REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY

FORMER SECOND DIVISION

EDISON (BATAAN) COGENERATION CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7104

Members:

CASTAÑEDA, JR., Chairperson,
UY, and
PALANCA-ENRIQUEZ, JJ.

Promulgated:
NOV 30 2010
4:00 p.m.

x --- x

DECISION

PALANCA-ENRIQUEZ, J.:

THE CASE

This is a Petition for Review filed on November 25, 2004 by Edison (Bataan) Cogeneration Corporation (hereafter "petitioner"), pursuant to *Section 7 of RA 1125, as amended by RA 9282*, due to the inaction of the Commissioner of Internal Revenue (hereafter "CIR") on petitioner's Letter Protest filed on March 3, 2004, assailing respondent's assessments dated January 23, 2004 for deficiency income tax, value-added tax (VAT), withholding tax on compensation, expanded withholding tax (EWT), and final withholding tax (FWT) for taxable year 2000 in the aggregate amount of P84,868,390.16.

THE FACTS

The facts of the case, based on the parties' Joint Stipulation of Facts and evidence on record, are as follows:

Petitioner is a corporation duly organized and existing under Philippine laws, with principal office located at Luzon Ave., Bataan Economic Zone (BEZ), Mariveles, Bataan. It is registered with the Bureau of Internal Revenue (BIR), bearing Taxpayer Identification No. 002-825-292-000, and with the Philippine Economic Zone Authority (PEZA), as an Ecozone Utilities Enterprise, as per its Certificate of Registration No. 96-01-U, dated October 22, 1996.

On the other hand, respondent CIR is the official authorized under *Section 4 of the NIRC of 1997, as amended,* to assess and collect internal revenue taxes, as well as the power to decide disputed assessments, among others, subject to the exclusive appellate jurisdiction of this Court, with office address at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

On February 2, 2004, petitioner received respondent's Formal Letter of Demand and Final Assessment Notice, dated January 23, 2004, assessing petitioner for alleged deficiency income tax, VAT, withholding tax on compensation, EWT and FWT for taxable year 2000, in the aggregate amount of P84,868,390.16, broken down as follows:

Deficiency Tax	Amount
Income Tax	P65,571,268.01
Value-Added Tax	168,866.15
Withholding Tax on Compensation	128,087.84
Expanded Withholding Tax	79,066.13
Final Withholding Tax	18,921,102.03
TOTAL	**P84,868,390.16**

As regards the deficiency withholding tax on compensation, the basis of the assessment is, as follows *(Exhibit "QQ")*:

> "Verification disclosed that there was under-remittance of taxes withheld from compensation amounting to P80,054.80 (sic) determined as follows:

Withholding tax due on compensation per alpha-list	P2,927,500.36
Less: Remittances per returns	2,847,445.46
Deficiency Withholding Tax	P 80,054.90"

While the basis of the assessed deficiency EWT is, as follows *(Exhibit "QQ")*:

> "Verification disclosed that the following income payments were not properly subjected to expanded withholding tax as required under RR 2-98, as amended, to wit:

	Amount	Rate	EWT Due
Professional Fees	175,000.00	10%	P 17,500.00
Repairs & Maintenance	12,618,860.45	1%	126,188.60
Rent Expense	141,666.49	5%	7,083.32
Laboratory Expense	69,261.66	1%	692.62
Brokerage Fees	570,808.01	5%	28,500.40
EWT Due			179,964.94
Less: Remittances			130,548.61
Deficiency Expanded Withholding Tax			P49,416.33

On the other hand, the basis of the FWT assessment is, as follows *(Exhibit "QQ")*:

> "Verification disclosed that the following income payments were not subjected to final withholding tax, thus, you are assessed for the deficiency final withholding tax pursuant to the provisions of RR 2-98, as amended, to wit:

	Amount	**Rate**	**EWT Due**
Syndicated Loan in Dollars	25,201,177.60	10%	P 2,520,117.76
Inter-company loan from Ogden	51,383,366.40	15%	7,707,504.96
Deficiency Final Withholding Tax			P10,227,622.72

On March 3, 2004, petitioner protested said assessments by filing a letter-protest dated March 2, 2004 with respondent CIR.

Subsequently, petitioner and the assigned BIR examiners had several meetings between March and May 2004, where petitioner furnished respondent with certain documents, as requested by the examiners.

Respondent failed to render a decision on petitioner's protest, within the 180-day period prescribed in *Section 228 of the Tax Code*; thus, on November 25, 2004, petitioner filed the instant Petition for Review.

