REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FIRST DIVISION

ISUZU PHILIPPINES CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8025

Members:

ACOSTA, *Chairperson*
UY, *and*
FABON-VICTORINO, *JJ.*

Promulgated:

DEC 11 2012, 2:30 p.m.

x- x

DECISION

UY, *J.*:

This is a Petition for Review filed on January 15, 2010 by Isuzu Philippines Corporation praying that judgment be rendered ordering that the assessment for alleged deficiency expanded withholding tax (EWT), as well as other compromise penalties and surcharges, in the aggregate amount of ₱6,464,280.71, be cancelled and withdrawn.

THE FACTS

Petitioner Isuzu Philippines Corporation is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with office address located at 114 Technology Avenue, Phase II, Laguna Technopark, Biñan, Laguna.[1] It is registered with the Bureau of Internal

[1] Par. 1, Facts Admitted, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 113.

Revenue (BIR), with Taxpayer Identification No. 004-834-871-000.[2]

On the other hand, respondent is the duly appointed Commissioner of Internal Revenue, vested under appropriate laws with the authority to carry out the functions, duties and responsibilities of said office, including, *inter alia*, the power to decide disputed assessments, cancel and abate tax liabilities, pursuant to the provisions of the National Internal Revenue Code (NIRC) of 1997 and other tax laws, rules and regulations. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.[3]

On January 14, 2009, petitioner received the Formal Letter of Demand dated January 13, 2009,[4] together with the Audit Result/Final Assessment Notice Nos. LTAID II WE-05-00003 and LTAID II WC-05-00002, assessing petitioner for alleged EWT and withholding tax on compensation, respectively, for taxable year 2005, in the aggregate amount of ₱ 20,129,406.70, broken down as follows:[5]

TAX TYPE	AMOUNT
EWT	₱ 18,832,530.98
Withholding Tax on Compensation	1,296,875.72
TOTAL	**₱ 20,129,406.70**

On February 13, 2009, petitioner protested the foregoing assessments by filing its letter dated February 12, 2009.[6] Subsequently, on April 8, 2009, petitioner filed another letter dated April 7, 2009, submitting to respondent the documents in support of its protest.[7]

On December 18, 2009 petitioner received respondent's Final Decision on Disputed Assessment (FDDA) dated December 1, 2009, together with the revised

[2] Exhibit "A", Docket, p. 268.
[3] Par. 2, Facts Admitted, JSFI, Docket, pp. 113 to 114.
[4] Exhibit "T", Docket, pp. 380 to 382; Exhibit "5", BIR Records, pp. 1385 to 1387.
[5] Par. 3, Facts Admitted, JSFI, Docket, p. 114. It must be noted that the aggregate amount of assessment was erroneously stipulated by the parties as ₱ 20,116,351.03.
[6] Exhibit "V", Docket, pp. 385 to 393.
[7] Exhibit "W", Docket, pp. 394 to 398.

Audit Result/Assessment Notice and Schedule of Adjustment per Final Assessment Notice (FAN) and FDDA.[8] Based on the FDDA and revised Assessment Notice, petitioner is still liable to a deficiency EWT in the reduced and aggregate amount of ₱ 6,464,280.71 for taxable year 2005, computed as follows:

Basic Tax Due	₱ 3,598,569.75
Add: Interest (January 20, 2006 to December 31, 2009)	2,840,710.96
Compromise Penalty	25,000.00
TOTAL AMOUNT DUE	₱ 6,464,280.71

The Basic Tax Due pertains to petitioner's payment for certain services which were subjected to the two percent (2%) withholding tax rate, detailed as follows:[9]

Manufacturing Overhead	
GA Canteen Expenses	₱ 3,737,028.23
GA Technical Assistance Expenses	18,573,897.00
Fire Insurance Expenses	2,925,164.32
Electricity Expenses	31,134,967.06
Water Supply Expenses	1,078,769.76
Shuttle Bus Expenses	4,930,104.68
Security Services	3,806,713.28
Janitorial Services	2,097,899.82
Repairs and Maintenance	23,310,763.22
Deductions per 1702	
Security Services	3,979,606.00
Janitorial Services	2,046,383.00
Other Outside Services	7,089,277.00
Advertising	135,688,144.00
Research Development	53,781.00
Interest	75,804,126.00
Insurance	3,253,270.00
Representation	7,302,250.16
Transportation	26,719,562.00
Communications, Light and Water	16,498,562.00
Miscellaneous	9,210,512.14
Warranties	69,516,518.00
Freight Storage	7,077,280.00

[8] Par. 4, Facts Admitted, JSFI, Docket, p. 114. Exhibits "X", "Y", and "Z", Docket, pp. 399 to 403. Exhibit "7", BIR Records, pp. 1708 to 1709.
[9] Exhibit "Z", Docket, pp. 402 to 403.

Professional Fees	20,469,326.50
Per BOC Data	
Freight	144,475,614.00
Insurance	16,921,225.00
Others	33,187.00
Total	**₱ 637,733,931.17**
EWT Due (₱ 637,733,931.17 x 2%)	**₱ 12,754,678.62**
Less: EWT paid	**9,156,108.87**
Basic Deficiency EWT	**₱ 3,598,569.75**

Consequently, petitioner filed the instant Petition for Review on January 15, 2010.

Respondent filed her Answer[10] on March 17, 2010, alleging the following Special and Affirmative Defenses:

"**<u>SPECIAL AND AFFIRMATIVE DEFENSES</u>**

"6. Petitioner's deficiency assessment for Expanded Withholding Tax (WT) in the amount of P6,464,280.71 was issued in accordance with law and regulations.

7. In the case at bar, petitioner miserably failed to discharge its duty to prove that respondent's deficiency EWT assessment is illegal and invalid.

