REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

REPUBLIC CEMENT CORPORATION (as surviving corporation in a merger involving FR CEMENT CORPORATION),
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB CASE No. 821
(CTA Case No. 7114)

Members:

ACOSTA, *P.J.,*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
PALANCA-ENRIQUEZ
FABON-VICTORINO,
MINDARO-GRULLA, and
COTANGCO-MANALASTAS, *JJ.*

Promulgated:

JUL 18 2012 2:30 p.m.

X- X

DECISION

Casanova, J.:

This is an appeal to the Court of Tax Appeals (CTA) *En Banc* by way of a verified Petition for Review[1], under Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals, seeking the reversal of the Decision[2] dated

---
[1] CTA En Banc Rollo, pp. 50-90.
[2] Annex "A" to Petition for Review, *Ibid.*, pp. 92-115.

March 17, 2011 (Assailed Decision) and the Amended Decision[3] dated August 2, 2011 (Assailed Amended Decision), both rendered by the CTA Third Division.

The facts of the case, as found by the CTA Third Division are briefly narrated as follows[4]:

> "Petitioner FR Cement Corporation is a corporation duly organized and existing under the laws of the Philippines. It is engaged in the manufacture and distribution of cement, concrete aggregates and concrete products generally for the building and construction industry, and to carry on all businesses incident thereto or connected therewith.
>
> Respondent is the duly appointed Commissioner of the Bureau Internal Revenue (BIR) who holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.
>
> Petitioner filed its 1999 Annual Income Tax Return (ITR) on April 17, 2000 with the BIR Revenue District Office (RDO) No. 121, Excise Taxpayers Division in accordance with Section 77 of the National Internal Revenue Code (NIRC) of 1997. Petitioner's Annual ITR for taxable year ended December 31, 1999 disclosed a net operating loss of P183,936,519.00.
>
> Petitioner filed its Quarterly Value-added Tax Returns for taxable year 1999 on the following dates.

PERIOD	DATE OF FILING
1ST Quarter	April 23, 1999
2nd Quarter	July 26, 1999
3rd Quarter	October 25, 1999
4th Quarter	January 25, 2000

> For taxable years 2000, 2001, and 2002, petitioner filed its Annual ITRs on the following dates:

TAXABLE YEAR	DATE OF FILING
2000	April 18, 2001
2001	April 15, 2002
2002	April 15, 2003

> Petitioner received a Letter of Authority No. 00003024 dated August 8, 2000 from the BIR, authorizing the examination of

---

[3] Annex "B" to Petition for Review, *Ibid.*, pp. 117-132.
[4] Decision, CTA En Banc Rollo, pp. 93-102.

petitioner's books of accounts and other financial records for all internal revenue taxes for taxable year ended December 31, 1999.

Petitioner executed a 'Waiver of the Defense of Prescription Under the Statute of Limitations of the National Internal Revenue Code' (the 'First Waiver') on December 19, without indicating the year it was signed by the taxpayer but appears to be notarized on January 7, 2003.

On April 22, 2003, petitioner received a Preliminary Assessment Notice dated March 3, 2003 for alleged deficiency taxes pertaining to taxable year ended December 31, 1999.

Subsequently, petitioner was made to execute five (5) other waivers on May 6, 2003 (the 'Second Waiver'), August 26, 2003 (the 'Third Waiver'), October 15, 2003 (the 'Fourth Waiver'), November 11, 2003 (the 'Fifth Waiver'), and January 6, 2004 (the 'Sixth Waiver'), purportedly to afford respondent more time to assess and collect taxes beyond the prescriptive period provided under the NIRC of 1997.

On March 3, 2004, petitioner received from respondent Assessment Notice Nos. IT-99-00049, WFVAT-99-00001, and WTC-99-00020, together with the accompanying Formal Letter of Demand, all dated February 18, 2004 for alleged deficiency income tax, withholding of final value-added tax, and withholding tax on compensation for taxable year ended December 31, 1999 in the aggregate amount of P450,373,870.86, inclusive of interest and compromise penalties.

Based on the said Assessment Notices, petitioner is liable for deficiency income tax of P422,754,163.08, withholding of final VAT of P27,614,045.70, and withholding tax on compensation in the amount of P5,662.08, inclusive of interests and compromise penalties, detailed as follows:

Deficiency Income Tax	
Tax Due	P 238,372,145.64
Add: Interest	184,357,017.44
Compromise Penalty	25,000.00
TOTAL AMOUNT DUE	P 422,754,163.08
Deficiency Withholding of Final VAT	
Tax Due	P 15,177,162.34
Add: Interest	12,411,883.36
Compromise Penalty	25,000.00
TOTAL AMOUNT DUE	P 27,614,045.70
Deficiency Withholding Tax on	

Compensation	
Tax Due	P 2,564.68
Add: Interest	2,097.40
Compromise Penalty	1,000.00
TOTAL AMOUNT DUE	P 5,662.08

On April 1, 2004, petitioner filed an administrative protest on the ground that the assessments are without legal and factual bases.

On December 22, 2004, petitioner received from respondent a Final Decision on Disputed Assessment, partially granting the protest of petitioner, together with Assessment Notice Nos. IT-99-00067, WFVAT-99-00044, and WTC-99-00012, all dated December 16, 2004.

