REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CLOROX INTERNATIONAL PHILS. INC.
(formerly First Brands Philippines, Inc.),
Petitioner,

- versus -

C.T.A. CASE NO. 6121

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

AUG 24 2004

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DECISION

This case involves assessments for alleged deficiency income, expanded withholding, and excise taxes in the aggregate amount of P13,615,228.15 for fiscal year ended June 30, 1996.

The facts as borne out by the records and pleadings of the case are as follows:

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Philippines with office address at No. 622 Shaw Boulevard, Mandaluyong City, Metro Manila. It is primarily engaged in conducting and carrying on "the business of developing, manufacturing, marketing, selling on wholesale basis, distributing, importing and/or exporting all kinds of products including but not limited to automotive coolant, brake fluid and other car care products and devices; plastic wrap, drinking straws, bag products, aluminum wrap and related home products" *(pages 45 to 46, BIR records)*. Petitioner is among the top 5,000 corporations classified by the Bureau of Internal Revenue under the large taxpayer group *(page 4 of Exhibit 13)*.

On October 15, 1996, petitioner filed its Corporation Annual Income Tax Return for fiscal year ended June 30, 1996 *(Exhibit U)*. Likewise, petitioner timely filed its Monthly Remittance Returns of Income Taxes Withheld for fiscal year ended June 30, 1996, to wit:

Month Covered		Date Filed[1]
1995	July	8/24/1995
	August	9/22/1995
	September	10/25/1995
	October	11/24/1995
	November	12/20/1995
	December	1/24/1996
1996	January	2/20/1996
	February	3/22/1996
	March	4/25/1996
	April	5/23/1996
	May	6/24/1996
	June	7/25/1996

On August 28, 1998, petitioner received Letter of Authority No. 000019301 issued by respondent authorizing the special team of Revenue Officers M. Villanueva, M. Lim, M. Israel, A. Bennett, J. Punzal to be supervised by Group Head J. Cruz, to examine its books of accounts and other accounting records for all internal revenue taxes for the period 1997 & unverified prior year(s) *(Exhibits A;1)*. The aforesaid letter of authority was revalidated by Letter of Authority No. 00018472 dated July 5, 1999 which was received by petitioner on July 12, 1999 covering the periods "FY 1996, 1997 to 1997, 1998" *(Exhibits B;2)*.

Subsequently, petitioner received the Final Assessment Notice dated October 14, 1999 issued by respondent *(Exhibits C;11)*, covering the following deficiency tax assessments:

INCOME TAX		
Taxable Income per Return		P24,324,079.00
Add: Disallowances		
Sales – Unaccounted	P16,751,226.30	
Purchases - No EWT	4,193,284.40	
Gondola Rental - No EWT	1,257,313.33	
Expenses Subject to EWT-Unaccounted	1,757,393.30	23,959,217.33

[1] Pages 155 to 197, BIR records.

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Total Income per Investigation		P 48,283,296.33
Income Tax Due		P16,899,153.72
Less: Tax paid per return		8,513,428.00
Basic Deficiency Income Tax		P 8,385,725.72
Add: Interest (60%)	P 5,031,435.43	
Compromise (late payment)	25,000.00	5,056,435.43
Deficiency Income Tax Due		P13,442,161.14[a]

[a] should be P13,442,161.15

EXPANDED WITHHOLDING TAX

Withholding Tax Due on Purchases-Supplier		P 303,377.98
Less: Payment		279,018.99
Unremitted EWT		P 24,358.91[b]
Gondola Rental - No EWT (P1,257,313.33 x 5%)		62,865.66
Basic Deficiency Expanded Withholding Tax		P 87,224.57[c]
Add: Interest (45%)	P 39,251.05	
Compromise (late payment)	6,000.00	45,251.05
Deficiency Expanded Withholding Tax		P 132,475.62[d]

[b] should be P24,358.99
[c] should be P87,224.65
[d] should be P132,475.70

EXCISE TAX

Basic Deficiency Excise Tax		P 18,643.50
Add: Interest	P 15,947.89	
Compromise	6,000.00	21,947.89
Deficiency Excise Tax		P 40,591.39

On November 12, 1999, petitioner filed its protest letter dated November 10, 1999, requesting for the reconsideration of the aforementioned final assessments *(Exhibit 12; par. 10, Joint Stipulation of Facts)*. Thereafter, several conferences were held. On May 17, 2000, petitioner filed its supplemental protest to support its position against the merits of the alleged deficiency tax assessments discussed during the scheduled informal conferences between the representatives of petitioner and the revenue examiners *(Exhibit 13; par. 11, Joint Stipulation of Facts)*.

