REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

JARDINE PACIFIC FINANCE, INC.
(formerly MB Finance Corporation),
Petitioner,

- versus -

C.T.A. CASE NO. 6195

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

APR 1 2 2004

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DECISION

This is a case involving assessments for deficiency taxes for taxable years ended December 31, 1996 and December 31, 1997, in the amounts of P86,475,431.31 and P72,658,930.53, respectively, representing alleged deficiency income tax, withholding tax on compensation, expanded withholding tax, final tax and gross receipts tax, inclusive of interest and compromise penalties.

The facts of the case have been jointly stipulated by the parties to be as follows:

> Petitioner Jardine Pacific Finance, Inc. (formerly "MB Finance Corporation") is a corporation duly organized and existing under the laws of the Philippines. It is engaged in the general financing business. As a finance company it is not engaged in quasi-banking business as certified by the Securities and Exchange Commission.
>
> Petitioner maintains a BIR-registered and qualified pension trust established and maintained for the benefit of its employees.
>
> Petitioner filed Monthly Remittance Returns of Income Taxes Withheld for the months of January to November 1996 on the following dates:

January	February 26, 1996
February	March 22, 1996
March	April 25, 1996
April	May 27, 1996
May	June 25, 1996
June	July 25, 1996
July	August 26, 1996
August	September 25, 1996
September	October 25, 1996
October	November 22, 1996
November	December 24, 1996

Petitioner filed its 1996 Annual Information Return of Income Taxes Withheld on Compensation, Expanded and Final Withholding Taxes and 1996 Alphabetical List of Payees Subject to Expanded Withholding Tax on March 3, 1997.

Respondent served on petitioner a Letter of Authority, dated October 21, 1998, authorizing the Bureau of Internal Revenue ("BIR") to examine the books of accounts and other financial records of petitioner for the taxable years ending December 31, 1996 and December 31, 1997.

On November 4, 1999, petitioner received from respondent a Pre-Assessment Notice, dated September 30, 1999, proposing to assess petitioner for deficiency income tax, deficiency withholding tax on compensation, deficiency expanded withholding tax, deficiency final tax and deficiency gross receipts tax for the taxable years ending December 31, 1996 and December 31, 1997.

Petitioner protested the aforesaid Pre-Assessment Notice in a letter dated January 11, 2000, which the Bureau of Internal Revenue received on January 13, 2000.

On January 18, 2000, or barely five days after respondent's receipt of petitioner's January 11, 2000 letter, petitioner received Assessment Notice Nos. ST-Income-96-0117-2000, ST-EWT-96-0116-2000, ST-EWT-96-0115-2000, ST-FT-96-0119-2000, ST-GRT-96-0118-2000, ST-EWT-97-0120-2000, ST-EWT-97-0123-2000, ST-FT-97-0122-2000 and ST-GRT-97-0121-2000 representing deficiency taxes allegedly due from petitioner for the taxable years ending December 31, 1996 and December 31, 1997 (the "Assessment Notices") together with the corresponding Demand Letter.

Respondent attached to the Assessment Notices and Demand Letter a document containing a general description of the items or issues involved in the assessment.

As per said Assessment Notices and accompanying Demand Letter, there is allegedly due from petitioner for the taxable year ending December 31, 1996 deficiency income tax in the amount of P23,381,167.29, deficiency withholding tax on compensation in the amount of P7,955,770.48, deficiency expanded withholding tax in the amount of P2,402,735.48, deficiency final tax in the amount of P3,422,994.78, inclusive of surcharge and interest.

Furthermore, for the taxable year ending December 31, 1997, there is also allegedly due from petitioner deficiency withholding tax on compensation in the amount of P4,992,212.48, deficiency expanded withholding tax in the amount of P1,159,447.53, deficiency final tax in the amount of P63,120,191.55, and deficiency gross receipts tax in the amount of P3,387,078.97, inclusive of surcharge and interest. These deficiency assessments were computed as follows:

1996 DEFICIENCY ASSESSMENT

Kind of Tax	Basic	Interest	Compromise Penalty	Total
Income	P 14,835,549.24	P 8,520,618.05	P 25,000.00	P 23,381,167.29
Withholding Tax				
Compensation	4,898,989.47	3,031,781.01	25,000.00	7,955,770.48
Expanded	1,467,537.50	908,197.98	27,000.00	2,402,735.48
Final	30,445,999.40	18,841,763.88	25,000.00	49.312,763.28
Gross Receipts Tax	2,123,746.74	1,274,248.04	25,000.00	3,422,994.78
Total	**P 53,771,822.35**	**P 32,576,608.96**	**P 127,000.00**	**P 86,475,431.31**

