

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

BANK OF COMMERCE,
Petitioner,

C.T.A. CASE NO. 6668

Members:

- versus -

CASTAÑEDA, JR., *Chairperson*
UY, *and*
PALANCA-ENRIQUEZ, JJ.

**COMMISSIONER OF INTERNAL
REVENUE,**
Respondent.

Promulgated:

JAN 08 2010

✓ 4:15 p.m.

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DECISION

CASTAÑEDA JR., J.:

This case involves a Petition for Review seeking the cancellation of Final Assessment Notice Nos. INC-97-000043, WC-97-000025, EWT-97-000044, FT-97-000022, CWT-97-000001, OT-97-000013, DST-97-000044, and DS2T-97-000018 dated June 14, 2002, covering deficiency income tax, withholding tax on compensation, expanded withholding tax, final tax, creditable withholding tax, onshore tax, and documentary stamp tax in the aggregate amount of P119,457,207.24, for taxable year 1997, detailed as follows:

Deficiency Tax	Assessment No.	Amount
Income Tax	INC-97-000043	P 5,917,855.80
Withholding Tax on Compensation	WC-97-000025	11,946,818.96

je

Expanded Withholding Tax	EWT-97-000044	177,401.09
Final Tax - Interest Expense	FT-97-000022	1,573,401.05
Creditable Withholding Tax	CWT-97-000001	6,648,339.42
Onshore Tax	OT-97-000013	70,463.84
Documentary Stamp Tax	DST-97-000044	75,706,314.95
Documentary Stamp Tax - Industry Issue	DS2T-97-000018	17,416,612.13
Total		P 119,457,207.24

Bank of Commerce (Petitioner) is a banking corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office address at 12th Floor, Bankers' Centre Building, 6764 Ayala Avenue, Makati City.

Respondent Commissioner of Internal Revenue is the Head of the Bureau of Internal Revenue (BIR) who is granted by law with the power to assess and collect all national internal revenue taxes, fees, and charges and to enforce all forfeitures, penalties, and fines connected therewith. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On June 21, 2002, petitioner received from respondent copies of the Formal Letter of Demand and Assessment Notice Nos. INC-97-000043, WC-97-000025, EWT-97-000044, FT-97-000022, CWT-97-000001, OT-97-000013, DST-97-000044, and DST2-97-000018, all dated June 14, 2002, assessing petitioner deficiency income tax, withholding tax on compensation, expanded withholding tax, final tax, creditable withholding tax, onshore tax, and documentary stamp taxes in the aggregate amount of P119,457,207.24, inclusive of compromise penalty and increments for taxable year 1997.¹

Petitioner protested the assessment via a letter filed with the BIR Large Taxpayer Service Division on July 19, 2002. Petitioner had until 

¹ Par. 2, Joint Stipulation of Facts and Issues (JSFI), docket, p. 98.

September 17, 2002 within which to submit its supporting documentary evidence.²

On March 16, 2003, the 180-day period within which respondent is mandated by law to render a decision on the protest lapsed without respondent's action on petitioner's protest. As such, petitioner had thirty (30) days from said date, or until April 15, 2003, within which to appeal to this Court.

In order to protect its rights, petitioner instituted the present action on April 14, 2003.

In his Answer³ filed on June 18, 2003, respondent interposed the following Special and Affirmative Defenses:

“6. The assessments were issued within the period allowed by law considering that valid Waivers of Statutes of Limitations were executed by the parties.

7. The assessments have factual and legal bases.

a) INCOME TAX

1. Bad Debts Written Off (P8,590,431.14)

Verification disclosed that there was an unaccounted difference of P1,277,611.58 between the write-off per financial statements against that of the schedule submitted, and a request for write-off that was not recognized by the BSP in the amount of P7,312,819.56, hence, disallowed as part of expense pursuant to Section 34(E) of the Tax Code because said accounts could not be ascertained to be worthless

2. Tax and Licenses *Je*

² Par. 3, JSF1, docket, p. 99.

³ Docket, pp. 51-57.