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On June 9, 2000, petitioner was constrained to file the instant Petition for Review as respondent failed to issue any revised assessment or cancel and/or deny its protest letter. However, on July 18, 2000, petitioner received the final decision of the respondent which reduced the assessments for deficiency income and expanded withholding taxes but maintained the findings on deficiency excise tax, to wit: *(Exhibits V; 3, 4, 6 and 14)*

INCOME TAX		
Taxable Income per Return		P 24,324,079.00
Add: Disallowances		
Sales - Unaccounted	P 3,907,212.92	
Purchases - No EWT	2,973,492.20	
Gondola Rental - No EWT	1,257,313.33	
Expenses Subject to EWT-Unaccounted	1,669,441.40	9,807,459.85
Total Income per Investigation		P34,131,538.85
Income Tax Due		P11,946,038.60
Less: Tax paid per return		8,513,428.00
Basic Deficiency Income Tax		P 3,432,610.60
Add: Interest		1,887,935.83
Deficiency Income Tax Due		P 5,320,546.43
EXPANDED WITHHOLDING TAX		
Taxable Basis per Return		P30,337,797.70
Add: Gondola Rental		1,257,313.33
Total Taxable Basis per Audit		P31,595,111.03
Tax Due		P 350,934.07
Less: Tax Paid		275,027.89
Basic Deficiency Expanded Withholding Tax		P 75,906.18
Add: Interest		37,593.09
Deficiency Expanded Withholding Tax		P 113,499.27
EXCISE TAX		
Basic Deficiency Excise Tax		P 18,643.50
Add: Interest		15,947.89
Deficiency Excise Tax		P 34,591.39
GRAND TOTAL		**P 5,468,637.09**

Respondent filed his Answer on July 24, 2000. But in view of petitioner's receipt of the said final decision on its protest on July 18, 2000, petitioner filed a Motion to Amend Petition for

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Review on August 17, 2000 which was granted by the court on September 6, 2000 *(page 159, CTA Records)*. Respondent filed his Amended Answer on September 25, 2000.

On December 14, 2001, petitioner paid the assessments for deficiency expanded withholding tax based on the report of the commissioned independent CPA in the amount of P82,565.38 and deficiency excise tax as assessed by respondent in the amount of P42,571.03[2] *(Exhibits II, JJ, KK, & LL)*.

The jointly stipulated issues to be resolved by the court are the following:

1. Whether or not petitioner was sufficiently informed in writing of the law and facts on which the alleged deficiency tax assessments were made?

2. Whether or not the alleged deficiency income, expanded withholding and excise tax assessments have factual and legal bases considering that they were issued for fiscal year ended June 30, 1996?

3. Whether or not Petitioner has unaccounted raw materials worth P10,560,034.93, which became the basis in computing for the unaccounted sales of P3,907,212.92?

4. Whether or not there is basis in applying the 37% gross profit ratio to the unaccounted raw materials worth P10,560,034.93 to arrive at the unaccounted sales of P3,907,212.92?

5. Whether or not the alleged purchases worth P2,973,492.20 were subject to the uniform rate of 1% expanded withholding tax?

6. Whether or not the payment for Gondola Rentals in the sum of P1,257,313.33 is subject to the 5% expanded withholding tax?

7. Whether or not Petitioner has unaccounted expenses worth P1,669,441.40 subject to the uniform rate of 1% expanded withholding tax?