In her Answer, respondent raised the following special and affirmative defenses:

> "6. Under Republic Act No. 7916, the 'Special Economic Zone Act of 1995', the five percent (5%) preferential tax for locators of Philippine Economic Zones shall apply only to income derived from their registered activities;
>
> 7. Under Section 1 of Revenue Regulations No. 20-2002 dated October 14, 2002, 'Clarifying the Tax Treatment of Income Earned from Unregistered

Activities by Enterprises Registered under the Bases Conversion and Development Act of 1992 and the Philippine Economic Zone Act of 1995', the income realized by such registered enterprise that is not related to its registered activities shall be subject to the regular internal revenue taxes;

8. Petitioner's registered activity under its PEZA Certificate of Registration No. 96-01-U dated October 22, 1996 is to engage in the installation, operation and maintenance of an electric generating facility that will supply the power requirements of the Bataan Economic Zone located at Mariveles, Bataan;

9. Investigation disclosed that for taxable year 2000, Petitioner sold P320,561,217.47 or 56.59% of its generated power to the National Power Corporation, which is not a locator of the Bataan Economic Zone, in violation of the provisions of its Certificate of Registration. Thus, it is not entitled to the 5% preferential tax but to the regular income tax rate of 32% under Section 27(A) of the NIRC of 1997;

10. Verification disclosed that Petitioner failed to include in its taxable income for taxable year 2000 its sale of sludge amounting to P428,605.00, sale of scrap amounting to P17,190.00 and gain on sale of vehicle amounting to P467,000.00, resulting to deficiency income tax under Sections 31 and 32 of the (sic) NIRC of 1997;

11. Petitioner's amortization of unrealized foreign exchange loss in the amount of P18,444,824.35 was disallowed pursuant to the provisions of Section 34 of the NIRC of 1997 as the loss was not yet realized as of the end of the taxable year 2000;

12. Verification disclosed that Petitioner failed to subject to the 10% value-added tax its sale of sludge amounting to P428,605.00, sale of scrap amounting to P17,190.00 and the sale of vehicle amounting to P467,000.00. Thus, it is liable for deficiency VAT in

the amount of P168,866.15 pursuant to the provisions of Section 106 of the NIRC of 1997;

13. Verification disclosed that Petitioner failed to withhold the proper expanded withholding taxes on its Professional Fees (P175,000.00), Repair and Maintenance (P12,618,860.45), Rent Expense (P141,666.49), Laboratory Expense (P69,261.66) and Brokerage Fees (P570,080.01) in violation of the provisions of Revenue Regulations No. 2-98, resulting to deficiency expanded withholding taxes in the amount of P49,416.33;

14. Verification disclosed that Petitioner failed to withhold the final withholding taxes on its Syndicated Loan ($25,201,177.60) and Inter-company loan from Ogden Power International Holdings, Inc. (P51,383,366.40), resulting to Deficiency Final Withholding Tax in the amount of P18,921,102.03;

15. Petitioner cannot invoke BIR Ruling No. 085-95 dated June 13, 1995 and BIR Ruling No. 098-A-98 dated June 29, 1998 as these were not issued to Petitioner;

16. All presumptions are in favor of the correctness of tax assessments. The good faith of tax assessors and the validity of their actions are presumed. They will be presumed to have taken into consideration all the facts to which their attention was called (*CIR vs. Construction Resources of Asia, Inc. 145 SCRA 671*). It is incumbent upon the taxpayer to prove the contrary (*Mindanao Bus Company vs. CIR, 1 SCRA 538; CIR vs. Tuazon, Inc., 173 SCRA 397*) and failure to do so shall vest legality to respondent's actions and assessments."

Petitioner presented Alberto Canlas, Edgar M. Reyes, Nelson Caballan, Angelina M. Sarlabos, Marichelle Q. Gerardo, Manolito P. Manalo, as witnesses, and documentary evidence, marked as *Exhibits*

"A" to "N", "Q", "R", "T", "U", "Y", "Z", "AA" to "EE", "GG", and "HH", inclusive of their sub-markings.

On August 12, 2008, petitioner filed a "Motion for Leave of Court to Serve Supplemental Petition upon Respondent and to Present Additional Evidence", together with the attached Supplemental Petition dated August 12, 2008; which was granted in the Resolution dated September 24, 2008.

