REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

****

LAPANDAY FOODS CORPORATION,
Petitioner,

- versus -

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7097

Members:

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

Promulgated:

OCT 18 2007; 9:10 AM

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DECISION

CASANOVA, *J.*:

THE CASE

This case is a Petition for Review seeking the cancellation of the deficiency value-added, expanded withholding, and documentary stamp tax assessments for the taxable year 2000 in the aggregate amount of P8,804,712.10, including increments.

THE FACTS

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines and with principal office address at 2263 Lapanday Centre, Pasong Tamo Extension, Makati City.[1] It is engaged in rendering management services.[2]

[1] Par. 1 of the Summary of Admitted Facts; docket, p. 95.
[2] Par. 3 of the Summary of Admitted Facts; *ibid.* See also Exhibit "F."

Respondent is the duly appointed Commissioner of Internal Revenue and holds office at BIR National Office Building, BIR Road, Diliman, Quezon City.[3]

On January 21, 2004, petitioner received from respondent a Formal Assessment Notice, together with several Assessment Notices all dated January 21, 2004, covering the taxable year 2000 for alleged deficiency value added tax, expanded withholding tax, final withholding tax, and deficiency documentary stamp tax, summarized as follows:[4]

	VAT	EWT	FWT	DST	Total
Basic tax	P 5,300,284.83	P 231,993.64	P3,600,000.00	P 972,168.55	P10,104,447.02
Interest (20%)	3,261,491.05	142,755.57	2,215,233.36	606,429.04	6,225,909.02
Total	P 8,561,775.88	P 374,749.21	P5,815,233.36	P1,578,597.59	P16,330,356.04

On February 20, 2004, petitioner filed a protest against the assessments. And on March 23, 2004, petitioner filed its supplemental protest against the assessments.[5]

On April 20, 2004, petitioner completed the submission of all the relevant documents it deemed necessary to prove the defenses raised in its protest and supplemental protest.[6]

On October 29, 2004, petitioner received from respondent the Final Decision on Disputed Assessment dated October 28, 2004, with accompanying Amended Assessment Notices. In the Final Decision, the VAT and DST assessments were reduced, the final withholding tax assessment was cancelled, and the EWT assessment was reiterated. The amended assessments were computed as follows:[7]

	VAT	EWT	DST	Total
Basic tax	P 3,473,772.15	P 231,993.64	P 289,824.30	P 3,995,590.09
Surcharge (50%)	1,736,886.07			1,736,886.07
Interest (20%)	2,668,935.62	178,243.15	225,057.17	3,072,235.94
Total	**P7,879,593.84**	**P410,236.79**	**P 514,881.47**	**P8,804,712.10**

[3] Par. 2 of the Summary of Admitted Facts; *ibid.*
[4] Par. 4 of the Summary of Admitted Facts; *ibid.* See also Exhibits "A," "A-1" to "A-4."
[5] Pars. 6 and 7 of the Summary of Admitted Facts; docket, pp. 96-97.
[6] Par. 8 of the Summary of Admitted Facts; *ibid.* See also Exhibit "O."
[7] Pars. 9 and 10 of the Summary of Admitted Facts; docket, pp. 97-98. See also Exhibits "B," "B-1" to "B-2."

On November 16, 2004, not amenable to pay the revised assessments, petitioner filed the instant Petition before this Court.[8]

THE ISSUES

Both parties stipulated on the following issues for the Court to decide:[9]

"VAT Assessment

1. Whether or not the deficiency VAT assessments for the first, second and third quarters of 2000 are barred by prescription.

2. Whether or not the interest income on loans to affiliates is subject to 10% VAT.

3. Whether or not the alleged deficiency VAT on interest income should be computed by multiplying the interest collected by 1/11 in accordance with Section 108(C) of the Tax Code.

4. Whether or not petitioner's failure to pay the VAT on the interest on loans to affiliates rendered the VAT returns false or fraudulent warranting the imposition of a 50% surcharge.