1997 DEFICIENCY ASSESSMENT

Kind of Tax	Basic	Interest	Compromise Penalty	Total
Income	-	-	-	-
Withholding Tax				
Compensation	P 3,502,203.84	P 1,465,008.64	P 25,000.00	P 4,992,212.48
Expanded	803,073.44	336,374.09	20,000.00	1,159,447.53
Final	44,468,982.60	18,626,208.95	25,000.00	63,120,191.55

Gross Receipts Tax	2,364,996.46	997,082.51	25,000.00	3,387,078.97
Total	**P 51,139,256.34**	**P 21,424,674.19**	**P 95,000.00**	**P 72,658,930.53**

Petitioner protested the Assessment Notices on February 17, 2000 in a letter of even date (the "Protest"), addressed to the Assistant Commissioner, Enforcement Service, BIR National Office.

Petitioner attached to the Protest a "Waiver of the Statute of Limitations" dated February 17, 2000 (the "Waiver"), signed by petitioner's authorized representative. Petitioner executed the Waiver solely in compliance with Section 6 of Revenue Regulations No. 12-85 and did so without prejudice to the defense of prescription that has already accrued in favor of petitioner.

Up to this date, however, respondent has yet to resolve/decide petitioner's protest.

Consequently, petitioner on November 13, 2000, filed the instant Petition for Review, lest the Assessment Notices shall become "final, executory and demandable" pursuant to Section 228 of the 1997 NIRC.

During the pendency of this case, or on November 14, 2001, petitioner applied for compromise settlement of its 1996 deficiency income tax and 1996 and 1997 deficiency gross receipts tax liabilities on the ground of financial incapacity. Its applications were approved by the respondent on January 10, 2002 and thereafter, the Bureau of Internal Revenue issued Authorities to Cancel Assessments relative to petitioner's 1996 deficiency income tax and 1996 and 1997 deficiency gross receipts tax *(CTA Records, pp. 238(a), 238(b), 238(c) and 238(d)).* Moreover, petitioner partially paid its 1996 and 1997 expanded withholding tax liabilities, inclusive of surcharge, interest (computed until February 15, 2002) and compromise penalties in the aggregate amounts of P697,446.92 and P772,503.95 *(CTA records, pp. 239 to 241).*

Consequently, this court, upon Manifestation And Joint Motion of the parties, granted the motion to withdraw the 1996 deficiency income tax assessment and the 1996 and 1997 gross receipts tax assessments, as well as the partial cancellation of the 1996 and 1997 expanded withholding tax assessments *(TSN, p. 4, March 22, 2002).*

With the cancellation of the 1996 deficiency income tax and the 1996 and 1997 deficiency gross receipts tax assessments, and the partial payment of the 1996 and 1997 deficiency expanded withholding tax assessments, the issues are now limited to the following, to wit:

1. Whether or not the right of the government to assess petitioner for deficiency withholding tax on compensation and expanded withholding tax for the months of January to November of the taxable year ending December 31, 1996 has already prescribed.

2. Assuming the right of the government to assess deficiency withholding tax on compensation and expanded withholding tax for the months of January to November 1996 for taxable year ended December 31, 1996 has not yet prescribed, whether or not the Assessment Notices for deficiency taxes for the taxable year ending December 31, 1996 should be cancelled on the ground that they are defective for failure to comply with paragraph 3.3.1 of Rev. Mem. Ord. No. 62-99 and for lack of factual and legal basis.

   2.a. Whether or not petitioner properly withheld and remitted taxes on compensation for the year 1996.

   2.b. Whether or not payments to car dealer in the amount of P23,322,140.22 are subject to 5% withholding tax.

   2.c. Whether or not petitioner filed an annual return and list of income payments in 1996.

   2.d. Whether or not petitioner's interest expense in the amount of P152,229,997.00 is subject to final withholding tax of P30,445,999.40.

3. Whether or not the Assessment Notices for deficiency taxes for the taxable year ending December 31, 1997 should be cancelled on the ground that they are defective for failure to comply with paragraph 3.3.1 of Rev. Mem. Ord. No. 62-99 and for lack of factual and legal basis.

3.a. Whether or not petitioner properly withheld and remitted taxes on compensation for the year 1997.

3.b. Whether or not payments to car dealers in the amount of P7,009,554.95 are subject to 5% withholding tax.

3.c. Whether or not petitioner's interest expense in the amount of P222,344,913.00 is subject to final withholding tax of P44,468,982.60.

