REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

HEADSTRONG PHILIPPINES, INC. (formerly JAMES MARTIN & CO.- PHILIPPINES, INC.), Petitioner,	**C.T.A. CASE NO. 6986**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson* **UY,** *and* **PALANCA-ENRIQUEZ,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** JAN 19 2009 9:00 a.m.

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DECISION

UY, J.:

This Petition for Review was filed by petitioner, Headstrong Philippines, Inc. (formerly James Martin & Co.–Philippines, Inc.), on May 14, 2004 seeking the cancellation and withdrawal of Assessment Notice No. VT-14338-FY-00-03-349 issued by respondent, Commissioner of Internal Revenue, requiring petitioner to pay deficiency value-added tax in the amount of **SEVENTEEN MILLION FIVE HUNDRED EIGHTY THOUSAND SIX HUNDRED THIRTY EIGHT AND 15/100 PESOS (P17,580,638.15)**, inclusive of surcharges and interests, covering the four quarters of the fiscal year ended March 31, 2000.

420

THE FACTS

Culled from the records of this case, and as stipulated by the parties in their Joint Stipulation of Facts and Issues,[1] these are the facts of the case.

Petitioner is a duly registered domestic corporation, with principal office at 15th Floor, Export Bank Plaza, Sen. Gil Puyat corner Chino Roces Avenue, Makati City. Its primary purpose as stated in Article II of its Amended Articles of Incorporation is "to carry on the business (of) making computer programs principally for the export market; to perform such programming and computer-related consultancy services; and to engage in export trading and other related consultancy services x x x ."[2] It is also duly registered with the Bureau of Internal Revenue (BIR) as evidenced by its Certificate of Registration dated September 23, 1994 and Taxpayer's Identification No. 001-008-136-000.[3] Petitioner was formerly called James Martin & Co. – Philippines, Inc. It changed its name to Headstrong Philippines, Inc. effective September 13, 2000 as proven by the Certificate of Filing of Amended Articles of Incorporation and By-Laws issued by the Securities and Exchange Commission.

Respondent, on the other hand, is the official charged with the duty to assess and collect internal revenue taxes, as well as the power to cancel disputed assessments, holding office at the BIR National Office Building, Diliman, Quezon City.[4]

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[1] Docket, pp. 106-116.
[2] Par. 1, Stipulated facts during pre-trial conference, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 113.
[3] Par. 1, Admitted Facts, JSFI, Docket, p. 106-107.
[4] Par. 2, Admitted Facts, JSFI, Docket, pp.106-107.

For the four quarters of the fiscal year ended March 31, 2000, petitioner filed its Quarterly VAT Returns on July 26, 1999 (1st Quarter), October 25, 1999 (2nd Quarter), January 27, 2000 (3rd Quarter), and April 25, 2000 (4th Quarter).[5]

On July 24, 2003, petitioner received from respondent a Formal Letter of Demand with attached Assessment Notice No. VT-14338-FY-00-03-349 and Details of Discrepancies, all dated July 18, 2003, informing petitioner of its alleged deficiency value-added taxes in the amount of P17,580,638.15, inclusive of fifty percent (50%) surcharge and interests for the fiscal year ended March 31, 2000,[6] broken down as follows: [7]

Deficiency Value-Added Tax			
Taxable Sales per return			29,785,080.00
Add: Undeclared Income			39,925,520.95
Total Sales subject to VAT			69,710,600.95
Output tax due thereon (10%)			6,971,060.09
Add: In tax carried over from prev. qtr		10,101,776.83	
Add: Allowable Input tax:			
Amount claimed per tax return	7,698,851.40		
Less: Unsupported input tax	2,725,820.27	4,973,031.13	
Allowable VAT credit:			
Amount claimed per tax return	2,391,017.80		
Less: Unsupported VAT credit	1,412,906.37	978,111.43	
Total		16,052,919.39	
Less: Input Tax carried forward		17,213,138.22	1,160,218.83
Deficiency Value-Added Tax			8,131,278.92
Add: 50% Surcharge			4,065,639.46
Total			12,196,918.38
Add: Interest (4-25-00 to 8-19-03)			5,383,719.77
Total Amount Due			17,580,638.15

As admitted in the Joint Stipulation of Facts and Issues, the assessment allegedly arose from the following:

[5] Par. 2, Stipulated facts during pre-trial conference, JSFI, Docket, p. 114.
[6] Par. 4, Admitted Facts, JSFI, Docket, p. 107.
[7] Par. 5, Ibid.