In the assessment of deficiency income tax, respondent disallowed the deduction from petitioner's gross income from the write-off of investment during taxable year 1999 for being unsubstantiated, and noted a discrepancy in the volume of cement bags produced in the Daily Operation Report and the Production Cost Summary of petitioner for taxable year 1999. The aforesaid discrepancy was then concluded to have resulted in an under-declaration of income in the amount of P4,953,047.36, after considering the average selling price and unit cost per bag of cement.

Respondent also assessed petitioner of deficiency income tax pertaining to the clinker sales for taxable year 1999 in the amount of P34,293,759.25 on the assumption that clinker sales are not covered by petitioner's Income Tax Holiday in 1999, and that a correcting entry in the amount of P44,243,824.52 in relation to the purported disposal of heavy equipment in 1998 is not a deductible expense but should have been charged to Retained Earnings in 1999. Respondent disallowed deduction from petitioner's gross income in 1999 of various payments to suppliers of goods and services amounting to P63,705,446.21 that were allegedly not subjected to withholding tax. Respondent also disallowed deduction from petitioner's gross income in the amount of P2,467,706.25, representing depreciation expense corresponding to payments made to non-resident foreign corporations, which were charged to property account but were not subjected to final withholding tax.

Respondent alleged that petitioner failed to withhold ten percent (10%) VAT on its payments to non-resident foreign corporations amounting to P151,771,623.25, broken down as follows:

PAYMENTS	AMOUNT
Management fee (royalty)	P 3,709,248.00
Retention and Service of Elex Engineers	12, 663,679.57
Krupp Polysius Service Contract	115,064,153.53
BMH Claudius Engineers	8, 516,179.13

Retention and Service Fee of Mr. Jadgmann	6,840,442.64
BMH Claudius Engineers	4,977,920.38
TOTAL	**P 151,771,623.25**

In the Final Decision and the revised Assessment Notices, respondent assessed petitioner of deficiency income tax of P100,021,835.16, withholding of final VAT of P30,429,409.29, and withholding tax on compensation in the amount of P6,137.82, inclusive of interest and compromise penalties for taxable year 1999, computed as follows:

Deficiency Income Tax		
Tax Due	P	51,050,048.58
Add: Interest		48,946,786.58
Compromise Penalty		25,000.00
TOTAL AMOUNT DUE	P	100,021,835.16
Deficiency Withholding of Final VAT		
Tax Due	P	15,177,162.33
Add: Interest		15,227,246.96
Compromise Penalty		25,000.00
TOTAL AMOUNT DUE	P	30,429,409.29
Deficiency Withholding Tax on Compensation		
Tax Due	P	2,564.68
Add: Interest		2,573.14
Compromise Penalty		1,000.00
TOTAL AMOUNT DUE	P	6,137.82

Consequently, upon receipt of the above-mentioned Final Decision on Disputed Assessment on December 22, 2004, petitioner filed the instant Petition for Review on December 23, 2004, praying that the deficiency income tax and withholding of final VAT in the amounts of P100,021,835.16 and P30,429,409.29, respectively, inclusive of interest and compromise penalties, for taxable year 1999 be declared devoid of factual and legal bases, and that the above-mentioned assessments be withdrawn and cancelled.

In his Answer filed on February 21, 2005, respondent interposed the following Special and Affirmative defenses:

'SPECIAL AND AFFIRMATIVE DEFENSES

3. The right of the government to assess has not prescribed, as petitioner executed valid waivers of the statute of limitations extending the prescriptive

period to assess pursuant to Section 222 of the Tax Code.

INCOME TAX

4. Investment in stock amounting to P5,033,333.33 was written off and deducted as expense. However, petitioner failed to meet the deductibility requirements pursuant to Section 34(A)(1)(b) of the NIRC, hence disallowed as expense.

5. There was a discrepancy in the taxable sales per investigation as against taxable sales per income tax return in the amount of P34,293,759.25 representing clinker sales which is not included for purposes of Income Tax Holiday, hence, assessed as income pursuant to Section 32 of the Tax Code.

6. Comparison of production in cement bags per Daily Operation Report versus Production Cost Summary resulted to a discrepancy in the number of cement bags. Since the discrepancy was no longer included in the inventory, it was considered sold. The number of cement bags multiplied by average selling price minus the cost resulted to unreported income of P4,953,047.36, hence, assessed pursuant to Section 32 of the Tax Code.

7. Correcting entry in relation to the disposal of heavy equipment in 1998 amounting to P44,243,620,886.13 was charged to Other Expense on Management Operation (Depreciation Expense) instead of Retained Earnings. Verification, likewise, disclosed that the entry made was to correct the debit balance of accumulated depreciation, hence, the disallowance pursuant to Section 34(A)(1)(b) of the Tax Code.

8. Income payments amounting to P63,705,446.21, which were not subjected to withholding tax under Revenue Regulations 2-98, were disallowed as expense pursuant to Section 34(K) of the Tax Code.

9. Payments for services to non-resident foreign corporation amounting to P151,771,623.25 were not subjected to final tax but were charged to property account, hence, the disallowance of depreciation expense pertaining to the months not

covered by ITH in the amount of P2,467,706.25 pursuant to Section 34(K) of the Tax Code.