On the first issue, respondent advanced the argument that the government's right to assess petitioner for deficiency withholding tax for the period covering January to November 1996 has not yet prescribed. According to respondent, the year-end adjustment is reflected in the December return, which is filed only on the 25th day of January of the succeeding year. Thus, when petitioner received the Assessment Notice on January 18, 2000, pertaining to its tax liabilities from January to November 1996, the same is within the reglementary period. As to the expanded withholding tax, respondent likewise asserts that the same has not also prescribed. Petitioner did not withhold and remit any amount because it believed that commissions/rebates to car dealers were not subject to EWT; hence, prescription will not apply.

Petitioner claims otherwise. It anchored its arguments on Section 203 of the 1997 Tax Code, which provides that respondent has a period of three years within which he is allowed to assess deficiency taxes. Moreover, petitioner relied on Revenue Regulations No. 12-93, which classified it as a large taxpayer and which has until the

25th day following the close of the month within which to remit taxes deducted and withheld on compensation and on income payments subject to expanded withholding tax.

We find petitioner's view meritorious.

After a careful scrutiny of the records of the case and the applicable law and jurisprudence, we find that respondent's assessments pertaining to the 1996 deficiency withholding tax on compensation and expanded withholding tax liabilities of petitioner had already prescribed. We find support on the provisions of the 1997 Tax Code, particularly Section 203 thereof, which provide thus:

> **Sec. 203. Period of Limitation Upon Assessment and Collection.**-*Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period:* **Provided,** *That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.*

It is clear from the above-quoted section that the respondent may assess a taxpayer's liability within three years reckoned after the last day prescribed by law for the filing of the return or from the day the return was filed. Well settled is the rule that when the law speaks in clear and categorical language, there is no room for interpretation. There is only room for application *(National Telecommunications Commission vs. Court of Appeals, 311 SCRA 508).*

Below is a table which shows the dates when petitioner filed its Monthly Remittance Returns of Income Taxes Withheld (covering withholding tax on compensation and expanded withholding tax) for the months of January to November of the taxable year ending December 31, 1996 as well as the corresponding dates within which respondent is allowed to assess petitioner.

Period (1996)	**Date Filed**	**Last Day To file Return**	**Last Day to Assess**
January	2/26/96	2/26/96	**2/26/99**
February	3/22/96	3/25/96	**3/25/99**
March	4/25/96	4/25/96	**4/25/99**
April	5/27/96	5/27/96	**5/27/99**
May	6/25/96	6/25/96	**6/25/99**
June	7/25/96	7/25/96	**7/25/99**
July	8/26/96	8/26/96	**8/26/99**
August	9/25/96	9/25/96	**9/25/99**
September	10/25/96	10/25/96	**10/25/99**
October	11/22/96	11/25/96	**11/25/99**
November	12/24/96	12/26/96	**12/26/99**

The court noted that the 1996 and 1997 Assessment Notices and demand letter were all undated. Hence, we reckoned the counting of the three-year period on the date of the receipt of petitioner which is January 18, 2000. This clearly manifests that the same were issued beyond the period within which the government has the right to assess. Having done so, we consider the assessments covering the period from January to November 1996 as null and void.

In the case of ***HPCO Agridev Corporation vs. Commissioner of Internal Revenue, CTA Case No. 6355, July 18, 2002,*** this court ruled that the three (3)-

year period within which respondent has to assess petitioner of expanded withholding tax shall be counted from the last day required by law for filing a monthly remittance return, which is ten (10) days after the end of each calendar month (save December) and twenty-five (25) days after the end of December for taxes withheld from the last compensation/income payment for the said month.

In view of our finding that the assessment for the period covering January to November 1996 are null and void, the second issue and its corollary issues are rendered moot and academic.

We, therefore, proceed to the third issue and its sub-issues.

As to whether or not the Assessment Notices for deficiency taxes for 1997 should be cancelled on the ground that they are defective for failure to comply with paragraph 3.3.1 of Revenue Memorandum Order No. 62-99, which provides that ***"All letters of demand and assessment notices shall be prepared, approved and issued by the Enforcement Service stating completely the facts and the law, jurisprudence, rules and regulations on which said assessment is based,"*** we rule in the negative.

The court believes that the Assessment Notices for deficiency taxes for 1997 have met the requirements embodied in paragraph 3.3.1 of Revenue Memorandum Order No. 62-99. The notices were signed by the Assistant Commissioner of the Enforcement Division. Relevant to the resolution of this issue is Section 6 of the Tax Code, which gives the Commissioner or his duly authorized representative the power to examine and assess any taxpayer for the correct amount of tax. The Assistant

Commissioner of the Enforcement Division is a duly authorized representative of the Commissioner and enjoys the presumption of regularity in the performance of his duties. We also find the Assessment Notice sufficient to inform the taxpayer of the facts and laws, which are the bases of the assessments. In fact, petitioner was able to file its protest judiciously.