8. Whether or not Petitioner has unaccounted expanded withholding tax of P24,358.91 for fiscal year ended June 30, 1996?

9. Whether or not the right to assess for unaccounted expanded withholding tax for fiscal year ended June 30, 1996 has already prescribed?

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[2] Note that the amount was increased to P42,571.03 (from P34,591.39 per final decision of the respondent) to include 25% surcharge and update the computation of interest.

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10. Whether or not there are factual and legal bases in imposing the deficiency excise tax assessment in the amount of P18,643.50?

11. Whether or not Respondent could impose an interest rate higher than 20% contrary to the provision of Section 249 of the Tax Code?

12. Whether or not the interest rates imposed on the deficiency tax assessments against Petitioner are in accordance with Section 249 of the Tax Code?

Petitioner questions the validity of the assessments for deficiency income, expanded withholding and excise taxes issued by respondent citing Section 228 of the National Internal Revenue Code of 1997 as its legal anchor. Pertinent portions of which read as follows:

> SEC. 228. Protesting of Assessment. — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: Provided, however, That a pre-assessment notice shall not be required in the following cases:
>
> xxx xxx xxx
>
> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

Petitioner points out that the Final Assessment Notice *(Exhibits C; 11)* contained a very brief and without sufficient details to apprise petitioner of the bases for the assessments. In effect, petitioner was insufficiently informed of the legal and factual bases on which the disputed assessments were made.

We are not convinced.

After a meticulous review of the records of the case, we found that petitioner was informed of the law and the facts from which the subject assessments were based. The BIR records show that petitioner was given an opportunity to controvert the findings of the respondent's examiners. Petitioner's authorized representatives Ms. Irma C. Flaminiano and Ms. Grace A. Abalos had attended the scheduled informal conference on September 22, 1999 *(page*

233, BIR records). The purpose of which was to notify petitioner of the findings and to enable it to present its position on the matter *(Exhibit 7)*. In fact, petitioner's President Ramon C. Calimbahan even admitted as early as September 24, 1999, that their office was duly notified of the Revenue Officers' findings and the resulting deficiency tax assessments and that it was afforded an opportunity to evaluate the basis thereof *(page 233, BIR records)*. Records also reveal that there were exchanges of communications between petitioner and respondent with respect to the subject tax deficiencies *(pages 234 to 236, BIR records)*. And the same issues were discussed during the preliminary assessment *(Exhibits 8, 9, and 10)*.

Since the assessments were not settled, respondent on October 14, 1999, issued the final assessment notice in view of the fact that his authority to issue the same (for fiscal year ended June 30, 1996) was about to prescribe on October 15, 1999 and petitioner opted not execute a waiver of the defense of prescription.

It bears stressing that the purpose of Section 228 of the National Internal Revenue Code of 1997 in requiring that "(t)he taxpayer be informed of the law and facts on which assessment is made" is to give the taxpayer the opportunity to refute the findings of the examiner and give a more accurate and detailed explanation regarding the proposed assessment(s) ***(Belle Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5930, April 4, 2002)***. The purpose of the said law having been served in the instant case, Section 228 of the National Internal Revenue Code of 1997 is deemed to have been complied with. Therefore, the assessments for income, expanded withholding and excise taxes issued against petitioner are not null and void.

We now proceed to the merits of the disputed assessments which are the remaining issues at bar. We are limiting our review on the reduced assessments issued by the respondent in his final decision.

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1. DEFICIENCY INCOME TAX P5,320,546.43

The deficiency income tax in the total amount of P5,320,546.43 was brought about by four factors[3], namely:

a.	Sales – Unaccounted	P 3,907,212.92
b.	Purchases – No EWT	2,973,492.20
c.	Gondola Rental – No EWT	1,257,313.33
d.	Expenses Subject to EWT – Unaccounted	1,669,441.40
	Total	P9,807,459.85

Corollary thereto, we have to re-examine the correctness of the above items of discrepancies.

