REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SPECIAL FIRST DIVISION

TUTUBAN PROPERTIES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 7536

Members:

ACOSTA, *Chairperson*
BAUTISTA, *and*
CASANOVA, *JJ.*

Promulgated:

DEC 13 2010 ; 4:00 pm

x - x

DECISION

CASANOVA, J.:

This is a Petition for Review filed on October 30, 2006 seeking the cancellation and termination of the assessment of its deficiency income, value-added, compensation withholding, and expanded withholding taxes for fiscal year ending June 30, 2002.

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

Tutuban Properties, Inc., the petitioner, is a corporation duly organized and existing under and by virtue of the laws of the Philippines. It is registered with the Bureau of Internal Revenue (BIR) with taxpayer's identification number 029-001-

178-585 and with principal office address at Tutuban Center, Claro M. Recto Avenue corner Dagupan St., Tondo, Manila.[1]

Respondent is the Commissioner of the Bureau of Internal Revenue, who was duly appointed and empowered to perform the duties of his office, including, among others, the power to decide, cancel and abate tax liabilities pursuant to Section 204(B) of the Tax Code, as amended by Republic Act (R.A.) No. 8424, otherwise known as the "Tax Reform Act" (TRA) of 1997, with office address at the BIR National Office Building, Diliman, Quezon City.[2]

On December 16, 2005, petitioner received from respondent Preliminary Assessment Notice (PAN) dated December 13, 2005 with Details of Discrepancies covering fiscal year ending June 30, 2002, alleging that petitioner had deficiency income tax of P37,206,406.36, deficiency value-added tax (VAT) of P27,308,735.43, deficiency compensation withholding tax of (WT-Compensation) P2,408,675.07 and deficiency expanded withholding tax (EWT) of P1,241,878.78 for fiscal year ending June 30, 2002.[3]

In reply, petitioner filed its Letter of Protest on December 29, 2005, refuting the findings of discrepancies in the PAN.[4]

On January 4, 2006, petitioner received a Formal Assessment Notice (FAN) with Details of Discrepancies dated December 28, 2005, requesting it to pay the assessed deficiency taxes in the total amount of P68,706,056.94.[5]

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[1] Petition for Review, par. 1, Docket, p. 1
[2] Ibid, par. 2
[3] Ibid, par. 3; Exhibit "C" and "C-1"
[4] Ibid, par. 4; Exhibit "D"
[5] Ibid, par. 5, Exhibits "E" and "E-1"

On February 3, 2006, petitioner filed its Protest Letter on the aforementioned FAN specifying therein the factual and legal bases of the protest and thus, sought for the cancellation of the said assessments as well as all increments arising therefrom.[6]

On April 4, 2006, petitioner submitted additional documents to support its protest.[7]

Due to respondent's failure to act on petitioner's protest letter, petitioner filed on October 30, 2006 the instant Petition for Review.

On January 18, 2007, respondent filed a Motion to Admit Answer[8], attaching thereto his Answer to the Petition interposing several defenses. The same was admitted in a Resolution[9] dated February 26, 2007.

The Answer submitted by respondent stated among others:

> "5. He denies the allegations in paragraphs 13, 16,19, 20, 22, 24, 25, 26, 28, 30, 33, 34, 40, 42, 43, 45, 46, 48 and 51 under the heading "ARGUMENTS AND DISCUSSION" for being erroneous conclusions of fact and law, the truth being that upon audit it was verified that several financial statement accounts namely Salaries and Wages, Taxes and licenses, Professional fees, Bank charges, Representation and entertainment, Advertising and promotion, Miscellaneous, Interest expense, and Water expenses, do not match ledger account balances. This is in violation of the basic accounting principle and bookkeeping regulations. Furthermore, amortization of prior period adjustment and amortization of unallowable cost of sales were not properly substantiated. Hence, were assessed in accordance with Section 6 and 34(A)(b) of the NIRC for deficiency income tax.
>
> 6. He denies the allegations in paragraphs 52 (second sentence), 53, 55, 61, 62, 63, 65, 67 and 68 under the heading "ARGUMENTS AND DISCUSSION" for being erroneous conclusions of fact and law, the truth being that verification disclosed that certain amounts of leases on properties, sale of leasehold rights, and other income per income tax return when a

[6] Ibid, par. 6; Exhibit "F"
[7] Ibid, par. 7; Exhibit "RRR"
[8] Docket, pp. 91-96
[9] Docket, pp. 102-103

compared to VAT returns were not subjected to VAT in violation of Sections 106 and 108 of the NIRC. Likewise, input taxes claimed on purchases from unregistered suppliers, input tax on water expenses, on security and janitorial services, and customer service-CUSA which were all charged to customers were disallowed pursuant to Section 113 of the NIRC.

