid by Mabuhay Vinyl?
>
> A: Yes. They were paid by Mabuhay Vinyl Corporation.
>
> Q: And, would you know if the appropriate taxes were withheld?
>
> A: The Withholding Taxes were also paid and remitted to the BIR.
>
> Q: What documents do you have to show that, Mr. Witness, that in fact, the appropriate taxes were paid?
>
> A: The payments were covered by Withholding Tax Returns, Confirmation Receipts issued by the BIR, evidencing payment of those withholding taxes.
>
> Atty. Pastrana: Your Honors, the witness is referring to confirmation Receipts previously marked as Exhibits "NN", "NN-1", "OO", "OO-1", "OO-2", and "OO-3". Also Exhibits "PP", "PP-1" up to "PP-3", as well as Exhibits "QQ" for the petitioner until "QQ-2", and Exhibits "RR", "RR-1", SS-1, until "SS-3". These are Confirmation Receipts.
>
> Q: What else, Mr. Witness?
>
> A: There is also another document here marked as Exhibit "TT" up to …
>
> Q: What is this Exhibit "TT", Mr. Witness?
>
> A: Also part of the Remittance Returns.

584

Atty. Pastrana: The witness, you Honors, is referring to the Monthly Remittance of Income Taxes withheld previously marked as Exhibit "TT", "TT-2".

May I make it of record also, your Honors, that the counsel for the Bureau of Internal Revenue is examining the documents.
(pages 26-28, TSN, January 17, 2000)

We now delve into the monthly interest accruals pertaining to loans obtained from Inchem and Eka Aktiebolag. An examination of the schedules of interest accruals submitted by petitioner to the BIR and forming part of the BIR Records (*pp. 15, 21, 29, 35, 38, 47, 55, 62, 66, 67, 75, 223, 238, 248, 252, 256, 260, 265 and 270*) show that while the loans obtained from these banks are peso-denominated, the loans, nonetheless, are designated as "**foreign loan prin**." Unlike in the cases of Banque Indosuez, NMB Bank and Societe Generale, petitioner showed no proof that the creditors are foreign (resident/OBU or non-resident) or domestic. Thus, it may be presumed that the Inchem and Eka Aktiebolag loans are foreign loans subject to the 20% final withholding tax.

As to the interest on loans obtained from PDCP, these are likewise not subject to the 10% final withholding tax under Section 25(B) of the NIRC which states:

"(B) Income derived under the Expanded Foreign Currency Deposit System.- Income derived by a depository bank under the expanded foreign currency deposit system from foreign currency transactions with nonresidents, offshore banking units in the Philippines, local commercial banks including branches of foreign banks that may be authorized by the Central Bank of Philippines to transact business with foreign currency depository system units and other depository banks under the expanded foreign currency deposit system shall be exempt from all taxes, except taxable income from such transactions as may be specified by the Secretary of Finance, upon recommendation of the Monetary Board to be subject to the usual income tax payable by banks: Provided, That interest income from foreign currency loans granted by such depository banks under said expanded system to residents (other than offshore banking units in the

Philippines or other depository banks under the expanded system) shall be subjected to a 10% tax.

Any income of nonresidents from transactions with depository banks under the expanded system shall be exempt from income tax."

Clearly from the above provision, for loan interest to be subject to a 10% tax, the loan must have been obtained from a depository bank authorized to engage in foreign currency transactions under the expanded foreign currency deposit system. A careful scrutiny of the Agreement executed between petitioner and the banks and financial institutions dated September 13, 1983 shows that PDCP is a domestic corporation referred to as a "Financial Institution" and not a banking corporation. (*p.446, BIR Records*). While the loans obtained may have been foreign currency denominated, the interest therefrom cannot be subject to the 10% tax since PDCP is not a depository bank under the expanded foreign currency deposit system.

Part of the interest accrued by petitioner for the years 1988 and 1989 consisted of loans obtained from the DBP. These loans comprise of direct loans from the DBP which petitioner categorized as domestic loans and loans obtained from foreign creditors which were guaranteed by the DBP. Based on the records, the DBP direct loans consisted of domestic loans and foreign currency denominated loans. These foreign currency denominated loans are likewise subject to the 10% final withholding tax pursuant to Section 25 (B) of the NIRC.

Based on the schedules, which show the details of the monthly accrual of interest, the DBP loans consisted of different groups, to wit:

1. IBRD Loans
2. Industrial Loan
3. Advances on Guaranteed Loans
   a) Banque Louis Dreyfus
   b) Inter-Alpha Asia Limited
4. Guaranteed Loan Inter-Alpha

5. Other Advances on Loan – Inter-Alpha
6. Domestic Loans

(pp. 17, 23, 25, 31, 40, 49, 57, 64, 69, 70, 72, 219, 225, 228, 234, 240, 244, 250, 254, 258, 262, 267 and 272, BIR Records)

The IBRD and Industrial Loans are considered as foreign currency denominated transactions subject to the 10% final withholding tax prescribed under the aforequoted Section 25(B) of the NIRC.

As to the advances on guaranteed loans (*items 3 to 5*), petitioner contended that the interest payments for the years 1988 and 1989 were not subjected to the final withholding tax as these no longer pertain to foreign loans but to domestic loans. Although the interest payments were originally loans obtained by petitioner from its foreign creditors, these loans nevertheless became domestic loans when petitioner defaulted in its payment and DBP, as guarantor, assumed the obligation pursuant to the Guaranty Undertaking. By virtue thereof, petitioner was no longer indebted to the foreign creditors but to DBP as a result of the latter's right of subrogation.