a. Sales – Unaccounted P3,907,212.92

Petitioner was originally assessed of unaccounted sales amounting to P16,751,226.30 as reflected in the final assessment notice issued by respondent *(Exhibits C; 11)*. However in his final decision, respondent reduced the unaccounted sales to P3,907,212.92 *(Exhibit V)*. Petitioner manifested that it failed to account for the latter amount because the final decision of the respondent has no schedule of recomputation. Nevertheless, we have found out that the reduction was due to the favorable reception of respondent of petitioner's schedule of the actual total landed cost of imported raw materials, to wit:

	Per FAN	Per Respondent's Final Decision
Purchases per VAT Return RR 6-89		
Imported	P 179,263,874.70	
(P179,263,874.70 less P34,713,549.67[1])		P 144,550,325.03
Local	23,197,542.30	23,197,542.30
Total	P 202,461,417.00	P 167,747,867.33
Less: Purchases - Finished Goods per T.B.	35,407,165.00	35,407,165.00
Net Purchases of Raw Materials	P 167,054,252.00	P 132,340,702.33
Raw Material on Hand per Investigation	121,780,667.40	121,780,667.40
Unaccounted Raw Material	P 45,273,584.60	10,560,034.93
Multiply by Gross Profit Rate	37%	37%
Unaccounted Sales	P 16,751,226.30	P 3,907,212.92

[3] Please refer to the earlier quoted reduced deficiency income tax assessment.

[4]Representing the difference between the petitioner's total actual landed cost of importation (P144,550,324.32) and BIR's total landed cost (P179,263,874.70) based on petitioner's VAT returns. See Exhibit Y-1-a.

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Despite the substantial reduction of the unaccounted sales, petitioner maintains that it had no unaccounted sales. In its desire to negate respondent's finding, petitioner availed of the services of the commissioned independent CPA Feliza A. Peralta pursuant to CTA Circular No. 1-95, as amended. As a consequence, she verified the original unaccounted sales of P16,751,226.30 per respondent examination with that of petitioner's supporting documents. In her report dated November 26, 2001, the following findings were arrived at: *(Exhibit X, inclusive of submarkings)*

> [W]e checked the BIR computation and made a separate recomputation of the alleged unaccounted raw materials purchases, which the BIR used to compute for unaccounted sales of the Company as follows:

	Per FAN	Per SGV *(Exhibit Y-1)*	Difference Over/(Under)
Purchases per VAT Return RR 6-89			
Imported	**P 179,263,874.70**	**P 99,660,164.52**	**P 79,603,710.18**
Local	23,197,542.30	23,197,542.30	-
Total	P 202,461,417.00	P 122,857,706.82	P 79,603,710.18
Less: Purchases - Finished Goods per T.B.	**35,407,165.00**	-	**35,407,165.00**
Net Purchases of Raw Materials	P 167,054,252.00	P 122,857,706.82	P 44,196,545.18
Raw Material on Hand per Investigation	**121,780,667.40**	**122,857,701.58**	**(1,077,034.18)**
Unaccounted Raw Material	P 45,273,584.60	P 5.24*	P 45,273,579.36
Multiply by Gross Profit Rate	37%		
Unaccounted Sales	P 16,751,226.30		

*Due to rounding off (centavo eliminations) in the subsidiary ledgers.

xxx xxx xxx

Moreover, the differences between the BIR computation and our computation are explained as follows:

[1] The difference is accounted for as follows:

a. Finished goods purchases per books included by the BIR In its computation (Exhibit Y-1-a)	P 44,890,159.80
b. Difference between the total BOC landed cost and the actual landed cost of importations (Exhibit Y-1-a)*	34,713,550.38
c. Rounding off difference	(0.72)
Total	P 79,603,709.46

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*Please see explanation in previous page on the nature of the difference. As explained previously, the BOC landed cost used by the BIR is not the actual cost of the Company.

[2] From the above computation, the BIR deducted from its total purchases (i.e., raw materials and finished goods purchases) ending inventory of finished goods purchases amounting to P35,407,165 in order to arrive at the net purchases on raw materials. The amount deducted however may be understated since the BIR considered only the finished goods inventory, which was already net of the sold inventories during the period, instead of the total finished goods purchases for the period. Note that we did not consider this anymore since we only considered purchases of raw materials in our independent computations.