7. He denies the allegations in paragraph 70 under the heading "ARGUMENTS AND DISCUSSION", of the Petition for being erroneous conclusions of fact and law, the truth being that the truth being that *(sic)* verification disclosed that the compensation reflected in the financial statement were not all subjected to withholding tax. It was assessed pursuant to Section 80(a) of the Tax Code. This section provides that the employer shall be liable for the withholding and remittance of the correct amount of tax on salaries and wages of their employees.

8. He denies the allegations in paragraphs 71 (second sentence) and 72 under the heading "ARGUMENTS AND DISCUSSION" of the petition for being erroneous conclusion of fact and law, the truth being that verification of the taxpayers' compliance to withholding tax pursuant to RR 2-98 as amended by RR 6-2001 and RR 12-2001 showed that there were income payments not subjected to expanded withholding tax. These were identified by matching the expenses subject to EWT against remittances and Alpha list."[10]

Petitioner and respondent filed their Pre-Trial Briefs on March 26, 2007[11] and March 30, 2007[12], respectively.

Thereafter, the parties submitted their Joint Stipulation of Facts and Issues[13] on July 26, 2007, which was approved in a Resolution[14] dated July 27, 2007.

On October 11, 2007, petitioner moved[15] for the commissioning of an Independent Certified Public Accountant (ICPA) which was granted during the hearing[16] on November 16, 2007.

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[10] Docket, pp. 92-94
[11] Docket, pp. 110-115
[12] Docket, pp. 117-122
[13] Docket, pp. 138-140
[14] Docket, p. 149
[15] Docket, pp. 166-168
[16] Docket, p. 175

On March 13, 2008, petitioner filed a Motion for Partial Withdrawal of Petition[17] praying that, in view of its availment of the tax amnesty under R.A. 9480, it be allowed to withdraw the instant petition. It further prayed that the proceedings relating to the assessment for petitioner's supposed liability for deficiency withholding taxes be allowed to continue.

This Court granted the said *Motion* in a Resolution[18] dated June 10, 2008, the dispositive portion of which reads:

> "**WHEREFORE**, petitioner's Motion for Partial Withdrawal of the Petition is hereby **GRANTED**; the Petition for Review filed on October 30, 2006 as regards the disputed assessments on deficiency income tax and value-added tax is deemed **WITHDRAWN**; and save for the portion relating to the assessments on deficiency withholding taxes, the case relating to assessments on deficiency income tax and value-added tax is deemed **CLOSED and TERMINATED**, subject to the provision of Republic Act No. 9480, otherwise known as the Tax Amnesty Law.
>
> Petitioner is hereby **ORDERED** to file an Amended Petition for Review to cover deficiency withholding tax assessments.
>
> **SO ORDERED.**"

On June 19, 2008, petitioner filed its Formal Offer of Evidence[19], formally offering for admission Exhibits "A" to "PPP-1". On the same date, petitioner filed its Omnibus Motion to Reopen the Case and Recall Witness[20] which was granted in open Court during the hearing on July 4, 2008. In a Resolution[21] dated July 25, 2008, the case was reopened and was set for the presentation of petitioner's additional evidence.

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[17] Docket, pp. 397-399
[18] Docket, pp. 478-482
[19] Docket, pp. 483-495
[20] Docket, pp. 786-789
[21] Docket, p. 798

In a Resolution[22] dated February 11, 2009, the Court granted petitioner's request to submit its Supplemental Formal Offer of Evidence and, likewise ordered respondent to file his Comment thereto.

On February 17, 2009, petitioner filed its Supplemental Formal Offer of Evidence[23], formally offering Exhibits "QQQ" to SSS-1 for this Court's admission, while respondent filed his Comment (Re: Petitioner's Supplemental Formal Offer of Evidence)[24] on March 13, 2009.