5. Whether or not the understatement of gross receipts by more than 30%, which understatement is due to the legal issue on the taxability of the receipt, warrants the application of the 10-year prescriptive period under Section 222 of the Tax Code.

6. Whether or not the alleged understatement of gross receipts amounts to more than 30% of the gross receipts per VAT return.

EWT Assessment

7. Whether or not the deficiency expanded withholding tax assessment is barred by prescription.

8. Whether or not Petitioner is liable for deficiency expanded withholding tax.

DST Assessment

9. Whether or not the due to/due from affiliates, which are evidenced by check vouchers, are subject to documentary stamp tax on loan agreements."

[8] Par. 11 of the Summary of Admitted Facts; docket, p. 98.
[9] Stipulation of Issues; docket, pp. 103-104.

THE COURT'S RULING

Deficiency Value-Added Tax

The modified deficiency VAT assessment in the amount of ₱7,879,593.84 arose from the ₱34,737,721.49 discrepancy between the taxable receipts of ₱110,062,843.10 per petitioner's VAT returns and the taxable receipts of ₱144,800,564.59 per examiner's investigation, computed as follows:

Taxable Sales/Receipts per Return			P 110,062,843.10
Less: Sales not Subjected to VAT			
Accounts Receivable, Beginning (Net of VAT)		P 6,684,793.44	
Less: Receivables subjected to VAT in previous year		4,287,311.30	
Accounts Receivable, Beginning as adjusted		P 2,397,482.14	
Add: Management fee	P 116,573,549.43		
Service fee	1,400,000.00		
Interest income	35,223,097.48		
Miscellaneous	96,282.00	153,292,928.91	
Accounts Receivable, Ending (Net of VAT)		(12,526,210.10)	
Total Receipts		P 143,164,200.95	
Add: Proceeds from Sale of Equipment (Net of VAT)		1,636,363.64	
Taxable Sales Per Audit		P 144,800,564.59	
Less: Sales Per Return		110,062,843.10	34,737,721.49
Taxable Sales/Receipts Per Audit			P 144,800,564.59
Tax Due			P 14,480,056.46
Less: Input Tax/Payments:			
Input Tax		P 1,245,328.12	
Payments		9,760,956.19	11,006,284.31
Deficiency Value-Added Tax Due			P 3,473,772.15
Add: 50% Surcharge			1,736,886.07
Interest (1-26-01 to 11-29-04)			2,668,935.62
Total Amount due			**P 7,879,593.84**

Petitioner submits that the difference represents interest income on loans to affiliates for the year 2000 in the amount of ₱35,223,097.48, broken down as follows:[10]

Quarter	Interest Income
1st	P 8,043,381.56
2nd	1,424,492.83
3rd	14,139,831.50
4th	11,615,392.59
Total	**P 35,223,098.48**

[10] Exhibit "O-1."

Petitioner alleges that the discrepancy of ₱485,375.99 (₱35,223,097.48 less ₱34,737,721.49) represents miscellaneous charges which were subjected by petitioner to VAT, but not included in the BIR computation and the BIR's under take-up of proceeds from sale of equipment in the computation.[11] Invoking Revenue Memorandum Circular ("RMC") No. 42-2003, petitioner posits that since it does not qualify as a "lending investor, dealer in securities, financial institution as defined in Revenue Regulations ("RR") No. 12-2003, or any other entity performing similar financing activities," the interest income on loans it granted to affiliates is not subject to VAT.

Respondent, on the other hand, argues that such interest income is subject to VAT pursuant to Section 105 of the Tax Reform Act of 1997 ("Tax Code"), which clearly imposes VAT on any person who renders service in the course of its business. The term "in the course of business" includes transactions incidental thereto.

This Court agrees with the respondent.