Petitioner further alleged that it is neither required to withhold tax on the interest accrued from its domestic loans because for domestic corporations, withholding is required only when interest pertains to "interest on Philippine currency bank deposits and yield or any other monetary benefit from deposit substitutes and from trust fund and similar arrangements." The interests on the DBP loans and the MOA are not "interests on Philippine currency bank deposits" because the debtor/petitioner, is not a bank; neither does petitioner perform quasi-banking functions nor does it accept deposits. Neither are said interests in the nature of "yield or any other monetary benefit from trust funds and similar arrangements" because the petitioner is a corporation engaged in the manufacturing of polyvinyl chloride – not a

587

trust fund. Neither may said interests be considered as "yield or monetary benefits from deposit substitutes" because said loans are ordinary loans or came from traditional lending activities of the creditor and do not fall within the context of deposit substitutes as defined in Section 20(Y) (now Section 22 (Y)) of the NIRC.

Respondent, for his part, argued that the interest expenses which were accrued by petitioner for the taxable years 1988 and 1989 are subject to the 20% final withholding tax pursuant to Section 25(b)(5)(A) of the old NIRC. Said interest expenses pertain to foreign loans obtained by petitioner from its foreign creditors, hence, withholding taxes should have been withheld for the said taxable years. According to respondent, guaranty is only an accessory contract to the contract of loan and the guarantor who pays merely steps into the shoes of the foreign creditors upon payment by the former. Consequently, DBP's credit acquired the character of a foreign loan on which withholding taxes were due. DBP's guaranty was merely an accessory obligation to the principal contract between the petitioner and the foreign creditors, therefore, DBP's contract was necessarily tainted with the foreign loan element.

We agree with petitioner's contentions.

The foreign loans obtained by petitioner from its foreign creditors and guaranteed by DBP became domestic loans when petitioner defaulted in its payment and DBP assumed petitioner's obligation. For easy reference, pertinent provisions of the Civil Code of the Philippines are hereby quoted as follows:

> *"Art. 1231. Obligations are extinguished:*
> *(1) By payment or performance;*
> *xxx xxx xxx"*

588

"Art. 1236. The creditor is not bound to accept payment or performance by a third person who has no interest in the fulfillment of the obligation, unless there is a stipulation to the contrary.

Whoever pays for another may demand from the debtor what he has paid, except that if he paid without the knowledge or against the will of the debtor, he can recover only insofar as the payment has been beneficial to the debtor.

"Art. 1303. Subrogation transfers to the person subrogated the credit with all the rights thereto appertaining, either against the debtor or against third persons, be they guarantors or possessors of mortgages, subject to stipulation in a conventional subrogation."

"Art. 2047. By guaranty a person, called the guarantor, binds himself to the creditor to fulfill the obligation of the principal debtor in case the latter should fail to do so.

xxx xxx xxx"

"Art. 2052. A guaranty cannot exist without a valid obligation.

xxx xxx xxx"

"Art. 2067. The guarantor who pays is subrogated by virtue thereof to all the rights which the creditor had against the debtor.

If the guarantor has compromised with the creditor, he cannot demand of the debtor more than what he has really paid."

"Art. 2076. The obligation of the guarantor is extinguished at the same as that of the debtor, and for the same causes as all other obligations."

A perusal of the "Letter Guarantee" executed by DBP in favor of Banque Louis Dreyfuss (*Exh. UUU*) and the "Guaranty of Development Bank of the Philippines" executed by DBP in favor of Inter Alpha Asia (Pacific) Limited and Baring Brothers Asia Limited (*Exh. BBBB-45*), reveals that DBP guaranteed the payment of the loans obtained from the respective foreign creditors when the same became due. In case of non-payment, DBP undertook to "unconditionally and irrevocably" pay upon demand the said foreign creditors, subject to the rights of subrogation.

J89

Thus, by virtue of subrogation, when petitioner failed to comply with its obligations to the foreign creditors and DBP assumed the payment of the said loans, the result would be the extinguishment of petitioner's foreign loans and the onset of new loans to DBP, a domestic banking corporation. Consequently, interest payments pertaining to these loans are not subject to the 20% final withholding tax pursuant to Section 25(b)(5)(A) of the old NIRC, as they have ceased to be foreign loans.

With reference to the DBP domestic loans, the same are not subject to withholding as they are peso-denominated loans. Under Section 25(B) of the old Tax Code, *supra*, only interest income from foreign currency loans granted by depository banks under the foreign currency expanded system to residents (other than offshore banking units in the Philippines or other depository banks under the expanded system) shall be subjected to a 10% tax.

Anent the interest on income bonds, the same are not subject to withholding tax. As correctly pointed out by petitioner, the fifteen percent (15%) EWT on interest payments on bonds or similar indebtedness imposed by Revenue Regulations (RR) No. 13-78, as amended by RR No. 5-82, has been repealed by RR No. 6-85 when it no longer required withholding on interest payments on bonds or similar indebtedness (*pp. 627-629, BIR Records*).

For clarity, Section 1(h) of RR No. 5-82 and the pertinent provisions of RR No. 6-85 are hereunder quoted:

Revenue Regulations No. 5-82

Section 1. *Income payments subject to withholding tax and rates prescribed herein.* xxx

"(g) *Income distribution to beneficiaries. - xxx*

590

> (h) *Interest Payments on Bonds or Similar Indebtedness*. - On interest payments on bonds or similar evidences of indebtedness, except interest or other payments on tax-free covenant bonds which are subject to withholding under Section 53(a) of the Tax Code, issued by any corporation and by all government agencies including government-owned or controlled corporations fifteen per centum (15%); Provided, however, that interest and discounts earned from Treasury bills and notes issued by the Republic of the Philippines shall not be subject to withholding under this subsection." (*Emphasis supplied*)
>
> Revenue Regulations No. 6-85
>
> SECTION 1. *Income payments subject to creditable withholding tax and rates prescribed thereon*. —x x x
>
> xxx
>
> (f) Income distribution to the beneficiaries — On income distributed to beneficiaries of estates and trusts as determined under Section 57 of the National Internal Revenue Code, except such income already subject to final withholding tax - fifteen per centum (15%)
>
> (g) Amounts paid to certain brokers and agents — On gross payments to customs, insurance, real estate and commercial brokers and agents of professional entertainers - five per centum (5%)

From the above, the deficiency withholding tax assessment should not include the amount corresponding to the interest on income bonds as the same has been clearly deleted from RR No. 6-85.

