REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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APO CEMENT CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 6461

Members:

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

Promulgated:

SEP 07 2005

x - x

DECISION

ACOSTA, E., P.J.:

This Petition for Review seeks the cancellation of five (5) internal revenue tax assessments, namely: deficiency value-added tax, excise tax, expanded withholding tax, final withholding tax and documentary stamp tax in the aggregate amount of P102,567,781.34 for the taxable year 1997.

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

Petitioner is a domestic corporation organized and existing under the laws of the Philippines with principal office at 25th Floor, Petron Mega Plaza, 358 Sen. Gil Puyat Avenue, Makati City.[1]

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[1] Paragraph 1, Summary of Admitted Facts, Joint Stipulation of Facts, page 133, Records.

On March 1, 2000, petitioner received from the respondent Preliminary Assessment Notice (PAN) dated December 20, 1999 informing it of the following proposed deficiency internal revenue tax assessments for taxable year 1997:[2]

	Amount
Value-added Tax	P468,418,081.05
Excise Tax	279,363.71
Expanded Withholding Tax	36,046,492.37
Final Withholding Tax	22,248,823.67
Documentary Stamp Tax	49,287,045.70
Total	P576,279,806.50

In the said PAN, petitioner was given an opportunity to present its side of the case within fifteen (15) days from receipt thereof. However, on March 3, 2000, petitioner requested until April 7, 2000 to submit supporting documents in view of the magnitude of workload caused by the change in its ownership and management in February 1999.[3] Eventually, petitioner filed its protest to the PAN on April 7, 2000 seeking for reconsideration of the proposed deficiency tax assessments.[4]

On February 7, 2001,[5] petitioner received Formal Letter of Demand No. 40238 together with the Details of Discrepancy and five (5) Assessment Notices issued by the respondent on January 31, 2001 through its Regional Director Antonio I. Ortega covering the following adjusted deficiency tax assessments for the year 1997[6], to wit:

	Basic	Surcharge	Interest	Penalty	Total
Deficiency Value-Added Tax	P31,575,687.50		P21,048,353.28		P 52,624,040.78
Deficiency Excise Tax	186,782.77		76,580.94		263,363.71
Deficiency Expanded Withholding Tax	25,895,613.83		18,990,030.40		44,885,644.23

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[2] Exhibit A, inclusive of submarkings.
[3] Exhibit F, inclusive of submarkings.
[4] Exhibit G, inclusive of submarkings.
[5] Exhibits N and N-1.
[6] Exhibits H, I, J, K, L, M and N, inclusive of submarkings.

Deficiency Withholding Tax on Compensation	40,711.85	P 20,355.92	25,102.92	P40,711.85	126,882.54
Deficiency Documentary Stamp	3,734,280.07	933,570.01			4,667,850.08
Totals	P61,433,076.02	P953,925.93	P40,140,067.54	P40,711.85	P102,567,781.34

On March 6, 2001, petitioner filed its protest to the aforementioned deficiency taxes praying for the reconsideration and/or cancellation thereof due to prescription.[7]

On August 10, 2001, respondent, in the process of evaluating petitioner's protest, requested the latter to submit documentary evidence in support of its arguments to the above-enumerated assessments.[8] On September 21, 2001, petitioner complied with the said request and transmitted to the respondent the schedule of payments not subjected to withholding tax, audited financial statements for the year 1997 and three (3) summaries of purchases of fuel, oils and lubricants to support its objections to the merit of the assessments.[9]

On April 18, 2002 and within thirty (30) days from the lapse of one hundred eighty (180) days from the submission of the aforementioned supporting documents, petitioner opted to file the instant Petition for Review with this Court pursuant to Section 228 of the National Internal Revenue Code of 1997.

On July 10, 2002, respondent filed his Answer maintaining his position that petitioner is liable to the 1997 assessed deficiency taxes.

The parties have jointly stipulated the issues of the case as follows:

> 1. Whether or not the right of the BIR to validly assess petitioner for the subject deficiency has already prescribed.
>
> 2. Whether or not petitioner filed his protest against the subject assessments within the period prescribed by law.

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[7] Exhibit O, inclusive of submarkings.
[8] Exhibit P, inclusive of submarkings.
[9] Exhibit R, inclusive of submarkings.

3. Whether or not the subject assessments are valid based on the provisions of the Tax Code of 1997, Revenue Regulations No. 12-99, and the applicable guidelines on the issuance of assessments.

4. With respect to the assessed deficiency value-added tax, whether or not there was discrepancy between the income reported per Income Statement and that reported in the Value-Added Tax Returns of petitioner.

5. With respect to the deficiency value-added tax, whether or not there is an overstatement of excess input tax carried over to succeeding quarters on the part of petitioner.

6. With respect to the assessed deficiency excise tax, whether or not there was an understatement of the market value of the quarry resources extracted by petitioner.