The next issue is whether or not petitioner properly withheld and remitted taxes on compensation for the year 1997. In arriving at the 1997 deficiency withholding tax on compensation, respondent's revenue examiners considered the amount declared as Salaries and Wages in petitioner's income tax return and trial balance, and added thereto the amount that petitioner declared as Staff Benefits, Director's Fees and Commission/Trust Fees. Then, they deducted therefrom the amount of salaries and wages per petitioner's alpha list resulting to 1997 deficiency withholding tax of P4,992,212.48, computed as follows *(BIR records, p. 341):*

Per ITR and TRIAL BALANCE

Salaries and wages	P55,752,898.23
Staff benefits	4,764,557.44
Directors fee	24,000.00
Commission/trust fee	320,210.00
	P60,861,665.67
Less-Non Taxable compensation per Alpha List (assuming to be correct):	5,138,206.26
Taxable compensation per ITR	P55,723,459.41

Less: Per ALPHA LIST OF EMPLOYEE

Total Compensation per Alpha List	P42,651,437.33
Less-Non Taxable compensation	
13th month	1,944,795.35

Other benefits			1,134,744.58
Salary & other form of compensation			2,058,666.33
Taxable compensation per Alpha List			P37,513,231.07
COMPENSATION NOT SUBJECTED TO W/TAX			P18,210,228.34
X Composite tax rate	8,114,673.87		
	42,651,437.33	19.03%	.190255578.19
WITHHOLDING TAX DUE			P 3,464,597.52
ADD: UNDER REMITTANCES			37,606.32
TOTAL WITHHOLDING TAX DUE (RR 6-85)			P 3,502,203.84
ADD: Interest (1-26-98 to 2-29-2000)			1,465,008.64
Compromise Penalty			25,000.00
TOTAL W/HOLDING TAX DEFICIENCY ON COMPENSATION			**P 4,992,212.48**

Petitioner maintains that respondent's assessment for deficiency withholding tax on compensation for taxable year ending December 31, 1997 is bereft of factual and legal bases.

We shall tackle the items individually.

a) Petitioner alleged that its parent company seconded some of its employees to the former to occupy crucial positions in the company and the latter paid them their salaries and wages. Since the withholding taxes in the amount of P3,317,668.00 on the salaries and wages paid to seconded officers of P10,074,679.00 were already paid by its parent company, Jardine Davies, Incorporated *(Exhibits U-1 and U-2),* petitioner reimbursed Jardine Davies, Inc. for the salaries paid and thereafter claimed the same as an expense *(Exhibit U-3).* Petitioner avers that there was no prejudice on the part of the Government as the applicable withholding taxes on the compensation paid to such seconded personnel were in fact withheld and remitted to the Bureau of Internal Revenue by Jardine Davies.

However, respondent argues that petitioner should not have reimbursed Jardine Davies, Inc. the full amount of the salaries and wages paid to the seconded employees on the ground that they are employees of Jardine Davies, Inc. Respondent claims that a portion of the salaries and wages of the seconded employees pertains to Jardine Davies, Inc. In other words, the full amount should not be charged to petitioner. Consequently, it is incorrect for petitioner to claim the expense as deduction from its income considering that it should not have been the sole expense of the petitioner.

Petitioner, however, counters that there is nothing irregular in petitioner's reimbursement of the salaries and wages paid by Jardine Davies, Inc. to the employees seconded to it, because the seconded employees rendered services for the petitioner. Accordingly, petitioner is the proper party to claim the expense arising from the seconded employees' services.

After considering the arguments of the parties, the court opines that the 1997 assessment for deficiency withholding tax on compensation is devoid of factual and legal bases. As borne out by the records, it was Jardine Davies, Inc. which actually disbursed or paid the salaries of the seconded employees, thus, it was obliged to withhold the appropriate taxes thereon. Considering that the appropriate taxes were withheld from the salaries and wages paid to the seconded employees and the same were remitted to the Bureau of Internal Revenue and considering further that petitioner merely reimbursed its parent company for the payments made to the seconded employees, then petitioner is no longer liable for deficiency withholding tax. Otherwise, sustaining it would be violative of the principle of unjust enrichment. While taxes are the lifeblood of every civilized nation, the power to tax must be exercised with utmost care and fairness.