The last issue is answered in the negative.

The appeal to this court over the pre-assessment notices issued on March 6, 1998 was premature and cannot be the subject of this court's consideration. Section 7 of Republic Act No. 1125 (An Act Creating the Court of Tax Appeals) is explicit: this court shall exercise exclusive appellate jurisdiction to review by appeal decisions of the Commissioner of Internal Revenue in cases involving **disputed assessment**, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation

J91

thereto, or other matters arising under the National Internal Revenue Code or other law or part of law administered by the Bureau of Internal Revenue.

Clearly, this court may assume jurisdiction only if the same involves a decision of the Commissioner in a disputed assessment. A pre-assessment notice is not the appealable decision for there is no disputed assessment yet. The taxpayer is still given the chance to file its protest or objection to the pre-assessment notice. The decision contemplated in R.A. 1125 is one which constitutes a final decision of the Commissioner of Internal Revenue.

In *Commissioner vs. Villa*, 22 SCRA 3, the Supreme Court passed upon a similar issue, thus:

"The Court of Tax Appeals lacks jurisdiction to take cognizance of uncontested assessments of the Bureau of Internal Revenue. The Tax Court's jurisdiction is over disputed assessments, and a deficiency assessment that has not yet been questioned by the taxpayer on the administrative level may not be said to be a disputed one.

Furthermore, Sec. 319-A of the Revenue Code provides for the remedy of taxpayers on assessments, to wit:

> "Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation in such form and manner as may be prescribed by implementing regulations within thirty (30) days from receipt of the assessment; x x x
>
> "If the protest is denied in whole or in part, the individual, association or corporation adversely affected by the decision on protest may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision; x x x"
>
> Consequently, the taxpayer should have first exhausted his administrative remedies, and it is only after his protest is denied that a petition may be entertained by the Court of Tax Appeals."

In fine, petitioner's deficiency withholding taxes for the years 1988 and 1989 are recomputed as follows:

592

Claimed Interest Expense on

	SWAP/Other Loans	DBP Loans	Total
1988			
Basic final tax due	P 2,153,709.49	P 13,436,376.92	P 15,590,086.42
Surcharge	1,155,968.26	6,718,188.46	7,874,156.73
Interest	6,610,821.47	37,394,351.87	44,005,173.34
(see Annex A)	P 9,920,499.22	P 57,548,917.26	P 67,469,416.48
1989			
Basic final tax due	P 2,113,399.98	P 10,603,085.99	P 12,716,485.97
Surcharge	1,106,982.28	5,301,542.99	6,408,525.27
Interest	5,571,379.48	27,043,818.09	32,615,197.57
(see Annex B)	P 8,791,761.74	P 42,948,447.06	P 51,740,208.81
1988 & 1989 Def. FWT			
Basic final tax due	P 4,267,109.48	P 24,039,462.91	P 28,306,572.38
Surcharge	2,262,950.54	12,019,731.45	14,282,681.99
Interest	12,182,200.95	64,438,169.96	76,620,370.91
	P 18,712,260.97	P100,497,364.32	P119,209,625.29

WHEREFORE, in view of all the foregoing, petitioner is hereby **ORDERED** to **PAY** the amount of P119,209,625.29 representing deficiency final withholding taxes for the years 1988 and 1989. In addition, petitioner is likewise **ORDERED** to **PAY** 20% delinquency interest on the total deficiency withholding tax computed from February 24, 1998 until fully paid pursuant to Section 249 (a)(C)(3) of the 1997 Tax Code .

SO ORDERED.

JUANITO C. CASTANEDA, JR.
Associate Judge

I CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

593

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Judge

Mabuhay Vinyl Corporation - versus-
Commissioner of Internal Revenue
CTA Case No. 5669
1988 Deficiency Final Withholding Tax

ANNEX A

SWAP/Other Loans	January	February	March
SWAP Loans			
from OBUs			
Banque Indosuez	79,835.66	78,369.41	
Societe Generale	1[illegible],843.93	195,192.00	
Total interest subject to final tax	278,679.59	273,561.41	-
10% final w/holding tax due	27,867.96	27,356.14	-
Less: final taxes withheld and remitted			
Basic deficiency final withholding tax	27,867.96	27,356.14	-
Add: 50% surcharge	13,933.98	13,678.07	-
20% interest (from the 11th of the following month until Jan. 23, 1998)	83,260.30	81,079.11	-
Total deficiency final w/holding tax	125,062.24	122,113.32	-
from non-resident foreign corp			
NMB Bank	282,520.27	277,331.54	
Other Loans			
Inchem	40,085.62	37,499.45	
Eka Aktiebolag	221,972.92	207,652.08	
SWAP/Other Loans w/o supporting schedule/breakdown			4,601,830.48
Total interest subject to final tax	544,578.81	522,483.07	4,601,830.48
20% final w/holding tax due	108,915.76	104,496.61	920,366.10
Less: final taxes withheld and remitted	200,364.36		
Basic deficiency final withholding tax	([illegible],448.60)	104,496.61	920,366.10
Add: 50% Surcharge		52,248.31	460,183.05
20% Interest (from the 11th of the following month until Jan. 23, 1998)		309,710.79	2,704,363.39
Total deficiency final withholding tax	(91,448.60)	466,455.71	4,084,912.54
Total Deficiency Final Tax - SWAP/Other Loans			
Basic Final Tax Due	(63,580.64)	131,852.76	920,366.10
Surcharge	13,933.98	65,926.38	460,183.05
Interest	83,260.30	390,789.89	2,704,363.39
Total Def. Final Tax - SWAP/Other Loans	33,613.64	588,569.02	4,084,912.54
DBP Foreign Curr. Denominated Direct Loans			
IBRD Loans			
SWfr	205,994.78	307,867.46	
M$	12,865.73	13,517.20	
NT$	19,867.14	30,089.42	
DM	290,093.94	410,441.07	
RS	10,609.15	10,877.28	
SRLS	3,310.27	3,185.84	
US$	40,933.82	39,334.87	
YEN	162,842.73	253,777.23	
Industrial Loans			
APCO Consortium 1X	505,194.86	485,461.11	
$56.71 CBJ due 3.31.85	205,137.89	197,124.87	
$26.02M FCB due 9.30.82	381,026.30	366,142.78	
Others-Due 12.31.85	659,716.09	633,946.50	
Others-Due 3.31.84	151,448.74	145,532.91	
Others-Due 9.30.84	368,986.51	354,573.29	
Banque Louis Dreyfuss	26,153.57	35,123.52	
Without supporting schedule/breakdown			14,572,463.17
Total interest subject to final tax	3,044,181.52	3,286,995.35	14,572,463.17
10% Final w/holding tax due	304,418.15	328,699.54	1,457,246.32
50% Surcharge	152,209.08	164,349.77	728,623.16
20% Interest (from the 11th of the following month until Jan. 23, 1998)	909,501.36	974,211.39	4,281,908.70
Total Deficiency Final Tax Due-DBP Loans	1,366,128.58	1,467,260.69	6,467,778.17
Total deficiency final tax - SWAP/Others & DBP Loans			
Basic final tax due	240,837.51	460,552.29	2,377,612.41
Surcharge	166,143.06	230,276.15	1,188,806.21
Interest	992,761.65	1,365,001.28	6,986,272.09
Total deficiency final tax - SWAP & DBP	1,399,742.22	2,055,829.72	10,552,690.71