WITHHOLDING OF FINAL VAT

10. Investigation disclosed that there were payments for services to non-resident foreign corporations which were not subjected to final withholding VAT. Petitioner failed to submit proof that the payments to Krupp Polysius and Elex Engineers were for 1998 transactions, hence, the assessment in the amount of P151,771,623.25 pursuant to Section 114 (C) of the Tax Code and Revenue Regulations No. 7-95.

WITHHOLDING TAX ON COMPENSATION

11. Comparison of withholding tax due per Alphalist of P16,962,271.66 versus Remittance per Returns of P16,959,706.98 resulted to a discrepancy of P2,564.68. Petitioner failed to submit proof of remittance of said amounts, hence, the assessment pursuant to Sections 80 and 81 of the Tax Code.

12. The assessment was issued in accordance with law and regulations.

13. All presumptions are in favor of the correctness of tax assessments.'

During trial, petitioner presented as witnesses the following: Ms. Amie Ajero, Mr. Gilbert Q. Aresta, Mr. Emmanuel Y. Mendoza, and Mr. Rodel N. Binuya. Thereafter, petitioner filed its Formal Offer of Evidence on March 3, 2008, submitting Exhibits 'A' to 'O', and 'T' to 'MM', inclusive of submarkings.

On March 18, 2008, petitioner filed a Manifestation and Omnibus Motion praying, among others, for the reduction of the amount of bond equivalent only to one and one half times the amount of P30,429,409.29, the remaining deficiency final withholding VAT being collected or in the total amount of P45,644,113.93, in light of petitioner's availment of the tax amnesty program on March 6, 2008; and to order respondent to reflect in the BIR's records the closure and termination of the deficiency income tax assessment pursuant to Republic Act (R.A.) No. 9480 by issuing an Authority to Cancel Assessment or any other document showing the same.

On June 23, 2008, petitioner filed a Supplement [To Petition for Review dated December 22, 2004 Pursuant to Sec. 6, Rule 10 of the 1997 Rules of Civil Procedure]. In the said Supplement, petitioner alleged that on March 6, 2008, it availed of the tax amnesty program pursuant to R.A. No. 9480 and paid the amnesty tax amounting to P7,162,084.00. Thus, petitioner averred that it is immune from the payment of taxes and the appurtenant civil, criminal or administrative penalties under the NIRC of 1997, particularly, the assessment for deficiency income tax for the year 1999, in the amount of P100,021,835.16. Petitioner further asserted that what remains pending for the resolution of this Court is the issue of deficiency withholding of final VAT assessment in the amount of P30,429,409.29.

In the Resolution dated October 29, 2008 this Court resolved among others, that petitioner had duly complied with the provisions of R.A. No. 9480 and thereby noted and granted petitioner's Manifestation and Motion filed on March 18, 2008. Consequently, the instant Petition for Review was deemed withdrawn as regards the issue on petitioner's deficiency income tax and the case covering the same was considered closed and terminated, subject to the provisions of R.A. No. 9480. However, petitioner's deficiency withholding of final VAT and deficiency withholding tax on compensation assessments, which are not covered by the law, stays.

In a Resolution dated December 4, 2008, this Court, resolved among others, the admissibility of petitioner's exhibits in its Formal Offer of Evidence filed on March 3, 2008. On December 22, 2008, petitioner filed a Motion praying for the reconsideration of the Resolution dated December 4, 2008 and the admission of Exhibits 'T-3', 'BB', 'LL', 'LL-1', and 'MM', which this Court granted in a Resolution dated February 5, 2009.

On February 23, 2009, petitioner filed a Motion to Amend Caption of this case from, 'FR Cement Corporation vs. Commissioner of Internal Revenue' to 'Republic Cement Corporation (as surviving corporation in a merger involving FR Cement Corporation) vs. Commissioner of Internal Revenue'. In the Resolution dated March 16, 2009, this Court granted the above motion and the caption of the case was then changed to 'Republic Cement (as surviving corporation in a merger involving FR Cement Corporation) vs. Commissioner of Internal Revenue.'

On the other hand, on September 15, 2009, respondent presented as lone witness Mr. Avelino P. Domaoan, Jr. Thereafter, on October 27, 2009 respondent filed his Formal Offer of Evidence submitting Exhibits '1' to '8', inclusive of sub-markings; which this Court admitted in a Resolution dated January 5, 2010.

The case was submitted for decision on April 6, 2010, taking into consideration the Memorandum of petitioner filed on March 15, 2010 and Reply-Memorandum filed on April 5, 2010; and respondent's Memorandum filed on March 19, 2010.

The following are the parties' jointly stipulated issues submitted for this Court's consideration:

'1. Whether or not the right of the Government to assess deficiency taxes for the taxable year ended December 31, 1999 (sic) has already prescribed.
2. Assuming the right of the Government to assess deficiency taxes for taxable year ended December 31, 1999 has not yet prescribed, whether or not the assessment notices should be cancelled for lack of factual and legal bases.
3. Whether or not petitioner is liable to pay the amount of P130,451,244.45 as deficiency income tax and withholding of final VAT for taxable year 1999.