Section 105 of the Tax Code reads:

> "SEC. 105. *Persons Liable.-* Any person who, in the course of trade or business, sells, barters, exchanges, leases goods or properties, renders services, and any person who imports goods shall be subject to the value-added tax (VAT) imposed in Sections 106 to 108 of this Code.
>
> "xxx xxx xxx.
>
> "The phrase '*in the course of trade or business*' means the regular conduct or pursuit of a commercial or an economic activity, including transactions incidental thereto, by any person regardless of whether or not the person engaged therein is a nonstock, nonprofit private organization (irrespective of the disposition of its net income and whether or not it sells exclusively to members or their guests), or government entity.
>
> "xxx xxx xxx."
>
> (Underscoring supplied.)

In *CS Garments, Inc. vs. Commissioner of Internal Revenue*,[12] this Court ruled:

[11] Exhibit "O", par. Q-27.
[12] CTA Case No. 6520, January 4, 2007. See also Deoferio, Jr. and Mamalateo, *The Value Added Tax in the Philippines*, 1st ed., pp. 81-85.

> "xxx, the VAT is imposed on a sale or transaction entered into by a person in the course of any trade or business. A transaction will be characterized as having been entered into by a person in the course of trade or business if it is: (1) regularly conducted; and (2) undertaken in pursuit of a commercial or economic activity. Likewise, transactions that are made incidental to the pursuit of a commercial or economic activity are considered as entered into in the course of trade or business. 'Incidental' means something else as primary; something necessary, appertaining to, or depending upon another, which is termed the principal. Hence, an isolated transaction is not necessarily disqualified from being made incidentally in the course of trade or business."

In the present case, petitioner was incorporated primarily "[t]o engage in the managing, promoting, administering, or assisting in any business or activity of corporations, partnerships, association, individual or firms xxx."[13] Thus, in extending loans to its affiliates, petitioner is engaged in transactions incidental to its business of providing assistance to its affiliates.

As petitioner is legally liable to pay 10% VAT thereon, the taxable gross receipts should be P26,753,063.52 instead of P34,737,721.49, computed as follows:[14]

Interest on Loans to Affiliates	**1st Quarter**	**2nd Quarter**	**3rd Quarter**	**4th Quarter**	**Total**
Interest Rec. Beg.	P -	P -	P 471,276.26	P 5,975,386.68	P -
Add: Interest Income	8,043,381.56	1,424,492.83	14,139,831.50	11,615,392.59	35,223,098.48
Less: Interest Rec. End.	-	(471,276.26)	(5,975,386.68)	(8,470,034.96)	(8,470,034.96)
Gross Receipts	P 8,043,381.56	P 953,216.57	P 8,635,721.08	P 9,120,744.31	P 26,753,063.52

The above computation is based on actual interest income received/collected by petitioner for taxable year 2000. Pursuant to Section 108(A) of the Tax Code, the VAT on sale of services is imposed on gross receipts, which is defined as "the **total amount of money** or its equivalent representing the contract price, compensation, service fee, rental or loyalty, including the amount charged for materials supplied with the services and deposits and advanced payments **actually** or **constructively received during the taxable quarter for the services performed or to be performed to another person, excluding value-added tax.**"

[13] See Exhibit "F."
[14] Exhibits E-1, "E-2" & "O-1."

The same section of the Tax Code also provides that: "[t]here shall be levied, assessed, and collected, a value-added tax equivalent to ten percent (10%) of gross receipts derived from the sale or exchange of services, including the use or lease of properties."[15] Inasmuch as no VAT official receipts were presented corresponding to the interest income collected, the deficiency VAT shall be computed by multiplying P26,753,063.52 by 10%, not 1/11 as claimed by petitioner.

On the issue of prescription, petitioner maintains that pursuant to Section 203 of the NIRC of 1997, the right of respondent to assess it of deficiency VAT for the first, second and third quarters of 2000 had already prescribed.

Respondent, however, counters that the undeclared receipts of petitioner for taxable year 2000 in the amount of P34,737,721.49 exceeds 30% of its reported taxable receipts of P110,062,843.10, thereby rendering its VAT returns false or fraudulent under Section 248(B) of the NIRC of 1997 and granting him ten years to assess in accordance with Section 222(a) of the same Code.