"a) Petitioner allegedly failed to pay the VAT due on undeclared income amounting to P39,925,520.95. Based on the Preliminary Assessment Notice (PAN) attached to the letter of the respondent to petitioner dated February 24, 2003, the alleged undeclared income constituted income payments from the following:

1. Philippine Telephone Corporation	P 1,155,485.60
2. Citibank	13,519,435.23
3. Social Security System	50,584,909.81
Total	P 65,259,890.64
Less: SSS revenue per invoice	25,334,369.69
	P 39,925,520.95

b) Petitioner allegedly failed to support with VAT invoices and official receipts input taxes amounting to P2,725,820.27.

c) Petitioner allegedly failed to support with Certificate of Creditable Tax Withheld at Source (BIR Form 2307) the VAT credits amounting to P1,412,906.37, which petitioner claimed in its tax return. Hence, the amount was disallowed pursuant to Sec 4.114(D) of Revenue Regulations No. 2-98 dated April 17, 1998 as shown below:

VAT credits claimed per return	P 2,391,017.80
Less: VAT Credits supported with Form 2307	978,111.43
Disallowed VAT credits	P 1,412,906.37

d) Petitioner's input tax of P17,213,138.22 carried forward from the previous quarters was disallowed allegedly because the "tax benefit" of this amount has already been forwarded to succeeding periods.

e) Petitioner allegedly filed a false or fraudulent return with intent to evade tax, in which case the alleged applicable period of prescription for the subject assessment is ten (10) years.

f) A fifty percent (50%) surcharge has been imposed on the petitioner allegedly because petitioner filed a false of fraudulent return as shown by its alleged failure to report sales, receipts or income in an amount exceeding thirty percent (30%) of that declared in its return."[8]

[8] Par. 6, id., Docket, pp. 108-109.

423

On August 18, 2003, petitioner, through its tax counsel, SGV & Co., filed a protest requesting the withdrawal and cancellation of the said assessment. Attached to the protest letter were supporting documents such as the Formal Assessment Notice and the Certificates of Creditable Tax Withheld.[9]

Due to respondent's inaction and before it could be barred by prescription, petitioner elevated its claim before this Court through a Petition for Review on May 14, 2004.

Respondent filed through registered mail an Answer on July 5, 2004,[10] duly received by this Court on July 14, 2004, raising the following Special and Affirmative Defenses:

> "9. He reiterates and repleads the preceding paragraphs of this answer as part of his Special and Affirmative Defenses;
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> 10. Section 228 of the Tax Code, partly provides:
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>> 'Sec. 228. Protesting of Assessment. – Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. *Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.*' (Emphasis supplied)
>
> Considering the failure of petitioner to submit all relevant supporting documents within sixty (60) days from filing its protest, the assessments have already become final by operation of law.
>
> 11. Since the assessments have become final, this Honorable Court has no jurisdiction to act on the instant petition.

[9] Par. 7, id., at p. 109.
[10] Docket, pp. 51-54.

12. Assuming arguendo that this Honorable Court has jurisdiction to act on the instant petition, petitioner was assessed for deficiency VAT for the reason that petitioner failed to pay the VAT due on undeclared income amounting to P39,925,520.95 during the year, in violation of Section 108 (A) of the Tax Code.

13. Petitioner failed to substantiate with VAT invoices or official receipts on its claimed input tax in the amount of P2,725,820.27, which must be credited against its output tax due, in violation of Section 110 of the Tax Code.

14. Petitioner failed to support with Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) the VAT credits amounting to P1,412,906.37, claimed in its Income Tax Return, hence, the same should be disallowed pursuant to Section 4.114(D) of Revenue Regulations No. 2-98 dated April 17, 1998.

15. Petitioner's claimed input tax in the amount of P17,213,138.22, being carried forward to the succeeding period should be disallowed pursuant to Section 110(B) of the Tax Code, which provides that if the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter/s.

16. Pursuant to Section 222 of the Tax Code, the BIR may assess petitioner for deficiency VAT within ten (10) years from the discovery of falsity, fraud, or omission.

17. Petitioner was subjected to the 50% surcharge pursuant to Section 248(b) of the NIRC which states that:

> 'In case of willful neglect to file a return within the period prescribed by this Code or Regulations...the penalty to be imposed shall be fifty percent (50%) of the tax or deficiency tax...'