J 95

Mabuhay Vinyl Corporation - versus-
Commissioner of Internal Revenue
CTA Case No. 5669
1988 Deficiency Final Withholding Tax

ANNEX A

SWAP/Other Loans	April	May	June
SWAP Loans			
from OBUs			
Banque Indosuez	81,071.81	83,774.20	70,026.56
Societe Generale	201,922.75	208,653.51	174,412.72
Total interest subject to final tax	282,994.56	292,427.71	244,439.28
10% final w/holding tax due	28,299.46	29,242.77	24,443.93
Less: final taxes withheld and remitted	56,727.15		
Basic deficiency final withholding tax	(28,427.69)	29,242.77	24,443.93
Add: 50% surcharge		14,621.39	12,221.96
20% interest (from the 11th of the following month until Jan. 23, 1998)		84,459.53	69,996.69
Total deficiency final w/holding tax	(28,427.69)	128,323.69	106,662.59
from non-resident foreign corp			
NMB Bank	286,894.69	296,457.85	247,808.07
Other Loans			
Inchem	38,792.53	40,085.62	38,792.53
Eka Aktiebolag	214,812.50	221,972.92	214,812.50
SWAP/Other Loans w/o supporting schedule/breakdown			
Total interest subject to final tax	540,499.72	558,516.39	501,413.10
20% final w/holding tax due	108,099.94	111,703.28	100,282.62
Less: final taxes withheld and remitted	115,017.88		
Basic deficiency final withholding tax	(6,917.94)	111,703.28	100,282.62
Add: 50% Surcharge		55,851.64	50,141.31
20% Interest (from the 11th of the following month until Jan. 23, 1998)		322,623.55	287,165.46
Total deficiency final withholding tax	(6,917.94)	490,178.47	437,589.39
Total Deficiency Final Tax - SWAP/Other Loans			
Basic Final Tax Due	(35,345.63)	140,946.05	124,726.55
Surcharge	-	70,473.02	62,363.27
Interest	-	407,083.08	357,162.16
Total Def. Final Tax - SWAP/Other Loans	(35,345.63)	618,502.16	544,251.98
DBP Foreign Curr. Denominated Direct Loans			
IBRD Loans			
SWfr	256,931.12	265,495.49	256,931.12
M$	13,191.47	13,631.18	13,191.47
NT$	24,978.28	25,810.89	24,978.28
DM	350,267.51	361,943.09	350,267.51
RS	10,743.22	11,101.32	10,743.22
SRLS	3,248.05	3,356.32	3,248.05
US$	40,134.35	41,472.16	40,134.35
YEN	208,309.98	215,253.65	208,309.98
Industrial Loans			
APCO Consortium 1X	495,327.99	511,838.92	495,327.99
$56.71 CBJ due 3.31.85	201,131.38	207,835.76	201,131.38
$26.02M FCB due 9.30.82	373,584.54	386,037.36	373,584.54
Others-Due 12.31.85	646,831.30	668,392.34	646,831.30
Others-Due 3.31.84	148,490.82	153,440.52	148,490.82
Others-Due 9.30.84	3[illegible],779.90	373,839.23	361,779.90
Banque Louis Dreyfuss	30,638.54	31,659.83	30,638.54
Without supporting schedule/breakdown			
Total interest subject to final tax	3,165,588.45	3,271,108.06	3,165,588.45
10% Final w/holding tax due	316,558.85	327,110.81	316,558.85
50% Surcharge	158,279.42	163,555.40	158,279.42
20% Interest (from the 11th of the following month until Jan. 23, 1998)	922,357.07	944,767.70	906,485.77
Total Deficiency Final Tax Due-DBP Loans	1,397,195.34	1,435,433.91	1,381,324.03
Total deficiency final tax - SWAP/Others & DBP Loans			
Basic final tax due	281,213.22	468,056.86	441,285.39
Surcharge	158,279.42	234,028.43	220,642.70
Interest	922,357.07	1,351,850.79	1,263,647.93
Total deficiency final tax - SWAP & DBP	1,361,849.71	2,053,936.07	1,925,576.01

596

Mabuhay Vinyl Corporation - versus-
Commissioner of Internal Revenue
CTA Case No. 5669
1988 Deficiency Final Withholding Tax