This Court partially agrees with petitioner.

Section 203 of the Tax Code provides:

> "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 a 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 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."

Corollary thereto, Section 114(A) of the same Code provides:

> "SEC. 114. *Return and Payment of Value-Added Tax.*-
>
> "(A) *In General.*- Every person liable to pay the value-added tax imposed under this Title shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of

[15] First par. of Section 108(A) of the Tax Code.

each taxable quarter prescribed for each taxpayer: *Provided, however,* That VAT-registered persons shall pay the value-added tax on a monthly basis.

xxx xxx xxx."

Pursuant to Section 203 of the Tax Code, the three-year period to assess commences from the date of actual filing of the return or from the last date prescribed by law for the filing of such return, whichever comes later. In the case of VAT, it is twenty-five (25) days following the close of each taxable quarter. Hence, if the return was filed earlier than the last day allowed by law, the period to assess shall 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. Therefore, respondent had until the following dates within which to assess petitioner for deficiency VAT for taxable year 2000:

Returns Filed	**Reference**	**Date Filed**	**Last Day to File Return**	**Last Day to Assess**
Monthly VAT Declaration (BIR Form 2550M) For March 2000	Exhibit C	Apr. 25, 2000		
Quarterly VAT Returns(BIR Form 2550Q)				
1st qtr-amended	Exhibit C-4	Sept. 4, 2001	Apr. 25, 2000	Sept. 3, 2004[16]
2nd quarter	Page 633, BIR Rec.	July 25, 2000	July 25, 2000	Jul. 25, 2003
3rd quarter	Page 632, BIR Rec.	Oct. 25, 2000		
3rd qtr-amended	Page 631, BIR Rec.	Nov. 24, 2000	Oct. 25, 2000	Nov. 24, 2003
4th quarter	Page 630, BIR Rec.	Jan. 25, 2001	Jan. 25, 2001	Jan. 26, 2004[17]

Petitioner claims that it made a mistake when it used BIR Form 2550M for filing the quarterly VAT return for the first quarter of 2000 on April 25, 2000.[18] To allegedly correct the mistake, petitioner filed another return using BIR Form 2550Q on September 4, 2001.[19] According to petitioner, other than the form used, there is no substantial difference between

[16] Year 2004 being a leap year.
[17] January 25, 2004 fell on a Sunday.
[18] Exhibit "C."
[19] Exhibit "C-4."

the two returns as the VAT due is the same.[20] Hence, the three year prescriptive period should allegedly be counted from April 25, 2000, the date of filing of the original return since the amendment made in the amended return was not substantial.

The Court disagrees. The two forms and the figures contained therein are completely different.[21] The Monthly VAT Declaration [BIR Form 2550M] filed by petitioner on April 25, 2000 refers to petitioner's VAT transactions for the month of March 2000. On the other hand, the Quarterly VAT Return [BIR Form 2550Q] filed by petitioner on September 4, 2001 pertains to petitioner's VAT transactions for the months of January, February and March 2000. This is illustrated as follows:

Per BIR Records	**Jan. 2000** *page 296*	**Feb. 2000** *page 295*	**Mar. 2000** *page 293 (Exhibit C)*	**1st Qtr-2000** *page 294 (Exhibit C-4)*
Taxable Sales/Receipts	P3,216,949.10	P2,133,892.00	P3,777,173.80	P9,128,014.90
Output VAT Due	P 321,694.91	P 213,389.20	P 377,717.38	P 912,801.49
Less: Input VAT	77,337.03	186,336.77	107,304.52	370,978.32
VAT Payable	P 244,357.88	P 27,052.43	P 270,412.86	P 541,823.17
Less: Monthly VAT Payments - previous two months	-	-	-	271,410.31
VAT Still Payable	P 244,357.88	P 27,052.43	P 270,412.86	P 270,412.86