7. With respect to the assessed deficiency expanded withholding tax, whether or not petitioner has income payments for the year 1997 which were not properly subjected to tax.

8. With respect to the assessed deficiency expanded withholding tax, whether or not petitioner is liable to pay taxes for purchases made from entities exempt from income tax.

9. With respect to the assessed deficiency expanded withholding tax, whether or not petitioner is liable to pay taxes for purchases from foreign companies pursuant to the RP-German Tax Treaty and for lack of opportunity to withhold taxes since it was not the payor.

10. With respect to the assessed deficiency withholding tax on compensation, whether or not there exists a failure on the part of petitioner to withhold and remit final income tax due on interest paid on loans availed from a foreign creditor.

At this juncture, it is important to note the following incidents that occur during trial of the case:

1. On November 29, 2002, petitioner had settled its liability for deficiency documentary stamp tax in the amount of P6,373,949.29.[10] The payment were

[10] The difference in the amount was due to updating of interest, see page 129, Records.

coursed through respondent's collection agent, Land Bank of the Philippine, East Avenue Branch;

2. On March 7, 2003, despite of the above jointly stipulated issues, petitioner moved for the early resolution of the case on the issue of prescription.[11] The Court granted said motion on March 31, 2003 and set the case for hearing for the reception of evidence on the issue of prescription only;[12]

3. On March 10, 2003, respondent issued an Amended Formal Letter of Demand No. 43558 together with Assessment Notices and Details of Assessments/ Discrepancies;[13]

4. On April 30, 2003, petitioner likewise paid its obligation for deficiency expanded withholding tax in the reduced amount of P545.52 based on the Amended Formal Letter of Demand No. 43558;[14] and

5. On January 27, 2004, upon the request of petitioner, Regional Director Nestor S. Valeroso issued a certification attesting its payments for 1997 deficiency documentary stamp tax and expanded withholding tax.[15]

Thus with the foregoing developments, the resolution of the issue on prescription shall be limited to the remaining 1997 deficiency tax assessments, to wit:

	Basic	Surcharge	Interest	Penalty	Total
Deficiency Value-Added Tax	P31,575,687.50		P32,873,799.09		P64,449,486.59
Deficiency Excise Tax	186,782.77		194,461.61		381,244.38
Deficiency Withholding Tax on Compensation	40,711.85	P20,355.92	42,385.55	P40,711.85	144,165.17
Totals	P31,803,182.12	P20,355.92	P33,110,646.25	P40,711.85	P64,974,896.14

[11] Page 150, CTA records.
[12] Resolution dated March 31, 2003, pageS 155 to 156, Records.
[13] Pages 177 to 181, Records.
[14] Pages 182 and 183, Records.
[15] Page 224, Records.

It has erstwhile been stated as a reminder, and borrowing from what our Supreme Court has said, in effect, that prescription is rigorous and at times harsh but there could be no oppression or inequity as this defense applies to both the Government and citizens or taxpayers. Its salutary and wholesome effect causes both to be alert and vigilant in order that both do not sleep on their rights and terminates what may otherwise be an endless litigation and consequent confusion. The beneficial purpose is that, to the citizens or taxpayers, they would have the feeling of security against revenue agents who may take advantage to harass taxpayers and protect them from protracted and unreasonable investigations; and that to the Government, tax officers shall be obliged to always act with promptness[16] in subservience to the principle of human rights and substantial justice. But prescription being a matter of defense, the burden is on the petitioner to prove that the full period of limitation has expired, so that it should positively establish the date when the period started to run and when it ended.[17]

Petitioner asserts that the 1997 assessments for deficiency value-added tax, excise tax and withholding tax on compensation in the aggregate amount of P64,974,896.14, were issued beyond the three-year prescriptive period provided under Section 203 of the National Internal Revenue Code of 1997.

Section 203 of the National Internal Revenue Code of 1997 is hereby quoted for easy reference, to wit:

> SEC. 203. *Period of Limitation Upon Assessment and Collection.* — Except as provided in the succeeding Section 222, <u>internal revenue taxes shall be assessed within three years after the last day prescribed by law for the filing of the return</u>, and no proceeding in court without assessment for collection of such taxes shall be begun after the

[16] Republic vs. Ablaza, 108 Phil. 1105 [1960].
[17] Querol vs. Collector of Internal Revenue, L-16705, October 30, 1962, 6 SCRA 304.

> 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 the purposes of this section, <u>a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day</u>. *(Underlining supplied).*

Petitioner points out that when respondent issued the 1997 deficiency assessments on January 31, 2001, his right to assess has already prescribed. Section 203 provides that internal revenue taxes shall be assessed within three years after the last day prescribed by law for the filing of the return. Since more than three (3) years has lapsed from the filing of the respective returns for 1997 value-added tax, excise tax and withholding tax on compensation when the corresponding 1997 deficiency assessments were issued, then the said assessments were void.