b) Respondent also included in the computation of its assessment for petitioner's 1997 deficiency withholding tax on compensation, the non-taxable employee benefits given by petitioner to employees and other non-taxable benefits such as training expenses incurred by petitioner in the course of training its employees in the sum of P4,764,557.44. According to petitioner, the non-taxable employee benefits are gestures of goodwill, which are of relatively small value and were granted to employees for the convenience of the employer. Such non-taxable benefits consisted of corporate uniforms, reimbursement of representation expenses incurred by petitioner's employees for lunches with clients for the purpose of business development, expenses in connection with sports tournaments sponsored by the petitioner for its employees, transportation expenses and such other similar expenses *(Exhibits W-1 and W-2).* Also, it averred that training expenses are not taxable compensation, since they are furnished or incurred in pursuit of the trade or business of petitioner and clearly for the convenience of petitioner, the employer.

We agree with petitioner.

It is worthy to mention that facilities or privileges furnished by an employer to its employees which are of relatively small value and which are offered by the employer as a means of promoting health, goodwill, contentment or efficiency of employees are not considered as compensation subject to withholding *(Section 2, Fifth Paragraph, Revenue Regulations No. 12-86).* It was even correctly admitted by respondent that ***de minimis*** employee benefits are not subject to withholding tax on compensation *(Paragraph 20, under the heading "Stipulation of Facts, Joint Stipulation of Facts and Issues).*

Notwithstanding the above discussion, the court is constrained to uphold the inclusion of ***Staff Benefits'*** account in the assessment of deficiency withholding tax on compensation in the amount of P2,488,253.52 out of P4,764,557.44 included in the computation of assessment. Petitioner failed to submit documentary evidence to support its claim. To emphasize, we find merit in the report of the independent CPA *(Exhibit F)*, which provides:

> "Our verification of the Company's general ledgers (Exhibit V) disclosed an amount of P4,764,557.44 of benefits under the "Staff Benefits" account, which is the same amount reflected in the Company's audited trial balance. Out of said amount, P2,276,303.92 was substantiated with journal vouchers, cash vouchers, and Official Receipts (ORs) (Exhibits W-1 & W-2), the details of which are presented below:

Amount Verified	P 2,276,303.92
Broken down as follows:	
Check vouchers with Official Receipts under the Name of the Company	P 41,071.50
Check vouchers with Official Receipts under the Name of the Employee	5,250.00
Check vouchers with no Official Receipts/Invoices	11,645.68
Journal Vouchers showing accruals of expenses	710,500.00
Journal Vouchers showing amortizations	797,994.46
Journal Vouchers showing payroll, liquidations, Housing loan, intercompany charges, insurance	709,842.28
Total	P 2,276,303.92

> Based on the above, check vouchers, amounting to P57,967.18, are generally supported by third-party receipts which are either in the name of the Company (P41,071.50) or that of the employees (P5,250.00). Check vouchers with no third-party supporting documents amounted to P11,645.68. A portion of the benefits which are generally accruals of expenses (P710,500.00) or amortizations of prepaid items (P797,994.46) are supported by journal vouchers. Moreover, journal vouchers pertaining to payroll, liquidations, housing loan and inter-company charges amounted to P709,842.28."

On the inclusion in the computation of the 1997 deficiency withholding tax of the amounts paid to the members of petitioner's Board of Directors of P24,000.00, as well as payments to Bank of the Philippine Islands, the trustee of petitioner's retirement fund of P320,210.00, petitioner does not agree. According to petitioner, there is nothing in Revenue Regulations No. 6-85, as amended-the Withholding Tax Regulations then existing, which subjects Director's Fees and Commission/Trust Fees to withholding tax; hence, these payments are clearly not subject to deficiency withholding tax on compensation.

After a careful examination of the relevant documents, the court rules that petitioner is still liable for deficiency withholding tax on the salaries of its Board of Directors. The court traced the names of petitioner's directors from the List of Directors *(Exhibit X)* with the Alphalist of Income Payments Subjected to Withholding Tax. We find that the nature of income payments to directors is *"Professional"* as reflected in petitioner's Alphalist of Income Payments Subjected to Expanded Withholding Tax for 1997 *(Exhibit Y)*. We also find that out of the P24,000.00 director's fees reflected in petitioner's financial statements, income tax return, trial balance *(Exhibit S)* and general ledger *(Exhibit V)*, only P14,000.00 was subjected to withholding tax as shown in the Alphalist of Income Payments Subjected to Expanded Withholding Tax (*Exhibit Y*). Since petitioner withheld only the amount of tax pertaining to P14,000.00 out of the total of P24,000.00 that should have been subjected to withholding tax, petitioner is liable for withholding tax that pertains to the difference of P10,000.00.