On March 17, 2011, the CTA Third Division promulgated the Assailed Decision partially granting petitioner's claim, to wit:

"**WHEREFORE**, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, the assessment of deficiency creditable withholding VAT for taxable year 1999 is hereby **AFFIRMED** with some **MODIFICATIONS.** Accordingly, petitioner is hereby **ORDERED TO PAY** respondent the amount of P10,044,824.64 inclusive of the twenty-five percent (25%) surcharge imposed under Section 248 (A)(3) of the NIRC of 1997, as amended, computed as follows:

Taxable basis per return			P 40,958,527.00
Add:	Royalty payments to Non Resident Foreign Corporation – Sec. 114(C) NIRC		
	Retention and Service of Elex Engineers	P 12,663,679.57	
	Krupp Polysius Service Contract	47,452,006.64	
	BMH Claudius Engineers	8,424,547.88	
	Retention and Service Fee of Mr. Jadgmann	6,840,442.64	
	BMH Claudius Engineers	4,977,920.38	80,358,597.11
Taxable basis per Investigation			P 121,317,124.11
Tax Due per Investigation			P 12,131,712.41
Less:	Payments per Return		4,095,852.70
Deficiency Creditable Withholding VAT			P 8,035,859.71
Add:	25% Surcharge		2,008,964.93

a

Total Deficiency Creditable Withholding VAT		**P 10,044,824.64**

Likewise, petitioner is hereby **ORDERED TO PAY** (a) deficiency interest at the rate of twenty percent (20%) *per annum* on the basic deficiency creditable withholding VAT of P8,035,859.71 computed from January 25, 2000, until full payment thereof pursuant to Section 249(B) of the NIRC of 1997; and (b) delinquency interest at the rate of twenty percent (20%) *per annum* on the total deficiency taxes of P10,044,824.64 and on the 20% deficiency interest which have accrued as afore-stated in (a) computed from December 22, 2004 until full payment thereof, pursuant to Section 249(C) of the NIRC of 1997.

SO ORDERED."

On April 5, 2011, petitioner filed its Motion for Partial Reconsideration [of Decision dated March 17, 2011][5] while respondent filed its Motion for Partial Reconsideration (Re: Decision promulgated 17 March 2011)[6] on April 7, 2011.

In a Resolution[7] dated April 18, 2011, CTA Third Division ordered the parties to comment on each other's Motion for Partial Reconsideration within 10 days from notice thereof.

On May 6, 2011, petitioner filed its Opposition [To Respondent's Motion for Partial Reconsideration dated April 7, 2011] while respondent failed to file her Comment on petitioner's Motion for Partial Reconsideration.[8]

On August 2, 2011, the CTA Third Division promulgated the Assailed Amended Decision[9] which resolved the parties' respective Motions for Partial Reconsideration of the Assailed Decision. In the Assailed Amended Decision, the CTA Third Division partially granted petitioner's Motion while denying that of the respondent's, to wit:

"**WHEREFORE,** premises considered, petitioner's ***Motion For Partial Reconsideration*** *[of the Decision dated March 17, 2011]* is

[5] Division Docket, (Vol. II), pp. 873-904.
[6] *Ibid.*, pp. 872-a-872-h.
[7] *Id.*, pp. 906-907.
[8] Records of Verification dated June 8, 2011, *Id.*, p. 926.
[9] CTA En Banc Rollo, pp. 117-132.

hereby **PARTLY GRANTED.** Accordingly, the reckoning date of the delinquency interest is from January 31, 2005 until full payment pursuant to Section 249 (C) of the NIRC.

On the other hand, respondent's **Motion for Partial Reconsideration** *(Re: Decision promulgated 17 March 2011)* is hereby **DENIED** for lack of merit.

SO ORDERED."

Hence, the present Petition for Review.

Petitioner raised the following issues before this Court:

I.

WHETHER OR NOT THE ASSESSMENT NOTICES SHOULD BE CANCELLED FOR LACK OF FACTUAL AND LEGAL BASES.

II.

WHETHER OR NOT PETITIONER IS LIABLE TO PAY THE AMOUNT OF P30,429,409.29 AS DEFICIENCY WITHHOLDING OF FINAL VAT FOR TAXABLE YEAR 1999.

III.

WHETHER OR NOT THE CTA DIVISION ERRED IN THE APPLICATION OF THE DEFICIENCY INTEREST AND DELINQUENCY INTEREST UNDER SECS. 249 (B) AND (C) OF THE 1997 NIRC, AS AMENDED.

On September 16, 2011, the CTA *En Banc* issued a Resolution[10] ordering respondent to file her Comment to the subject petition. Respondent failed to file her Comment.[11]

On November 17, 2011, the instant case was submitted for decision.[12]

After a careful and thorough evaluation of the arguments raised by petitioner, this Court finds no merit in the present petition.

---

[10] *Ibid.*, pp.213-214.

[11] Records Verification Form, *Id.*, p. 215.

[12] *Id.*, pp. 217-218.

We shall discuss the first and second issues jointly, the two being intrinsically intertwined.

This Court affirms the ruling of the CTA Third Division that there are factual and legal bases in the assessment for deficiency withholding tax on VAT imposed upon petitioner in relation to its payments to non-resident foreign corporations or entities.