While the final amounts of VAT payable in both returns filed for the month of March 2000 and first quarter of 2000 are the same, this does not mean that petitioner's VAT declarations in both returns are the same. The reported figures in the Monthly VAT Declaration are only for the month of March; while the amounts reported in Quarterly VAT Return are cumulative figures for the months of January, February and March, 2000. In its Quarterly VAT return for the first quarter of 2000, petitioner had the same amount of VAT payable of P270,412.86 as that reflected in its VAT return for the month of March 2000. This is because from the accumulated VAT Payable of P541,823.17, petitioner's VAT payments for the months of January and February in the amounts of P244,357.88 and

[20] Exhibit "O", pars. Q16 to Q19.
[21] Exhibits "C" and "C-4."

₱27,052.43, respectively, or in the sum of ₱271,410.31, were deducted; and, thus, leaving only the amount of ₱270,412.86 as VAT payable as of the end of the first quarter of 2000.

In fine, the reckoning of the three-year prescriptive period within which respondent may assess petitioner of deficiency VAT for the first quarter of 2000 should be counted from September 4, 2001, the date when petitioner filed its VAT return for the first quarter of 2000 and not from April 25, 2000, the date when petitioner filed its VAT return for the month of March 2000. Since the Formal Assessment Notice for deficiency VAT covering the year 2000 was issued only on January 21, 2004, the VAT assessments pertaining to the second and third quarters of 2000 are already barred by prescription. Only the VAT assessments corresponding to the first and fourth quarters of 2000 were timely issued.

Now, contrary to respondent's assertion and pursuant to Section 248(B) of the Tax Code, there is no substantial under-declaration of petitioner's gross receipts for taxable year 2000 that would warrant the extension of the prescriptive period to ten (10) years and the imposition of the 50% surcharge. The percentage of petitioner's undeclared receipts to the total receipts per VAT return is less than 30%, as shown in the following:

$$\frac{\text{P } 26,753,063.52}{\text{P } 110,062,843.10} = \mathbf{24.31\%}$$

Hence, this Court finds petitioner liable to pay deficiency VAT in the amount of ₱3,464,253.56, as computed below:

Undeclared Gross Receipts:		
1st Quarter	P	8,043,381.56
4th Quarter		9,120,744.31
Total	P	17,164,125.87
Deficiency Output VAT Due	P	1,716,412.59
Add: 25% Surcharge		429,103.15
Interest (1-26-01 to 11-29-04)		1,318,737.82
Total Amount due	**P**	**3,464,253.56**

Deficiency Expanded Withholding Tax

Respondent assessed petitioner of deficiency EWT for taxable year 2000 in the amount of ₱410,236.79, computed as follows:

Professional fee paid to TUV per Alphalist	P	5,799,841.00
Tax due (5%)	P	289,992.05
Less: payment		(57,998.41)
Deficiency EWT	P	231,993.64
Add: Interest (1-26-01 to 11-29-04)		178,243.15
Total amount due	**P**	**410,236.79**

Respondent claims that petitioner withheld just 1% on its payments to TUV Products Service Asia Pacific PTE Ltd. ("TUV") instead of 5%. The deficiency tax assessment was based on the Alphalist, wherein the income payment to TUV was presented as follows:

Amount of Income Payment	Rate of Tax	Amount of Tax Withheld
P5,799,841.00	1%	P57,998.41

Petitioner, on the other hand, contends that the deficiency EWT assessment is barred by prescription.

The Court agrees with petitioner.

Section 203 of the Tax Code provides:

> "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 begun after the expiration of such period: *Provided,* That in case where a 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 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."

Pursuant to the above-quoted section, the three-year period to assess commences from the date of actual filing of the return or from the last date prescribed by law for the filing of such return, whichever comes later. In the case of EWT, under Section 2.58(A)(2)(a) of Revenue Regulations No. 2-98, as amended, the return is required to be filed within ten (10) days after the end of each month for creditable taxes withheld during the months of January until November, while the return for creditable taxes withheld for the month of December shall be filed on or before January 25 of the following year.