It is a settle (sic) rule that the burden of proof is on the taxpayer contesting the validity or correctness of assessment to prove not only that the Commissioner of Internal Revenue (CIR) is wrong but petitioner is right (Tan Guan vs. CTA, 19 SCRA 903), otherwise, the presumption in favor of the correctness of tax assessment stands (Sy Po vs. CTA, 164 SCRA 524).

It is also a well settled rule that tax assessments by tax examiners are presumed correct and made in good faith. It is to be presumed, however, that such assessment was based on sufficient evidence. Upon the introduction of the assessment in evidence, a *prima facie* case of liability on the part of the taxpayer is made. If a taxpayer files a petition for review in the CTA and assails the assessment, the *prima facie* presumption is that assessment made by the BIR is correct, and that in preparing the same, the BIR personnel regularly performed their duties. This rule for tax initiated suits is premised on several factors other than the normal evidentiary rule imposing proof obligation on the petitioner-taxpayer; the presumption of administrative regularity; the likelihood that

[10] Docket, pp. 55 to 62.

the taxpayer will have access to the relevant information; and the desirability of bolstering the record-keeping requirements of the NIRC (CIR vs. Hantex Trading Co., Inc., G.R. No. 136975, March 31, 2005).

8. Petitioner argues that respondent's right to assess petitioner deficiency EWT assessment for taxable year 2005 has already been barred by prescription pursuant to Section 58(A) of the Tax Code of 1997 and Revenue Regulations No. 17-2003, in relation to Section 203 of the same Code.

Respondent begs to disagree.

The right of the respondent to assess petitioner for deficiency EWT for the taxable year 2005 has not prescribed pursuant to Section 222(a) of the 1997 Tax Code, thus:

> **'SEC. 222.** ***Exceptions as to Period of Limitation of Assessment and Collection of Taxes.*** **-**
>
> (a) In the case of a <u>false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission</u>: Provided, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof. (underscoring supplied)
>
> (b) xxx xxx xxx
>
> (c) xxx xxx xxx
>
> (d) xxx xxx xxx
>
> (d) xxx xxx xxx.'

The abovementioned provision finds application to the present case because respondent discovered that petitioner failed to remit and file Expanded Withholding Tax Returns for various income payments pursuant to Section 57(B) of the Tax Code of 1997, as amended, and Section 2.57.2 of Revenue Regulations No. 2-98. This was based on the result of the investigations made by respondent's revenue officers on the books of accounts and pertinent records and documents submitted by petitioner. Hence, for **<u>failure to file EWT returns for taxable year 2005, the corresponding taxes may be assessed at any time within ten (10) years after the discovery</u> of such failure to file returns** pursuant to Section 222(a) of the 1997 Tax Code.

10. Respondent further submits that Section 203 of the 1997 Tax Code does not apply to petitioner's deficiency EWT assessment

> because petitioner was not assessed for internal revenue taxes directly related in the operation of its business, but for its liability as withholding agent for failure to withhold, account for and remit the deficiency expanded withholding taxes as required by Revenue Regulations No. 2-98.
>
> Moreover, there is nothing under the 1997 Tax Code that provides for the period of limitation to assess withholding agents for failure to withhold, account for and remit any tax imposed by the said Tax Code.
>
> 11. The presumptions, therefore, that respondent's deficiency EWT assessment against petitioner is correct and made in good faith should apply and be given weight and consideration."

During trial, petitioner presented several witnesses.[11] Thereafter, petitioner filed its Formal Offer of Evidence[12] on August 22, 2011, submitting Exhibits "A" to "EE", "GG to "CCC", and "III", inclusive of sub-markings, which, except for Exhibits "U", "U-1", "QQ-2", "QQ-3", and "RR", were admitted in the Resolution dated September 12, 2011.[13] On February 6, 2012, petitioner filed an Amended Formal Offer of Evidence,[14] through registered mail, offering in evidence, Exhibit "RR"; which was admitted in the Resolution dated February 21, 2012.[15]

On February 21, 2012, respondent presented Erlita Vergara, Revenue Officer III of the BIR Large Taxpayers Audit Division, as her sole witness.[16] Thereafter, on March 7, 2012, respondent filed her Formal Offer of Evidence,[17]

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[11] Namely: *Mary Grace B. Servañez*, Accounting Manager of petitioner (Refer to the Minutes of the Hearings held on July 20, 2010, September 23, 2010, October 14, 2010, and November 11, 2010, Docket, pp. 123, 143, 156 and 165, respectively); *Atty. Marlon Facun*, Securities Counsel III-Securities and Exchange Commission (SEC) (Refer to the Minutes of Hearing held on December 14, 2010, Docket, p. 177); *Abbet Barce*, Partner, Tax Compliance Group of Tax Services, Reyes Tacandong & Co. (Refer to the Minutes of the Hearings held on January 25, 2011 and March 8, 2011, Docket, pp. 194 and 204, respectively); *Atty. Mary Ann V. Morales-Laguna*, Securities Counsel III-SEC, (Refer to the Minutes of Hearing held on April 12, 2011, Docket, p. 211); *Faith Panzo*, Accounting Supervisor of petitioner, (Refer to the Minutes of Hearing held on June 21, 2011, Docket, p. 230).

[12] Docket, pp. 252 to 267.

[13] Docket, pp. 491 to 492.

[14] Docket, pp. 565 to 567.

[15] Docket, p. 580.

[16] Minutes of Hearing held on February 21, 2012, Docket, p. 570.

[17] Docket, pp. 573 to 577.

offering in evidence, Exhibits "1", "2", "4", "5", "6-D", "7", and "7-A", which were admitted in the Resolution dated April 3, 2012.[18]

On May 23, 2012, this case was submitted for decision, considering petitioner's Memorandum[19] filed on May 11, 2012, *sans* respondent's Memorandum.