ANNEX A

SWAP/Other Loans	July	August	September
SWAP Loans			
from OBUs			
Banque Indosuez	77,778.83	77,537.43	75,036.23
Societe Generale	193,721.04	193,119.81	186,890.14
Total interest subject to final tax	271,499.87	270,657.24	261,926.37
10% final w/holding tax due	27,149.99	27,065.72	26,192.64
Less: final taxes withheld and remitted	54,843.71		
Basic deficiency final withholding tax	(27,693.72)	27,065.72	26,192.64
Add: 50% surcharge		13,532.86	13,096.32
20% interest (from the 11th of the following month until Jan. 23, 1998)		76,125.13	73,023.64
Total deficiency final w/holding tax	(27,693.72)	116,723.72	112,312.59
from non-resident foreign corp			
NMB Bank	275,241.59	274,387.35	265,536.15
Other Loans			
Inchem	40,085.62	40,085.62	38,792.53
Eka Aktiebolag	221,972.92	221,972.92	214,812.50
SWAP/Other Loans w/o supporting schedule/breakdown			
Total interest subject to final tax	537,300.13	536,445.89	519,141.18
20% final w/holding tax due	107,460.03	107,289.18	103,828.24
Less: final taxes withheld and remitted	111,199.11		
Basic deficiency final withholding tax	(3,739.08)	107,289.18	103,828.24
Add: 50% Surcharge		53,644.59	51,914.12
20% Interest (from the 11th of the following month until Jan. 23, 1998)		301,761.84	289,467.43
Total deficiency final withholding tax	(3,739.08)	462,695.60	445,209.79
Total Deficiency Final Tax - SWAP/Other Loans			
Basic Final Tax Due	(31,432.81)	134,354.90	130,020.87
Surcharge	-	67,177.45	65,010.44
Interest	-	377,886.97	362,491.07
Total Def. Final Tax - SWAP/Other Loans	(31,432.81)	579,419.32	557,522.38
DBP Foreign Curr. Denominated Direct Loans			
IBRD Loans			
SWfr	619,489.48	619,489.48	599,505.95
M$	31,806.10	31,806.10	30,780.09
NT$	60,225.41	60,225.41	58,282.65
DM	844,533.88	844,533.88	817,290.85
RS	25,903.09	25,903.09	25,067.50
SRLS	7,831.42	7,831.42	7,578.79
US$	96,768.37	96,768.37	93,646.81
YEN	502,258.51	502,258.51	486,056.62
Industrial Loans			
APCO Consortium 1X	1,194,290.81	1,194,290.81	1,155,765.30
$56.71 CBJ due 3.31.85	484,950.10	484,950.10	469,306.55
$26.02M FCB due 9.30.82	900,753.84	900,753.84	871,697.26
Others-Due 12.31.85	1,559,582.13	1,559,582.13	1,509,273.03
Others-Due 3.31.84	358,027.87	358,027.87	346,478.59
Others-Due 9.30.84	872,291.54	872,291.54	844,153.10
Banque Louis Dreyfuss	73,872.93	73,872.93	71,489.93
Without supporting schedule/breakdown			
Total interest subject to final tax	7,632,585.48	7,632,585.48	7,386,373.02
10% Final w/holding tax due	763,258.55	763,258.55	738,637.30
50% Surcharge	381,629.27	381,629.27	369,318.65
20% Interest (from the 11th of the following month until Jan. 23, 1998)	2,166,190.49	2,146,743.08	2,059,280.32
Total Deficiency Final Tax Due-DBP Loans	3,311,078.31	3,291,630.91	3,167,236.28
Total deficiency final tax - SWAP/Others & DBP Loans			
Basic final tax due	731,825.74	897,613.45	868,658.18
Surcharge	381,629.27	448,806.73	434,329.09
Interest	2,166,190.49	2,524,630.05	2,421,771.39
Total deficiency final tax - SWAP & DBP	3,279,645.51	3,871,050.22	3,724,758.66

197

Mabuhay Vinyl Corporation - versus-
Commissioner of Internal Revenue
CTA Case No. 5669
1988 Deficiency Final Withholding Tax

ANNEX A

SWAP/Other Loans	Total - 1988
SWAP Loans	
from OBUs	
Banque Indosuez	800,547.08
Societe Generale	1,993,894.99
Total interest subject to final tax	2,794,442.07
10% final w/holding tax due	279,444.21
Less: final taxes withheld and remitted	
Basic deficiency final withholding tax	167,873.35
Add: 50% surcharge	111,997.38
20% interest (from the 11th of the following month until Jan. 23, 1998)	636,410.49
Total deficiency final w/holding tax	916,281.22
from non-resident foreign corp	
NMB Bank	2,832,954.15
Other Loans	
Inchem	393,097.67
Eka Aktiebolag	2,176,766.68
SWAP/Other Loans w/o supporting schedule/breakdown	7,629,033.92
Total interest subject to final tax	13,031,852.42
20% final w/holding tax due	2,606,370.48
Less: final taxes withheld and remitted	620,534.34
Basic deficiency final withholding tax	1,985,836.14
Add: 50% Surcharge	1,043,970.88
20% Interest (from the 11th of the following month until Jan. 23, 1998)	5,[illegible]4,410.98
Total deficiency final withholding tax	9,004,218.00
Total Deficiency Final Tax - SWAP/Other Loans	
Basic Final Tax Due	2,153,709.49
Surcharge	1,155,968.26
Interest	6,610,821.47
Total Def. Final Tax - SWAP/Other Loans	9,920,499.22
DBP Foreign Curr. Denominated Direct Loans	
IBRD Loans	
SWfr	4,970,189.79
M$	255,181.63
NT$	483,190.95
DM	6,775,730.34
RS	207,821.55
SRLS	62,831.79
US$	776,376.65
YEN	4,029,640.84
Industrial Loans	
APCO Consortium 1X	9,581,844.71
$56.71 CBJ due 3.31.85	3,800,774.78
$26.02M FCB due 9.30.82	7,226,785.40
Others-Due 12.31.85	12,512,592.11
Others-Due 3.31.84	2,872,472.47
Others-Due 9.30.84	6,998,431.19
Banque Louis Dreyfuss	592,685.58
Without supporting schedule/breakdown	73,127,219.46
Total interest subject to final tax	134,363,769.24
10% Final w/holding tax due	13,436,376.92
50% Surcharge	6,718,188.46
20% Interest (from the 11th of the following month until Jan. 23, 1998)	37,394,351.87
Total Deficiency Final Tax Due-DBP Loans	57,548,917.26
Total deficiency final tax - SWAP/Others & DBP Loans	
Basic final tax due	15,590,086.42
Surcharge	7,874,156.73
Interest	44,005,173.34
Total deficiency final tax - SWAP & DBP	67,469,416.48