18. The assessments issued against petitioner for deficiency VAT for fiscal year ended March 31, 2000, covered under Assessment Notice No. VT-14338-FY-00-03-349 dated July 18, 2003, was made in accordance with existing laws and regulations.

19. All presumptions are in favor of the correctness of tax assessments."

475

During trial, both parties presented their documentary and testimonial evidence. And on February 1, 2008,[11] this case was deemed submitted for decision after petitioner filed its Memorandum on December 21, 2007, sans respondent's Memorandum.

Hence, this Decision.

THE ISSUES

As stipulated by the parties, the issues for this Court's consideration are as follows:

> "1. Whether or not respondent's right to assess petitioner for alleged deficiency VAT for FY ended March 31, 2000 has prescribed.
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> 2. Whether or not the VAT returns filed by petitioner for FY ended March 31, 2000 are 'false or fraudulent returns' with intent to evade payment of tax.
>
> 3. Whether or not the 50% surcharge imposed upon petitioner has legal basis.
>
> 4. Whether or not petitioner has an undeclared income amounting to P39,925,520.95 for FY ended March 31, 2000.
>
> 5. Whether or not petitioner failed to pay the VAT due on its undeclared income amounting to P39,925,520.95 for FY ended March 31, 2000, in violation of Section 108(A) of the Tax Code.
>
> 6. Whether or not the assessment of the respondent with respect to the alleged unsupported input tax of P2,725,820.27 is deficient in form and substance, which makes such assessment null and void.
>
> 7. Whether or not petitioner has unsupported input tax in the amount of P2,725,820.27.
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> 8. Whether or not the VAT credits that petitioner claimed in its VAT returns for FY ended March 31, 2000 are duly supported by Certificates of Creditable Tax Withheld at Source.

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[11] Resolution, Docket, p. 418.

9. Whether or not the disallowance of petitioner's input tax of P17,213,138.22 is proper.

10. Whether or not petitioner is liable to pay the amount of P17,580,638.15 plus 50% surcharge and interest, representing the assessed deficiency VAT covered under Formal Assessment Notice No. VT-14338-FY-00-03-349 dated July 18, 2000, for FY ended March 31, 2000.[12]"

Petitioner's Arguments

Petitioner submits that respondent's right to assess its deficiency value-added tax (VAT) liabilities for the fiscal year ended March 31, 2000, through the subject Assessment Notice No. VT-14338-FY-00-03-349 dated July 18, 2003, had already prescribed; and that its Quarterly VAT Returns are not "false and fraudulent returns with intent to evade the payment of tax".

According to petitioner, respondent has a period of three (3) years from the filing of its return within which to issue an assessment against it for deficiency VAT liabilities pursuant to Section 203 of the National Internal Revenue Code (NIRC) of 1997. In relation thereto, Section 114(A) of the same Code provides that every person liable to the pay VAT shall file a quarterly return within twenty-five (25) days following the close of the taxable quarter. Considering that it filed its Quarterly VAT Returns for the four quarters of the fiscal year ended March 31, 2000 on July 26, 1999, October 25, 1999, January 27, 2000, and April 25, 2000, respondent had until July 26, 2002, October 25, 2002, January 27, 2003, and April 25, 2003, respectively, within which to issue the corresponding assessment notices against petitioner for deficiency VAT.

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[12] Issues, JSFI, Docket, pp. 114-116.

427

Petitioner further argues that contrary to respondent's claim, it did not file a "false or fraudulent return with intent to evade payment of tax", which will justify the extension of the period of assessment from three (3) years to ten (10) years. In fact, respondent failed to allege, much less prove, that the contents of its Quarterly VAT Returns for the fiscal year ended March 31, 2000 were tainted with fraud, or that it willingly filed a false or fraudulent return with intent to evade the payment of the correct taxes. It is well-settled in law and jurisprudence that in order to justify the application of the ten (10)-year prescriptive period for an assessment, there must be a clear, unequivocal and deliberate intent to evade the payment of taxes.

Lastly, assuming that the right of respondent to assess has yet to prescribe in the present case, the subject assessment has no legal and factual basis.

Respondent's Counter-Arguments

In the Answer, respondent claims that due to petitioner's failure to submit all relevant supporting documents within sixty (60) days from filing of its protest, the assessments have already become final by operation of law. And as the assessments have become final, this Court has no jurisdiction to act on the instant petition.