With regard to the Commission/Trust Fees, the court cannot determine the nature of income payments since petitioner presented only its trial balance and general ledger account. There is no other document to support the said account. Hence, we are constrained to subject said account to withholding tax.

In summary, petitioner is still liable for deficiency withholding tax on compensation (*representing the amount not subjected to withholding tax*) for failure to prove that taxes were withheld on the following income payments, to wit:

	Amount per Income Tax Return	Amount Subjected to Withholding Tax	Amount Not Subjected to Withholding Tax
Salaries & Wages	P 50,614,691.97[1]	P 47,587,910.07[2]	P 3,026,781.90
Staff Benefits	4,764,557.00	2,276,303.48	2,488,253.52
Director's Fees	24,000.00	14,000.00	10,000.00
Commission/Trust Fees	320,210.00		320,210.00
Total	P 55,723,458.97	P 49,878,213.55	P 5,845,245.42

On the issue on whether or not payments to car dealers in the amount of P7,009,554.95 are subject to withholding tax, respondent alleged that for 1997, the amount verified to be subject to EWT was P16,277,677.00, but the actual amount

[1] Net of P5,138,206.26 non-taxable compensation.
[2] Includes P10,074,679.00 Salaries and Wages to seconded employees.

subjected to EWT was only P9,268,122.75, resulting to P7,009,554.95 discrepancy and which in turn resulted to deficiency EWT of P435,965.04 *(BIR Records, p. 672)*.

In upholding the assessment, respondent argues that the payments made by petitioner to car dealers are in fact commissions, which should be subjected to Expanded Withholding Tax under *Section 1(g), Revenue Regulations 6-85,* which provides:

> "**Section 1. Income payments subject to creditable withholding tax and rates prescribed thereof. -** Except as herein otherwise provided, there shall be withheld a creditable income tax at the rates herein specified for each class of payee from the following items of income payments to persons residing in the Philippines:
>
> xxx xxx xxx
>
> (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%)."

Respondent cited as basis the case of ***Commissioner of Internal Revenue vs. Manila Machinery & Supply Company***, 135 SCRA 8, February 25, 1985, which defined commercial broker as follows:

> "**Commercial Broker-**includes all persons, other than importers, manufacturers, producers, or bona fide employees, who for compensation or profit, sell or bring proposed buyers and seller together, or negotiate freights or other business for owners of vessels, or other means of transportation. The term includes commission merchants."

On the contrary, petitioner submits that the purported "commissions" to car dealers actually represent a portion of the consideration for the acquisition of automobile financing contracts entered into by such car dealers with customers in need of automobile financing *(Testimony of Ma. Teresa B. Lapid, TSN, pages 21 to 22, September 27, 2001).*

According to petitioner, pursuant to various Dealer Financing Agreements *(Exhibits D, D-1 to D-13)*, petitioner agreed to acquire from car dealers contracts evidencing the sale through financing of vehicles and accessories. When a car dealer sells a motor vehicle to a customer under financing, the customer would execute a Promissory Note *(Exhibit D-14)* secured by a Deed of Chattel Mortgage *(Exhibit D-15)* on the vehicle in favor of the car dealer. The car dealer would then assign the Promissory Note and corresponding Deed of Chattel Mortgage to petitioner by executing a Deed of Assignment with Warranty of Soundness *(Exhibit D-16)*, thereby substituting petitioner as the creditor in the motor vehicle acquisition. In return, petitioner had to pay the car dealers a consideration that would be considered competitive by industry standards. The amount of P7,009,554.95 for 1997 formed part of the consideration paid by petitioner to the car dealers for the acquisition of the latter's automobile financing contracts. Hence, the payments made by petitioner to various car dealers are not commissions *(Testimony of Ma. Teresa B. Lapid, TSN, pages 7 to 16, September 27, 2001).*

Petitioner argued that even if the payments to car dealers are in the nature of commissions, these payments are nonetheless not subject to withholding tax inasmuch as car dealers are not commercial brokers. Car dealers cannot be considered commercial brokers since they are not responsible for bringing automobile buyers and sellers together. Instead, the car dealers are themselves the sellers of the motor vehicles *(Testimony of Ma. Teresa B. Lapid, TSN, September 27, 2001, pages 16 to 18).*

Respondent takes issue on the fact that the Dealer Financing Agreements do not show a specific amount that the petitioner was obligated to pay the car dealers for the acquisition of automobile financing contracts. Respondent argues:

> "We respectfully disagree. The amounts are commissions paid to car dealers. The Dealer Financing Agreement between the petitioner and the car dealers, which petitioner claims to show the amounts paid by petitioner to car dealers, do not show any amount agreed by them as constituting any payment. Neither did any documents show that the payments to car dealers as commission formed part of the consideration or the purchase price of the cars. Petitioner failed to prove that those payments formed part of the purchase price." *(p.8, Memorandum for Respondent).*

Petitioner nonetheless submits that it never claimed that the Dealer Financing Agreements reflected the amount at which it sought to acquire from various car dealers the latter's automobile loan contracts. Petitioner intentionally avoided indicating a fixed amount in its Dealer Financing Agreements since the consideration for acquiring automobile loan contracts was constantly fluctuating and the exact amount of which was unascertainable at the time the Dealer Financing Agreements were entered into. Financing companies were persistently and relentlessly competing with each other to acquire automobile loans, and logically, car dealers would always gravitate towards the best offer. It was impractical for petitioner to indicate a fixed amount in the Dealer Financing Agreements to prevent its incessant amendment.

We are not persuaded by petitioner's arguments.

The court adheres to the ruling that assessments enjoy the presumption of regularity and correctness. In the case at bar, petitioner was not able to convince the court that its payment to car dealers should not be subjected to expanded withholding tax. Petitioner merely alleged that the amount of P7,009,554.95 formed part of the consideration of the cars it paid to car dealers by virtue of the Dealer Financing Agreements. To us, such allegation has the least weight. Petitioner should have submitted supporting documents to support its claim. While petitioner submitted to the court Dealer Financing Agreements *(Exhibits D, D-1 to D-13)*, these documents failed to show the actual amount paid by petitioner to car dealers. Considering so, we rule on the validity of the deficiency assessment in the amount of P435,965.04.

On the last issue on whether or not interest expense is subject to final withholding tax, respondent claimed that petitioner is liable for deficiency final withholding tax in the amount of P63,120,191.55 (inclusive of interest and compromise penalties) for the taxable year 1997. Respondent argues that their investigation revealed that the transactions involving loans granted by creditor banks to petitioner were in fact money market borrowings by the petitioner, which are sourced from the Treasury Department of the creditor banks where money market transactions were arranged *(CTA records, p. 319, paragraphs 1 & 2; see BIR records, pp. 652 to 653).* From the said findings, respondent concluded that a 20% final tax should have been imposed on petitioner's interest payments.

Petitioner submits that the assessment for deficiency final withholding tax is clearly erroneous and devoid of any factual and legal bases. It argued that the 20%

final withholding tax applies only to interest payments on Philippine currency bank deposits, as well as to the yield or monetary benefit arising from deposit substitutes, trust funds and similar arrangements taking as basis Section 24(e)(1) of the 1977 NIRC, as amended (now Sec. 27(D)(1) of the 1997 National Internal Revenue Code).

To bolster its argument, petitioner took reference on the definition of the term "deposit substitute", thus:

> **"The term 'deposit substitutes' shall mean an alternative form of obtaining funds from the public (the term 'public' means borrowing from twenty (20) or more individuals or corporate lenders at any one time), other than deposits, through the issuance, endorsement, or acceptance of debt instruments for the borrower's own account, for the purpose of relending or purchasing of receivables and other obligations, or financing their own needs or the needs of their agent or dealer. These instruments may include, but need not be limited to, bankers' acceptances, promissory notes, repurchase agreements, including reverse repurchase agreements entered into by and between the Bangko Sentral ng Pilipinas (BSP) and any authorized agent bank, certificates of assignment or participation and similar instruments with recourse: Provided, however, That debt instruments issued for inter-bank call loans with maturity of not more than five (5) days to cover deficiency in reserves against deposit liabilities, including those between or among banks and quasi-banks, shall not be considered as deposit substitute debt instruments."**

We find petitioner's argument tenable. Its interest payments to creditors/lenders are not subject to the 20% final withholding tax levied pursuant to Section 24(e) of the NIRC of 1977, as amended.

Petitioner submitted substantial evidence to prove this fact. The documentary and testimonial evidence clearly show that petitioner's interest payments are not interest payments on bank deposits, nor do they constitute yield or monetary benefit from deposit substitutes, trust funds or other similar arrangements.

For one thing, petitioner is a finance company that is not engaged in the quasi-banking business *(paragraph 15, Joint Stipulation of Facts and Issues)*. Since it never had twenty or more lenders at any one time, it never engaged in the business of obtaining funds from the public *(Testimony of Ma. Teresa B. Lapid, TSN, January 7, 2002; Exhibits E-2 [BIR Records], E-8, E-9, E-10, E-11 and E-12)*.

