REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

CONTINENTAL MICRONESIA, INC.-PHILIPPINE BRANCH, Petitioner,	**C.T.A. E.B. NO. 213 (C.T.A. CASE NO. 6191)**
	Present:
- versus -	**ACOSTA,** *P.J.* **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA,** *and* **PALANCA-ENRIQUEZ,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** AUG 0 3 2007

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DECISION

UY, J.:

This is a petition for review before the Court of Tax Appeals *En Banc* filed on September 22, 2006 seeking a review of the Decision and Resolution dated March 22, 2006 and August 4, 2006, respectively, rendered by the First Division of this Court (Court in Division) pursuant to Section 18 of Republic Act No. 1125, as amended by Republic Act No. 9282. The dispositive portions of which read as follows:

Decision promulgated on March 22, 2006:

> "**WHEREFORE**, the Petition for Review is **PARTIALLY GRANTED.** The assessments for deficiency withholding tax on compensation and expanded withholding tax for the months of January 1995 to September 1995 are hereby declared VOID for having been issued out of time. However, the deficiency assessments for the months of October, November and December 1995 are UPHELD in the following amounts:

Particulars	Basic	Interest	Surcharge	Total
Deficiency Withholding Tax on Compensation	P10,759.43	P8,499.95	P2,689.86	P21,949.24
Deficiency Expanded Withholding	288,701.44	228,074.14	72,175.36	588,950.94
TOTALS	P299,460.87	P236,574.09	P74,865.22	P610,900.18

Accordingly, petitioner is **ORDERED to PAY** the respondent the aggregate amount of P610,900.18 plus 20% delinquency interest per annum from February 1, 2000 until fully paid pursuant to Section 249 (C) of the National Internal Revenue Code of 1997.

SO ORDERED."

<u>Resolution promulgated on August 4, 2006</u>:

"**WHEREFORE**, petitioner's Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED."

THE FACTS

The factual antecedents of the case are undisputed.

Petitioner is a Philippine branch of a non-resident foreign corporation incorporated in the State of Delaware, U.S.A., engaged in the operation of air transportation in international traffic. It is duly licensed to do business in the Philippines with office address at the Ground Floor, SGV II Bldg., 6760 Ayala Avenue, Makati City.

On December 12, 1996, petitioner received Letter of Authority No. 137419 dated December 5, 1996 from Revenue District Officer Hernani S. Arboleda of Revenue District Office No. 47 authorizing Revenue Officer Leticia Lorna Dosado, and Group Supervisor Julita Batoon, to examine

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petitioner's books of accounts and other accounting records for all internal revenue taxes for the period January 1995 to December 1995.

On March 17, 1998, an invitation for informal conference was sent to petitioner by Revenue District Officer Gerardo R. Florendo requesting it to submit whatever documentary evidence in its possession that may support any objection against the proposed assessments as follows:

	Amount
Deficiency Gross Phil. Billings	P1,868,048.45
Deficiency Common Carrier's Tax	183,042.09
Deficiency Withholding Tax on Compensation	79,643.25
Deficiency Expanded Withholding Tax	2,152,508.68
Total	P4,283,242.47

On March 27, 1998, a conference with the representative of petitioner was held. The proposed deficiency tax assessments were tackled. Petitioner expressed its willingness to settle the deficiency gross Philippine billings and common carrier's tax but would protest the remaining deficiency taxes upon receipt of the assessment notice.

On May 5, 1998, petitioner paid the deficiency gross Philippine billings and common carrier's tax in the recomputed amounts of P1,843,048.45 and P167,042.09 as evidenced by corresponding machine validated Authority to Accept Payment Nos. 0378169 and 0378168 from the Bank of the Philippine Islands.

On May 15, 1998, the examining Revenue Officer Ms. Dosado recommended that an assessment notice for deficiency withholding tax on compensation and deficiency expanded withholding tax be issued against petitioner. On September 10, 1998, the Chief of the Assessment Division, Ma. Nieva A. Guerrero, of Revenue Region No. 8, Makati issued (instead) a

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Preliminary Assessment Notice (PAN) for the said remaining deficiency taxes. This was received by petitioner on October 8, 1998. In the said PAN, petitioner was invited to a conference to hear its side or to present its evidence within fifteen (15) days from receipt thereof. Petitioner, however, opted to file its objection to the PAN on October 15, 1998. Thus, it resulted to a reinvestigation of the case.