599

Mabuhay Vinyl Corporation - versus-
Commissioner of Internal Revenue
CTA Case No. 5669
1989 Deficiency Final Withholding Tax

ANNEX B

	January	February	March	April
SWAP/Other Loans				
SWAP Loans				
from OBUs				
Banque Indosuez	114,855.21	117,913.19	130,546.75	125,611.37
Societe Generale	286,065.89	293,682.32	325,148.28	312,855.92
Total interest subject to final tax	400,921.10	411,595.51	455,695.03	438,467.29
10% final withholding tax due	40,092.11	41,159.55	45,569.50	43,846.73
Less: final taxes withheld and remitted				70,612.65
Basic deficiency final withholding tax	40,092.11	41,159.55	45,569.50	(26,765.92)
Add: 50% surcharge	20,046.06	20,579.78	22,784.75	
20% interest (from the 11th of the following month until January 23, 1998)	107,754.41	109,642.28	120,228.58	
Total deficiency final w/holding tax	167,892.58	171,381.60	188,582.83	(26,765.92)
from non-resident foreign corp				
NMB Bank	406,446.45	417,267.99	461,975.27	444,510.10
Other Loans				
Inchem	40,085.62	36,206.36	40,085.62	38,792.53
Eka Aktiebolag	221,972.92	200,491.67	221,972.92	214,812.50
SWAP/Other Loans w/o supporting sched/breakdown				
Total interest subject to final tax	668,504.99	653,966.02	724,033.81	698,115.13
20% final withholding tax due	133,701.00	130,793.20	144,806.76	139,623.03
Less: final taxes withheld and remitted	203,951.06			143,171.61
Basic deficiency final withholding tax	(70,250.06)	130,793.20	144,806.76	(3,548.58)
Add: 50% surcharge		65,396.60	72,403.38	
20% interest (from the 11th of the following month until January 23, 1998)		348,411.60	382,051.81	
Total deficiency final w/holding tax	(70,250.06)	544,601.40	599,261.96	(3,548.58)
Total Deficiency Final Tax - SWAP/Other Loans				
Basic final withholding tax due	(30,157.95)	171,952.76	190,376.27	(30,314.51)
Surcharge	20,046.06	85,976.38	95,188.13	-
Interest	107,754.41	458,053.87	502,280.39	-
Total deficiency final w/holding tax	97,642.51	715,983.01	787,844.79	(30,314.51)
DBP Foreign Curr Denominated Direct Loans				
IBRD Loans				
SWfr	737,487.47	666,117.72	737,487.47	713,697.56
M$	37,864.40	34,200.10	37,864.40	36,642.97
NT$	71,696.91	64,758.50	71,696.91	69,384.11
DM	1,005,397.47	908,100.94	1,005,397.47	972,965.30
RS	30,837.01	27,852.78	30,837.01	29,842.27
SRLS	9,323.12	8,420.88	9,323.12	9,022.37
US$	115,200.14	104,052.01	115,200.44	111,484.29
YEN	597,926.79	540,062.91	597,926.79	578,638.83
Industrial Loan				
APCO Consortium 1X	1,421,774.78	1,284,183.67	1,421,774.78	1,375,911.08
$56.71 CBJ due 3.31.85	577,321.55	521,451.72	577,321.55	558,698.27
$26.02M FCB due 9.30.82	1,072,326.00	968,552.52	1,072,326.00	1,037,734.84
Others-Due 12.31.85	1,856,645.39	1,676,970.03	1,856,645.39	1,796,753.60
Others-Due 3.31.84	426,223.66	384,976.21	426,223.66	412,474.51
Others-Due 9.30.84	1,038,442.31	937,947.89	1,038,442.31	1,004,944.17
Banque Louis Dreyfuss	87,943.96	79,433.26	87,943.96	85,107.06
Total interest subject to final tax	9,086,410.96	8,207,081.14	9,086,411.26	8,793,301.23
10% final withholding tax due	908,641.10	820,708.11	908,641.13	879,330.12
50% Surcharge	454,320.55	410,354.06	454,320.56	439,665.06
20% Interest (from the 11th of the following month until January 23, 1998)	2,442,128.53	2,186,231.50	2,397,318.92	2,298,303.94
Total deficiency final w/holding tax - DBP Loans	3,805,090.18	3,417,293.68	3,760,280.60	3,617,299.12
Total deficiency final tax - SWAP/Others & DBP Loans				
Basic final tax due	878,483.14	992,660.87	1,099,017.39	849,015.62
Surcharge	474,366.60	496,330.43	549,508.70	439,665.06
Interest	2,549,882.95	2,644,285.38	2,899,599.31	2,298,303.94
Total deficiency final tax - SWAP/Others & DBP	3,902,732.69	4,133,276.68	4,548,125.39	3,586,984.62

600

Mabuhay Vinyl Corporation - versus-
Commissioner of Internal Revenue
CTA Case No. 5669
1989 Deficiency Final Withholding Tax