Secondly, the Bangko Sentral ng Pilipinas issued a Certification to the effect that petitioner is not included in the Bangko Sentral list of companies or entities authorized to engage in banking or quasi-banking functions *(Exhibit E)*.

Thirdly, the Corporation Finance Department of the Securities and Exchange Commission certified that: (i) the petitioner is not authorized to engage in quasi-banking functions; (ii) the petitioner never exceeded the nineteen (19) lender limit; and (iii) the Securities and Exchange Commission has never received any complaint or claim that petitioner engaged in quasi-banking functions *(Exhibit E-1)*.

Fourthly, petitioner never issued commercial papers, which could give rise to money market transactions or debt instruments, which could be considered deposit substitutes, trust funds or other similar arrangements. ***The interest expense arose from ordinary loans evidenced by <u>promissory notes</u>*** *(Exhibit E-2)* obtained from various banks and financial institutions to finance working capital requirements *(Testimony of Ma. Teresa B. Lapid, TSN, September 27, 2001, pages 23 to 25)*.

Finally, the Acting Commissioner of Internal Revenue previously declared in Revenue Memorandum Circular No. 35-81 that the 20% final withholding tax does not apply to financing companies with no quasi-banking license. Also, as provided in Revenue Memorandum Circular No. 39-85, the Commissioner of Internal Revenue further elucidated that traditional lending by banks shall not be subject to 15% (now 20%) final withholding tax.

In view of all the foregoing, the assessments for 1996 deficiency withholding tax on compensation and 1996 deficiency expanded withholding tax are hereby ***CANCELLED*** due to prescription. Likewise, the 1997 deficiency assessment for final withholding tax are hereby ***WITHDRAWN*** *and* ***SET ASIDE*** for lack of merit.

However, the 1997 deficiency withholding tax on compensation and expanded withholding tax are hereby ***UPHELD*** and computed as follows:

Deficiency Withholding Tax on Compensation

Amount of compensation not subjected to withholding tax	P 5,845,245.42
Multiply by the Composite Tax Rate (P8,243,129.87/P37,513,231.07);*	0.219739266
Withholding Tax Due	P 1,284,429.94
Add: Under Remittance (Exhibit F, page 13 and Exhibit T)	37,606.32
Basic Deficiency Withholding Tax	P 1,322,036.26
Add: Deficiency Interest (1-26-98 to 2-29-2000)	553,444.22
Total Deficiency Withholding Tax	**P 1,875,480.48**

*Respondent used the **Composite Tax Rate** of **0.19025557810** while the independent CPA used **0.193267341**. The formula used in computing composite tax rate is ***total tax payment over total taxable income.*** The parties used different amounts of numerator (respondent used P8,114,673.87 while the independent CPA used P8,243,129.87) but both used the same amount of denominator which is P42,651,437.33 (Exhibit F, page 13). The court agrees with the independent CPA's use of the amount P8,243,129.87 as a numerator because it includes the amount of taxes withheld by the previous employer of petitioner's employees. As far as the denominator is concerned, the court is not amenable to the use of the amount P42,651,437.33 because it is inclusive of non-taxable income. The proper amount of denominator is P37,513,231.07, which represents the total taxable income of petitioner's employees (see comment number 2). Thus, the composite tax rate that should be used is 0.219739266 (P8,243,129.87 divide by P37,513,231.07).

Expanded Withholding Tax on Commission (BIR Records, Folder 1, page 672)

Commission per New Business Register	P16,151,797.70
Commission on sale of various vehicles (debited for income account)	125,880.00
Total commissions subject to EWT	P16,277,677.70
Commissions per Annual return-w/tax	9,268,122.75
Difference	P 7,009,554.95
Multiply by rate	5%
Basic Tax	P 350,477.75
Add: Under remittance	85,487.29
Basic Deficiency Expanded Withholding Tax	P 435,965.04
Add: Deficiency Interest	182,508.10
Total Deficiency Expanded Withholding Tax	**P 618,473.14**

plus 20% delinquency interest from February 17, 2000 until full payment thereof pursuant to Section 249(c)(3) of the 1997 Tax Code. It should be noted that respondent's imposition of compromise penalties is unmeritorious. We do not impose compromise penalty because there was no compromise agreement reached by the parties ***(Atlas Consolidated Mining and Development Corporation (doing business under the name Atlas-Itochu Consortium) vs. Commissioner of Internal Revenue, CTA Case No. 5671, promulgated on August 29, 2002)***.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

JUANITO C. CASTAÑEDA, JR. *
Associate Judge
*Inhibited being the former Tax and Legal Counsel of petitioner's parent company, Jardine Davies

LOVELL R. BAUTISTA
Associate Judge

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