[3] The BIR did not explain how they arrived at the amount of Raw Materials Purchases per Investigation amounting to P121,780,667.40 as shown in the Final Assessment Notice marked "Annex A" of the Amended Petition for Review. However, per our verification of the documents supporting the purchases of the Company, we were able to ascertain that the total purchases of raw materials amount to P122,857,706.82 (Exhibit Y-1).

We find the above data of the commissioned independent CPA persuasive as they were supported by schedules and source documents *(Exhibits Z to Z177, Z179 to Z482, AA to AA549, AA560 to AA680)*. On the basis thereof, we can now ascertain if petitioner has unaccounted sales.

It can be deduced from the above table that the original unaccounted sales of P16,751,226.30 was the result of three unreconciled items – (1) the purchases of imported goods (P79,603,709.46); (2) the finished goods per trial balance (P35,407,165.00); and (3) the raw materials on hand per investigation (-P1,077,034.18).

The discrepancy of importation of raw materials in the amount of P79,603,709.46 was further accounted by the independent CPA as follows:

a. Finished goods purchases per books included by the BIR In its computation (Exhibit Y-1-a)	P	44,890,159.80
b. Difference between the total BOC landed cost and the actual landed cost of importations (Exhibit Y-1-a)		34,713,550.38
c. Rounding off difference		(0.72)
Total	P	79,603,709.46

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Earlier in this decision, we have already mentioned that respondent had already accepted that the actual total landed cost of petitioner's importation of raw materials was P144,550,324.32. Hence, the "Difference between the total BOC landed cost and the actual landed cost of importations" in the amount of P34,713,550.38 was already considered by respondent in arriving at the reduced unaccounted sales of P3,907,212.92. What remain to be examined are the effects of the following items in arriving at the unaccounted raw materials, to wit:

1.	Finished goods purchases per books included by the BIR in its computation	P44,890,159.80
2.	The finished goods per trial balance	P 35,407,165.00
3.	The difference of raw materials on hand per investigation of respondent and commissioned independent CPA	(P 1,077,034.18)

Reproduced hereunder is the computation of the reduced unaccounted sales of petitioner per final decision of the respondent, to wit:

	Per Respondent's Final Decision	
Purchases per VAT Return RR 6-89		
Imported	P	144,550,325.03
Local		23,197,542.30
Total	P	167,747,867.33
Less: Purchases - Finished Goods per T.B.		35,407,165.00
Net Purchases of Raw Materials	**P**	**132,340,702.33**
Raw Material on Hand per Investigation		**121,780,667.40**
Unaccounted Raw Material		10,560,034.93
Multiply by Gross Profit Rate		37%
Unaccounted Sales	P	3,907,212.92

It can be observed from the manner of computation of respondent that he was aiming to arrive at the correct purchases of raw materials for the fiscal year ended June 30, 1996. This is evident on two components that were compared by the respondent – the "Net Purchases of Raw Materials" and "Raw Materials on Hand per Investigation". However, the difference in these

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two items will not automatically result to unaccounted raw materials. The account title "Raw Materials on Hand per Investigation" connotes the ending inventory of raw materials per investigation of respondent's revenue examiners. If we are going to deduct this ending inventory of raw materials from the net purchases of raw materials during the period, the result is the raw materials that formed part of the cost of sales. What should have been deducted from the *Net Purchases of Raw Materials* of petitioner is the *Net Purchases of Raw Materials* per investigation of respondent since these two items are of the same category. Any difference thereof may result to unaccounted raw materials. It is inaccurate to assume that the Raw Materials on Hand per investigation is equivalent to the Net Purchases of Raw Materials.