ANNEX B

	May	June	July	August
SWAP/Other Loans				
SWAP Loans				
from OBUs				
Banque Indosuez	129,299.54	125,128.58	-	131,793.96
Societe Generale	322,041.90	311,653.45	-	328,254.67
Total interest subject to final tax	451,341.44	436,782.03	-	460,048.63
10% final withholding tax due	45,134.14	43,678.20	-	46,004.86
Less: final taxes withheld and remitted				
Basic deficiency final withholding tax	45,134.14	43,678.20	-	46,004.86
Add: 50% surcharge	22,567.07	21,839.10	-	23,002.43
20% interest (from the 11th of the following month until January 23, 1998)	116,817.06	111,971.77	-	115,591.94
Total deficiency final w/holding tax	184,518.27	177,489.07	-	184,599.24
from non-resident foreign corp				
NMB Bank	457,561.67	442,801.62	-	466,388.86
Other Loans				
Inchem	40,085.62	38,792.53		40,085.62
Eka Aktiebolag	221,972.92	214,812.50		221,972.92
SWAP/Other Loans w/o supporting sched/breakdown			1,526,081.53	
Total interest subject to final tax	719,620.21	696,406.65	1,526,081.53	728,447.40
20% final withholding tax due	143,924.04	139,281.33	305,216.31	145,689.48
Less: final taxes withheld and remitted			233,984.22	
Basic deficiency final withholding tax	143,924.04	139,281.33	71,232.09	145,689.48
Add: 50% surcharge	71,962.02	69,640.67	35,616.04	72,844.74
20% interest (from the 11th of the following month until January 23, 1998)	372,506.97	357,056.28	180,792.89	366,059.79
Total deficiency final w/holding tax	588,393.03	565,978.27	287,641.02	584,594.01
Total Deficiency Final Tax - SWAP/Other Loans				
Basic final withholding tax due	189,058.19	182,959.53	71,232.09	191,694.34
Surcharge	94,529.09	91,479.77	35,616.04	95,847.17
Interest	489,324.02	469,028.04	180,792.89	481,651.73
Total deficiency final w/holding tax	772,911.30	743,467.34	287,641.02	769,193.25
DBP Foreign Curr Denominated Direct Loans				
IBRD Loans				
SWfr	737,487.47	713,697.56	568646.7	568,646.70
M$	37,864.40	36,642.97	35992.73	35,992.73
NT$	71,696.91	69,384.11	80961.5	80,961.50
DM	1,005,397.47	972,965.30	834296.03	834,296.03
RS	30,837.01	29,842.27	25074.34	25,074.34
SRLS	9,323.12	9,022.37	9688.92	9,688.92
US$	115,200.44	111,484.30	119675.53	119,675.53
YEN	597,926.79	578,638.83	537571.02	537,571.02
Industrial Loan				
APCO Consortium 1X	1,421,774.78	1,375,911.08	1477005.26	1,477,005.26
$56.71 CBJ due 3.31.85	577,321.55	558,698.27	599748.27	599,748.27
$26.02M FCB due 9.30.82	1,072,326.00	1,037,734.84	1113981.74	1,113,981.74
Others-Due 12.31.85	1,856,[illegible]45.39	1,796,753.60	1928768.92	1,928,768.92
Others-Due 3.31.84	426,223.66	412,474.51	442780.81	442,780.81
Others-Due 9.30.84	1,038,442.31	1,004,944.17	1078781.8	1,078,781.80
Banque Louis Dreyfuss	87,943.96	85,107.06	73,098.10	73,098.10
Total interest subject to final tax	9,086,411.26	8,793,301.24	8,926,071.67	8,926,071.67
10% final withholding tax due	908,641.13	879,330.12	892,607.17	892,607.17
50% Surcharge	454,320.56	439,665.06	446,303.58	446,303.58
20% Interest (from the 11th of the following month until January 23, 1998)	2,351,762.39	2,254,216.98	2,265,510.35	2,242,767.21
Total deficiency final w/holding tax - DBP Loans	3,714,724.08	3,573,212.16	3,604,421.11	3,581,677.96
Total deficiency final tax - SWAP/Others & DBP Loans				
Basic final tax due	1,097,699.31	1,062,289.66	963,839.25	1,084,301.51
Surcharge	548,849.66	531,144.83	481,919.63	542,150.76
Interest	2,841,086.41	2,723,245.02	2,446,303.24	2,724,418.94
Total deficiency final tax - SWAP/Others & DBP	4,487,635.38	4,316,679.50	3,892,062.12	4,350,871.21

Co1

Mabuhay Vinyl Corporation - versus-
Commissioner of Internal Revenue
CTA Case No. 5669
1989 Deficiency Final Withholding Tax

