REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

BONIFACIO GAS CORPORATION,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8520

Members:

Bautista, *Chairperson*
Fabon-Victorino, *and*
Ringpis-Liban, *JJ.*

Promulgated:

MAR 23 2015
11:00 a.m.

x -- x

DECISION

BAUTISTA, J:

The Case[1]

This is an appeal from the Final Decision on Disputed Assessment ("FDDA") of respondent dated June 20, 2012, against petitioner for alleged deficiency Income Tax in the amount of Php462,346.24, inclusive of interest covering taxable year 2008. This arose from the disallowed deduction in the Income Tax Return for creditable withholding VAT payments relative to air-conditioning services rendered by petitioner to the Bases Conversion and Development Authority ("BCDA"), a Government Owned and Controlled Corporation ("GOCC"), which withheld the 5% output tax, as required by the National Internal Revenue Code of 1997 ("1997 NIRC").

[1] *Records,* CTA Case No. 8520, p. 531.

The Parties[2]

Petitioner Bonifacio Gas Corporation is a domestic corporation duly registered with the Securities and Exchange Commission, and existing under and by virtue of the laws of the Republic of the Philippines, with office address at 2nd Floor, Bonifacio Technology Centre, 31st St., corner 2nd Ave., Bonifacio Global City, Taguig City, Metro Manila.

Respondent Bureau of Internal Revenue ("BIR") is a government agency tasked with the enforcement of revenue laws and the collection of taxes and duties, including the power to examine tax returns and determine the tax due, credit or refund of internal revenue taxes erroneously or excessively collected, and is being represented by legal officers of the Legal Division of Revenue Region No. 8, Makati City, with office address at 2nd Floor Legal Division, BIR Building, No. 313 Sen. Gil Puyat Avenue, Makati City.

The Facts

As stated in the Joint Stipulation of Facts and Issues ("JSFI")[3] dated February 20, 2013, the factual antecedents of this case are as follows:

> "**4.** Petitioner was assessed for deficiency income tax amounting to ₱446,914.32 for taxable year 2008 pursuant to the Assessment Notice No. IT-LA27476-08-12-0348 and Formal Assessment Notice, both dated March 19, 2012, which were received by petitioner on March 12, 2012. The details of the computation for the deficiency income tax assessment are as follows:

'INCOME TAX

Taxable Income (Loss) per Return		P 19,009,966.00
Tax Due		P 6,653,488.10
Less: Tax Credits		
Creditable Withholding Tax	P 1,582,304.00	
Less: Disallowed Creditable Withholding Tax (Schedule 1)	278,843.88	1,303,460.12
Income Tax Payable		5,350,027.98

[2] *Id., Joint Stipulation of Facts and Issues ("JSFI")*, pp. 107-108.
[3] *Id., JSFI*, pp. 108-113.

Less: Tax payments per return	5,071,184.00
Basic Deficiency Income Tax	278,843.98
Add: Interest (04/16/09 to 04/20/12)	168,070.34
TOTAL AMOUNT DUE	**P 446,914.32** '

5. Petitioner disputed the 2008 formal assessment for deficiency income tax with the filing of a protest letter dated April 20, 2012, which was received by the Assessment Division of the BIR Revenue Region No. 8 on April 20, 2012.

6. The Final Decision on Disputed Assessment ("FDDA") dated June 20, 2012 was issued by the Public Respondent through her Regional Director for Revenue Region No. 8, with the finding that Petitioner have a deficient Income Tax in the amount of ₱462,346.24 plus increments, which was received by petitioner on June 26, 2012. The details of the computation for the deficiency Income Tax assessment are as follows:

'INCOME TAX (Assessment No. IT-LA27476-08-12-0348)