Eventually, on December 10, 1999, another PAN was issued based on the report of reinvestigation. Petitioner was still held to be liable for deficiency expanded withholding tax and withholding tax on compensation in the respective amounts of P2,486,931.49 and P93,081.26. Shortly thereafter, respondent, through Regional Director Antonio I. Ortega, issued Assessment Notices on December 29, 1999 covering the aforementioned deficiency taxes in the increased amounts of P2,501,523.64 and P93,193.66, respectively. This was received by petitioner on January 5, 2000 together with their corresponding demand letters.

On February 4, 2000, petitioner, through its external auditors, Sycip, Gorres Velayo and Company, filed its administrative protest on the above assessments seeking the cancellation and withdrawal thereof due to prescription and lack of factual and legal bases. On April 4, 2000, petitioner filed a supplemental protest reiterating its disagreement with the subject withholding tax assessments and submitting thereto all relevant documents to support its position against the merit of the assessments.

In view of the respondent's inaction on its protest, petitioner filed its Petition for Review before this Court on October 31, 2000. After trial on the merits, the Court in Division rendered the assailed Decision partially granting the petition on March 22, 2006. Not satisfied, petitioner filed a Motion for Reconsideration of the said Decision on April 21, 2006 which was denied for lack of merit in the assailed Resolution promulgated on August 4, 2006.

Hence, this recourse before the Court *En Banc* praying that: (a) the Decision dated March 22, 2006 and the Resolution dated August 4, 2006 be reversed and set aside; (b) the deficiency tax assessments for the months of October, November and December 1995 in the amount of P610,900.18 be declared void for having been barred by prescription; or in the alternative, the deficiency expanded withholding tax in the amount of P588,950.94 be adjusted to remove the deficiency tax assessment on Ground Handling in the total amount of P58,228.47; and (c) the deficiency expanded withholding tax in the amount of P588,950.94 be adjusted to remove the deficiency tax assessment on Commissions in the total amount of P343,257.92.

THE ISSUES

Petitioner presents the following grounds in support of its petition:

"1. The Honorable Court erred in holding that the deficiency tax assessments for the months of October, November, and December 1995 were not barred by prescription. The running of the prescriptive period for the assessment of tax was not suspended by a request for reinvestigation because petitioner did not request for a reinvestigation, contrary to the finding of the Honorable Court.

2. Assuming *arguendo* that petitioner requested a reinvestigation, petitioner did not execute a waiver of the Statute of Limitations. Without a valid waiver of the Statute of Limitations, a request for reinvestigation alone cannot suspend the running of the prescriptive period for the assessment of tax.

3. Assuming *arguendo* that the deficiency tax assessments for the months of October, November and December 1995 were not barred by prescription, the deficiency expanded withholding

72

> tax in the amount of Php588,950.94 should be adjusted to remove the deficiency tax assessment on ground handling in the total amount of Php58,228.47. Contrary to the finding of the Honorable Court, petitioner objected to the deficiency withholding tax assessment on ground handling in its protest letter dated October 15, 1998.
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> 4. Assuming *arguendo* that the deficiency tax assessments for the months of October, November and December 1995 were not barred by prescription, the deficiency expanded withholding tax in the amount of Php588,950.94 should be further adjusted to remove the deficiency tax assessment on commissions in the total amount of Php343,257.92. Contrary to the finding of the Honorable Court, petitioner has no obligation to act as withholding agent on the commissions derived by ticket sales agents from the sale of petitioner's tickets."

On October 13, 2006, this Court issued a Resolution requiring respondent to file a Comment thereto. However, upon the expiration of the given period, respondent failed to file the same. Hence, the case was deemed submitted for decision on November 20, 2006.

THE COURT EN BANC'*S* RULING

The petition is bereft of merit.

A careful and closer look at the arguments set forth in the instant petition for review readily reveal that the grounds relied upon and the matters raised herein are mere restatements of petitioner's previous arguments before the Court in Division which had already been exhaustively discussed and passed upon by it in its assailed Decision and Resolution. All the same, We find it necessary to further elucidate the matters raised by petitioner which will be discussed jointly.