In its Supplemental Petition, petitioner alleged that on December 27, 2007, it availed of the benefits of tax amnesty under *RA 9480* and paid the amnesty tax amounting to P500,000.00, and it is entitled to all the immunities and privileges under *Section 6 of RA 9480*, such as the cancellation of the assessment for deficiency income tax and VAT (as well as interests and surcharges) for the year 2000 in the amounts of P65,571,268.01 and P168,866.15, respectively.

On the other hand, respondent presented Dahlia Nitura, as witness, and documentatry evidence, marked as *Exhibits "1" to "12"*, inclusive of their sub-markings, which were admitted by the Court in a Resolution dated November 27, 2008.

In a Resolution dated November 7, 2008, the Court resolved that petitioner has fully complied with the requirements prescribed by *RA 9480*. Consequently, petitioner's Petition for Review was deemed partially withdrawn, and the case considered closed and terminated, as regards petitioner's deficiency income tax in the amount of P65,571,268.01, and VAT in the amount of P168,866.16 for the year 2000, subject to the provisions of *RA 9480.*

On November 27, 2008, petitioner filed a "Motion for Clarification and/or Reconsideration" of the Resolution dated November 7, 2008, praying that the Court clarify and/or reconsider said Resolution, as follows: 1) by confirming that petitioner is entitled to all the immunities and privileges under *Section 6 of RA 9480*; and 2) by cancelling the assessment against petitioner for deficiency income tax and VAT for taxable year 2000.

In a Resolution dated March 18, 2009, the Court set aside the assessments against petitioner for deficiency income tax and VAT for taxable year 2000, solely in view of petitioner's availment of the Tax Amnesty Program under *RA 9480.*

On February 11, 2009, petitioner filed an "Urgent Motion to Reopen the Case for the Presentation of Additional Evidence"; which was granted in a Resolution dated March 18, 2009.

As additional evidence, petitioner presented Atty. Jerome B. Arnaldo and Jennifer Urriquia, and *Exhibits "LL" to "WW"*, inclusive of their sub-markings.

Thereafter, both parties were ordered to file their simultaneous memoranda, within thirty (30) days from notice; afterwhich, the case shall be deemed submitted for decision. Both parties having filed their respective memorandum, the case was deemed submitted for decision on December 1, 2009.

ISSUES

As stipulated upon by the parties, the following are the issues for this Court's consideration:

I

WHETHER PETITIONER'S SALE OF GENERATED POWER TO THE NATIONAL POWER CORPORATION, WHICH IS NOT A LOCATOR OF THE BATAAN ECONOMIC ZONE, IS ENTITLED TO THE 5% PREFERENTIAL RATE OR THE 32% REGULAR INCOME TAX RATE.

II

WHETHER PETITIONER'S SALE OF SLUDGE AND SCRAP AS WELL AS ITS GAIN ON THE SALE OF A VEHICLE ARE SUBJECT TO THE 5% PREFERENTIAL RATE OR THE 32% REGULAR INCOME TAX RATE.

III

WHETHER PETITIONER'S ALLEGED AMORTIZATION OF FOREIGN EXCHANGE LOSS FOR TAXABLE YEAR 2000 IS PROPER, CONSIDERING THAT IT WAS NOT YET REALIZED AS OF THE END OF TAXABLE YEAR 2000.

IV

WHETHER PETITIONER'S SALE OF SLUDGE, SCRAP AND VEHICLE IS SUBJECT TO VAT.

V

WHETHER PETITIONER IS LIABLE FOR FINAL WITHHOLDING TAX ON ITS INTEREST PAYMENTS ON ITS SYNDICATED DOLLAR-DENOMINATED LOAN.

VI

WHETHER PETITIONER IS LIABLE FOR FINAL WITHHOLDING TAX ON ITS INTEREST PAYMENTS ON ITS LOAN FROM OGDEN POWER INTERNATIONAL HOLDINGS, INC.

VII

WHETHER PETITIONER WITHHELD THE PROPER WITHHOLDING TAXES FROM ITS PAYMENTS FOR PROFESSIONAL FEES, REPAIRS AND MAINTENANCE, RENT EXPENSE, LABORATORY EXPENSE AND BROKERAGE FEES.

In view of petitioner's availment of the tax amnesty, the remaining issues to be resolved by the Court in this case pertain to the assessments for the deficiency withholding tax on compensation, deficiency EWT, and deficiency FWT for taxable year 2000.

THE COURT'S RULING

The petition is partly meritorious.