Taxable Income (Loss) per Return		P 19,009,966.00
Tax Due		P 6,653,488.10
Less: Tax Credits		
Creditable Withholding Tax	P 1,582,304.00	
Less: Disallowed Creditable		
Withholding Tax (Schedule 1)	278,843.88	1,303,460.12
Income Tax Payable		5,350,027.98
Less: Tax payments per return		5,071,184.00
Basic Deficiency Income Tax		278,843.98
Add: Interest (04/16/09 to 07/30/12)		183,502.26
TOTAL AMOUNT DUE		**P 462,346.24** '"

Thus, on July 25, 2012, petitioner filed a Petition for Review[4] with the Court,

On October 16, 2012, respondent filed her Answer,[5] interposing the following Special and Affirmative Defenses:

"6. Petitioner's claim for the cancellation of assessment against it in the instant Petition for Review has no

[4] *Id.*, pp. 6-13, with annexes.
[5] *Id.*, pp. 33-39.

basis in fact and in law and being mere opinions, for the following reasons:

6.1. On the question of the assessment of Deficiency Income Tax. Investigation of the petitioner's tax liability disclosed that due to it claiming creditable income tax withheld in the amount of ₱278,843.88 was found to be invalid and disallowed. Moreover, petitioner attempts to apply the said creditable income tax withheld against its Value-added Taxes ("VAT") due, which cannot be done, as it is not allowed under Sec. 110 of the National Internal Revenue Code of 1997, as amended ("Tax Code") and Section 4.114-2 of Revenue Regulation ("RR") No. 16-2005. Even the provisions Tax Code pertaining to creditable withholding taxes and under Sec. 2.58.3 of RR No. 2-98 does not allow such application. Only creditable withholding income taxes may be applied against income tax due, while only creditable VAT may be claimed against VAT due;

6.2. Petitioner's burden to show its entitlement to its claim. In a catena of cases, the Honorable Supreme Court has laid down the rule that in tax cases, **<u>all presumptions are in favor of the correctness of tax assessments. The good faith of tax assessors and the validity of their actions are presumed. They will be presumed to have taken into consideration all the facts to which their attention was called.</u> No presumption can be indulged that all of the public officials who have to do with the assessment of property for taxation will knowingly violate the duties imposed upon them by law.** As a logical outgrowth of the presumption in favor of the validity of assessments, **<u>when such assessments are assailed, the burden of proof is upon the taxpayer to clearly show that the assessment is erroneous, in order to relieve himself from it;</u>**

6.3. Considering that the claims by petitioner were found to be not in accordance with the requirements of the law, and following the pronouncements above, then such disallowance is proper and valid. Hence, petitioner's allegation that petitioner's allegation that '[t]he disputed assessment should be withdrawn and cancelled as it constitutes an oppressive exercise of the taxing authority on the part of the respondent...' has no merit and cannot be given even the scantest of consideration;

7. No evidence was submitted by the petitioner to disprove such findings by the Respondent. Thus, the assailed assessments are to be presumed correct. As held by the Honorable Supreme Court in one case:

> The Commissioner of Internal Revenue, sustained by the Tax Court, found for a fact that the expenses in the amount of P206,870.00 are fictitious. **Tan Guan presented no evidence to disprove such finding. In appeals to the Court of Tax Appeals, the determination of the Commissioner of Internal Revenue is presumed correct and it behooves the taxpayers to rebut such presumption** (*Perez vs. Court of Tax Appeals, et. al., L-10507,* May 30, 1958). **Tan Guan failed to overcome his burden. Hence, the finding that the expenses are fictitious must be sustained. And being fictitious, the expenses cannot be claimed as deduction from gross income.** ***(Emphases and underlining all provided)***

8. Indeed, mere allegations will never suffice to overthrow the presumption in favor of taxation. Only evidence presented to substantiate errors in assessment will be given merit. as held by the Honorable Supreme Court in one case:

> **Since no evidence was presented to substantiate the errors that are claimed to have been committed by the Collector in making the assessment** for the years 1948, 1949 and 1950, **the trial court had no other alternative than to resort to the legal truism that "all presumptions are in favor of the correctness of tax assessments". The burden of proof is on the**

taxpayer to show the contrary. This the company failed to do. This action finds support in the following authorities:

> **All presumptions are in favor of the correctness of tax assessments. The good faith of tax assessors and the validity of their actions are presumed.** They will be presumed to have taken into consideration all the facts to which their attention was called. No presumption can be indulged that all of the public officials of the state in the various countries who have to do with the assessment of property for taxation will knowingly violate the duties imposed upon them by law.
>
> **As a logical outgrowth of the presumption in favor of the validity of assessments, when such assessments are assailed, the burden of proof is upon the complaining party. It is incumbent upon the property owner clearly to show that the assessment was erroneous, in order to relieve himself from it.** (51 *Am. Jur. pages* 620-621)' (*Interprovincial Autobus Co., Inc. vs. Collector of Internal Revenue,* 98 Phil., 290; 52 Off. Gaz., [2] 791.)
>
> When an importer challenges by legal steps the correctness of an assessment of a duty by the Collector of Customs, **the question to be decided is not whether the Collector was wrong but whether the importer was right, the burden being on the latter to establish the correctness of his own contention.**" (*Behn, Meyer & Co. vs. Collector of Customs,* 26 Phil., 647)
>
> **That the determination of the tax deficiency by the Government has *prima facie* validity and the burden rests upon the taxpayer to overcome this presumption and to show to the satisfaction of the Tax Court that the determination was not correct."** (*Perez vs.*

N

> *Court of Tax Appeals, et. al.,* G.R. No. L-10507, May 30, 1958).' ***(Emphases and underlining all provided)***

9. Petitioner cannot question the assessments made against it for all presumptions are **<u>in favor of tax assessments</u>** **(*Interprovincial Autobus Co., Inc. v. Collector* [98 Phil. 290]; *Cecilia Teodoro Dayrit v. Hon. Fernando Cruz and Commissioner* [L-39910, Sept. 26, 1988]; and *Bonifacia Sy Po v. CTA & Commissioner,* [G.R. No. 81446, Aug. 18, 1988]);**

10. Thus, applying the pertinent provisions of law, rules, and jurisprudence in the matter at hand, it is crystal clear that the instant petition for review lacks basis and merit, and should be dismissed outright by this Honorable Court. Consequently, petitioner should already be made to pay the deficient taxes."

Petitioner and respondent filed their respective Pre-trial Briefs[6] on November 15, 2012 and November 22, 2012.

On February 25, 2013, the parties filed their JSFI,[7] and thus a Pre-Trial Order[8] was issued on March 1, 2013.

On July 15, 2013 and on December 5, 2013, petitioner and respondent respectively filed their Formal Offer of Evidence.[9] There being no comment on the part of the other party for both pleadings, the Court separately resolved the Formal Offers of Evidence on October 10, 2013[10] and January 22, 2014,[11] respectively. In the latter resolution, the Court further ordered the parties to file simultaneously within thirty (30) days their respective memoranda.

On March 4, 2014, respondent filed a Manifestation and Motion stating that she is adopting all her arguments in her Answer[12].

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[6] *Id.,* pp. 46-55 and 58-61.
[7] *Id., JSFI,* pp. 107-110.
[8] *Id.,* pp. 160-167.
[9] *Id.,* pp. 185-225 and 497-503.
[10] *Id.,* pp. 469-470.
[11] *Id.,* pp. 519-520.
[12] *Id.,* pp. 523-525.

Petitioner then filed its Memorandum for Petitioner[13] on March 31, 2014.

Thus on April 8, 2014, the Court promulgated a Resolution[14] submitting the case for Decision.

Hence, this Decision.