Retention and Service of Elex Engineers

Petitioner's arguments stating that the payments to Elex Engineers, BMH Claudius Engineers, Mr. Jadgmann and Krupp Polysius should not be subject to withholding VAT for being made prior to 1999 cannot be sustained. Petitioner was not able to sufficiently prove its allegations. The pieces of evidence that it presented before this Court are but self-serving and unverifiable.

Petitioner alleges that the payments to Elex Engineers in the total amount of 12,663,679.57 were actually made prior to 1999 and that Journal Voucher No. 070125 is a mere reclassification entry from Prepaid Importation Charges, a temporary expense account, to Factory Ledger, a fixed asset account, for the purpose of capitalizing the expenses incurred upon completion of the plant in Teresa, Rizal. It further contends that the transaction recorded in said journal voucher did not show any corresponding credit to cash or accounts receivable, and as such, it is evident that the transaction did not involve payment of any kind. Lastly, petitioner rationalizes its submission of Journal Voucher No. 070125 as the sole piece of evidence to support its claim by pointing out that respondent issued the subject assessment based only on the said journal voucher. Petitioner states that "to hold that Journal Voucher No. 070125 is 'unverifiable, self-serving, if not dubious, and can be contrived easily' is like confirming that respondent's assessment of the payment to Elex Engineers is likewise without basis and thus, invalid, as respondent ***solely*** based its assessment on the same journal voucher that the Honorable Court passed its judgment upon. In such case, this particular item of assessment, representing payment to Elex Engineers should likewise be cancelled and withdrawn."

The Court is not convinced.

Undeniably, Journal Voucher No. 070125, being a document generated and used by petitioner for internal purposes, is far from being a persuasive evidence to prove petitioner's claim that the aforementioned entry is a mere reclassification entry and that the amounts stated therein represent payments to non-resident foreign corporations/entities made prior to the taxable year 1999. Petitioner has the obligation to sufficiently prove its claim that the said payments were indeed made prior to 1999, hence should not be subject to deficiency withholding VAT. This, petitioner failed to do.

Krupp Polysius Service Contract

In the Assailed Decision, this Court held that a perusal of supporting documents for the payments to Krupp Polysius' account reveals that only the amount of P67,612,146.89 can be ascertained as payment to domestic corporation and were made from 1996 to 1998, making the unverified amount of P47,452,006.64 subject to withholding of final VAT.

Petitioner submits that the payments that were disallowed by the CTA Third Division were all duly supported by original cash vouchers, billing letters and provisional receipts, all dated prior to 1999. Moreover, petitioner submits that under the ICPA Report, the foregoing payments were determined to have been made prior to 1999 and thus not covered by the present examination and assessment.

We do not agree with the contentions of petitioner. We affirm the ruling of the CTA Third Division subjecting the unverified amount of P47, 452,006.64 to withholding of final VAT. This Court finds that the supporting documents submitted by petitioner do not sufficiently substantiate its claim that these payments were made prior to 1999 and thus should not be subjected to withholding VAT. As enunciated in the Assailed Amended Decision, We cannot ascertain the truth of petitioner's allegations based on the vouchers alone. And, considering that petitioner was able to present some documents in support of these vouchers which led to the partial grant of its prayer, We find no reason why petitioner cannot do the same for the rest of the payments to Krupp.

Payments to BMH Claudius Engineers

In the Assailed Decision, the CTA Third Division ruled that the aforementioned payments to BMH Claudius Engineers should be subject to withholding of final VAT as the supporting documents submitted to this Court revealed that these payments were made in 1999, to BMH Claudius Engineers, a non-resident foreign corporation, based in Germany. Furthermore, it was ascertained by the Independent CPA that petitioner did not file nor remit the withholding VAT related to payments made to BMH Claudius Engineers. Thus, this Court upholds the CTA Third Division's decision that respondent's assessment of deficiency withholding VAT on petitioner's payments to BMH Claudius Engineers in the amount of P8,424,547.88.

Retention and Service Fee of Mr. Jadgmann

The Assailed Decision held that the payments recorded in the manual ledger under the name of Mr. Jadgmann amounting to P6,840,442.64 should be subject to withholding of creditable VAT. In the case at bench, petitioner contends that said payment should not be subject to deficiency withholding VAT on the ground that out of the said amount, P6,612,115.51 represents payment made prior to 1999 to Babcock Materials Handling in relation to the retention fee for the purchase of machinery and equipment and P44,727.60 represents payment for the engineering services of Mr. Jadgmann made in 1998.

Petitioner's contention deserves scant consideration. As found by the CTA Third Division, petitioner was not able to sufficiently prove its claim that the amount of P6,612,115.51 represents payment of retention fee in relation to the purchase of machinery and equipment. The journal voucher submitted by the petitioner is considered self-serving, and the invoices and Import Entry and Internal Revenue Declarations it presented do not show the amount being claimed as retention fee. The CTA Third Division also stressed its finding that the Independent CPA was not able to validate the supporting documents on the alleged payment of the said retention fee.

As for the payment for the services of Mr. Jadgmann in the amount of P44,727.60, petitioner, likewise, failed to prove that such payment was made prior to 1999. Petitioner presented its journal voucher and the related invoice, in support of its claim. As previously held by this Court, such pieces of evidence are considered self-serving and least persuasive in judicial claims such as in the case at bench.