Deficiency Withholding Tax on Compensation – P68,474.49

As regards the deficiency withholding tax on compensation, in an Addendum to the Memorandum Report dated December 16, 2003, as stipulated by the parties, petitioner paid the correct amount of withholding tax due on compensation of its employees. The assessment, therefore, as to withholding tax on compensation, is hereby ordered cancelled and set aside.

Deficiency EWT – P79,066.13

As regards the deficiency EWT, respondent originally assessed petitioner, as follows *(Exhibit "QQ")*:

	Amount	Rate	EWT Due
Professional fees	P 175,000.00	10%	P 17,500.00
Repairs & Maintenance	12,618,860.45	1%	126,188.60
Rent Expense	141,666.49	5%	7,083.32
Laboratory Expense	69,261.66	1%	692.62
Brokerage Fees	570,008.01	5%	28,500.40
EWT Due			P 179,964.94
Less: Remittances			130,548.61
Deficiency EWT			P 49,416.33
Add: 20% p.a. Interest (1.26.01 to 1.23.04)			29,649.80
TOTAL AMOUNT DUE			**P 79,066.13**

Said assessment for EWT was revised by respondent, as shown in the Addendum to the Memorandum Report dated December 16, 2003, as follows *(Exhibit "4-a", BIR Records, p. 762)*:

	Amount	Rate	EWT Due
Professional fees	P 100,000.00	5%	P 5,000.00
Freight Charges	8,314.02	5%	415.70
EWT Due			P 5,415.70
Add: 20% p.a. Interest			4,115.93
Compromise			1,500.00
TOTAL AMOUNT DUE			**P 11,031.63**

However, in said Addendum to the Memorandum Report, it is provided that the taxpayer paid the following deficiency assessments:

> "a. Deficiency EWT: P11,031.63 for taxable year 2000
> b. Penalties for late remittance: P3,426.69 for taxable year 2000."

Likewise, in the Affidavit dated August 12, 2008 of Revenue Officer Dahlia V. Nitura, one of the signatories of said Memorandum, she confirmed the above-mentioned payments of petitioner *(pars. 11 and 12, Exhibit "12")*. Since respondent's witness herself admitted that the alleged deficiency EWT had been paid, the assessment for EWT is hereby ordered cancelled and set aside.

As such, the remaining issue to be resolved pertains to the deficiency FWT.

Deficiency FWT – P18,921,102.03

For petitioner's alleged failure to properly subject the following income payments to FWT, respondent assessed petitioner of deficiency FWT, pursuant to the provisions of *Revenue Regulations No. 2-98, as amended*, as follows:

	INTEREST PAYMENT	RATE	FWT DUE
Syndicated Loan in Dollars	P25,201,177.60	10%	P 2,520,117.76
Inter-company loan from Ogden	51,383,366.40	15%	7,707,504.96
Deficiency FWT			P 10,227,622.72
Add: 25% Surcharge			2,556,905.68
20% p.a. Interest (1-26-01 to 1-23-04)			6,136,573.63
TOTAL AMOUNT DUE			**P 18,921,102.03**

Petitioner submitted certified copies of withholding tax remittances to respondent's examiners; thus, the assessment was subsequently revised, as follows *(Exhibit "4-a", BIR Records, pp. 761-762)*:

FWT Due	P 10,227,622.72
Less: Remittances	2,842,630.20
Deficiency FWT	P 7,384,992.52
Add: 20% p.a. Interest	4,726,395.21
TOTAL AMOUNT DUE	**P 12,111,387.73**

FWT on Interest Payments on Loan Agreement with Ogden Power International Holdings, Inc. - P7,707,504.96

In its protest letter, petitioner argued that it is not liable to pay FWT on interest on loan from Ogden Power International Holdings, Inc. (hereafter "Ogden") for the reason that interest in the amount of P51,383,366.40 accrued at the end of the year 2000 only; the same should not be subjected to FWT, as it was not yet due and demandable, pursuant to *Section 2.57.4 of Revenue Regulations No 2-98;* and the applicable tax rate should be the 5% preferential rate, not 15%, pursuant to *BIR Ruling No. 85-95,* dated June 13, 1995.

We agree with petitioner that it is not liable to pay FWT on interest payment on loan from Ogden.