Granting for the sake of argument that this Court has jurisdiction to act on the instant petition, respondent states that petitioner was assessed for deficiency VAT due to its alleged failure to pay the VAT due on undeclared income amounting to P39,925,520.95 during the year, in violation of Section 108 (A) of the NIRC of 1997; that petitioner failed to substantiate with VAT invoices or official receipts on its claimed input tax in the amount of P2,725,820.27, which must be credited against its output tax due, in violation of Section 110 of the same Code; that petitioner failed to support with Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) the VAT credits amounting to P1,412,906.37, claimed in its Income Tax Return; hence, the same should be disallowed pursuant to Section 4.114(D) of Revenue Regulations No. 2-98 dated April 17, 1998; that petitioner's claimed input tax in the amount of P17,213,138.22, being carried forward to the succeeding period should be disallowed pursuant to Section 110(B) of the NIRC of 1997, which provides that if the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter/s.

Respondent insists that pursuant to Section 222 of the NIRC of 1997, the BIR may assess petitioner for deficiency VAT within ten (10) years from the discovery of falsity, fraud, or omission; and that petitioner was subjected to the 50% surcharge pursuant to Section 248(b) of the same Code; and that all presumptions are in favor of the correctness of tax assessments.

THE COURT'S RULING

A perusal of the stipulated issues raised in this case reveals that the defense of prescription is raised by petitioner to defeat the validity of the subject assessment for deficiency VAT for the Fiscal Year ended March 31, 2000. Thus, it is crucial that this issue be first resolved being the primordial consideration for this Court to proceed to resolve the other issues raised in the instant petition for review.

As a general rule, the three (3) year prescriptive period for the assessment and collection of taxes is provided under Section 203 of the NIRC of 1997, while the exception thereto, providing for a ten (10) year prescriptive period is mentioned under Section 222 of the same Code. Said provisions read as follows:

> "**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 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 is filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day."
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> **"SEC. 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes.**
>
> (a) In the case of a **false or fraudulent return with intent to evade tax or of failure to file a return**, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time **within ten (10) years** after the discovery of the falsity, fraud or omission: Provided, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof." (*Emphasis Ours)*

Corollary thereto, as the tax involved in the subject assessment pertains to value added tax, it is material that We also look into the provisions of Section 114(A) of the same Code which provides for the period within which to pay the required VAT and to file the necessary return thereto. Said provision reads:

> "**SEC. 114. Return and Payment of Value-added Tax**. –
>
> **(A) In General**. - Every person liable to pay the value-added tax imposed under this Title shall file a quarterly return of the amount of his gross sales or receipts **within twenty-five (25) days following the close of each taxable quarter** prescribed for each taxpayer: Provided, however, That VAT-

430

registered persons shall pay the value-added tax on a monthly basis." *(Emphasis Ours)*

In light of the foregoing legal provisions, Section 203 provides that the three-year prescriptive period to assess internal revenue taxes commences to run after the last day prescribed by law for the filing of the required return, except when the return was filed beyond the period prescribed by law, the three-year period shall be counted from the day the return was filed.

In the case of VAT, it is twenty-five (25) days following the close of each taxable quarter. Thus, although the return may be filed earlier than the last day allowed by law, the period to assess shall be counted from the last day prescribed by law for the filing of the required return, unless as mentioned earlier, the return was filed beyond twenty five (25) days from the close of each taxable quarter, then the period shall be counted from the date of filing of the return.

Section 203 further provides that beyond the three (3) year prescriptive period to assess and collect taxes, no proceeding in court may be filed without assessment for the collection of such taxes having been issued within the three (3) year period prescribed by law.

In the case at bench, although petitioner pays its VAT on a monthly basis, it is mandated to file a Quarterly Vat Return not later than twenty five (25) days after the end of each quarter pertaining to the total amount of its gross sales or receipts. Thus, each taxable quarter shall have its own prescriptive period for the assessment of any deficiency VAT, and it shall commence to run after the twenty-fifth day following the close of each taxable

431

quarter, or from date of filing of the Quarterly VAT Return (in case of late filing), whichever comes later.

Applying the foregoing discussion in the present case, respondent had until the following dates within which to assess petitioner for deficiency VAT for the four quarters of the fiscal year ended March 31, 2000:

Period Covered	**Date of Filing**[13]	**End of 3-year Period To Assess Deficiency VAT**
1st Quarter	July 26, 1999	**July 25, 2002**
2nd Quarter	October 25, 1999	**October 24, 2002**
3rd Quarter	January 27, 2000	**January 26, 2003**
4th Quarter	April 25, 2000	**April 24, 2003**

Considering that respondent admittedly issued the subject Assessment Notice No. VT-14338-FY-00-03-349, covering all the four quarters of the fiscal year ended March 31, 2000, only on July 18, 2003, the right to assess petitioner for the supposed deficiency VAT has clearly prescribed.