Thus, the manner of computation adopted by respondent in arriving at the unaccounted sales of petitioner is erroneous on the following reasons:

> Firstly, it is not absolute to conclude that the unaccounted raw materials will result to unaccounted sales just by multiplying the former with petitioner's gross profit rate of 37%;
>
> Secondly, in accounting for raw materials, it is not justifiable to include the finished goods transaction to arrive at the unaccounted raw materials. Finished goods and raw materials are not of the same classification; and
>
> Thirdly, this court finds it very difficult to trace or locate the figures used by respondent in his computation. Examples are the amounts in the "Purchases-Finished Goods per T.B." (P35,407,165.00) and the figures used to arrive at the "Raw Material on Hand per Investigation" (P121,780,667.40).

At best, we agree with the result of the examination of the commissioned independent CPA that petitioner has no unaccounted raw materials and therefore had no unaccounted sales.

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The rest of the disallowance of respondent pertained to expenses which petitioner allegedly failed to withhold or it "underwithheld" the income tax at source. These items are composed of the following expenses:

b. Purchases – No EWT	**P 2,973,492.20**
c. Gondola Rental – No EWT	**1,257,313.33**
d. Expenses Subject to EWT – Unaccounted	**1,669,441.40**
Total	**P 5,900,246.93**

From the above expenses, the Gondola rental was further subjected to 5% deficiency expanded withholding tax. Records also disclose that the above expenses referred to the calendar year 1996 but petitioner was adopting an accounting period of fiscal year ending June 30, 1996. To properly compute the income for the period, there must be proper matching of income and expense wherein the expenses incurred in a given period are matched with the revenue earned within the same period ***(Filipinas Synthetic Fiber Corporation vs. Court of Tax Appeals and Commissioner of Internal Revenue, CA-G.R. SP No. 32022, December 21, 1995)***. Hence, we will consider only the disallowance of respondent for the first and second quarters of 1996 which are actually for the third and fourth quarters of fiscal year ending June 30, 1996 for income tax purposes.

Section 29(j) of the National Internal Revenue Code of 1993 provides additional requirement for deductibility of certain payments. To quote:

> (j) *Additional requirement for deductibility of certain payments.* — Any amount paid or payable which is otherwise deductible from, or taken into account in computing gross income or for which depreciation or amortization may be allowed under this section, shall be allowed as a deduction only if it is shown that the tax required to be deducted and withheld therefrom has been paid to the Bureau of Internal Revenue in accordance with this section, Section 51 and 74 of this Code.

Based on afore-quoted Section 29(j), certain expenses that are subject to withholding tax shall be allowed as a deduction from gross income only if it is shown that the tax required to be

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deducted and withheld therefrom has been paid to the Bureau of Internal Revenue. In the case at bar, the disallowance was premised on petitioner's inability to subject the above-enumerated expenses to expanded withholding tax. In order to arrive at that conclusion, respondent has to examine first the liability of petitioner for expanded withholding tax. However, petitioner is questioning the right of respondent to assess its deficiency expanded withholding tax for having prescribed.

Therefore, it is but appropriate to tackle first the issue of whether or not the right of respondent to assess petitioner for expanded withholding tax has prescribed. Because if it has, then respondent can no longer examine if the claimed expenses of petitioner were subjected to expanded withholding taxes, the additional requirement under the Section 29(j) being inapplicable.

Petitioner avers that the right of respondent to assess the deficiency expanded withholding for fiscal year ended June 30, 1996 has already prescribed inasmuch as the Final Assessment Notice was issued only on October 14, 1999. Petitioner relied on the case of ***HPCO Agridev Corporation vs. Commissioner of Internal Revenue, CTA Case No. 6355, July 18, 2002***, in counting the prescriptive period, which is, three years from each date of filing of monthly remittance return of income taxes withheld at source.

Respondent, on the other hand, argues that the assessment was issued within the prescriptive period. He asseverates in his Answer that:

> 15. Expanded Withholding Tax (EWT) is not a tax in itself; it is a manner of collecting in advance a kind of tax, that is, income tax, VAT or percentage tax. The EWT being assessed against petitioner pertains to the payment of income tax. Thus, the prescriptive period that will be followed is the Income Tax Return period which falls on October 15, 1999. Hence, the right to assess deficiency EWT has not prescribed.

We find the above ratiocinations of respondent bereft of merit.