The subject EWT were withheld in July and November 2000 and the corresponding returns were filed/EWT remitted on August 10, 2000 and December 11, 2000, respectively.[22] Hence, respondent had only until August 10, 2003 and December 11, 2003 within which to issue the deficiency EWT for the months of July and November, 2000, respectively. Since the FAN was issued only on January 21, 2004, the deficiency EWT assessment in the amount of P410,236.79 is time barred and should be cancelled.

The Court finds that there is no basis for the application of the ten-year prescriptive period as petitioner was able to explain and establish that an error was inadvertently made in the preparation of the alpha list which can be traced from the documents submitted.[23]

As the right to assess deficiency EWT has prescribed, there is no basis to hold petitioner liable to pay the same.

Deficiency Documentary Stamp Tax

Respondent assessed documentary stamp tax on petitioner's loans and advances to affiliates amounting to P193,216,127.03, which were not covered by promissory notes or loan agreements but by cash/check vouchers only.

In *Filinvest Development Corporation, et. al. vs. Commissioner of Internal Revenue*,[24] this Court ruled:

> "As we have held in the case of *APC Group, Inc. vs. CIR, CTA Case No. 6155, March 11, 2002*:
>
> > 'There is nothing in Section 180 that provides that board resolutions, inter-office memoranda, letters of instruction, journal or cash vouchers evidencing lending/borrowings are subject to documentary stamp tax. Clearly, what Section 180 taxes are loan agreements, promissory notes, bills of exchange, drafts, instruments and securities issued by the government or any of its instrumentalities or certificates of deposits drawing interest and others not payable on sight or demand. xxx'
>
> It should likewise be stressed that in Section 173 of the Tax Code, documentary stamp tax is essentially a tax upon documents, instruments,

[22] Exhibits "O", pars. Q53 to Q55; "M", "M-a", "M-b", "N", "N-a" and "N-b".
[23] Exhibits "M", "M-a", "M-b", M-1, M-3, "N", "N-a", "N-b" N-1, N-2 and "O", pars. Q49 to Q59.
[24] CTA Case No. 6182, September 10, 2002.

> loan agreements and papers. The instructional letter and cash/journal vouchers containing petitioner's advances to its affiliates, are not loan agreements within the contemplation of Section 173 in relation to Section 3 (b) and Section 6 of Revenue Regulations No. 9-94. At this point, it is worthy to note that even the BIR issued a ruling (BIR Ruling No. DA-666-A-99, dated December 3, 1999), which clearly states that inter-company advances covered only by board resolutions and cash vouchers are not subject to DST under Section 180 of the Tax Code. Such being the case, the imposition of DST on instructional letters or vouchers should necessarily fail."

Thus, the assessment for documentary stamp tax in the amount of P514,881.47 should be cancelled for lack of legal basis.

WHEREFORE, the Petition for Review is granted as regards the assessment for deficiency EWT and DST for the taxable year 2000. The deficiency EWT and DST assessments for the respective amounts of P410,236.79 and P514,881.47 are hereby **CANCELLED** and **WITHDRAWN** for lack of basis.

However, the assessment for deficiency VAT is **AFFIRMED**. Petitioner is liable to pay deficiency VAT in the amount of P3,464,253.56, computed as follows:

Undeclared Gross Receipts:	
1st Quarter	P 8,043,381.56
4th Quarter	9,120,744.31
Total	P 17,164,125.87
Deficiency Output VAT Due	P 1,716,412.59
Add: 25% Surcharge	429,103.15
Interest (1-26-01 to 11-29-04)	1,318,737.82
Total Amount due	**P 3,464,253.56**

In addition, petitioner is liable to pay 20% delinquency interest on the amount of P3,464,253.56 computed from November 29, 2004 until full payment thereof pursuant to Section 249(C)(3) of the Tax Code.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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.

ERNESTO D. ACOSTA
Presiding Justice
Chairman, First Division