We note that petitioner failed to submit supporting evidence in relation to the amount of P183,599.53 representing additional charges on foreign exchange difference, thus We uphold the ruling of CTA Third Division subjecting this amount to withholding VAT.

Thus, for grounds discussed above, We affirm the CTA Third Division's Decision to subject the payment of P6,840,442.64 recorded in the manual ledger under the name of Mr. Jadgmann to withholding VAT.

Payments to BMH Claudius Engineers

Petitioner claims that the alleged payments to BMH Claudius Engineers in the amount of P4,977,920.38 were made prior to 1999 and that the transaction recorded in Journal Voucher No. 070127 was merely a reclassification entry from Prepaid Importation Charges, a temporary expense account, to PPE Expansion, a fixed asset account, for the purpose of capitalizing the expenses incurred upon the completion of the expansion project of petitioner's plant in Teresa, Rizal.

Petitioner submitted Journal Voucher No. 070127 to support its allegations, saying that the primary reason for doing so is to show that respondent based her assessment solely on such journal voucher, which is extremely unfounded. Petitioner further claims that the said journal voucher showed no indication that the transaction recorded therein is a payment. Petitioner added that the Independent CPA's findings reveal that the transaction covered was a mere reclassification entry.

This Court does not agree with petitioner. As previously held by this Court, journal vouchers, being a document used for internal purposes, is unverifiable and self-serving. Absent any other document to corroborate the allegations it presented, We cannot subscribe to the submissions of petitioner. It is the obligation of petitioner to fully substantiate its claim before this Court. Unlike tax assessments that enjoy the presumption of regularity, taxpayers' claims of no liability against deficiency taxes should be sufficiently established and, by that, clear and convincing evidence should be presented to support such claims.

The Imposition of Deficiency and Delinquency Interests

Anent the issue of the imposition of deficiency and delinquency interests pursuant to Sec. 249 (B) and (C) of the 1997 NIRC, We hold that the CTA Third Division did not err in applying the following interests to the case at bench: deficiency interest at the rate of twenty (20%) per annum on basic deficiency creditable withholding VAT of P8,035,859.71 computed from January 25, 2000 until full payment thereof pursuant to 249 (B) of the 1997 NIRC Section and delinquency interest at the rate of twenty (20%) per annum on total deficiency taxes of P10,044,824.64 and on 20% deficiency interest from January 31, 2005 until full payment thereof pursuant to Section 249 (C) of the 1997 NIRC.

Section 249 of the 1997 NIRC is clear on the imposition of these interests in the event that the taxpayer is held liable for deficiency taxes. Section 249 states that:

> "**SEC. 249.** ***Interest.*** –
>
> (A) In General. - There shall be assessed and collected on any unpaid amount of tax, interest at the rate of twenty percent (20%) per annum, or such higher rate as may be prescribed by rules and regulations, from the date prescribed for payment until the amount is fully paid.
>
> **(B) Deficiency Interest. - Any deficiency in the tax due, as the term is defined in this Code, shall be subject to the interest prescribed in Subsection (A) hereof, which interest shall be assessed and collected <u>from the date prescribed for its payment until the full payment thereof.</u>**
>
> **(C) Delinquency Interest. - In case of failure to pay:**
> **(1) The amount of the tax due on any return to be filed, or**
> **(2) The amount of the tax due for which no return is required, or**
> **(3) A deficiency tax, or any surcharge or interest thereon on the due date appearing in the notice and demand of the Commissioner, there shall be assessed and collected on the unpaid amount, <u>interest at the rate prescribed in Subsection (A) hereof until the amount is fully paid, which interest shall form part of the tax.</u>**
>
> (D) Interest on Extended Payment. - If any person required to pay the tax is qualified and elects to pay the tax on installment under the provisions of this Code, but fails to pay the tax or any installment hereof, or any part of such amount or installment on or before the date prescribed for its payment, or where the Commissioner has authorized an extension of time within which to pay a tax or a deficiency tax or any part thereof, there shall be assessed and collected interest at the rate hereinabove prescribed on the tax or deficiency tax or any part thereof unpaid from the date of notice and demand until it is paid."

Petitioner contends that the Assailed Decision and Assailed Amended Decision erred in ruling on the periods within which the interests, particularly the deficiency interest, will run. It alleges that deficiency interest under Section 249 (B) of the 1997 NIRC should be computed from date prescribed for the payment of deficiency tax until the last day to pay the same under the Assessment Notice. Applying this rule in the instant case, it is petitioner's contention that the deficiency interest should be computed from January 25, 2000 to January 31, 2005. On the other hand, petitioner alleges that delinquency interest should be imposed from February 1, 2005 until full payment thereof. In making the aforementioned submissions, petitioner cited the provisions of Revenue Memorandum Circular (RMC) No. 46-99 and Revenue Regulations (RR) No. 12-99 as support.

It is a well-settled rule that in case of discrepancy between the basic law and the implementing rules and regulations, the basic law prevails because rules and regulations cannot go beyond the provisions of the basic law it seeks to implement.[13] The Supreme Court held, in the case of *Felix B. Perez and Amante G. Doria vs. Philippine Telegraph and Telephone Company and Jose Luis Santiago*[14]*:*

> "At the outset, we reaffirm the time-honored doctrine that, in case of conflict, the law prevails over the administrative regulations implementing it The authority to promulgate implementing rules proceeds from the law itself. To be valid, a rule or regulation must conform to and be consistent with the provisions of the enabling statute. As such, it cannot amend the law either by abridging or expanding its scope."