The amount of P503,995.91 was disallowed as an item of deduction because petitioner failed to substantiate its deductibility

b) WITHHOLDING TAX ON COMPENSATION

Pursuant to Section 57 of the NIRC, the employer as a withholding agent shall be liable for the correct withholding and remittance of the amount required to be deducted and withheld based on all remunerations received by their employees. Verification disclosed that when total tax due was compared against the actual tax remittance, there was a discrepancy, resulting to a deficiency tax.

c) EXPANDED WITHHOLDING TAX

There were items that were not subjected to EWT which resulted in the deficiency assessment amounting to P177,401.09.

d) FINAL TAX – INTEREST EXPENSE

Verification disclosed that final tax on savings and time deposits as well as deposit substitutes were found to be inadequately remitted when compared to the schedule of interest expense resulting to an assessment of P1,573,401.05, inclusive of interest, in accordance with Section 27 (D)(1) of the NIRC, as amended, which provides that interest on Philippine Currency Bank Deposits and yield or any other monetary benefit from deposit substitutes and from trust fund and similar arrangements received by domestic corporation shall be subject to 20% tax.

e) ONSHORE INCOME

Pursuant to Section 27 (D)(3) of the NIRC, as amended, interest income derived from foreign domestic currency loans granted by depository banks under the expanded foreign currency deposit system to residents shall be subject to a final income tax at the rate of ten percent of such income

Petitioner argues that the liability for payment of the onshore tax rests on the payor as withholding agent and not on the payee. Under the Code, the liability of the payor or withholding agent is separate



and distinct from the payee or recipient of the interest income. It cannot be denied that petitioner as the recipient of the interest income may be properly assessed if no tax was paid on the interest income it received.

f) CREDITABLE WITHHOLDING TAX

The deficiency assessment in the amount of P6,648,339.42 represents the penalties for late payment of creditable withholding tax.

g) DOCUMENTARY STAMP TAX

Verification disclosed that the taxpayer failed to affix the documentary stamp tax on the following transactions: loans and discounts, customers' liabilities under letters payable, increase in capitalization and DST on real property in violation of the provisions of Sections 175, 179, 180 and 182 of the NIRC.

h) DOCUMENTARY STAMP TAX (INDUSTRY ISSUE)

Verification disclosed that Special Savings Deposits is an interest bearing account and has the feature of Time Deposit Account. They are certificates of deposits subject to DST under Section 180 of the Tax Code."

The case was set for Pre-Trial Conference on September 5, 2003.⁴ Petitioner's Pre-Trial Brief and respondent's Pre-Trial Brief were filed on August 29, 2003 and November 3, 2003, respectively. On March 22, 2004, the parties submitted their Joint Stipulation of Facts and Issues⁵.

During trial, petitioner was able to present its documentary and testimonial evidence to support its claims and contentions; while respondent was deemed to have waived his right to present evidence for failure to appear *je*

⁴ Docket, p. 59.

⁵ Docket, pp. 98-103.

at the scheduled initial presentation of evidence on January 31, 2007 and March 5, 2007.⁶

On October 31, 2007, the Court issued a Resolution⁷ submitting this case for Decision, considering that petitioner had already submitted its Memorandum on September 11, 2007 and the report of this Court's Record Division that respondent filed no Memorandum.

On December 26, 2007, petitioner filed a Motion (to Suspend Collection of Alleged Tax Liabilities)⁸, praying for the suspension of collection of its alleged tax liabilities pending the final disposition of the present case. The motion was denied by the Court in a Resolution⁹ dated April 1, 2008.

Petitioner moved for the reconsideration of the said Resolution alleging, among others, its availment of the Tax Amnesty Law under Republic Act (R.A.) No. 9480.¹⁰ Petitioner's Motion was treated by this Court as a Motion to Partially Withdraw the Petition, which was also granted in Resolution¹¹ dated August 8, 2008; hence, the instant case was deemed to be partially withdrawn and was considered closed and terminated subject to the provisions of R.A. No. 9480. In the same Resolution, this Court set the case for the marking of respondent's documentary evidence and initial presentation of evidence on the issue of deficiency withholding taxes.

Petitioner filed a Motion for Partial Judgment¹² on October 23, 2008, praying for the cancellation of Assessment Notice Nos. WC-97-000025, EWT- 

⁶ Docket, p. 388.

⁷ Docket, p. 447.

⁸ Docket, p. 448-456

⁹ Docket, pp. 467-468.

¹⁰ Docket, pp. 472-475.

¹¹ Docket, pp. 522-523.

¹² Docket, pp. 529-536.

97-000044, and CWT-97-000001 dated June 14, 2002, on the ground of prescription. Consequently, on February 3, 2009, the Court promulgated a Resolution¹³ canceling and setting aside Assessment Notice Nos. EWT-97-000044 and CWT-97-000001; while sustaining the validity of Assessment Notice No. WC-97-000025.