THE ISSUES

The following are the parties' jointly stipulated issues[20] submitted for this Court's resolution, to wit:

> "1. Whether Petitioner is liable to pay the amount of Php 6,464,280.71 representing alleged Expanded Withholding Tax deficiency for taxable year 2005.
>
> 2. Whether the present assessment for alleged Expanded Withholding Tax deficiency against Petitioner has already prescribed."

Petitioner's arguments

Petitioner submits that the major source of the deficiency EWT assessment of ₱ 6,464,280.71 is upon its purported non-withholding on payment for "Freight, Insurance and Others". In this regard, petitioner alleges that it does not directly pay for the freight, insurance and other charges as these form part of the purchase price billed by its foreign suppliers. Pursuant to Section 28(B) of the NIRC of 1997 in relation to Section 2.57.1(1) of Revenue Regulations (RR) No. 2-98, petitioner's payments made to its non-resident foreign suppliers are allegedly not subject to income tax and EWT and that Section 159 of RR No. 2-40 dated February 10, 1940 defined the tax situs relative to the sale of personal property. Petitioner points out that respondent, in BIR Ruling DA-576-99 dated October 6, 1999 opined, among others, that if the personal property involved was

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[18] Docket, pp. 587 to 588.
[19] Docket, pp. 589 to 608.
[20] Docket, p. 115.

both produced or manufactured and sold outside the Philippines, the income derived therefrom will be regarded as sourced entirely outside the Philippines.

Petitioner further claims that there is a mathematical error in the Schedule of Adjustment per FAN and FDDA; that the assessment is already barred by prescription, pursuant to Sections 58(A) and 203 of the NIRC of 1997, as amended, and RR No. 17-2003 dated March 31, 2003; and that the formal assessment notices are void for their violation of Section 228 of the NIRC of 1997.

Respondent's counter-arguments

Respondent counter-argues, in her Answer, that petitioner failed to discharge its duty to prove that respondent's deficiency EWT assessment is illegal and invalid; that the right of respondent to assess petitioner for deficiency EWT for taxable year 2005 has not prescribed pursuant to Section 222(a) of the NIRC of 1997 because petitioner failed to remit and file EWT Returns for various income payments in violation of Section 57(B) of the NIRC of 1997, as amended and Section 2.57.2 of RR No. 2-98. Moreover, respondent stresses that Section 203 of the NIRC of 1997 does not apply to petitioner's deficiency EWT assessment because petitioner was not assessed for internal revenue taxes directly related to the operation of its business, but for its liability as withholding agent for failure to withhold, account for and remit the deficiency expanded withholding taxes as required by RR No. 2-98.

THE COURT'S RULING

For an orderly disposition of the case, this Court shall first resolve the issue pertaining to prescription.

Prescription on the withholding tax assessment.

Sections 203 and 222 of the NIRC of 1997 state the periods of limitation upon the assessments to be issued by the BIR, to wit:

> "SEC. 203. *Period of Limitation Upon Assessment.*—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."
>
> "SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collections of Taxes.*—
>
> (a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission: *Provided*, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.
>
> (b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.
>
> xxx xxx xxx."

Section 203 of the NIRC of 1997 mandates the government to assess internal revenue taxes within three (3) years from the last day prescribed by law for the filing of the tax return or the actual date of filing of such return, whichever comes later. Hence, an assessment notice issued after the three-year prescriptive period is no longer valid and effective. Exceptions however are provided under Section 222 of the NIRC of 1997,[21] to wit: (1) in the case of a false or fraudulent return with intent to evade tax or of failure to file a return, and (2) when the three-year period is extended upon a valid written agreement between the Commissioner of Internal Revenue and the taxpayer executed before the expiration thereof.

In relation to the above-quoted Section 203 and as pertinent to this case, Section 58(A) of the NIRC of 1997, and Section 2.58(A)(2) of RR No. 2-98[22], as amended by RR No. 17-2003, provide that:

> "SEC. 58. *Returns and Payment of Taxes Withheld at Source.* –
>
> (A) *Quarterly Returns and Payments of Taxes Withheld.* – Taxes deducted and withheld under Section 57 by withholding agents shall be covered by a return and paid to, except in cases where the Commissioner otherwise permits, an authorized agent bank, Revenue District Officer, Collection Agent, or duly authorized Treasurer of the city or 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 by the withholding agent shall be held as a special fund in trust for the government until paid to the collecting officers.
>
> **The return for final withholding tax shall be filed and the payment made within twenty-five (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: *Provided*, That the Commissioner, with the approval of the Secretary of Finance, may 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.**" *(Emphasis supplied)*
>
> "SEC. 2.58. *RETURNS AND PAYMENT OF TAXES WITHHELD AT SOURCE.* -

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[21] *Commissioner of Internal Revenue vs. Kudos Metal Corporation,* G.R. No. 178087, May 5, 2010.

[22] SUBJECT: Implementing Republic Act No. 8424, *"An Act Amending The National Internal Revenue Code, as Amended"* Relative to the Withholding on Income Subject to the Expanded Withholding Tax and Final Withholding Tax, Withholding on Income Tax on Compensation, Withholding of Creditable Value-Added Tax ad Other Percentage Taxes.