Hence, in a Resolution[25] dated March 25, 2009, Exhibits "A" to "SSS-1" were admitted as evidence subject to this Court's final evaluation and/or appreciation of their purposes, materiality, relevancy, and probative value to the issues involved in this case.

Respondent presented his testimonial and documentary evidence and thereafter filed his Formal Offer of Documentary Evidence[26] on August 4, 2009, offering Exhibits "1" to 16-A" for admission of this Court which exhibits were admitted in a Resolution[27] dated September 4, 2009.

The case was submitted for decision on November 17, 2009[28] taking into consideration petitioner's Memorandum[29] filed on October 13, 2009 without respondent's Memorandum.

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[22] Docket, p. 848
[23] Docket, pp. 850-853
[24] Docket, pp. 878-880
[25] Docket, pp. 883-884
[26] Docket, pp. 921-930
[27] Docket, p. 935
[28] Docket, p. 963
[29] Docket, pp. 943-962

Thereafter, respondent filed his Motion to Admit Attached Memorandum[30] filed on November 23, 2009 which was granted in a Resolution[31] dated December 14, 2009. In the same Resolution, the case was submitted anew upon the promulgation of the said Resolution.

The parties submitted the following issues[32] for this Court's disposition:

> "1. Whether or not Petitioner timely filed the instant Petition for Review with this Honorable Court?
>
> 2. Whether or not Petitioner has overstated its expenses for fiscal year ending June 30, 2002?
>
> 3. Whether or not Respondent's disallowance of Petitioner's expenses in the amount of P15,977,612.30 allegedly because it was paid to unregistered suppliers was valid and proper?
>
> 4. Whether or not Petitioner has unreported income arising from unexplained increase in asset amounting to P14,387,627.47?
>
> 5. Whether or not Petitioner has deficiency VAT liabilities for fiscal year ending June 30, 2002, arising from income/gross receipts not subjected to VAT?
>
> 6. Whether or not Respondent's disallowance of Petitioner's input tax valid and proper?
>
> 7. Whether or not Respondent's assessment on withholding tax against the Petitioner was valid and proper?
>
> 8. Whether or not Petitioner has under-remitted its expanded withholding tax by P563,068.47?"

On March 6, 2008, petitioner availed of the tax amnesty under R.A. No. 9480 (Tax Amnesty Law of 2007), the discussion of this Court shall delve only on the propriety of the remaining deficiency tax assessments detailed as follows:[33]

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[30] Docket, pp. 964-988
[31] Docket, pp. 998-999
[32] Joint Stipulation of Facts and Issues, Docket, p. 139
[33] Exhibit "E"

	WT-Compensation	EWT	Total
Basic Tax	P 1,092,094.49	P 563,068.47	P 1,655,162.96
Surcharge (50%)	546,047.25	281,534.23	827,581.48
Interest (20%)	789,341.63	406,973.37	1,196,315.00
Total Amount Due	**P 2,427,483.37**	**P 1,251,576.07**	**P 3,679,059.44**

Thus, the remaining issues to be resolved are as follows:

"1. Whether or not Petitioner timely filed the instant Petition for Review with this Honorable Court?

7. Whether or not Respondent's assessment on withholding tax against the Petitioner was valid and proper?

8. Whether or not Petitioner has under-remitted its expanded withholding tax by P563,068.47?"

First, to determine the timeliness of the filing of the instant Petition for Review, it is necessary to quote Section 228 of the Tax Code of 1997, as amended, which provides:

> **"SECTION 228.** *Protesting of Assessment.* – xxx
>
> xxx
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable"

In this case, petitioner filed its protest letter[34] with the BIR on February 3, 2006, which was exactly thirty (30) days from the receipt of the Formal Assessment Notice or from January 4, 2006. Hence, it was timely filed.

As provided for in the above-quoted provision, petitioner has sixty (60) days from the filing of the protest within which to submit all relevant documents to support its administrative claim. In this regard, respondent alleges that petitioner failed to submit all relevant documents in support of its administrative protest within sixty (60) days from the filing of its protest in total disregard and violation of Section 228 of the Tax Code of 1997, as amended and Revenue Regulations No. 12-99.

On April 4, 2006, respondent received a letter[35] from petitioner, submitting therein additional documents to support its claim and, likewise, informing respondent that due to the volume of documents involved, respondent may examine other documents within its premises.

Respondent, however, emphasized that it is incumbent upon petitioner to decide which documents to submit within sixty (60) days from the filing of administrative claim and not the other way around. For these reasons, respondent concluded that the assessment has already become final and executory.

This Court agrees with respondent that it is initially the petitioner who determines the "relevant supporting documents" to be submitted for its administrative protest. As cited in the case of *Business One Inc., vs. Commissioner of Internal Revenue*[36], this Court said:

> "However, there is no merit in respondent's contention that the assessment became final and executory for petitioner's failure to

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[34] Exhibit "F"
[35] Exhibit "RRR"
[36] C.T.A. CASE NO. 6832, October 7, 2008

> submit relevant supporting documents within 60 days from filing of its protest pursuant to Sec. 228 of the Tax Code. In *Standard Chartered Bank-Philippine Branches v. Commissioner of Internal Revenue,* this Court pointed out that **relevant supporting documents refers to such documents which the taxpayer feels would be necessary to support the protest** and not what the respondent feels should be submitted; otherwise, the taxpayer would always be at the mercy of the BIR which may require production of such documents which taxpayer could not produce. **Besides, the BIR should inform the taxpayer to submit whatever documents are lacking in order that a complete determination of the propriety of the assessment may be had. Further, this Court reiterated that the requirement on the submission of all the relevant supporting documents within the 60-day period from filing protest is merely directory."**

Based from the foregoing, the "relevant supporting documents" provided under Section 228 of the Tax Code of 1997, as amended, refers to such documents which the taxpayer feels would be necessary to support the protest. In this case, the additional documents submitted by petitioner were those that petitioner thinks would support its position in connection with their protest as may be perused from the Transmittal Letter[37] dated April 3, 2006 which states in part:

> "On behalf of our client, Tutuban Properties Inc., (TPI), we are pleased to submit additional documents to support our position in connection with our protest xxx"

Attached to the said letter is a list of documents for submission to the BIR which comprises of:

(1) petitioner's Trial Balance for the fiscal year ended June 30, 2002;

(2) CVs, APVs, JVs and supporting documents of the following:

(a) salaries, wages and employee benefits
(b) taxes and licenses
(c) professional fees
(d) ads and promotions;

[37] Docket, pp. 862-864; Exhibit "RRR"

(3) sample copies of Invoices (for goods) and OR (for services) from suppliers as per BIR Annex J;

(4) BIR Certificate of Registration of Iceberg22ban;

(5) GL and JVs for withholding tax on compensation;

(6) 1604 E for calendar years ended December 2001 and 2002; and

(7) Tentative and Final ITRs for FY 2002.

It is apparent from the foregoing that petitioner was able to submit the "relevant supporting documents" as mandated by Section 228 of the Tax Code of 1997, as amended.

Likewise, even if the supporting documents are found to be lacking, the subject assessment does not automatically become final and executory considering that, as pointed out in the above-quoted decision, the submission of all relevant documents within the 60-day period provided by law is merely directory. Furthermore, respondent may still inform and cause petitioner to submit those documents which he deems essential in order to properly ascertain the validity and correctness of the assailed assessment.

In the case of *H. Tambunting Pawnshop, Inc. v. Commissioner of Internal Revenue,* citing a portion of the Resolution in the case of *Standard Chartered Bank-Philippine Branches vs. Commissioner of Internal Revenue (CTA Case No. 5696, May 27, 1999)* where the Court said that the most appropriate way for respondent Commissioner to do under the circumstances when he feels the documents submitted are insufficient, is to deny the protest, stating his reason therefore, so the taxpayer would have the opportunity to go to Court, if warranted.[38]

In view thereof, respondent's claim that the assessment has already become final and executory due to petitioner's failure to indicate that it has submitted the complete supporting documents, deserves scant consideration.

Accordingly, the date when petitioner submitted its additional documents to support its administrative claim shall be considered as the date when petitioner submitted all relevant supporting documents as provided under Section 228 of the Tax Code of 1997, as amended.

Counting from April 4, 2006, the date when petitioner submitted its supporting documents, respondent had 180-days or until October 1, 2006 to decide on the protest. Respondent, as stipulated by the parties, failed to act on petitioner's protest. Thus, counting from October 1, 2006, petitioner had 30 days or until October 31, 2006, within which to file its appeal before this Court. Clearly, the instant Petition for Review dated October 30, 2006, was timely filed.

After determining the timeliness of the appeal filed with this Court, the resolution of the remaining issues shall now be made.

<u>Deficiency Withholding Tax on Compensation—P</u>2,427,483.37

Respondent assessed petitioner of deficiency withholding tax on compensation, inclusive of surcharge and interest, in the amount of P2,427,483.37 as shown below:[39]

Tax withheld per audit	P 5,689,807.50
Less: Remittances	4,597,713.01
Deficiency	P 1,092,094.49
50% Surcharge	546,047.25

[38] CTA Case No. 6238, October 8, 2004
[39] Exhibit "JJ", p. 3

20% Interest (July 10, 2002-Jan. 31, 2005)	789,341.63
Total amount due	**P 2,427,483.37**

Petitioner asserts that respondent's examiner failed to include certain transactions in his computation. Most of these transactions pertain to alleged double recording of remittances which were subsequently reversed in petitioner's books.[40]

As found by the Court-commissioned ICPA, Ms. Myra Celeste Dabalos, the assessment arose from the difference between the withholding tax on compensation recorded in petitioner's General Ledger[41] and the list of transactions per audit made by the BIR[42]. The Court-commissioned ICPA noted that the BIR excluded certain transactions that were debited to the said account which consisted of entries to take up remittances of withholding taxes, which in some cases were recorded twice, to wit:

Date	Reference	Particulars	Amount
11/8/2001	APY PV24394	Payment for the remittances of WTC and EWT for the month of October 2001 (reversed in JV22574)	P 311,047.39
4/6/2002	APY PV25614	Payment for the remittances of WTC and EWT for the month of March 2002 (reversed in JV23608)	383,398.47
5/8/2002	APY PV25859	Payment for the remittances of WTC and EWT for the month of April 2002 (reversed in JV23808)	398,783.58
Total			P 1,093,229.44
Alleged deficiency per BIR			1,092,094.49
Unaccounted difference			**P 1,134.95**

This Court finds for the petitioner.

As can be gleaned from its general ledger for withholding tax on compensation as of June 30, 2002,[43] the above transactions were subsequently reversed by petitioner. These reversal entries for cancellation were included by the BIR in his computation but excluded the set-up of the entries being reversed. The

40 Exhibit "F"
41 Exhibit "GGG"
42 Exhibit "E"
43 Exhibit "GGG"

following are the reversal entries which were actually made to correct the record of erroneous remittances by petitioner:

Date	Reference	Particulars	Amount
11/30/2001	JV 22574	To take up reversal of AP entries due to error in computation for November 2001.	P 311,047.39
4/30/2002	JV 23608	To take up reversal of AP entries for April 2002 due to error in recording.	383,398.47
5/31/2002	JV 23808	To take up reversal of AP entries due to error in recording.	398,783.58
		TOTAL	**P 1,093,229.44**

Besides, petitioner, in its Audited Financial Statements[44], reported Accounts Payable and Accrued Expenses of P128,068,616.00 which included the balance of withholding tax payable-compensation per General Ledger amounting to P457,757.51[45]. In other words, the assessment for deficiency withholding tax on compensation in the amount of P2,427,483.37 was a mere result of the respondent's examiner's erroneous computation.

In addition, further evaluation of petitioner's general ledger for withholding tax on compensation vis-à-vis its Monthly Remittance Returns of Income Taxes Withheld on Compensation (BIR Form No. 1601C)[46] shows that petitioner even over-remitted the amount of P1,134.95, to wit:

Total Credits - Withholding Tax on Compensation Payable per GL(*Exh. GGG*)*	P 6,062,336.69
Less: Total Debits – Remittances**	5,670,508.61
Credit Balance	P 391,828.08
Less: Remittance of WTC for June 2002 *(Exh. LLL-12)****	(392,963.03)
Over-remittance	**P (1,134.95)**

** excluding ending balance as of June 2001 amounting to P374,898.61*
*** excluding remittance for June 2001 amounting to P308,969.18*
**** not included in the general ledger for the period ending June 30, 2002*

Thus, respondent's assessment for deficiency withholding tax on compensation should be cancelled.

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[44] Exhibit "KK"
[45] Refer to Trial Balance for details of Accounts Payable and Accrued Expenses, BIR Records, p. 1487
[46] Exhibits "LLL-1" to "LLL-12"

Deficiency EWT-P1,251,576.07

Respondent's examiners assessed petitioner for deficiency expanded withholding taxes (EWT) in the amount of P1,251,576.07, inclusive of surcharge and interest, computed as follows[47]:

Tax withheld per audit	P 8,698,910.16
Less: Remittances	8,135,841.69
Deficiency	P 563,068.47
50% Surcharge	281,534.23
20% Interest (July 20, 2002-Jan. 31, 2005	406,973.37
Total amount due	**P 1,251,576.07**

Petitioner argues that respondent's examiner understated the amount of EWT remittances by P50,056.03. Moreover, in computing the amount of tax withheld for the fiscal year ending June 30, 2002, respondent's examiner failed to include the journal voucher (JV) entries for adjustments as explained in its protest letter dated December 28, 2005. [48]

The findings of the Court-commissioned ICPA confirmed petitioner's allegations. In her report, Ms. Dabalos stated:[49]

> "56. We obtained copies of Petitioner's Monthly Remittance of Taxes Withheld—Expanded (BIR Form 1601E) and summarized the amount of taxes remitted according to their nature. We compared the totals against the BIR's schedule as shown in Annex L which we have marked as **Exhibit JJ-4-a**. As shown in **Exhibit III**, the amount of taxes remitted per BIR is understated by P50,056.03.
>
> 57. We checked the basis of the BIR as shown on Annex N (*sic*) which we have marked as **Exhibit JJ-4-b** against the general ledger for withholding tax on compensation (*sic*). We noted that the discrepancy arose from the BIR's failure to include JV entries in its balance per books.

The difference of P563,068.47 was accounted for as follows[50]:

[47] Exhibit "JJ", pp. 3-4
[48] Exhibit D, p. 9
[49] Exhibit II, p. 18
[50] Exhibit "MMM"

Tax withheld:		
Per BIR	P 8,698,910.16[51]	
Per GL	7,981,639.38	P 717,270.78
WT per GL	P 7,981,639.38	
Actual remittance	8,185,897.72	(204,258.34)
Remittance:		
Per Returns	P 8,185,897.72	
Per BIR	8,135,841.69[52]	50,056.03
Difference as accounted		**P 563,068.47**

The discrepancy of P717,270.78 arose from comparing the amount of tax withheld per respondent's audit of P8,698,910.16 and per general ledger balances shown below:

Month	End. Credit Balance	Less Beg. Credit Balance	Total Credits for the Month[53]	Total Debits for the Month[54]	Tax Withheld per GL
Jul-01	P 110,553.43	P -	P 110,553.43	P (69,470.33)	P 41,083.10
Aug-01	2,253,800.46	110,553.43	2,143,247.03	(2,021,191.23)	122,055.80
Sep-01	2,514,015.70	2,253,800.46	260,215.24	(170,504.80)	89,710.44
Oct-01	3,124,586.60	2,514,015.70	610,570.90	(74,474.53)	536,096.37
Nov-01	3,833,992.09	3,124,586.60	709,405.49	(210,222.54)	499,182.95
Dec-01	7,388,438.55	3,833,992.09	3,554,446.46	(75,054.97)	3,479,391.49
Jan-02	12,664,532.07	7,388,438.55	5,276,094.12	(4,775,215.15)	500,878.37
Feb-02	13,391,871.22	12,664,532.07	727,338.55	(135,390.37)	591,948.78
Mar-02	15,000,069.90	13,391,871.22	1,608,198.68	(1,072,865.46)	535,333.22
Apr-02	17,148,830.26	15,000,069.90	2,148,760.36	(1,505,264.11)	643,496.25
May-02	18,490,069.55	17,148,830.26	1,341,239.29	(839,913.34)	501,325.95
Jun-02	20,197,259.58	18,490,069.55	1,707,190.03	(1,266,053.37)	441,136.66
Total			**P20,197,259.58**	**P(12,215,620.20)**	**P7,981,639.38**

Examination of petitioner's general ledger for the expanded withholding tax payable account [55] revealed that the foregoing balances per books are correct.

Anent the amount of P204,258.34, the ICPA accounted for and summarized the difference as follows:[56]

[51] Exhibit 10-b, BIR Records, p. 1014; Exhibit "E"
[52] Exhibit 10-a, BIR Records, p. 1015, Exhibit "E"
[53] Exhibit "NNN-1"
[54] Ibid
[55] Exhibits "MMM-1" to "MMM-12"
[56] Exhibits "NNN" and "OOO"

Month	Tax Remittance Per Returns	Tax Withheld Per GL	Difference
July 2001	P 35,327.97	P 41,083.10	P (5,755.13)
August 2001	117,055.80	122,055.80	(5,000.00)
September 2001	81,487.83	89,710.44	(8,222.61)
October 2001	434,642.08	536,096.37	(101,454.29)
November 2001	617,981.29	499,182.95	118,798.34
December 2001	3,433,331.76	3,479,391.49	(46,059.73)
January 2002	607,764.14	500,878.97	106,885.17
February 2002	631,058.64	591,948.18	39,110.46
March 2002	521,323.19	535,333.22	(14,010.03)
April 2002	529,029.28	643,496.25	(114,466.97)
May 2002	735,318.08	501,325.95	233,992.13
June 2002	441,577.66	441,136.66	441.00
	P 8,185,897.72	**P 7,981,639.38**	**P 204,258.34**

Items included in the returns but not recorded in the GL for FY 2002:		
6/30/01 JV21625 Moda de Angeli	P (168.18)	
6/30/01 JV21633 Intercontinental Water	(54.55)	
6/30/01 JV 21624 Majjeca Mgt.	64.58	
12/31/01 JV22847 Mgt. Fee (GHPI)	105,121.88	P 104,963.73
Less: Adjustments recorded in the GL but not effected in the returns:		
11/30/01 JV22642 Mgt. Fee	P 32,201.42	
2/28/02 JV23254 Mgt. Fee for February (Adj.)	(25,539.90)	
5/31/02 JV23850 Adjustment on Mgt. Fee	(105,515.13)	
6/30/02 JV24071 Reversal of accrual on contracted services re: CRAs for April 16-30, 2002	(441.00)	(99,294.61)
Difference as accounted		**P 204,258.34**

Scrutiny of the documents[57] supporting the foregoing shows that the same is likewise, in order.

Finally, the examination of the remittance returns of petitioner for the subject period showed that the total EWT remittance per BIR findings is indeed understated by P50,056.03, as shown below:

Month	Exhibit	Amount
Jul-01	III-1	P 35,327.97
Aug-01	III-2	117,055.80
Sep-01	III-3	81,487.83
Oct-01	III-4	100,078.92
	III-5	334,563.16
Nov-01	III-6	254,925.84
	III-7	363,055.45
Dec-01	III-8	297.68
	III-9	3,433,034.08
Jan-02	III-10	205.52
Feb-02	III-11	607,558.62

[57] Exhibits "OOO-1" to "OOO-46", "NNN-1", "MMM-1 to MMM-12", "LLL-1 to LLL-12"

Mar-02	III-12		631,058.64
	III-13		521,323.19
Apr-02	III-14		529,029.28
May-02	III-15		735,318.08
Jun-02	III-16		441,577.66
Total Remittances		P	8,185,897.72
Per BIR findings			8,135,841.69
Difference		**P**	**50,056.03**

Thus, respondent's Expanded Withholding Tax assessment should be cancelled for lack of legal and factual bases.

WHEREFORE, premises considered, respondent's assessments for the deficiency withholding tax on compensation and expanded withholding tax for the fiscal year ending June 30, 2002, including increments, in the respective amounts of P2,427,483.37 and P1,251,576.07 are hereby **CANCELLED** for lack of factual and legal bases.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Justice
Chairman, First Division