As regards the issue on prescription, petitioner contends that the period for assessment of the tax was already barred by prescription considering that it did not request for a reinvestigation in its protest later dated October 15, 1998. However, evidence on record shows that, respondent acted on the said protest letter thru a letter addressed to petitioner dated November 9, 1998,[1] which was received by the latter on the same date, effectively granting its request for reinvestigation. Apparently, the said letter of respondent was not questioned by petitioner. Instead, what is evident from the records is that petitioner sent a letter to respondent dated July 7, 1999[2] enumerating the documents submitted in support of its position. Petitioner's subsequent acts clearly manifest that it considered respondent's letter dated November 9, 1998 as a grant of its request for reinvestigation. Settled is the rule that when the taxpayer requests for a reinvestigation of an assessment which is granted by the BIR, the running of the period to asses under Sections 203 and 222 of the National Internal Revenue Code (NIRC) is suspended.[3]

Petitioner further argues that a reading of its protest letter would establish that there is absolutely nothing that may be interpreted to mean that petitioner requested for a reinvestigation. However, even though the letter of request did not specifically use the word "reinvestigation", the fact that the government was persuaded to suspend the proceedings and grant the request of the taxpayer, the statute of limitations will still be suspended. Where the tax could have been collected, but the government withheld action at the specific request of the taxpayer, the latter is estopped and should not

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[1] Exhibit "6".
[2] Exhibit "7".
[3] Commissioner of Internal Revenue vs. Wyeth Suaco Laboratories, Inc., 202 SCRA 125 (1991).

be permitted to raise the defense of the statute of limitations.[4] It is obvious that the actions of petitioner manifested its conformity to the reinvestigation granted by respondent; hence, We cannot allow it to overturn its position when such proceeding resulted against its favor.

Likewise, contrary to petitioner's contention, Section 223 of the NIRC does not categorically require the taxpayer to execute a waiver in support of its request for reinvestigation to effectively suspend the Statute of Limitations.

To emphasize, the Supreme Court in the case of ***Collector of Internal Revenue vs. Suyoc Consolidated Mining Company, et al.***[5] held that "there are cases however where a taxpayer may be prevented from setting up the defense of prescription even if he has not previously waived it in writing as when by his repeated requests or positive acts, the Government has been, for good reasons, persuaded to postpone collection to make him feel that the demand was not unreasonable or that no harassment or injustice is meant by the Government".

Whether the taxpayer should sign the waiver or not will depend on the particular facts of the case. Should the taxpayer choose not to sign the waiver and the revenue officer recommends the issuance of a formal assessment notice and letter of demand, the remedy of the taxpayer is to file a protest within thirty (30) days from receipt of the assessment.[6] In the instant case, although petitioner did not sign any waiver of the Statute of Limitations, the fact that it requested for reinvestigation and the same was granted by

[4] Republic vs. Arcache, 10 SCRA 337 (1964).
[5] 104 Phil 819 (1958).
[6] Tax Rights and Remedies, Victorino C. Mamalateo, p.796.

respondent, effectively suspended the running of the prescriptive period from the time petitioner filed its request, and commenced to run again when respondent issued the final assessment and demanded collection of the assessed deficiency.

As aptly ruled by the Court in Division and based on the evidence at hand, it is apparent that the assessments for the months of January to September 1995 were already barred by prescription since respondent issued the final assessment notice only on December 29, 1999. Likewise, We conform to its finding that for the months of October, November and December 1995, the period for assessment has not yet prescribed.

With respect to the issue on the propriety of the assessment for deficiency withholding taxes for the months of October, November and December 1995, We stress that in the absence of proof of any irregularities in the factual determination of the Court in Division, its findings will not be disturbed. The matters raised by petitioner with regard to the computation of the deficiency withholding taxes had already been properly addressed by the Court in Division in the assailed Decision and Resolution. Petitioner having failed to show that there are any other ground for the revision of the Court in Division's findings, We hereby adopt the same.

In the light of the foregoing discussions, the Court *En Banc* finds no reversible error committed by the Court in Division when it rendered its assailed Decision and Resolution dated March 22, 2006 and August 4, 2006, respectively.

76

WHEREFORE, premises considered, the instant petition is hereby **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

C E R T I F I C A T I O N

Pursuant to Section 13, Article VIII 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 *En Banc*.

ERNESTO D. ACOSTA
Presiding Justice

79