(A) *Monthly return and payment of taxes withheld at source*. -

(1) xxx

(2) WHEN TO FILE –

(a) For both large and non-large taxpayers, the withholding tax return, whether creditable or final (including final withholding taxes on interest from any currency bank deposit and yield or any other monetary benefit from deposit substitutes and from trust funds and similar arrangements) shall be filed and payments should be made, within ten (10) days after the end of each month, except for taxes withheld for the month of December of each year, which shall be filed on or before January 15 of the following year; xxx

xxx xxx xxx

(b) With respect, however, **to taxpayers, whether large or non-large, who availed of the electronic filing and payment system (EFPS), the deadline for electronically filing the applicable withholding tax returns and paying the taxes due thereon via the EFPS shall be five (5) days later than the deadlines set above,** xxx" (*Emphasis supplied*)

Based on the foregoing, in case of assessment of withholding tax, the counting of the three-year period to assess under Section 203 of the NIRC of 1997, starts from either: (i) the actual filing of the withholding tax return, or (ii) the last day prescribed by the aforequoted Section 2.58(A)(2), which is the 10th day after the end of each month, except for the taxes withheld for the month of December, in which case the last day of filing would be on the 15th day of January of the following year, or if the withholding agent avails of the EFPS, the last day would be five (5) days later from the set deadlines; whichever comes later.

Respondent contends, however, that Section 203 of the NIRC of 1997 is not applicable to withholding tax assessments.[23]

This Court, however, finds no merit in said contention, since in a number

[23] Answer, Par. 10, Docket, p. 60.

of cases,[24] the Supreme Court has uniformly applied the said provision involving such kind of assessments.

Furthermore, it is a general rule of statutory interpretation that provisions should not be given a restricted meaning where no restriction is indicated. Just as the express enumerate of persons, objects, situations, etc., is construed to exclude those not mentioned, according to a well-known maxim, so no distinction should be made none appears to be intended. This is not an arbitrary rule but one founded on logic.[25]

Be that as it may, respondent does not deny that the withholding tax assessments were issued beyond the three-year prescriptive period, but she claims that:

> "The right of the respondent to assess petitioner for deficiency EWT for the taxable year 2005 has not prescribed pursuant to Section 222(a) of the 1997 Tax Code, thus:
>
> **'SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* -**
>
> (a) In the case of a <u>false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission</u>: Provided, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof. (underscoring supplied)
>
> (b) xxx xxx xxx
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> (e) xxx xxx xxx
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> (d) xxx xxx xxx
>
> (f) xxx xxx xxx.'

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[24] *Philippine Journalist, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 162852, December 16, 2004; *Commissioner of Internal Revenue vs. FMF Development Corporation*, G.R. No. 167765, June 30, 2008; *Commissioner of Internal Revenue vs. Kudos Metal Corporation,* G.R. No. 178087, May 5, 2010.
[25] *Lo Cham vs. Ocampo, et al., etseq.*, G.R. Nos. L-831, L-876 and L-878, November 21, 1946.

> The abovementioned provision finds application to the present case because respondent discovered that petitioner failed to remit and file Expanded Withholding Tax Returns for various income payments pursuant to Section 57(B) of the Tax Code of 1997, as amended, and Section 2.57.2 of Revenue Regulations No. 2-98. This was based on the result of the investigations made by respondent's revenue officers on the books of accounts and pertinent records and documents submitted by petitioner. Hence, for **failure to file EWT returns for taxable year 2005, the corresponding taxes may be assessed at any time within ten (10) years after the discovery of such failure to file returns** pursuant to Section 222(a) of the 1997 Tax Code."[26]

Thus, according to respondent, since there was failure on the part of petitioner to file its EWT returns for taxable year 2005, respondent's stance is that the 10-year period under Section 222(a) should be applied in issuing the subject deficiency withholding tax assessment. Correspondingly, said assessment is not yet time-barred.

Respondent is mistaken.

In the instant case, petitioner sufficiently established that it actually filed its EWT Returns for the months of January to December 2005 on the following dates:

PETITIONER'S MONTHLY REMITTANCE RETURN OF CREDITABLE INCOME TAXES WITHHELD (EXPANDED)-BIR FORM NO. 1601-E		
EXHIBIT	**MONTH**	**DATE FILED**
"S"	January 2005	February 14, 2005
"R"	February 2005	March 14, 2005
"Q"	March 2005	April 14, 2005
"P"	April 2005	May 13, 2005
"O"	May 2005	June 14, 2005
"N"	June 2005	July 14, 2005
"M"	July 2005	August 12, 2005
"L"	August 2005	September 14, 2005
"K"	September 2005	October 14, 2005
"J"	October 2005	November 14, 2005
"I"	November 2005	December 14, 2005
"H"	December 2005	March 1, 2006

[26] Answer, Docket, pp. 58 to 59.

Hence, it cannot be said that petitioner failed to file the corresponding EWT Returns for taxable year 2005. Such being the case, the applicable prescriptive period for the said assessments is only three (3) years as prescribed under Section 203 of the NIRC of 1997 in relation to Section 58(A) thereof and Section 2.58(A)(2) of RR No. 2-98, as amended by RR No. 17-2003, as applied to petitioner's case, to wit:

PETITIONER'S MONTHLY REMITTANCE RETURN OF CREDITABLE INCOME TAXES WITHHELD (EXPANDED)-BIR FORM NO. 1601-E			
Period covered (2005)	**Date of actual filing (Thru EFPS)**	**Last day prescribed by law to file the return[27]**	**Last day to assess under Section 203 of the NIRC of 1997**
January 2005	Februay 14, 2005	Februay 15, 2005	Februay 15, 2008
February 2005	March 14, 2005	March 15, 2005	March 15, 2008
March 2005	April 14, 2005	April 15, 2005	April 15, 2008
April 2005	May 13, 2005	May 15, 2005	May 15, 2008
May 2005	June 14, 2005	June 15, 2005	June 15, 2008
June 2005	July 14, 2005	July 15, 2005	July 15, 2008
July 2005	August 12, 2005	August 15, 2005	August 15, 2008
August 2005	September 14, 2005	September 15, 2005	September 15, 2008
September 2005	October 14, 2005	October 15, 2005	October 15, 2008
October 2005	November 14, 2005	November 15, 2005	November 15, 2008
November 2005	December 14, 2005	December 15, 2005	December 15, 2008
December 2005	March 1, 2006	January 20, 2006	March 1, 2009

Since the subject EWT assessment was received on January 14, 2009,[28] the same is no longer valid and effective insofar as the months from January 2005 to November 2005 are concerned.