The Issues[15]

Based on the Joint Stipulation of Facts and Issues ("JSPI") filed by the parties on February 25, 2013, the issues to be resolved are as follows:

> "**1.** Whether or not the output Value-added Tax ("VAT") liability on petitioner's sale of service to BCDA in 2008 in the total amount of ₱278,843.98 final VAT withheld by BCDA were reported by petitioner in its 2008 VAT returns.
>
> **2.** Whether or not petitioner may apply its alleged creditable VAT against its Creditable Withholding Tax.
>
> **3.** Whether or not petitioner is liable for income tax deficiency in the amount of ₱462,346.24, inclusive of interest.
>
> **4.** Whether or not respondent erred in disallowing the amount of PhP278,843.88 representing the 5% final VAT withheld which resulted to a deficiency assessment of income tax for the year 2008."

The Ruling of the Court

The Court finds no merit in the Petition for Review.

Based on petitioner's arguments, it admitted that it inadvertently included in its 2008 Annual Income Tax Return the

[13] *Id.*, pp. 531-542.
[14] *Id.*, p. 543.
[15] *Id.*, *JSFI*, pp. 109-110.

amount of Php278,843.98 as income tax credit, representing the 5% withholding VAT withheld and remitted to the BIR by BCDA for air-conditioning services. The said income was reflected both in its Income Tax Return and its VAT Returns. Nonetheless, petitioner insists that it should not be assessed the income tax deficiency since it has over reported its tax liabilities by 7% for using the rate of 12% instead of the 5% applicable to output VAT. Hence, assessing the deficiency income tax will further unjustly enrich the government by another 5% (representing the basic assessment of Php278,843.98,) plus interest and penalties, which is against justice, equity and fairness and amounts to double taxation. Further, petitioner claims that the error should be considered as an honest mistake due to the ambiguity in the treatment of the 5% withholding VAT. Lastly, petitioner argues that the government will not incur any loss for the cancellation of the assessment since it involves a mere reclassification from one tax type to another.

On the other hand, respondent argues that only creditable withholding income taxes may be applied against income tax due and only creditable withholding VAT may be claimed against VAT due. Respondent also went on to explain that all presumptions are in favor of the correctness of tax assessments and good faith on the part of tax assessors. Hence, petitioner has the burden to prove entitlement to its claim. Respondent further alleges that since the petitioner failed to disprove respondent's findings, the assessment shall be presumed correct.

After a careful consideration of the issues raised by the parties, as well as the evidence on record, the Court finds itself unconvinced by petitioner's arguments.

Based on petitioner's Monthly VAT Declarations and Quarterly VAT Returns,[16] it is true that petitioner never reported in its 2008 VAT returns the final VAT withheld by BCDA in the total amount of Php278,843.98. Also, the Annual Income Tax Return[17] reflects the total amount of Php1,582,304.00 as creditable taxes withheld, which includes the amount of Php278,843.98 representing final withholding VAT of 5%. The inclusion of the 5% tax in the income tax return was admitted by petitioner.

[16] *Exhibits* "A" and its sub-markings.
[17] *Exhibit* "UU".

As to the general treatment of tax credits, Sections 57(B), 58 and 110 of the 1997 NIRC; Section 4.114-2 of Revenue Regulation ("RR") No. 16-2005; and Section 2.58.3 of RR No. 02-98 do not allow the use of the final withholding VAT as credit in the Income Tax Return.

With regard to sales of services to the government, the BIR was not remiss in providing guidelines to help taxpayers in preparing their returns. In Revenue Memorandum Circular ("RMC") No. 23-2007,[18] an example was provided on how purchases of services by the government shall be computed if the invoice amount is Php5,600.00, inclusive of VAT, as follows:

"Selling Price	P5,000.00
Output VAT (P5,000) x 12%	**600.00**
Invoice Amount	P5,600.00
Less:	
5% withholding final VAT (P5,000.00 x 5%)	**250.00**
2% withholding of Income Tax (P5,000.00 x 2%)	**100.00**
Amount Payable to supplier of Services	**P5,250.00"**

[Emphasis ours.]