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The counting of the three-year period to assess expanded withholding tax should not start from the filing of petitioner's annual income tax return for fiscal year June 30, 1996. Foremost because the deficiency expanded withholding tax is not an income tax on the part of petitioner. It is a penalty imposed by law for failure to perform an obligation as a withholding agent of the government. This was elucidated by the Supreme Court in the case of ***Commissioner of Internal Revenue vs. The Court of Appeals, Court of Tax Appeals and A. Soriano Corp., G.R. No. 108576, January 20, 1999.*** We quote:

> In the operation of the withholding tax system, the withholding agent is the payor, a separate entity acting no more than an agent of the government for the collection of the tax in order to ensure its payments; the payer is the taxpayer — he is the person subject to tax imposed by law; and the payee is the taxing authority. In other words, the withholding agent is merely a tax collector, not a taxpayer. Under the withholding system, however, the agent-payor becomes a payee by fiction of law. His (agent) liability is direct and independent from the taxpayer, because the income tax is still imposed on and due from the latter. The agent is not liable for the tax as no wealth flowed into him — he earned no income. The Tax Code only makes the agent personally liable for the tax arising from the breach of its legal duty to withhold as distinguished from its duty to pay tax xxx *(Underlining supplied).*

Going back to the issue of prescription, let us revisit Section 203 of the National Internal Revenue Code of 1997 and Section 51 of the National Internal Revenue Code of 1993 which are the pertinent laws in the case at bar. For easy reference, said provisions are quoted below:

> Sec. 203. *Period of Limitation Upon Assessment and Collection.* — Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided*, That in a case where the return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For the 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.
>
> Sec. 51. *Returns and payments of taxes withheld at source. -- (a) Quarterly returns and payment of taxes withheld.* – Taxes deducted and withheld under Section fifty-three (now 50) shall be covered by a return and paid to the Revenue District Officer, Collection Agent, or duly authorized Treasurer of the city, or

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> municipality where the withholding agent has his legal residence or principal place of business, or where the withholding agent is a corporation, where the principal office is located. The taxes deducted and withheld b the withholding agent shall be held as a special fund in trust for the Government until paid to the collecting officers. The Commissioner of Internal Revenue may, with the approval of the Secretary of Finance, require these withholding agents to pay or deposit the taxes deducted or withheld at more frequent intervals when necessary to protect the interest of the Government. The return for final withholding tax shall be filed and the payment made within 25 days from the close of each calendar quarter; while the return for creditable withholding taxes shall be filed and the payment made not later than the last day of the month following the close of the quarter during which withholding was made.

Section 51 was implemented by Section 2 of Revenue Regulations No. 5-85, as amended by Revenue Regulations No. 3-93 and further amended by Revenue Regulations No. 18-93. To quote:

> SECTION 1. Section 2 of Revenue Regulations No. 5-85 is hereby amended to read as follows:
>
> > "Sec. 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 day of January of the succeeding year. *Provided, further,* <u>that taxes withheld by Large Taxpayers, as identified and notified by the Bureau of Internal Revenue pursuant to Republic Act No. 7646, as implemented by Revenue Regulations No. 12-93, shall be remitted within twenty-five (25) days after the end of each calendar month with the filing of appropriate **return**</u> (BIR Form 1743-W)." *(Underlining supplied).*

Pursuant to Section 203 in relation to Section 51(a) of the National Internal Revenue Code of 1997 and 1993, respectively, and Section 2 of Revenue Regulations No. 5-85, as

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amended, the period to assess commences after the last day prescribed by law for the *filing of the return*.

In the case of petitioner, being a large taxpayer, the last day to file and remit taxes withheld then was on the twenty-fifth (25th) day after the end of each calendar month. Nevertheless, if the return was filed earlier than the last day allowed by law, the period to assess shall still be counted from the last day prescribed for filing of the return. However, if the return was filed beyond the period prescribed by law, the three-year period shall be counted from the day the return was filed.