Petitioner was duly informed in writing of the law and facts on which the subject assessment was made.

Petitioner submits that the subject EWT assessment is void for failure of respondent to inform petitioner of the law and the facts on which the

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[27] Since petitioner filed its EWT Returns through the Electronic Filing and Payment System (EFPS), the last day for filing such Returns is on the 15th day of the following month in which the taxes were withheld, except for the month of December, in which case, the last day would be the 20th day of the following month, *i.e.*, the month of January.

[28] Par. 3, Facts Admitted, JSFI, Docket, p. 114. Exhibit "5", BIR Records, pp. 1386 to 1387.

assessments were made in violation of Section 228 of the NIRC of 1997, the relevant portion of which reads:

> "SEC. 228. *Protesting of Assessment.* –
>
> 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."

However, this Court finds that respondent has sufficiently informed petitioner of the facts and the law upon which the assessment was made. In respondent's Details of Discrepancy,[29] the following statements may be found, viz:

> "I. Deficiency Expanded Withholding Tax
>
> Reconciliation / verification of the company's income payments disclosed that certain income payments were not subjected to expanded withholding taxes hence, the same were assessed the corresponding withholding taxes, pursuant to Section 57 (B) of the Tax Code and implemented by Revenue Regulations No. 2-98 and 17-03 ."

Moreover, as can be gleaned from petitioner's protest letter,[30] it is without question that petitioner understood the items of income payments that are being subjected to EWT by respondent, since it was able to intelligently dispute the assessment. In part, said protest letter states:

> "We respectfully set forth our protest against the above alleged deficiency tax assessments as the same is devoid of any legal and factual bases. We shall refute the alleged findings of your revenue examiners in seriatim.
>
> ***Expanded Withholding Tax***

Expanded Withholding Tax:		
Preliminary Assessment Notice		P 11,499,743.45
Less: Adjustments		0.00
Basic Deficiency EWT		11,499,743.45
Add:		
Interest (1/15/06-3/15/09 .6333)	7,282,787.53	

[29] Exhibit "T-2", Docket, p. 382.
[30] Exhibit "V", Docket, pp. 385 to 393.

Compromise	50,000.00	7,332,787.53
Total Deficiency EWT		**P 18,832,530.98**

The amount of P11,499,743.45 alleged to be the company's income payments that were not subjected to expanded withholding taxes, is comprised to payments made by IPC to the following:

Rental Expense	P 44,444.44
Charges subject to 2% EWT	4,546,402.58
Payments to Local Supplier of Goods	4,130,525.10
Commission Expense	122,805.96
Professional Fees	2,655,565.37
Total	P 11,499,743.45

xxx xxx xxx." *(Underscoring supplied)*

Said understanding of petitioner as to the items of income payments was later confirmed when respondent reduced the amount of the basic deficiency EWT from ₱ 11,499,743.45 to ₱ 3,598,569.75,[31] determined as follows:

TAX TYPE/ISSUES	FAN	ADJUSTMENT/S	FDDA
I. **EXPANDED WITHHOLDING TAX**			
Rental	44,444.44	44,444.44	-
Other Charges	4,546,402.58	947,832.83	3,598,569.75
Local Supplier of Goods	4,130,525.10	4,130,525.10	-
Commissions	122,805.96	122,805.96	-
Professional Fees	2,655,565.37	2,655,565.37	-
Basic Deficiency EWT	**11,499,743.45**	7,901,173.70	3,598,569.75
Add: Interest (1/20/2006 to 12/31/2009) .7894			2,840.710.96
Compromise Penalty			25,000.00
Total Deficiency EWT			6,464,280.72

Such being the case, the subject EWT assessment cannot be considered void upon the ground that it fails to state the facts and law upon which such assessment was made.

The EWT assessment pertaining to the month of December 2005 lacks merit.

However, notwithstanding that only a portion of the subject EWT assessment has prescribed and that such assessment is not void, such assessment must perforce fail.

[31] BIR Records (Folder 1 of 4), p. 1688

A careful scrutiny of records of this case reveals that the income payments subjected to the deficiency EWT actually pertain to the BOC data account, *i.e.,* Freight, Insurance, and Others, in the total amount of ₱ 161,430,026.00. Furthermore, the purported amount of ₱ 9,156,108.87 representing petitioner's EWT payment is mathematically erroneous. The accurate total amount remitted to the government pertaining to the 2% withholding tax as reflected on the BIR Form No. 1601-E was ₱ 9,526,108.49.[32] Thus, the resulting alleged basic deficiency EWT should only be ₱ 3,228,570.13, as shown below:

EWT Due	₱ 12,754,678.62
Less: EWT paid	**9,526,108.49**
Basic Deficiency EWT	**₱ 3,228,570.13**

As a corollary, the amount of ₱ 3,228,600.52 represents the alleged 2% deficiency EWT on income payments per BOC data account, computed as follows:

Per BOC Data	
Freight	₱ 144,475,614.00
Insurance	16,921,225.00
Others	33,187.00
Total	**₱ 161,430,026.00**
Multiply by: EWT rate	**2%**
Basic Deficiency EWT	**₱ 3,228,600.52**

As We have ruled, only the income payments pertaining to the month of December 2005 has not prescribed, and thus, out of the said amount of ₱ 161,430,026.00, only the amount of ₱ 17,140,885.00, as determined below,[33] shall be the proper subject of determination of whether the same should indeed be subjected to the 2% EWT, viz:

[32] Exhibits "S-1", "R-1", "Q-1", "P-1", "O-1", "N-1", "M-1", "L-1", "K-1", "J-1", "I-1" and "H-1".
[33] Refer to Exhibit "QQ-3".