It must be remembered that the purpose of the limitation of the issuance of deficiency tax assessments is likened to that of actions for collection of taxes. The following words of the Honorable Supreme Court in the often quoted case of ***Republic of the Philippines vs. Luis G. Ablaza***,[14] are pertinent:

> "The law prescribing a limitation of actions for the collection of the income tax is beneficial both to the Government and to its citizens; to the Government because tax officers would be obliged to act promptly in the making of assessment, and to citizens because after the lapse of the period of prescription, citizens would have a feeling of security against unscrupulous tax agents who will always find an excuse to inspect the books of taxpayers, not to determine the latter's real liability, but to take advantage of every opportunity to molest peaceful, law abiding citizens. Without such a legal defense, taxpayer would furthermore be under obligation to always keep

[13] Exhibits "G" to "J"; Par. 2, Stipulated Facts during Pre-trial Conference, JSFI, supra.
[14] 108 Phil. 1105 (1960).

432

their books and keep them open for inspection subject to harassment by unscrupulous tax agents. The law on prescription being a remedial measure should be interpreted in a way conducive to bringing about the beneficent purpose of affording protection to the taxpayer within the contemplation of the Commission which recommends the approval of the law."

On a different argument raised by respondent that he has a period of ten (10) years pursuant to Section 222 (a) of the NIRC of 1997 within which to assess petitioner for deficiency VAT liabilities, the Court finds the same unmeritorious. This Court rules that, to warrant a ten-year period to assess taxpayer's tax deficiency liabilities, respondent must not only state with clarity the specific ground/s relied thereon, but must also prove the same in a clear and unequivocal manner. Mere allegation in respondent's pleading, that is, in the Answer, that petitioner filed a false or fraudulent return with intent to evade payment of taxes, without presenting substantial evidence in support thereto, will not suffice.

It bears stressing that Section 222 (a) of the NIRC of 1997 mentions the specific instances when the ten-year prescriptive period will apply, to wit: in the event that the taxpayer files a false or fraudulent return with intent to evade taxes; or the taxpayer fails to file a return. In the instant case, respondent claims that petitioner failed to pay Value Added Tax due on its alleged undeclared income amounting to P39,925,520.95 for fiscal year ended March 2000,[15] thus invoking the applicability of said Section in the instant case due allegedly to the filing of a false or fraudulent return by petitioner.

[15] Exhibit C-1, Formal Assessment Notice.

433

In invoking the claim that a false or fraudulent return was filed as an exception to the period of limitation to assess and to collect taxes provided in Section 222 of the NIRC of 1997, the fraud thereof must be actual not constructive. It must be intentional, consisting of deception willfully and deliberately done or resorted to. It cannot be justified by mere speculation.[16] In fact, the Supreme Court in one case explained that mere falsity of a return does not merit the application of the ten-year prescriptive period. The element of fraud, as in the case of taxpayer's intent to evade the payment of the correct amount of tax, must be clearly established.[17]

As consistently pronounced by this Court, fraud must be proven to exist by clear and convincing evidence amounting to more than mere preponderance, and cannot be justified by a mere speculation, because fraud is never lightly to be presumed.[18] It is a cardinal rule in taxation that fraud is a question of fact and the circumstances constituting it must be alleged and proven. Considering that fraud is a serious charge, to be sustained, it must be supported by clear and convincing proof.[19]

In charging against petitioner an undeclared income of P39,925,520.95, respondent merely compared the income payment as appearing in the Certificates of Creditable Tax Withheld at Source (BIR Form 2307) issued by Piltel, Citibank and SSS *vis-à-vis* the income of

[16] Yutivo Sons Hardware Company vs. Court of Tax Appeals and Collector of Internal Revenue, G.R. No. L-13203, January 28, 1961.
[17] Commissioner of Internal Revenue vs. BF Goodrich Phils., Inc., 303 SCRA 546.
[18] Philippine Commercial International Bank vs. Commissioner of Internal Revenue, CTA Case No. 5003, February 4, 1997.
[19] The Collector of Customs vs. Alberto D. Benipayo, G.R. No. L-13656, January 31, 1962.

434

P29,785,080.00 per petitioner's VAT Return and deduced therefrom that petitioner had undeclared income in the amount of P39,925,080.95.

A careful consideration of the parties' respective documentary and testimonial evidence, this Court finds that respondent failed to satisfactorily prove by convincing evidence that petitioner filed a false or fraudulent return which would warrant the application of the ten (10)-year prescriptive period within which to assess deficiency tax. As satisfactorily explained by Mr. Ericson P. Suarez, Accounting Staff of petitioner, in his sworn statement[20], the discrepancy between the income amounts as indicated in its VAT returns and BIR Form 2307 was brought about by the different accounting method used. It should be noted that VAT on services is based on gross receipts / collections, as mandated by the NIRC of 1997, while for withholding tax purposes the accrual method is used as required by Section 57(B) of the same code and Revenue Regulation 2-98, which states that the obligation of the payor to deduct and withhold the tax arises at the time an income is paid or payable, whichever comes first.

The adoption of the accrual method for withholding tax purposes – withholding of tax at source is reported in the period income becomes payable regardless whether it has been paid or not – and the cash method of accounting for VAT purposes – income is reported based on gross receipts / collection – results to a timing difference in recognition of its income[21], thus causing the discrepancies between the income that was reported by petitioner

[20] Exhibit "II".
[21] Telesat, Inc. vs. Commissioner of Internal Revenue, C.T.A. Case No. 6812, January 2, 2006, with Entry of Judgement dated March 17, 2006.

against the gross income that appears in the BIR Form 2307 representing withholding made by their clients.

Moreover, through the summary of official receipts[22] it has submitted as well as the sworn statement of Mr. Suarez, petitioner was able to explain that the alleged undeclared income was actually collected during periods outside the fiscal year ending March 31, 2000. Records show that out of the total P39,925,520.95 or 57.27%[23] discrepancies as assessed by respondent, petitioner was able to prove, that collections from Piltel, Citibank and SSS outside the period covered by the assessment amounted to P466,798.86, P5,964,324.83 and P30,091,592.66 respectively. Thus, reducing the undeclared income to P3,402,804.60 or 4.88% only.

Clearly, the burden of proof in establishing whether the taxpayer is guilty of fraud with intent to evade tax that falls within the exceptions as to period of limitation of assessment, is with the Commissioner of Internal Revenue.[24]

In sum, this Court finds the application of the exceptions provided for under Section 222 of the NIRC of 1997, unavailing in the instant case and correspondingly applies the three (3) year prescriptive period to assess and collect taxes provided under Section 203 of the same Code. And considering that the Formal Assessment Notice for the alleged deficiency VAT covering the four quarters of the fiscal year ended March 31, 2000, was issued only on

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[22] Summary of Official Receipts are covered by Exhibits "W", "X" and "Y" while Official Receipts are covered by Exhibits "W-1 to 11", "Y1 – 17" and "Y1 – 35".

[23] P39,925,520.95 divided by P69,710,600.95, amounts taken from the Formal Letter of Demand with attached Assessment Notice No. VT-14338-FY-00-03-349 and Details of Discrepancies, all dated July 18, 2003.

[24] Andrew D. Gruber vs. Commissioner of Internal Revenue, C.T.A. Case No. 2278, March 5, 1982, citing Jacob Mertens Jr., Law of Federal Income Taxation, Vol. 10, Chapter 55.18, 1958 Ed., pp. 71-72.

July 18, 2003, which is beyond the three-year period allowed under the law, the said VAT assessments are already barred by prescription.

To reiterate, any assessment for deficiency taxes issued after the lapse of the legal period of three (3) years, is no longer valid and effective. Consequently, inasmuch as respondent's right to assess petitioner for deficiency value-added taxes has already prescribed, resolution of the other issues raised before Us becomes moot and academic.

WHEREFORE, premises considered, the Petition for Review is hereby **GRANTED**. Accordingly, Assessment Notice No. VT-14338-FY-00-03-349 dated July 18, 2003 issued against petitioner, representing its alleged deficiency value-added tax liabilities for the four quarters of the fiscal year ended March 31, 2000 in the total amount of **SEVENTEEN MILLION FIVE HUNDRED EIGHTY THOUSAND SIX HUNDRED THIRTY EIGHT PESOS AND 15/100 (P17,580,638.15)**, inclusive of surcharges and interests, is hereby **CANCELLED** and **WITHDRAWN**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

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

OLGA PALANCA-ENRIQUEZ
Associate Justice

437

ATTESTATION

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

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

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Justice

42