Presented below is a table which will show the period within which respondent is allowed by law to examine petitioner's liability for expanded withholding tax at source for the fiscal year ended June 30, 1996, to wit:

Month Covered	Date Filed	Last Day To File Return	Last Day To Issue Assessment[5]
1995 July	8/24/1995	8/25/1995	8/24/1998
August	9/22/1995	9/25/1995	9/24/1998
September	10/25/1995	10/25/1995	10/26/1998
October	11/24/1995	11/27/1995	11/26/1998
November	12/20/1995	12/26/1995	12/26/1998
December	1/24/1996	1/25/1996	1/25/1999
1996 January	2/20/1996	2/26/1996	2/25/1999
February	3/22/1996	3/25/1996	3/24/1999
March	4/25/1996	4/25/1996	4/26/1999
April	5/23/1996	5/27/1996	5/26/1999
May	6/24/1996	6/25/1996	6/24/1999
June	7/25/1996	7/25/1996	7/26/1999

This court is convinced that Section 2 of Revenue Regulations No. 5-85, as amended, implementing Section 51, is the applicable provision in reckoning the three-year period of respondent's right to assess considering that it specifies the time for the filing of monthly **return** and remittance of taxes withheld. Such monthly return is a complete return as it provides for any

[5] Please note that year 1996 is a leap year.

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adjustment for previous month(s) payment ***(HPCO Agridev Corporation vs. Commissioner of Internal Revenue, supra).***

Since the assessment notice was issued only on October 14, 1999, the right of respondent to assess deficiency expanded withholding tax for the fiscal year ended June 30, 1996 had already prescribed ***(see also Mirant (Navotas II) Corporation (formerly Southern Energy Navotas II Power, Inc.) vs. Commissioner of Internal Revenue, CTA Case No. 5950, January 13, 2003).*** It follows that the assessment issued by respondent against petitioner for deficiency expanded withholding tax amounting to P113,499.27 is void.

Respondent having lost the right to assess petitioner of deficiency expanded withholding tax, he also lost the right to examine and determine whether the subject expenses claimed as deductions from gross income were subjected to expanded withholding tax.

But even assuming that respondent has the authority to examine petitioner's claimed expenses, still, the disallowance is not proper. We agree with petitioner that it is erroneous for respondent to assume that the expenses (Purchases – No EWT and Expenses Subject to EWT – Unaccounted) are all subject to 1% uniform expanded withholding tax based on the fact that petitioner is classified under the large taxpayers' group. The fact that petitioner belongs to the top 5,000 corporation does not automatically make all of its suppliers of goods subject to 1% expanded withholding tax. In order to stand the test of judicial scrutiny, the assessment must be based on actual facts. The presumption of correctness of assessment being a mere presumption cannot be made to rest on another presumption ***(Collector of Internal Revenue vs. Benipayo, G.R. No. L-13656, January 31, 1962, 4 SCRA 182, 185; cited in Commissioner of Internal Revenue vs. Island Garment Manufacturing Corporation and The Court of Tax Appeals, G.R. No. L-46644, September 11, 1987).*** Moreover, petitioner had already paid the deficiency

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expanded withholding tax on Gondola rental per finding of the commissioned independent CPA on December 14, 2001.

In fine, petitioner satisfactorily rebutted the respondent's finding of discrepancies. The assessment for deficiency income has no leg to stand on.

As regards the assessment for deficiency excise tax in the amount of P34,591.39, the same is already considered settled due to the payment thereof made by petitioner on December 14, 2001 in the amount of P42,571.03 (inclusive of surcharge) as evidenced by BIR Form No. 0605 and Official Receipt for BIR Payments No. 811811 *(Exhibits KK & LL, respectively)*.

WHEREFORE, the Petition for Review is hereby granted. Respondent is **ORDERED** to **CANCEL** and **WITHDRAW** the deficiency assessment for income tax for lack of merit and the deficiency assessment for expanded withholding tax for having prescribed while the deficiency assessment for excise tax is hereby declared **CLOSED** and **TERMINATED** in view of the payment made by the petitioner.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

(On Leave)
ERNESTO D. ACOSTA
Presiding Justice

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

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CERTIFICATION

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

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

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