Date	Supplier's Name	Freight	Insurance	Total
01-Dec-05	Taiwan Isuzu Motors Asia Ltd.	₱ 5,138.00	₱ 649.00	₱ 5,787.00
01-Dec-05	Isuzu Motors Asia Ltd.	191,204.00	63,045.00	254,249.00
01-Dec-05	Isuzu Motors Asia Ltd.	318,892.00	25,991.00	344,883.00
01-Dec-05	Mitsubishi Corp.	216,414.00	11,028.00	227,442.00
01-Dec-05	Mitsubishi Motors Co., Ltd.	685.00	52.00	737.00
01-Dec-05	Mitsubishi Motors Co., Ltd.	91.00	7.00	98.00
01-Dec-05	Isuzu Motors Asia Ltd.	43,075.00	28,436.00	71,511.00
01-Dec-05	Isuzu Operations Co., Ltd.	25.00	2.00	27.00
01-Dec-05	Isuzu Operations Co., Ltd.	1.00	-	1.00
01-Dec-05	Isuzu Operations Co., Ltd.	69.00	6.00	75.00
01-Dec-05	Isuzu Operations Co., Ltd.	12.00	1.00	13.00
01-Dec-05	Isuzu Operations Co., Ltd.	32.00	3.00	35.00
01-Dec-05	Isuzu Operations Co., Ltd.	300.00	27.00	327.00
01-Dec-05	Isuzu Operations Co., Ltd.	238.00	21.00	259.00
02-Dec-05	Isuzu Operations Co., Ltd.	1,730.00	155.00	1,885.00
02-Dec-05	Mitsubishi Corp.	324,620.00	49,341.00	373,961.00
02-Dec-05	Vista Enterprises Co., Ltd.	21,696.00	8,144.00	29,840.00
02-Dec-05	Isuzu Motors Asia Ltd.	294,361.00	19,728.00	314,089.00
02-Dec-05	Isuzu Motors Asia Ltd.	294,361.00	21,261.00	315,622.00
02-Dec-05	Mitsubishi Corp.	55.00	6.00	61.00
02-Dec-05	Mitsubishi Corp.	2,603.00	296.00	2,899.00
02-Dec-05	Mitsubishi Corp.	5,319.00	604.00	5,923.00
02-Dec-05	Mitsubishi Corp.	3,047.00	346.00	3,393.00
02-Dec-05	Mitsubishi Corp.	2,764.00	314.00	3,078.00
02-Dec-05	Mitsubishi Corp.	10,071.00	1,144.00	11,215.00
02-Dec-05	Mitsubishi Corp.	1,168.00	133.00	1,301.00
02-Dec-05	Mitsubishi Corp.	1,343.00	153.00	1,496.00
02-Dec-05	Mitsubishi Corp.	922.00	105.00	1,027.00
02-Dec-05	Mitsubishi Corp.	36,242.00	4,116.00	40,358.00
02-Dec-05	Mitsubishi Corp.	5,369.00	610.00	5,979.00
02-Dec-05	Mitsubishi Corp.	6,547.00	744.00	7,291.00
02-Dec-05	Mitsubishi Corp.	2,321.00	264.00	2,585.00
02-Dec-05	Isuzu Motors Asia Ltd.	318,892.00	24,719.00	343,611.00
02-Dec-05	3M	1,897.00	3,436.00	322,327.00
05-Dec-05	Isuzu Motors Asia Ltd.	318,891.00	24,719.00	571,054.00
06-Dec-05	Mitsubishi Corp.	540,625.00	30,429.00	314,089.00
06-Dec-05	Isuzu Motors Asia Ltd.	294,361.00	19,728.00	170,263.00
06-Dec-05	Isuzu Motors Asia Ltd.	113,607.00	56,656.00	341,610.00
06-Dec-05	Isuzu Motors Asia Ltd.	316,891.00	24,719.00	315,622.00
07-Dec-05	Isuzu Motors Asia Ltd.	294,361.00	21,261.00	501.00
07-Dec-05	Tri Petch Isuzu Sales Co., Ltd		64.00	6.00
07-Dec-05	Tri Petch Isuzu Sales Co., Ltd	5.00	1.00	853.00