ANNEX B

	September	October	November	December
SWAP/Other Loans				
SWAP Loans				
from OBUs				
Banque Indosuez	-	-	151,832.47	-
Societe Generale	-	-	378,163.90	-
Total interest subject to final tax	-	-	529,996.37	-
10% final withholding tax due	-	-	52,999.64	-
Less: final taxes withheld and remitted				
Basic deficiency final withholding tax	-	-	52,999.64	-
Add: 50% surcharge	-	-	26,499.82	-
20% interest (from the 11th of the following month until January 23, 1998)	-	-	129,202.95	-
Total deficiency final w/holding tax	-	-	208,702.41	-
from non-resident foreign corp				
NMB Bank	-	-	537,300.60	-
Other Loans				
Inchem			38,792.55	
Eka Aktiebolag			214,812.50	
SWAP/Other Loans w/o supporting sched/breakdown	1,480,731.43	1,633,080.91		1,713,280.19
Total interest subject to final tax	1,480,731.43	1,633,080.91	790,905.65	1,713,280.19
20% final withholding tax due	296,146.29	326,616.18	158,181.13	342,656.04
Less: final taxes withheld and remitted				
Basic deficiency final withholding tax	296,146.29	326,616.18	158,181.13	342,656.04
Add: 50% surcharge	148,073.14	163,308.09	79,090.57	171,328.02
20% interest (from the 11th of the following month until January 23, 1998)	736,795.73	804,281.16	385,615.26	826,599.02
Total deficiency final w/holding tax	1,181,015.16	1,294,205.44	622,886.95	1,340,583.07
Total Deficiency Final Tax - SWAP/Other Loans				
Basic final withholding tax due	296,146.29	326,616.18	211,180.77	342,656.04
Surcharge	148,073.14	163,308.09	105,590.38	171,328.02
Interest	736,795.73	804,281.16	514,818.21	826,599.02
Total deficiency final w/holding tax	1,181,015.16	1,294,205.44	831,589.36	1,340,583.07
DBP Foreign Curr Denominated Direct Loans				
IBRD Loans				
SWfr	550,303.26	568,646.70	550,303.26	568,646.70
M$	34,831.68	35,992.73	34,831.68	35,992.73
NT$	78,349.84	80,961.50	78,349.84	78,349.84
DM	807,383.25	834,296.03	807,383.25	834,296.03
RS	24,265.49	25,074.34	24,265.49	25,074.34
SRLS	9,376.37	9,688.92	9,376.37	9,688.92
US$	115,815.03	119,675.53	115,815.03	119,675.53
YEN	520,230.02	537,571.02	520,230.02	537,571.02
Industrial Loan				
APCO Consortium 1X	1,429,359.93	1,477,005.26	1,429,359.93	1,477,005.26
$56.71 CBJ due 3.31.85	580,401.55	599,748.27	580,401.55	599,748.27
$26.02M FCB due 9.30.82	1,078,046.85	1,113,981.74	1,078,046.85	1,113,981.74
Others-Due 12.31.85	1,866,550.57	1,928,768.92	1,866,550.57	1,928,768.92
Others-Due 3.31.84	428,497.56	442,780.81	428,497.56	442,780.81
Others-Due 9.30.84	1,043,982.38	1,078,781.80	1,043,982.38	1,078,781.80
Banque Louis Dreyfuss	70,740.09	73,098.10	70,740.09	73,098.10
Total interest subject to final tax	8,638,133.87	8,926,071.67	8,638,133.87	8,923,460.01
10% final withholding tax due	863,813.39	892,607.17	863,813.39	892,346.00
50% Surcharge	431,906.69	446,303.58	431,906.69	446,173.00
20% Interest (from the 11th of the following month until January 23, 1998)	2,149,120.37	2,198,014.58	2,105,811.37	2,152,631.93
Total deficiency final w/holding tax - DBP Loans	3,444,840.46	3,536,925.33	3,401,531.46	3,491,150.93
Total deficiency final tax - SWAP/Others & DBP Loans				
Basic final tax due	1,159,959.67	1,219,223.35	1,074,994.15	1,235,002.04
Surcharge	579,979.84	609,611.67	537,497.08	617,501.02
Interest	2,885,916.11	3,002,295.74	2,620,629.58	2,979,230.95
Total deficiency final tax - SWAP/Others & DBP	4,625,855.62	4,831,130.77	4,233,120.82	4,831,734.00

682

ANNEX B

Mabuhay Vinyl Corporation - versus-
Commissioner of Internal Revenue
CTA Case No. 5669
1989 Deficiency Final Withholding Tax

	Total - 1989
SWAP/Other Loans	
SWAP Loans	
from OBUs	
Banque Indosuez	1,026,981.07
Societe Generale	2,557,866.33
Total interest subject to final tax	3,584,847.40
10% final withholding tax due	358,484.74
Less: final taxes withheld and remitted	
Basic deficiency final withholding tax	287,872.09
Add: 50% surcharge	157,319.01
20% interest (from the 11th of the following month until January 23, 1998)	811,208.99
Total deficiency final w/holding tax	1,256,400.08
from non-resident foreign corp	
NMB Bank	3,634,252.56
Other Loans	
Inchem	312,926.45
Eka Aktiebolag	1,732,820.85
SWAP/Other Loans w/o supporting sched/breakdown	6,35[illegible]174.06
Total interest subject to final tax	12,033,173.92
20% final withholding tax due	2,406,634.78
Less: final taxes withheld and remitted	581,106.89
Basic deficiency final withholding tax	1,825,527.89
Add: 50% surcharge	949,663.27
20% interest (from the 11th of the following month until January 23, 1998)	4,760,170.50
Total deficiency final w/holding tax	7,535,361.66
Total Deficiency Final Tax - SWAP/Other Loans	
Basic final withholding tax due	2,113,399.98
Surcharge	1,106,982.28
Interest	5,571,379.48
Total deficiency final w/holding tax	8,791,761.74
DBP Foreign Curr Denominated Direct Loans	
IBRD Loans	
SWfr	7,681,168.57
M$	434,713.52
NT$	896,551.47
DM	10,822,174.57
RS	328,876.69
SRLS	111,943.40
US$	1,382,953.80
YEN	6,681,865.06
Industrial Loan	
APCO Consortium 1X	17,068,071.07
$56.71 CBJ due 3.31.85	6,930,609.09
$26.02M FCB due 9.30.82	12,873,020.86
Others-Due 12.31.85	22,288,590.22
Others-Due 3.31.84	5,116,714.57
Others-Due 9.30.84	12,466,255.12
Banque Louis Dreyfuss	947,351.84
Total interest subject to final tax	106,030,859.85
10% final withholding tax due	10,603,085.99
50% Surcharge	5,301,542.99
20% Interest (from the 11th of the following month until January 23, 1998)	27,043,818.09
Total deficiency final w/holding tax - DBP Loans	42,948,447.06
Total deficiency final tax - SWAP/Others & DBP Loans	
Basic final tax due	12,716,485.97
Surcharge	6,408,525.27
Interest	32,615,197.57
Total deficiency final tax - SWAP/Others & DBP	51,740,208.81

607