The law cannot be more explicit as to the period covered for the computation of the aforementioned interests. The deficiency interest should

---

[13] Rodolfo G. Navarro, Victor F. Bernal, and Rene O. Medina vs. Executive Secretary Eduardo Ermita, Representing the President of the Philippines; Senate of the Philippines, represented by the Senate President; House of Representatives, represented by the House Speaker; Governor Robert Ace S. Barbers, Representing the Mother Province of Surigao Del Norte; Governor Geraldine Ecleo Villaroman, representing the New Province of Dinagat Islands, G.R. No. 180050, May 12, 2010, Commissioner of Internal Revenue, vs. Bicolandia Drug Corporation (formerly known as Elmas Drug Co.), G.R. No. 148083, July 21, 2006.
[14] G.R. No. 152048, April 7, 2009.

be computed from the date prescribed for the payment of the deficiency tax until full payment thereof. On the other hand, delinquency interest should be computed from the due date prescribed under the Assessment Notice until the full payment thereof.

In sum, the *CTA En Banc* finds no cogent justification to disturb the findings and conclusion spelled out in the Assailed Decision dated March 17, 2011 and the Assailed Amended Decision dated August 2, 2011, both promulgated by the CTA Third Division. What the instant petition seeks is for the Court *En Banc* to view and appreciate the arguments/discussions raised by the petitioner in its own perspective of things, which unfortunately had already been considered and passed upon by the Court.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DISMISSED** for lack of merit. Accordingly, the March 17, 2011 Decision and the August 2, 2011 Amended Decision of the CTA Third Division are hereby **AFFIRMED *in toto***.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

See concurring & dissenting opinion
ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
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.

ERNESTO D. ACOSTA
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

REPUBLIC CEMENT CORPORATION (as surviving corporation in a Merger involving FR CEMENT CORPORATION)
Petitioner,

C.T.A. EB No. 821
(C.T.A. Case Nos. 7114)

-versus-

Present:
ACOSTA, *PJ*,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
PALANCA-ENRIQUEZ,
FABON-VICTORINO,
MINDARO-GRULLA *and*,
COTANGCO-MANALASTAS, *JJ.*.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUL 1 8 2012 aWApolinario 2:30 p.m.

x---x

CONCURRING AND DISSENTING OPINION

I agree with the majority that petitioner is liable for deficiency creditable withholding tax but humbly disagrees with the manner the deficiency interest and delinquency interests are computed.

The imposition of civil penalties is provided in Section 249 (A), (B) and (C) of the 1997 Tax Code, provides:

> **SEC. 249. Interest. -**
>
> **(A) In General.** - There shall be assessed and collected on any unpaid amount of tax, interest at the rate of twenty percent (20%) per annum, or such higher

Ek

> rate as may be prescribed by rules and regulations, from the date prescribed for payment until the amount is fully paid.
>
> **(B) Deficiency Interest.** - Any deficiency in the tax due, as the term is defined in this Code, shall be subject to the interest prescribed in Subsection (A) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof.
>
> **(C) Delinquency Interest.** - In case of failure to pay:
>
> (1) The amount of the tax due on any return to be filed, or
>
> (2) The amount of the tax due for which no return is required, or
>
> (3) A deficiency tax, or any surcharge or interest thereon on the due date appearing in the notice and demand of the Commissioner, there shall be assessed and collected on the unpaid amount, interest at the rate prescribed in Subsection (A) hereof until the amount is fully paid, which interest shall form part of the tax.

The majority opines that the deficiency interest is to be computed from the date prescribed for the payment of deficiency tax until full payment thereof. The delinquency interest, on the hand, is to be computed from the due date prescribed under the Assessment Notice until the full payment thereof.

In effect, it is the opinion of the majority that an imposition of the deficiency interest runs simultaneous with the delinquency interest after the date prescribed by the FAN, which effectively results in the imposition of at least a 40% interest per annum on the deficiency withholding tax. Clearly, this is not the intent of the law. I believe that an imposition of at least a 40% per annum interest on any unpaid tax is grossly excessive and unjust, one that partakes the nature of an imposition that is penal, rather than compensatory.

The Supreme Court, in the old case of **Jamora, et al. vs. Meer, etc., et al.** (74 Phil. 22 (1942), stressed that the imposition of penalties for unpaid taxes, such as interest, is mandatory and cannot be condoned lightly:

> " xxx Tax laws imposing penalties for delinquencies are clearly intended to hasten tax payments or to punish evasions or neglect of duty in respect thereof.

ga

> If delays in tax payments are to be condoned for light reasons, the law imposing penalties for delinquencies would be rendered nugatory, and the maintenance of the government and its multifarious activities would be as precarious as tax payers are willing or unwilling to pay their obligations to the state in time. The imperatives of public welfare will not approve of this result."