Section 2.57.4 of Revenue Regulations No. 2-98 provides, as follows:

> "SEC. 2.57.4. *Time of Withholding.* - The obligation of the payor to deduct and withhold the tax under Section

> 2.57 of these regulations arises at the time an income is paid or payable, whichever comes first, the term **'payable'** refers to **the date the obligation becomes due, demandable or legally enforceable.**"

From the foregoing provision it is clear that the obligation to withhold arises at the time the income is paid, or when the obligation becomes payable.

A careful examination of petitioner's loan agreement with Ogden reveals the following *(Exhibit "K")*:

> "**3. Repayment and Interest**
>
> 3.1 The BORROWER shall repay the Loan to the LENDER (or as it may in writing direct) in sixteen (16) consecutive semi-annual instalments (sic) of US DOLLARS EIGHT HUNDRED and EIGHTY ONE THOUSAND and TWO HUNDRED and FIFTY (US$881,250.00) commencing on 1 June 2002 and thereafter on June 1 and December 1 of each year.
>
> 3.2 Interest shall accrue on the Loan from the date hereof until the date of repayment at a rate equal to the 90-day LIBOR rate plus 2.5%, subject to review every 90 days.
>
> 3.3 Notwithstanding the provisions of Clause 3.2 above, if the BORROWER fails to make payment of an amount due on a payment date, the BORROWER shall pay additional interest on such past due and unpaid amount from the due date until the date of payment at the rate of ½% per month.
>
> 3.4 The interest payable to the LENDER shall be exclusive of withholding tax and/or any other similar taxes which shall be to the account of the BORROWER. Every payment to the LENDER hereunder shall be net of any present or future tax,

> assessment or other governmental charge imposed by any taxing authority of any jurisdiction."

Since in the afore-quoted provisions of the loan agreement with Ogden, it is provided that petitioner's liability for interest payment became due and demandable, and therefore 'payable', starting June 1, 2002 only; hence, petitioner is not required to withhold the FWT thereon at the end of year 2000. Being not required to withhold FWT at the end of 2000, the deficiency FWT assessment of P7,707,504.96 for taxable year 2000 is hereby ordered cancelled and set aside.

FWT on Interest Payments on Syndicated Loan in Dollars – P2,520,117.76

Records show that petitioner obtained a syndicated dollar-denominated loan from and paid interest to the following creditors *(Exhibit "BB")*:

1) United Coconut Planters Bank (UCPB);
2) Philippine National Bank (PNB);
3) First Metro Investment Corporation;
4) Security Bank;
5) Sung Hung Kai; and
6) United Overseas Bank/Westmont Bank.

Petitioner claims that as industry practice, the lender banks remitted to the BIR the 10% final tax on interest on behalf of petitioner.

To prove remittance of the 10% FWT on the interest payments on its dollar-denominated syndicated loan for the year 2000, petitioner presented the following:

Creditors	Supporting Document	Exhibit	Tax Withheld
PNB			
May	BIR Form No. 1601-E	AA	P 350,183.04
November	BIR Form No. 1601-F	Z	346,988.77
First Metro Investment Corp.	BIR Form No. 2306	Y	536,254.43
Security Bank	BIR Form No. 1604-CF, Alphalist	CC and CC-1	387,411.46
UOB/Westmont Bank	BIR Form No. 2306	HH	155,912.63
TOTAL			**P 1,776,750.33**

FWT on Loan Interest Paid to UCPB and Sung Hung Kai Bank

Petitioner, however, failed to submit any proof of withholding and/or remittance of FWT on its interest payments to UCPB and Sung Hung Kai Bank. Hence, the deficiency FWT assessments on loan interest paid to UCPB and Sung Hung Kai Bank are hereby sustained.

FWT on Loan Interest Paid to First Metro Investment Corporation and UOB/Westmont Bank

As to BIR Forms No. 2306 (Certificates of Final Income Tax Withheld), pertaining to the alleged FWT of P536,254.43 and P155,912.63 on petitioner's interest payments to First Metro Investment Corporation and UOB/Westmont Bank, respectively, the same cannot be given probative value because a perusal of said certificates shows that the income recipient/payee therein is petitioner; while the withholding agents/payors are First Metro Investment Corporation and United Overseas Bank. Even if said certificates pertain to the withholding taxes subject of the assessments, still the same do not prove remittance of the subject withholding taxes. Hence, the deficiency FWT assessments on loan interest paid to First Metro Investment Corporation and UOB/Westmont Bank are hereby sustained.