07-Dec-05	Tri Petch Isuzu Sales Co., Ltd	744.00	109.00	8,328.00
07-Dec-05	Tri Petch Isuzu Sales Co., Ltd	7,266.00	1,062.00	7,935.00
07-Dec-05	Tri Petch Isuzu Sales Co., Ltd	6,923.00	1,012.00	7,935.00
07-Dec-05	Tri Petch Isuzu Sales Co., Ltd	10,008.00	1,463.00	11,471.00
07-Dec-05	Tri Petch Isuzu Sales Co., Ltd		647.00	5,071.00
07-Dec-05	Isuzu Motor	59,870.00	21,865.00	81,735.00
07-Dec-05	PT Pantja Motor	9.00	1.00	10.00
07-Dec-05	PT Pantja Motor	1,636.00	168.00	1,804.00
07-Dec-05	PT Pantja Motor	35,601.00	3,655.00	39,256.00
07-Dec-05	PT Pantja Motor	1,986.00	204.00	2,190.00
07-Dec-05	PT Pantja Motor	388.00	40.00	428.00
07-Dec-05	PT Pantja Motor	293.00	30.00	323.00
07-Dec-05	Isuzu Motors Asia Ltd.	108,125.00	31,096.00	139,221.00
07-Dec-05	Isuzu Motors Asia Ltd.	432,500.00	63,212.00	495,712.00
07-Dec-05	Isuzu Motors Co., Thailand	1,832.00	138.00	1,970.00
07-Dec-05	Isuzu Motors Asia Ltd.	3,267.00	462.00	3,729.00
07-Dec-05	Isuzu Motors Asia Ltd.	509,848.00	40,925.00	550,773.00
09-Dec-05	Isuzu Motors Asia Ltd.	318,892.00	24,719.00	343,611.00
09-Dec-05	Isuzu Motors Asia Ltd.	318,891.00	25,363.00	344,254.00
09-Dec-05	Isuzu	2,477.00	2,536.00	5,013.00
13-Dec-05	PT Pantja Motor as agent	1,422.00	108.00	1,530.00
13-Dec-05	Isuzu Motors Asia Ltd.	43,075.00	28,447.00	71,522.00
13-Dec-05	Isuzu Motors Asia	294,361.00	21,261.00	315,622.00
13-Dec-05	Isuzu Motors Asia Ltd.	318,859.00	25,363.00	344,222.00
13-Dec-05	Isuzu Operations Co., Ltd.	78.00	4.00	82.00
13-Dec-05	Isuzu Operations Co., Ltd.	177.00	9.00	186.00
13-Dec-05	Isuzu Operations Co., Ltd.	24.00	1.00	25.00
13-Dec-05	Isuzu Operations Co., Ltd.	37.00	2.00	39.00
13-Dec-05	Isuzu Operations Co., Ltd.	17.00	1.00	18.00
13-Dec-05	Isuzu Operations Co., Ltd.	131.00	7.00	138.00
13-Dec-05	Isuzu Operations Co., Ltd.	208.00	11.00	219.00
13-Dec-05	Isuzu Operations Co., Ltd.	2,086.00	108.00	2,194.00
13-Dec-05	PT Pantja Motor as agent	54.00	27.00	81.00
13-Dec-05	PT Pantja Motor as agent	1,903.00	950.00	2,853.00
13-Dec-05	Isuzu Motors Asia Ltd.	318,892.00	24,719.00	531,503.00
13-Dec-05	Isuzu Motors Co., Thailand Ltd.	506,784.00	40,324.00	334,862.00
13-Dec-05	Isuzu Motors Asia Ltd.	294,538.00	19,728.00	155,575.00
14-Dec-05	Mitsubishi Corp.	214,538.00	26,191.00	74,583.00
14-Dec-05	Isuzu Motors Asia Ltd.	135,847.00	6,094.00	324,986.00
14-Dec-05	Mitsubishi Corporation Taiwan	48,392.00	6,910.00	51,130.00

14-Dec-05	Isuzu Motors Asia Ltd.	318,892.00	24,719.00	56,659.00
16-Dec-05	Isuzu Motors Asia Ltd.	44,220.00	2,099.00	6,677.00
21-Dec-05	Isuzu Motors Asia Ltd.	31,940.00	1,828.00	3,522.00
21-Dec-05	Isuzu Motors Asia Ltd.	4,578.00	1,831.00	8,400,240.00
27-Dec-05	WIN	1,694.00	4,265.00	4,265.00
Total		**₱ 8,398,409.00**	**₱ 896,178.00**	**₱ 17,140,885.00**

This Court, however, finds no legal basis to subject the foregoing payments to EWT.

Section 2.57.2 of RR No. 2-98, as amended, provides, to wit:

"SECTION. 2.57.2. *Income Payment Subject to Creditable Withholding Tax and Rates Prescribed Thereon.* - Except as herein otherwise provided, there shall be withheld a creditable income tax at the rates herein specified for each class of payee **from the following items of income payments to persons residing in the Philippines**:

xxx xxx xxx

(E) ***Income payments to certain contractors.*** **— On gross payments to the following contractors, whether individual or corporate —** ***Two percent (2%)***[34]

(1) General enginerring contractors — Those whose principal contracting business in connection with fixed works requiring specialized engineering knowledge and skill including the following divisions or subjects:

xxx xxx xxx

(2) General Building contractors — xxx

(3) Specialty Contractors — Those whose operations pertain to the performance of construction work requiring special skill and whose principal contracting business involves the use of specialized building trades or crafts.

(4) Other contractors —

a) Filling, demolition and salvage work contractors and operators of mine drilling apparatus;
b) Operators of dockyards;
c) Persons engaged in the installation of water system, and gas or electric light, heat or power;
d) Operators of stevedoring, warehousing or forwarding establishments;

[34] As amended by Revenue Regulations No. (RR) 30-03.

e) Transportation contractors which include common carriers for the carriage of goods and merchandise of whatever kind by land, air or water, where the gross payments by the payor to the same payee amounts to at least two thousand pesos (P2,000) per month, regardless of the number of shipments during the month;
f) Printers, bookbinders, lithographers and publishers *except* those principally engaged in the publication or printing of any newspaper, magazine, review or bulletin which appears at regular intervals, with fixed prices for subscription and sale;
g) Messengerial, janitorial, private detective and/or security agencies, credit and/or collection agencies and other business agencies;
h) Advertising agencies, exclusive of gross payments to media;
i) Independent producers of television, radio and stage performances or shows;
j) Independent producers of *'jingles'*;
k) Labor recruiting agencies and/or *'labor-only'* contractors. xxx[35]
l) Persons engaged in the installation of elevators, central air conditioning units, computer machines and other equipment and machineries and the maintenance services thereon.
m) Persons engaged in the sale of computer services, computer programmers, software/program developer/designer, internet service providers, web page designing, computer data processing, conversion or base services and other computer related activities;[36]
n) Persons engaged in landscaping services;
o) Persons engaged in the collection and disposal of garbage;
p) TV and radio station operators on sale of TV and radio airtime; and
q) TV and radio blocktimers on sale of TV and radio commercial spots.

xxx xxx xxx

(M) ***Income payments made by the top ten thousand (10,000) private corporations to their local/resident suppliers of goods and local/resident supplier of services other than those covered by other rates.*** — Income payments made by any of the top ten thousand (10,000) private corporations, as determined by the Commissioner, to their local/resident supplier of goods and local/resident supplier of services, including non-resident alien engaged in trade or business in the Philippines

Supplier of goods – One percent (1%)
Supplier of services – *Two percent (2%)*

xxx xxx xxx[37]

(N) ***Income payments made by the government to its local/resident supplier of goods and local/resident supplier of services other than those covered by the other rates of withholding***

[35] As amended by RR 17-03.
[36] As amended by RR 14-02.
[37] As amended by RR 06-01 and RR 17-03.