However, despite its mandatory imposition, the Supreme Court ruled that penalties for unpaid taxes due are not penal in character but are actually compensatory and laid down the rationale in imposing the same,[1] *viz:*

> "As regards interest, the reason is —
>
> The imposition of 1% monthly is but a just compensation to the State **for the delay in paying the tax and for the concomitant use by the taxpayer of funds that rightfully should be in the government's hands. (U.S. vs. Goldstein, 189 F (2d) 752; Ross vs. U.S. 148 Fed. Supp. 330; U.S. vs. Joffray 97 Fed. (2d) 488.) The fact that the interest charged is made proportionate to the period of delay constitutes the best evidence that such interest is not penal but compensatory** (Castro vs. Collector of Internal Revenue, G.R. L-12174, Dec. 28, 1662, Resolution on Motion for Reconsideration.)" (Emphasis ours.)

Noteworthy is the old case of **Commissioner of Internal Revenue vs. Connel Bros. Company (Phil.) and Court of Tax Appeals**[2], wherein the Supreme Court explained the application of Republic Act No. 2342, from which the practice of imposing interest for delinquency, on top of the interest for deficiency tax started, to wit:

> Herein petitioner, Commissioner of Internal Revenue, now claims that in the imposition of interests and surcharges on the delinquent taxes in these cases, the respondent Court of Tax Appeals should have observed the old or unamended provision of Section 51 (e) of the Internal Revenue Code which was enforcible when the assessments were made, and not that of Section 51(d) of the same Code, as amended by Republic Act 2343, which went into effect only on 20 June 1959. It may be pointed out that before its amendment, Section 51(e) prescribed

---

[1] *Aguinaldo Industries Corporation vs. Commissioner of Internal Revenue,* G.R. No. L-29790 February 25, 1982.
[2] G.R. Nos. L-27752-53 August 30, 1971.

SEC. 51. *Assessment and payment of income tax.* —

xxx xxx xxx

(e) *Surcharge and interest in case of delinquency.* — To any sum or sums due and unpaid after the dates prescribed in subsections (b), (c) and (d) for the payment of the same, there shall be added the sum of five *per centum* on the amount of tax unpaid and interest at the rate of one *per centum* a month upon said tax from the time the same became due, except from the estates of insane, deceased, or insolvent persons.

As amended by Republic Act 2343, effective 20 June 1959, the provision now reads:

SEC. 51. —

xxx xxx xxx

(d) *Interest on deficiency.* — Interest upon the amount determined as a deficiency shall be assessed at the same time as the deficiency and shall be paid upon notice and demand from the Commissioner of Internal Revenue; and shall be collected as part of the tax, at the rate of six *per centum per annum* from the date prescribed for the payment of the tax (or, if the tax is paid in installments, from the date prescribed for the payment of the first installment) to the date the deficiency is assessed: Provided, that the maximum amount that may be collected as interest on deficiency shall in no case exceed the amount corresponding to a period of three years, the present provisions regarding prescription to the contrary notwithstanding.

(e) *Additions to the tax in case of non-payment.* —

xxx xxx xxx

(2) *Deficiency.* — Where a deficiency, or any interest assessed in connection therewith under paragraph (d) of this section, or any addition to the taxes provided for in section seventy-two of this Code is not paid in full within thirty-two days from the date of notice and demand from the Commissioner of Internal Revenue, there shall be collected upon the unpaid amount, as part of the tax, interest at the rate of one per centum, a month from the date of such notice and demand until it is paid: *Provided*, That the maximum amount that may be collected as interest on deficiency shall in no case exceed the amount corresponding to a period of three years, the present provisions regarding prescription to the contrary notwithstanding.

(3) *Surcharge.* — If any amount included in the notice and demand from the Commissioner of Internal Revenue is not paid in full within thirty days after such notice and demand, there shall be collected in addition to the interest prescribed herein and in paragraph (d) above and as part of the tax a surcharge of five *per centum* of the amount of tax unpaid.

In other words, under the old Section 51 (e), a delinquent taxpayer would have to pay, in addition to the unpaid tax, a 5% surcharge thereon computed from the time the tax became due, plus interest on the whole unpaid amount at the rate of 1% a month. Under the amendatory act

9a

> **(Republic Act 2343), the delinquent taxpayer shall pay, in addition to the tax, a deficiency interest thereon at the rate of 6% *per annum* computed from the date prescribed for payment of the income tax up to the assessment of the delinquency tax, but which shall not exceed the amount corresponding to a period of 3 years. The interest of 1% a month and surcharge of 5% on the whole unpaid amount shall be imposed only in case the delinquency tax and deficiency interest are not paid within 30 days from the date they become due. xxx** (Emphasis ours.)

From the foregoing, it can be deduced that the imposition of deficiency interest should be made from the date prescribed for payment until the assessment of the Commissioner of Internal Revenue for delinquency. Should the taxpayer fail to pay the assessed deficiency tax with corresponding deficiency interest, the imposition of delinquency interest is thereafter made.

Again, in summary, I believe that an imposition of 40% per annum interest on unpaid tax is grossly excessive and onerous. The proper computation should be that the 20% deficiency interest runs from the date prescribed for the payment of the unpaid or deficiency tax until only the date prescribed by the Final Assessment Notice (FAN) issued by the Commissioner of Internal Revenue. After which, only the delinquency interest (on the deficiency tax, deficiency interest and surcharge) is imposed on the taxpayer which will run until final payment of the total amount due.

ERNESTO D. ACOSTA
Presiding Justice