FWT on Loan Interest Paid to PNB

The Court also disallows BIR Form No.1601-E [Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded)], pertaining to the alleged FWT of P350,183.04 on petitioner's interest payments to PNB, because the return shows that the amount of P350,183.04 refers to *creditable* income taxes withheld on petitioner's income payments to certain brokers and agents. We, therefore, sustain the deficiency FWT assessment on loan interest paid to PNB.

However, the Court finds BIR Form No. 1601-F (Monthly Remittance Return of Final Income Taxes Withheld), as valid proof of the P346,988.77 FWT on petitioner's interest payments on its dollar-denominated syndicated loan with PNB. Accordingly, the amount of P346,988.77, representing 10% FWT and corresponding to the assessment on loan interest payment of petitioner to PNB, is hereby ordered cancelled and set aside.

FWT on Loan Interest Paid to Security Bank Corporation

While a perusal of BIR Form No. 1604-CF filed by Security Bank Corporation would show that the FWT indicated therein pertains to Security Bank Corporation's income payments, and not to petitioner's income payments; the attached alphalist, however, proves otherwise. As reflected in the alphalist, the amount of P387,411.46 corresponds to ATC (Alphanumeric Tax Code) WC 191, which refers to "Interest and other income payments on foreign currency transactions/loans payable to FCDU's" *(dorsal portion of Exhibit "Y")*. Since petitioner is not an FCDU, but an Ecozone entity engaged in power generation services, we conclude that the FWT of P387,411.46 pertains to petitioner's interest payments to Security Bank Corporation. In fact, the amount of P387,411.46 was included in the total FWT remittances of P2,842,630.20 deducted by respondent's examiners in arriving at the revised assessment of P12,111,387.73 *(Exhibit "4-a", BIR Records, pp. 761-762)*.

As such, the amount of P387,411.46, representing 10% FWT on loan interest payments made by petitioner to Security Bank Corporation, was properly withheld and remitted to the BIR. For this reason, the amount of P387,411.46 is hereby ordered cancelled and set aside.

In sum, petitioner is liable to pay basic deficiency FWT of P1,785,717.53 for the year 2000 on its interest payments on its dollar-denominated syndicated loan, computed as follows:

	Interest Payment	Rate	FWT
FWT Due on Interest Paid on Syndicated Loan in US Dollars	P 25,201,177.60	10%	P 2,520,117.76
Less: Duly Substantiated FWT			
On loan interest paid to PNB	P 3,469,887.70	10%	P 346,988.77
On loan interest paid to Security Bank Corp.	3,874,114.60	10%	387,411.46
Subtotal	P 7,344,002.30		P 734,400.23
FWT Still Due on Interest on Syndicated Loan in US Dollars	**P 17,857,175.30**		**P 1,785,717.53**

WHEREFORE, premises considered, the instant Petition for Review is hereby **PARTLY GRANTED**. Accordingly, the assessments for deficiency withholding tax on compensation in the amount of P128,087.84 and expanded withholding tax in the amount of P79,066.13 for taxable year 2000 are hereby **CANCELLED** and **SET ASIDE**.

As regards the deficiency final withholding tax assessment against petitioner for taxable year 2000, the same is hereby **AFFIRMED,** with modification. Accordingly, petitioner is hereby **ORDERED TO PAY** respondent Commissioner of Internal Revenue the amount of TWO MILLION TWO HUNDRED THIRTY TWO ONE HUNDRED FORTY SIX AND 91/100 (P2,232,146.91), representing deficiency final withholding tax, computed, as follows:

FWT Due Per Assessment		P 10,227,622.72
Less: Substantiated FWT on interest on syndicated loans	P 734,400.23	
FWT on interest on foreign loan from Ogden	7,707,504.96	8,441,905.19
Basic Deficiency FWT		P 1,785,717.53
Add: 25% Surcharge		446,429.38
Total Deficiency FWT		**P 2,232,146.91**

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In addition, petitioner is ordered to pay:

1) deficiency interest at the rate of twenty percent (20%) *per annum* on the basic deficiency final withholding tax of P1,785,717.53 computed from January 25, 2001 until full payment thereof, pursuant to *Section 249(B) of the NIRC of 1997, as amended*; and

2) delinquency interest at the rate of twenty percent (20%) *per annum* on the total deficiency final withholding tax of P2,232,146.91, and on the deficiency interest which have accrued as afore-stated in paragraph 1 hereof, computed from January 23, 2004 until full payment thereof, pursuant to *Section 249(C) of the NIRC of 1997, as amended.*

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

(On Leave)
ERLINDA P. UY
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

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

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, 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