On the matter of Returns, Section 52(A) of the 1997 NIRC requires every corporation to prepare and file a Quarterly Income Tax Return and Final or Adjustment Return. In addition, Section 114 of the same Code provides that every person liable for VAT shall file a Quarterly Return.

Internal revenue taxes (*e.g.* Income Tax and VAT) are self-assessing and no further assessment by the government is required to create the tax liability.[19] Hence, under the self-assessment or voluntary compliance system, it is the responsibility of the taxpayer to file correct tax returns since it has on hand all the records for their preparation and filing.

Under Section 6(A) of the 1997 NIRC, the general rule is that any filed return shall not be withdrawn. However, the law provides recourse for the taxpayer should it wish to revise its tax return, *viz*:

[18] *Clarification on the Computations of Withholding Taxes and Other Requirements on Government Money Payments Due or Payable to Suppliers of Goods and/or Services, in Connection With the Implementation of Republic Act No. 9337, as Amended, Republic Act No. 1051, and Revenue Regulations No. 2-98, as Amended, in Relation to Revenue Regulations No. 9-2001, as Amended, and Revenue Regulations No. 2-2006* dated March 20, 2007.

[19] *Tupaz v. Honorable Ulep and People of the Philippines*, G.R. No. 127777, October 1, 1999, 316 SCRA 118.

> "SECTION 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* —
>
> (A) *Examination of Returns and Determination of Tax Due.* —
>
> xxx xxx xxx
>
> Any return, statement or declaration filed in any office authorized to receive the same shall not be withdrawn: *Provided,* That within three (3) years from the date of such filing, the same may be modified, changed, or amended: *Provided, further,* That no notice for audit or investigation of such return, statement or declaration has, in the meantime, been actually served upon the taxpayer."

RMC No. 23-2007 further expounded on the BIR Forms which shall be prepared by the government agency involved, *viz*:

> **BIR Form 2306 (**Certificate of ***Final Tax*** Withheld at Source) to be given to the supplier of goods and/or services within ten (10) days following the end of the month in which the withholding was made or upon demand. The certificates and hard copy of the Summary Alphalist of Withholding Taxes (SAWT) shall be attached to the Monthly/Quarterly VAT Declaration/Return (BIR Form 2550M/2550Q), in those instances where there are not more than ten (10) withholding agents, or the certificates shall be used for the preparation of the electronic Summary Alphalist of Withholding Taxes (SAWT) which shall be attached, together with the certificates, to the VAT Return of the seller-payee, in those instances where there are more than ten (10) withholding agents. For the above example, the following amount shall be reflected on the Certificate (BIR Form 2306):
>
> Withholding of Final VAT on Goods P 50.00
> Withholding of Final VAT on Services 250.00
>
> (EFPS filers shall always submit the SAWT in electronic format.)

> **BIR Form 2307** (Certificate of ***Creditable Tax*** Withheld at Source) for the withholding of income tax on GMP to be given to the supplier of goods and/or services not later than the 20th day of the month following the close of the taxable quarter in which the withholding was made or upon demand. **The certificates shall be the proof of claimed tax credit of EWT against income tax due and shall be attached to the Quarterly/Annual Income Tax Return**, together with the hard copy of the SAWT, in those instances where there are not more than ten (10) withholding agents, or the certificates shall be used for the preparation of the electronic SAWT that shall be attached, together with the certificates, to the Quarterly/Annual Income Tax Return of the seller-payee, in those instances where there are more than ten (10) withholding agents. For the above example, the following amount shall be reflected on the Certificate (BIR Form 2307):
>
> | | |
> |---|---|
> | Withholding on GMP-goods (EWT) | P 10.00 |
> | Withholding on GMP-services (EWT) | 100.00 |
>
> (EFPS filers shall always submit the SAWT in electronic format.)"

As indicted above, the proper rate for output VAT is 12%, not the 5% being insisted upon by petitioner. Also, it clearly provides that BIR Form 2307 must be attached to the Quarterly/Annual Income Tax Return as proof of claimed tax credit of Expanded Withholding Tax ("EWT"). There was no mention that BIR Form 2306 shall also be attached to the Income Tax Return, to claim the tax credit from income tax due therein.