> ***tax.*** — Income payments, except any casual or single purchase of P10,000.00 and below, which are made by a government office, national or local, including *barangays*, or their attached agencies or bodies, and government-owned or controlled corporations, on their purchases of goods and purchases of services from local/resident suppliers
>
> Supplier of goods – One percent (1%)
> **Supplier of services – *Two percent (2%)***
>
> A government-owned or controlled corporation shall withhold the tax in its capacity as a government-owned or controlled corporation rather than as a corporation stated in Subsection (M) hereof.[38]
>
> xxx xxx xxx" *(Emphases supplied)*

Based on the foregoing, to be subject to EWT at the rate of 2%, the income payment must be one of the items enumerated, and must have been made to a person residing in the Philippines.

A cursory examination of items of income subject to EWT reveals that payments for freight and insurance in connection with importations are not among those which are subject to the EWT at 2%. The said income payments of petitioner was not made to any of the contractors mentioned in paragraph (E) of the above-quoted Section 2.57.2 of RR 2-98, as amended. Neither is there any indication that petitioner is one of the top 10,000 private corporations to fall under paragraph (M) of the same provision. Nor is petitioner part of government or a government-owned or controlled corporation to be covered by paragraph (N) thereof.

In addition, the bulk of income payments in the total amount of ₱ 17,140,885.00 for December 2005 were made to persons or entities not residing in the Philippines. In the Report of the Independent CPA,[39] it is reported that, on the bases of the Supplier's Invoice, Import Entry Revenue Declarations,

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[38] As amended by RR 06-01, RR 14-02, RR 17-03, and RR 30-03.
[39] Exhibit "QQ", Docket, pp. 437 to 438.

Bills of Lading,[40] and SEC Certificate of Non-Registration,[41] the following suppliers/payees with corresponding freight and insurance have addresses which are located outside the Philippines, to wit:

Supplier's Name	Address	Outside the Philippines? (Y/N)
1) Carryboy Thailand	Bangkok, Thailand	Y
2) Ishikawajima Harima Heavy Industries	Tokyo, Japan	Y
3) Isuzu Motors Asia Limited	Singapore, Singapore	Y
4) Isuzu Operations Thailand Co. Limited	Bangkok, Thailand	Y
5) Metal One Asia PTE Limited	Singapore, Singapore	Y
6) Mitsubishi Corporation	Tokyo, Japan	Y
7) Mitsubishi Corporation Taiwan Limited	Taipei, Taiwan	Y
8) PT Frina Lestari Nusantara	Bogor, Indonesia	Y
9) PT Pantja Motor	Sunter II, Indonesia	Y
10) Tri Petch Isuzu Sales Co. Limited	Ladyao, Taiwan	Y
11) 3M Korea	Seoul, Korea	Y
12) Etas KK	Yokohama, Japan	Y
13) PT Pantja Motor JL Gaya	Sunter II, Indonesia	Y
14) SPX Service Solution	Victoria, Australia	Y
15) Thai Yonei Co. Limited	Bangkok, Thailand	Y
16) TRK Bangkok Industry Exporter Co. Ltd.	Bangkok, Thailand	Y

Considering that the foregoing suppliers/payees are not residents of the Philippines, income payments to them are not subject to the EWT at 2% under the aforequoted Section 2.57.2 of RR 2-98, as amended, especially under paragraphs (M) and (N) thereof, which required that the pertinent supplier must be "local/resident".

More importantly, petitioner's witness, Mary Grace B. Servañez, in her Judicial Affidavit dated October 11, 2010, explained that the payments for "Freight, Insurance and Others" as reflected in the Bills of Lading and Import Entry Declarations were made on the basis of a "CIF" arrangement, thus:

"Q22: Would you know the circumstances or nature of these payments on freight, insurance, and other charges as contained in your bills of lading and import entry declaration?

[40] Exhibit "RR".
[41] Exhibits "BB" and "NN".

A22: The payments for freight, insurance and other charges, as mentioned, are connected to the purchase of imported goods by [petitioner], sourced from foreign suppliers. Accordingly, our payment for these items, were made on a CIF method. **This means that the Cost, Insurance and Freight charges are already included in the price of the goods IPC purchased from foreign suppliers.**

Q23: **In other words, when you paid your foreign suppliers for the purchase of the imported goods, the price billed to you already included the price of the cost of the goods plus the freight cost plus the insurance cost?**

A23: **Yes, sir.**"[42]

In view thereof, the subject suppliers of petitioner cannot be considered as suppliers of services covered by paragraphs (M) and (N) of Section 2.57.2 of RR 2-98, as amended, subject to 2% EWT, but as supplier of goods.

WHEREFORE, all the foregoing considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, the assessment for deficiency EWT, inclusive of interest and compromise penalty, in the amount of ₱ 6,464,280.71 covering taxable year 2005 is hereby **CANCELLED** and **WITHDRAWN** on the ground of prescription for the assessments pertaining to the months of January 2005 until November 2005, and for lack of legal basis, anent the month of December 2005.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

ESPERANZA FABON-VICTORINO
Associate Justice

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[42] Exhibit "AA", Docket, p. 407.

CERTIFICATION

I hereby certify that this Decision was reached after due consultation among the members of this Division in accordance with the provisions of Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Chairperson
Presiding Justice