We find the position of petitioner well taken.

Section 203 authorizes the respondent to issue his assessment for deficiency internal revenue taxes within three (3) years to be reckoned after the last day prescribed by law for the filing of the return or from the day the return was (belatedly) filed.[18] Well settled is the rule that when the law speaks in clear and categorical language, there is no room for interpretation. There is only room for application.[19]

Applying the provisions of Section 203 in the case at bar, the right of respondent to issue deficiency assessment depends on when the respective returns for value-added tax, excise tax and withholding tax on compensation were filed.

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[18] Commissioner of Internal Revenue vs. PASCOR Realty and Development Corporation, Rogelio A. Dio and Virginia S. Dio, G.R. No. 128315, June 29, 1999.

[19] National Telecommunications Commission vs. Court of Appeals, 311 SCRA 508.

For 1997 deficiency value-added tax, the quarterly Value-Added Tax Return is required to be filed not later than twenty (20) days following the close of each taxable quarter pursuant to Section 110 of the National Internal Revenue Code of 1993[20] as implemented by Sec. 2 of Revenue Regulations No. 5-93, amending Section 23 of Revenue Regulations No. 5-87, to wit:[21]

> SECTION 2. Section 23 of Revenue Regulations No. 5-87 is hereby amended to read as follows:
>
> "Sec. 23. Filing of Return and payment of Value Added Tax.
>
> A. *In general* — Every person liable to pay the value added tax shall file a quarterly return of the amount of his/its gross sales or receipts within twenty (20) days following the close of each calendar quarter."

For 1997 excise tax, petitioner is mandated by law to file its quarterly return within twenty (20) days after the end of such quarter in accordance with Section 151(c) of the same Code.[22] Section 151(c) provides:

> **SEC. 151. Mineral Products** — (a) **Rates of Tax**. – xxx.
>
> (b) xxx.
>
> (c) **Time, manner and place of payment of excise tax on mineral and mineral products**. — Unless otherwise provided, the excise tax on minerals and mineral products shall be due and payable upon removal of the minerals and mineral products or quarry resources from the locality where mined or upon removal from customs custody in the case of importations.
>
> Any person liable to pay the excise tax on locally produced or extracted minerals, mineral products or quarry resources shall before removal of such products file in duplicate, a return setting forth the quantity and the actual market value of the minerals or mineral products to be removed and pay the taxes due thereon to the

[20] Section 110 of the National Internal Revenue Code applies to the case at bar in as much as the period covered by the petition for review is taxable year 1997. It is to be noted further that the National Internal Revenue Code of 1997 becomes effective only on January 1, 1998 *(R.A. 8424)*.

[21] HPCO AGRIDEV Corporation vs. Commissioner of Internal Revenue, CTA Case No. 6355, July 18, 2002.

[22] Apex Mining Co., Inc. vs. Commissioner of Internal Revenue, CTA Case No. 4450, October 6, 1994.

Collection agent, of the Treasurer of the city or municipality of the place where the mine is located except as herein below provided.

However, the output of the mine may be removed from such locality without the prepayment of such excise taxes if the lessee, owner or operator of the mining claim shall file a bond in the form and amount and with such sureties as the Commissioner may require, conditioned upon the payment of such excise taxes. It shall be the duty of every lessee, owner or operator to make a true and complete return in duplicate setting forth the quantity and the actual market value of the minerals and mineral products or quarry resources removed during such calendar quarter, of the balance if any in cases where payments are made upon removal, and pay the excise taxes thereon within 20 days after the end of such quarter to the collection agent, or the Treasurer of the city or municipality of the place where the mine is located. *(Underlining supplied).*

In case of withholding tax on compensation, the same is required to be filed on the 10th day following the month as provided in Section 1 of Revenue Regulations No. 3-93, amending Section 2 of Revenue Regulations No. 5-85.[23] To quote:

SECTION 1. Section 2 of Revenue Regulations No. 5-85 is hereby amended to read as follows:

"Section 2. MONTHLY RETURN AND REMITTANCE OF TAXES WITHHELD — Taxes deducted and withheld on:

(i) compensation income;

(ii) income payments subject to the creditable (expanded) withholding taxes; and

(iii) income subject to final withholding taxes.

shall be remitted within ten (10) days after the end of each calendar month with the filing of appropriate return. (BIR Form 1743-W). However, taxes withheld from the last compensation/income payment for the calendar year (December) shall be remitted on or before the 25th of January of the succeeding year."

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[23] The above regulations implements Section 245 in relation to Sections 50, 51 and 74 of the National Internal Revenue Code of 1977, as amended, as well as Section 11 of Republic Act No. 7497, otherwise known as the "Finality of the Withholding Tax on Purely Compensation Income".

Records show that petitioner filed its 1997 respective returns for value-added tax, excise tax and withholding tax on compensation on the following dates:

VALUE-ADDED TAX RETURNS

Period Covered	Exh.	Date Filed
1st Qtr. 1997	V, V-1 to V-3	04/20/97
2nd Qtr. 1997	GG, GG-11 & GG-12	07/21/97
3rd Qtr. 1997	MM	10/20/97
4th Qtr. 1997	PP	01/20/98

EXCISE TAX RETURNS

Period Covered	Exh.	Date Filed
1st Qtr. 1997	X & X-1	04/21/97
2nd Qtr. 1997	Y, Y-1 & Y-2	07/21/97
3rd Qtr. 1997	Z & Z-1, AA, AA-1,AA-2	10/20/97
4th Qtr. 1997	T & T-1	01/20/98

MONTHLY WITHHOLDING TAX RETURNS

Period Covered 1997	Exh.	Date Filed
January	HH-1 to HH-3	02/25/97
February	HH-4 to HH-7	03/25/97
March	HH-8 to HH-12	04/23/97
April	GG-10	05/26/97
May	GG-9	06/10/97
June	GG-8	07/10/97
July	GG-7	08/25/97
August	BB, BB-1, GG-6	09/25/97
September	CC, CC-1, CC-2, GG-5	10/25/97
October	DD, DD-1, DD-2, GG-4	11/25/97
November	EE, EE-1, EE-2, GG-3	12/24/97
December	FF, FF-1, FF-2, GG-2	01/26/98

Therefore, respondent has three years within which to issue his 1997 deficiency assessments for the afore-mentioned internal revenue taxes computed either on the day required for filing of the respective returns or on the date when the corresponding returns were belatedly filed, to wit:

VALUE-ADDED TAX RETURNS

Period Covered	Exh.	Date Filed	Last Day to File Return	Last Day to Issue Assessment[24]
1st Qtr. 1997	V, V-1 to V-3	04/20/97	04/20/97	04/19/00
2nd Qtr. 1997	GG, GG-11 & GG-12	07/21/97	07/20/97	07/20/00
3rd Qtr. 1997	MM	10/20/97	10/20/97	10/19/00
4th Qtr. 1997	PP	01/20/98	01/20/98	01/19/01

EXCISE TAX RETURNS

Period Covered	Exh.	Date Filed	Last Day to File Return	Last Day to Issue Assessment
1st Qtr. 1997	X & X-1	04/21/97	04/20/97	04/20/00
2nd Qtr. 1997	Y, Y-1 & Y-2	07/21/97	07/20/97	07/20/00
3rd Qtr. 1997	Z & Z-1,AA,AA-1,AA-2	10/20/97	10/20/97	10/19/00
4th Qtr. 1997	T & T-1	01/20/98	01/20/98	01/19/01

MONTHLY WITHHOLDING TAX RETURNS

Period Covered 1997	Exh.	Date Filed	Last Day to File Return	Last Day to Issue Assessment
January	HH-1 to HH-3	02/25/97	02/10/97	02/25/00
February	HH-4 to HH-7	03/25/97	03/10/97	03/24/00
March	HH-8 to HH-12	04/23/97	04/10/97	04/24/00
April	GG-10	05/26/97	05/10/97	05/25/00
May	GG-9	06/10/97	06/10/97	06/09/00
June	GG-8	07/10/97	07/10/97	07/10/00
July	GG-7	08/25/97	08/10/97	08/24/00
August	GG-6	09/25/97	09/10/07	09/25/00
September	GG-5	10/25/97	10/10/97	10/24/00
October	GG-4	11/25/97	11/10/97	11/24/00
November	GG-3	12/24/97	12/10/97	12/26/00
December	GG-2	01/26/98	01/25/98	01/25/01

Considering that the Formal Letter of Demand, Assessment Notices and Details of Discrepancy for 1997 deficiency value-added tax, excise tax and

[24] Calendar year 2000 is a leap year.

withholding tax on compensation were issued only on January 31, 2001, the same were clearly issued beyond the three-year period allowed by law.

For emphasis, an assessment for deficiency taxes issued after the lapse of three years can no longer be valid and effective.[25]

WHEREFORE, the Petition for Review is hereby ***GRANTED.*** The assessments for 1997 deficiency documentary stamp tax and expanded withholding tax are now considered ***CLOSED*** and ***TERMINATED*** for having been already paid by the petitioner while the assessments for 1997 deficiency value-added tax, excise tax and withholding tax on compensation are ***CANCELLED*** and ***SET ASIDE*** due to prescription.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

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[25] Solid Cement Corporation vs. Liwayway Vinzons-Chato, in her capacity as the Commissioner of Internal Revenue, CTA Case No. 5420, May 27, 1999.

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
Chairman, First Division
Presiding Justice