Further, it makes no sense to use the 5% VAT covered by BIR Form 2306 as a credit to the income tax due since it is not an EWT which can be used as a Creditable Withholding Tax ("CWT") on the part of petitioner.

Well-settled is the rule that tax refunds or credits, just like tax exemptions, are strictly construed against the taxpayer and the burden is upon the taxpayer to show that it has strictly complied with the conditions for the grant of the tax refund or credit.[20] Having failed to provide basis for the deduction of final withholding VAT from the income tax due, it shall not be recognized.

It is the responsibility of petitioner under the voluntary compliance system to ensure that it prepares correct returns. In this case, petitioner failed to do so. The above cited RMC was issued back in 2007, while petitioner prepared its returns in 2008-2009. Therefore, petitioner cannot claim that the tax treatment of government sales *vis-a-vis* the preparation of Income Tax Returns is unclear at the time of filing.

Further, the law gave petitioner recourse in case it erred in the preparation of its returns. Therefore, petitioner should have amended its VAT and Income Tax Returns within three (3) years from filing thereof and before the BIR has issued a notice for tax audit of its books. In this case, the returns were filed in 2008-2009, while the assessment[21] was received by petitioner on March 21, 2012. It is clear to the Court that petitioner had several years to correct the returns, but failed to do so.

Petitioner cannot claim "justice, equity and fairness" and unjust enrichment to cancel the assessment, since respondent was merely doing its duties under Section 56(B) of the 1997 NIRC when it examined and assessed the income tax return of petitioner to determine if the correct amount of tax was paid.

The first and fundamental duty of the Court is to apply the law.[22] Hence, if the law is clear and free from any doubt or ambiguity, there is no occasion for interpretation, there is only room for application.[23] Under the legal maxim *dura lex sed lex*, it may be said that the law may be harsh but it is the law.[24]

There is a long standing rule that equity follows the law. Equitable reasons will not prevail over any well-settled rule of law or public policy.[25]

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[20] *Commissioner of Internal Revenue v. San Roque Power Corporation*, G.R. Nos. 187485, 196113, 197156, October 8, 2013.
[21] *Records, JSFI*, p. 108.
[22] *Rizal Commercial Banking Corporation v. Intermediate Appellate Court*, G.R. No. 74851, December 9, 1999, 320 SCRA 279.
[23] *Id.*, citing *Cebu Portland Cement Company v. Municipality of Naga, Cebu*, G.R. Nos. 24116-17, August 22, 1968, 24 SCRA 708.
[24] *Pascual, et. al. v. Pascual-Bautista, et. al.*, G.R. No. 84240, March 25, 1992, 207 SCRA 56.
[25] *Arsenal v. Intermediate Appellate Court*, G.R. No. 1-66696, July 14, 1986, 143 SCRA 40 citing *McCurdy v. County of Shiawassee* 118 N.W. 625.

The underlying principle here is that taxes are the lifeblood of the government and a principal attribute of sovereignty, the exercise of which is derived from the very existence of the state.[26] It is what we pay for a civilized society.[27] Without taxes, the government cannot fulfill its mandate of promoting the general welfare and well-being of the people.[28]

Lastly, petitioner is asking the Court to recognize legal compensation between the deficiency income tax and the final withholding VAT.

To determine whether the amounts may be offset, we refer to Article 1279 of the Civil Code[29] for the elements of legal compensation:

> "Art. 1279. In order that compensation may be proper, it is necessary:
>
> (1) That each one of the obligors be bound principally, and that he be at the same time a principal creditor of the other;
> (2) That both debts consist in a sum of money, or if the things due are consumable, they be of the same kind, and also of the same quality if the latter has been stated;
> (3) That the two debts be due;
> (4) That they be liquidated and demandable;
> (5) That over neither of them there be any retention or controversy, commenced by third persons and communicated in due time to the debtor."