On March 2, 2009, petitioner filed a Motion for Partial Reconsideration of the Court's Resolution dated February 3, 2009, specifically, praying that an Order be issued canceling Assessment Notice No. WC-97-000025 on the ground of prescription. The Court however denied the said Motion for lack of merit in a Resolution dated April 27, 2009.

On May 26, 2009 and June 24, 2009, petitioner and respondent respectively submitted their memoranda.

Petitioner moved to reopen trial¹⁴ for the purpose of submitting its Monthly Withholding Tax Returns, copies of which were attached to the BIR Records, in order to prove the filing, the date of filing, and their contents, pertinent to its allegation of prescription of Assessment Notice No. WC-97-000025. The same was granted by the Court in a Resolution¹⁵ dated July 22, 2009. Accordingly, petitioner presented its supplemental evidence, which was later formally offered in Court and admitted in a Resolution dated September 24, 2009.

The case was submitted for decision on November 4, 2009, after the parties filed their respective Supplemental Memorandum.¹⁶ 

¹³ Docket, pp. 540-548.

¹⁴ Docket, pp. 640-648.

¹⁵ Docket, pp. 768-770.

¹⁶ Docket, p. 873.

The parties submitted the following issues¹⁷ for this Court's resolution:

"15. Income Tax

- a. Whether the disallowance of the amount of P8,590,431.14 representing bad debts written-off as part of expenses is proper.
- b. Whether the disallowance of the amount of P503,995.91 representing Taxes and License as part of expenses is proper.
- c. Whether Respondent's right to assess deficiency income tax has already prescribed when it issued the Formal Letter of Demand and Assessment Notices.

16. Withholding Tax on Compensation

- a. Whether Petitioner is liable for deficiency withholding tax on compensation.
- b. Whether Respondent's right to assess deficiency withholding tax on compensation has already prescribed when it issued the Formal Letter of Demand and Assessment Notices.

17. Expanded Withholding Tax

- a. Whether Petitioner is liable for deficiency expanded Withholding Tax on certain income payments.
- b. Whether Respondent's right to assess deficiency expanded withholding tax on certain income payments has already prescribed when it issued the Formal Letter of Demand and Assessment Notices.

18. Final Tax – Interest Expense

- a. Whether Petitioner is liable for deficiency 20% final tax on savings and time deposits as well as deposit substitutes.
- b. Whether Respondent's right to assess final tax on interest expense has already prescribed when it issued the Formal Letter of Demand and Assessment Notices. *gr*

¹⁷ Pars. 15-21, JSFI, docket, pp. 101-102.

19. Creditable Withholding Tax

- a. Whether Petitioner is liable to surcharge, interest and compromise penalty for the late remittance of the creditable withholding tax on the sale of real property.
- b. Whether Respondent's right to assess surcharge, interest and compromise penalty for the late remittance of the creditable withholding tax on the sale of real property has already prescribed when it issued the Formal Letter of Demand and Assessment Notices.

20. Documentary Stamp Tax (DST)

- a. Whether Petitioner is liable for deficiency DST on various adjustments (debits) and other transactions i.e., letters of credit transactions; domestic bills purchased; and adjustments on debits in the amount of P75,706,314.95.

21. Documentary Stamp Tax – Industry Issue

- a. Whether Petitioner is liable for deficiency DST on its Special Savings Deposits in the amount of P17,416,612.13 inclusive of surcharge.”

As narrated earlier, Assessment Notice Nos. INC-97-000043, EWT-97-000044, FT-97-000022, CWT-97-000001, OT-97-000013, DST-97-000044, and DST2-97-000018 were already cancelled pursuant to Resolutions dated August 8, 2008 and February 3, 2009, leaving unresolved the sole issue of whether or not petitioner is liable for deficiency withholding tax on compensation in the amount of P11,946,818.96 under Assessment Notice No. WC-97-000025.

It may be recalled that in Resolution dated February 3, 2009, the validity of Assessment Notice No. WC-97-000025 was sustained due to petitioner's failure to formally submit to this Court its Monthly Withholding Tax Returns for Compensation. Such omission made this Court unable to 

determine which prescriptive period should apply, when such prescriptive period should begin to run, and when it should lapse. Thus, the Court ruled that the defense of prescription cannot be sustained. However, after petitioner's motion to reopen trial had been granted and after it had presented and formally offered to this Court its Monthly Withholding Tax Returns for Compensation for the months of taxable year 1997, the issue of whether the assessment of deficiency withholding tax on compensation is already barred by prescription may now be properly addressed and resolved.

Section 203 of the National Internal Revenue Code (NIRC) of 1977, as amended, provides:

“SECTION 203. *Period of Limitation Upon Assessment and Collection.* - Except as provided in the succeeding section, internal revenue taxes shall be assessed within three 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-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.”

Petitioner presented to this Court its supplemental evidence to support its contention that Assessment Notice No. WC-97-000025 was issued beyond the period provided by law for respondent to assess deficiency compensation withholding taxes. Based on the said documents (*Exhibits “TTTT” to “EEEE”*) and on the above-quoted provision, respondent had until the following dates within which to assess petitioner for the subject deficiency withholding tax on compensation for taxable year 1997: *gr*

1997	Exhibit	BIR Form No.	Date Filed	Last Day to File Return	Last Day to Assess	Amount
January	TTTT	1743-W	02/25/97	02/25/97	02/25/00	P 1,407,312.87
February	UUUU	1743-W	03/25/97	03/25/97	03/27/00**	2,317,916.75
March	VVVV	1743-W	04/25/97	04/25/97	04/25/00	2,068,011.17
April	WWWW	1743-W	05/27/97	05/26/97*	05/29/00**	1,925,578.61
May	XXXX	1743-W	06/25/97	06/25/97	06/26/00**	2,217,445.59
June	YYYY	1743-W	07/25/97	07/25/97	07/25/00	1,542,523.80
July	ZZZZ	1743-W	08/25/97	08/25/97	08/25/00	1,576,371.48
August	AAAAA	1743-W	09/25/97	09/25/97	09/25/00	1,933,731.89
September	BBBBB	1601	10/27/97	10/27/97*	10/27/00	1,699,730.32
October	CCCCC	1601	11/25/97	11/25/97	11/27/00**	1,572,312.62
November	DDDDD	1601	12/24/97	12/26/97*	12/26/00	1,963,447.00
December	EEEEE	1601	01/26/98	01/26/98*	01/26/01	4,623,459.64
						P 24,847,841.74

* the 25th day following the end of the month of withholding fell either on a Saturday, Sunday or legal holiday

** the last day of the three-year period fell either on a Saturday or Sunday

After a close scrutiny of the foregoing documents, the Court finds that the assessment for deficiency withholding tax on compensation was also issued beyond the three-year prescriptive period provided under Section 203 of the NIRC of 1977, as amended. As shown in the foregoing table, the last Monthly Withholding Tax Return for Compensation was filed on January 26, 1998. Counting from said date, respondent should have issued Assessment Notice No. WC-97-000025 on January 26, 2001. However, respondent belatedly assessed petitioner on June 14, 2002. Clearly, the assessment for deficiency withholding tax on compensation was already barred by prescription at the time of its issuance.

Respondent argues that petitioner failed to declare certain tax payments it was supposed to withhold and remit, making the ten (10)-year prescriptive period for issuance of assessment as provided under Section 223 of the NIRC of 1977, as amended, applicable to this case.

Respondent's argument is untenable. *jr*

It is noteworthy that while Section 223 of the NIRC of 1977 provides for certain exceptions as to the period of limitation, viz., in case of *false* or *fraudulent return* with intent to evade tax or *failure to file a return*, such is not present in this case to warrant the extension of the prescriptive period to ten years.

As indicated in the above table, petitioner filed its Monthly Remittance Returns of Income Taxes Withheld for taxable year 1997. Moreover, respondent did not allege much less prove that the returns were false or fraudulent as contemplated under Section 223 of the NIRC of 1977, as amended. On the other hand, petitioner has satisfactorily shown that it properly withheld and remitted the withholding taxes on its employees' compensation for taxable year 1997.

As reflected in the Formal Letter of Demand¹⁸, Assessment Notice No. WC-97-000025 and Schedule 1-1997 Computation of Deficiency Taxes¹⁹, respondent computed the alleged deficiency withholding tax on compensation as follows:

Breakdown per Alpha-list	Tax Base	Withholding Tax
Senior Officers	P 23,339,763.10	P 6,356,601.26
Junior Officers	80,737,921.36	17,302,600.42
Rank and File	<u>63,043,183.00</u>	<u>7,574,975.86</u>
Tax Due	<u>P 167,120,867.46</u>	P 31,234,177.54
Less: Tax Remitted		<u>24,969,472.79</u>
Basic Tax still due		P 6,264,704.75
Interest (1.25.98-7.31.02)		5,657,114.21
Compromise Penalty		<u>25,000.00</u>
Amount due and collectible		<u>P 11,946,818.96</u>

The said assessment was based on the examiners' finding that:

"Pursuant to Section 57 of the NIRC, the employer as a withholding agent 

¹⁸ Exhibit "J".

¹⁹ Exhibit "J-2".

shall be liable for the correct withholding and remittance of the amount required to be deducted and withheld based on all remuneration received by their employees. A comparison between the salaries and wages claimed per financial statements and per alpha-list showed no discrepancy, however, when total tax due was compared against the actual tax remittance there was a discrepancy, resulting to a deficiency tax of P11,946,818.96, inclusive of interest".²⁰

A close examination of petitioner's 1997 Alphalists of Active²¹ and Resigned²² Senior Officers, Alphalists of Active²³ and Resigned²⁴ Junior Officers, and Consolidated Alphalists of Active²⁵ and Resigned²⁶ Employees and as illustrated in the Affidavits of petitioner's witnesses, Ms. Elvira Muñoz²⁷ and Ms. Rowena N. Morada²⁸, the alleged basic deficiency tax of P6,264,704.75 arose from the following:

Double take-up of w/holding tax on compensation of Senior Officers		P6,356,601.26
Withholding tax from previous employer		29,734.54
Difference in tax remittance as alleged by the BIR and actual remittance per BIR Form No. 1743-IR		
Tax remittance as alleged by the BIR	P24,969,472.79	
Less: Actual remittance per BIR Form No. 1743-IR	24,847,841.74	(121,631.05)
Total		P6,264,704.75

As can be seen in the Alphalists of Active and Resigned Senior Officers, the amount of P6,356,601.26²⁹ pertains to the withholding tax on *Je*

²⁰ Compensation Withholding Tax, Details of Discrepancies, Annex "A-1", Formal Letter of Demand, Exhibit "J".

²¹ Exhibit "KK".

²² Exhibit "LL".

²³ Exhibit "MM".

²⁴ Exhibit "NN".

²⁵ Exhibit "OO".

²⁶ Exhibit "PP".

²⁷ Exhibit "RR".

²⁸ Exhibit "SS".

²⁹ P5,808,177.78 (Exhibit "KK-2") plus P548,423.48 (Exhibit "LL").

compensation of petitioner's senior officers in the amount of P23,339,763.10³⁰, which was also included in the printed totals shown in the Alphalists of Active and Resigned Junior Officers. Accordingly, the amounts of P80,737,921.36³¹ and P17,302,600.42³² already represent the gross compensation and withholding tax, respectively, not only of the junior officers but also of the senior officers of petitioner.³³ Consequently, there was double take-up of the amounts of P23,339,763.10 and P6,356,601.26, representing gross compensation and withholding tax, respectively, of petitioner's senior officers, in respondent's computation of petitioner's deficiency withholding tax on compensation for taxable year 1997.

As to the amount of P29,734.54, representing withholding taxes from previous employment of petitioner's junior officers,³⁴ petitioner is not liable for the remittance thereof.

Anent the amount of P121,631.05, the same was arrived at by deducting petitioner's actual tax remittance of P24,847,841.74³⁵ per BIR Form No. 1743-IR from the P24,969,472.79³⁶ tax remittance indicated by the BIR in computing the alleged deficiency basic tax of P6,264,704.75. Apparently, the amount of P121,631.05 was a mere result of respondent's erroneous take-up of petitioner's total tax remittance for the year 1997.

Inasmuch as respondent's right to assess has already lapsed and petitioner has sufficiently proven that it properly withheld and remitted the 

³⁰ P21,419,981.73 (Exhibit "KK-1") plus P1,919,781.37 (Exhibit "LL").

³¹ P70,326,894.89 (Exhibit "MM-1") less P308,298.23 (Exhibit "MM-4") plus P10,719,324.70 (Exhibit "NN-1").

³² P15,045,867.95 (Exhibit "MM-3") plus P2,256,732.47 (Exhibit "NN-2").

³³ Exhibits "MM" and "NN".

³⁴ Exhibit "MM-2".

³⁵ Exhibit "JJ-1".

³⁶ Exhibit "J".

taxes due on the compensation of its employees for taxable year 1997, the cancellation of Assessment Notice No. WC-97-000025 is in order.

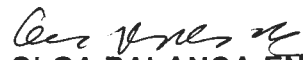
WHEREFORE, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, Assessment Notice No. WC-97-000025 is hereby **CANCELLED** and **SET ASIDE**..

SO ORDERED.


JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:


ERLINDA P. UY
Associate Justice


OLGA PALANCA-ENRIQUEZ
Associate Justice

ATTESTATION

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


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