To provide a proper understanding, the Supreme Court discussed legal compensation of taxes in this manner[30]:

> "In several instances prior to the instant case, we have already made the pronouncement that **taxes cannot be subject to compensation for the simple reason that**

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[26] *National Power Corporation v. City of Cabanatuan*, G.R. No. 149110, April 9, 2003, 401 SCRA 259.
[27] *Commissioner of Internal Revenue v. Algue, Inc.*, G.R. No. L-28896, February 17, 1988, 241 Phil. 829.
[28] See Note 26.
[29] An Act to Ordain and Institute the Civil Code of the Philippines [CIVIL CODE], Republic Act No. 386 (1950).
[30] *United Airlines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 178788, September 29, 2010, 631 SCRA 567; citing *Philex Mining Corporation v. Commissioner of Internal Revenue*, G.R. No. 125704, August 28, 1998, 294 SCRA 687.

<u>the government and the taxpayer are not creditors and debtors of each other. There is a material distinction between a tax and debt. Debts are due to the Government in its corporate capacity, while taxes are due to the Government in its sovereign capacity.</u> We find no cogent reason to deviate from the aforementioned distinction.

Prescinding from this premise, in *Francia v. Intermediate Appellate Court*, we categorically held that **<u>taxes cannot be subject to set-off or compensation</u>**, thus:

> 'We have consistently ruled that there can be no off-setting of taxes against the claims that the taxpayer may have against the government. A person cannot refuse to pay a tax on the ground that the government owes him an amount equal to or greater than the tax being collected. The collection of a tax cannot await the results of a lawsuit against the government.'

The ruling in *Francia* has been applied to the subsequent case of *Caltex Philippines, Inc. v. Commission on Audit*, which reiterated that:

> '. . . a taxpayer may not offset taxes due from the claims that he may have against the government. Taxes cannot be the subject of compensation because the government and taxpayer are not mutually creditors and debtors of each other and a claim for taxes is not such a debt, demand, contract or judgment as is allowed to be set-off.'" *[Emphasis ours.]*

Based on the above, petitioner cannot claim legal compensation between the amount assessed and the claimed over payment since taxes are not subject to legal compensation. To emphasize, the government and the taxpayer are not debtors and creditors of each other.

Thus, the Court finds that the tax assessment by respondent is presumed correct and made in good faith.[31]

WHEREFORE, in view of the foregoing, the present Petition for Review is hereby **DENIED** for lack of merit. Petitioner is hereby **ORDERED TO PAY** the deficiency Income Tax for the taxable year ended December 31, 2008, in the amount of Php348,554.85, inclusive of the 25% surcharge imposed under Section 248(A)(3) of the 1997 NIRC, computed as follows:

Type of Tax	Basic Deficiency	25% Surcharge	Total
Income Tax	278,843.88	69,710.97	348,554.85

In addition, petitioner is liable to pay:

(a) Deficiency interest at the rate of twenty percent (20%) per annum pursuant to Section 249(C) of the 1997 NIRC on the basic deficiency Income Tax of Php278,843.88 computed from April 15, 2009 until full payment thereof;

(b) Delinquency interest at the rate of twenty percent (20%) per annum on the total amount due of Php348,554.85 representing deficiency Income Tax, and on the 20% deficiency interest which have accrued as aforestated in (a), computed from July 30, 2012 until full payment thereof, pursuant to Section 249(C) of the 1997 NIRC, as amended.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

[31] *Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue*, G.R. No. 168498, April 24, 2007, 522 SCRA 144, citing *Commissioner of Internal Revenue v. Hantex Trading Co., Inc.*, G.R. No. 136975, March 31, 2005, 454 SCRA 301.

WE CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

Ma. Belen S. L.
MA. BELEN M. RINGPIS-LIBAN
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

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution and the Division's 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice