REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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ISUZU AUTOPARTS MANUFACTURING CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondents.

C.T.A. CASE NO. 7265

Members:

ACOSTA, *P.J.*
BAUTISTA, and
CASANOVA, *JJ*,.

Promulgated:
DEC 11 2008 ; 1:00 pm

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AMENDED DECISION

ACOSTA, *P.J.*:

On July 16, 2008, this Court promulgated a Decision where respondent was ordered to cancel/withdraw the assessment issued against petitioner in the amount of P296,134.38, representing deficiency legal increments in interest of P284,134.38 and compromise penalties of P12,000.00, for final withholding tax on royalty payments corresponding the calendar year 2002.

However, petitioner was ordered to pay the reduced assessment of P1,198,305.14, representing deficiency tax assessment for legal increments in surcharges and twenty percent (20%) delinquency interest on the said amount, computed from October 29, 2004 until full payment.

Subsequently, respondent filed his **"MOTION FOR RECONSIDERATION"** on August 6, 2008, whereas, petitioner filed its **"MOTION FOR PARTIAL RECONSIDERATION (OF THE DECISION DATED JULY 16,2008)"** by mail on August 7, 2008 and received by this Court on August 21, 2008. Both Motions are seeking the reconsideration of this Court's Decision.

Petitioner and respondent filed their respective Comment/Opposition to the other's Motion on August 28, 2008 and September 15, 2008, respectively.

On September 29, 2008, respondent filed a **"REPLY (to Petitioner's Comment/Opposition to Respondent's Motion for Reconsideration dated 28 August 2008)"**.

At the outset, a perusal of petitioner's Motion for Partial Reconsideration would reveal that it has no notice of hearing as required under Sections 4 and 5 of Rule 15 of the Rules of Court, *viz*:

> "Sec. 4. *Hearing of motion.* — Except for motions which the court may act upon without prejudicing the rights of the adverse party, **every written motion shall be set for hearing by the applicant**.
>
> Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice.
>
> Sec. 5. *Notice of hearing.* — The notice of hearing shall be addressed to all parties concerned, and **shall specify the time and date of the hearing which must not be later than ten (10) days after the filing of the motion."** (*Emphasis supplied.*)

In *Pojas vs. Gozo-Dadole, et al.*[1], the Supreme Court held that:

> "Section 4 of Rule 15 of the Rules of Court requires that not of motion be served by the movant on all parties concerned at least three (3) days before its hearing. Section 5 of the same Rule provides that the notice shall be directed to the parties concerned, and shall state the

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[1] G.R. No. 76519, December 21, 1990.

> time and place for the hearing of the motion. **A motion which does not meet the requirements of Sections 4 and 5 of Rule 15 of the Rules of Court is considered a worthless piece of paper which the clerk has no right to receive and the court has no authority to act upon. Service of copy of a motion containing notice of the time and place of hearing of said motion is a mandatory requirement, and the failure of the movant to comply with said requisites renders his motion fatally defective**."[2] (*Emphasis supplied.*)

Accordingly, petitioner's Motion for Partial Reconsideration is deemed a worthless piece of paper and shall not be acted upon by this Court.

Consequently, the only issue to be considered is that which has been raised by respondent in his Motion and those argued by petitioner in its Comment/Opposition thereto, relating to the amount of P284,134.38, representing deficiency legal increments in interest.

The core of controversy herein is the time when petitioner should have withheld and remitted the withholding tax on its royalty payments to Isuzu Motors Ltd. (ISUZU), a nonresident foreign corporation, for calendar year 2002. The period of withholding determines whether or not petitioner is liable for the deficiency interest of P284,134.38.

To recall, petitioner computed the deficiency interest for final tax on royalty payments, as follows:

2002	Tax Base	Final W/tax Rate	Basic Tax Due	Date Due RR 12-2001	Date Paid	Days Late	Interest 20%
Jan	2,296,694.46	25%	574,173.62	4/10/2002	5/10/2002	30	9,438.47
Feb	3,017,374.32	25%	754,343.58	4/10/2002	5/10/2002	30	12,400.17
Mar	1,682,423.29	25%	420,605.82	4/10/2002	5/10/2002	30	6,914.07
Apr	6,298,627.84	25%	1,574,656.96	7/10/2002	11/11/2002	124	106,990.39
May	4,035,559.85	25%	1,008,889.96	7/10/2002	11/11/2002	124	68,549.24
June	5,384,861.50	25%	1,346,215.38	7/10/2002	11/11/2002	124	91,468.88
July	6,284,429.97	25%	1,571,107.49	10/10/2002	11/11/2002	32	27,548.19

[2] Citations omitted.

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Aug	10,162,793.16	25%	2,540,698.29	10/10/2002	11/11/2002	32	44,549.23
Sept	9,584,273.65	25%	2,396,068.41	10/10/2002	11/11/2002	32	42,013.25
Oct	5,962,748.09	25%	1,490,687.02	1/15/2003	4/10/2003	85	69,429.26
Nov	6,208,925.88	25%	1,552,231.47	1/15/2003	4/10/2003	85	72,295.71
Dec	6,911,506.28	25%	1,727,876.57	1/15/2003	4/10/2003	85	80,476.44
TOTAL							**632,073.30**

From the table above, petitioner counted the number of days it was late on quarterly dates from which the period when it believed its obligation to withhold arose.

On the other hand, respondent's computation of the number of days late is monthly, as shown in the table below:

2002	Tax Base	Final W/tax Rate	Basic Tax Due	Date Due	Date Paid	Days Late	Interest 20%
Jan	2,296,694.46	25%	574,173.62	2/10/2002	5/10/2002	89	28,000.80
Feb	3,017,374.32	25%	754,343.58	3/10/2002	5/10/2002	61	25,213.68
Mar	1,682,423.29	25%	420,605.82	4/10/2002	5/10/2002	30	6,914.07
Apr	6,298,627.84	25%	1,574,656.96	5/10/2002	11/10/2002	185	159,622.76
May	4,035,559.85	25%	1,008,889.96	6/10/2002	11/10/2002	154	85,133.73
June	5,384,861.50	25%	1,346,215.38	7/10/2002	11/10/2002	124	91,468.88
July	6,284,429.97	25%	1,571,107.49	8/10/2002	11/10/2002	93	80,061.92
Aug	10,162,793.16	25%	2,540,698.29	9/10/2002	11/10/2002	62	86,314.13
Sept	9,584,273.65	25%	2,396,068.41	10/10/2002	11/10/2002	32	42,013.25
Oct	5,962,748.09	25%	1,490,687.02	11/10/2002	4/10/2003	151	123,339.04
Nov	6,208,925.88	25%	1,552,231.47	12/10/2002	4/10/2003	121	102,915.07
Dec	6,911,506.28	25%	1,727,876.57	1/15/2003	4/10/2003	90	85,210.35
TOTAL							**916,207.68**

The difference in petitioner's and respondent's computation resulted to the deficiency interest in the amount of P284,134.38.

Petitioner argues that it accrues royalty payments as expenses on a monthly basis, even though they were not yet actually paid or payable. Hence, it withheld on the last month of the return period in which the royalty payments were claimed as

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expense, pursuant to the second paragraph of Section 2.57.4 of Revenue Regulations No. 2-98, as amended.

However, it is respondent's position that the obligation to withhold the tax on petitioner's royalty expenses should occur at the time the expenses are recorded in its books, *that is*, monthly, by virtue of the first paragraph of Section 2.57.4 of Revenue Regulations No. 2-98, as amended.

Section 58 of the National Internal Revenue Code (NIRC) of 1997 provides the period for the filing of the return and the payment or remittance of final taxes withheld under Section 57 of the same Code. Section 57 and 58 partly read:

> **"SEC. 57.** *Withholding Tax at Source.—*
>
> (A) *Withholding of Final Tax on Certain Incomes.* — Subject to rules and regulations the Secretary of Finance may promulgate, upon the recommendation of the Commissioner, requiring the filing of income tax return by certain income payees, the tax imposed or prescribed by Sections xxx 28(B)(1) xxx of this Code on specified items of income shall be withheld by payor-corporation and/or person person and paid in the same manner and subject to the same conditions as provided in Section 58 of this Code.
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> **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 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

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> shall be filed and the payment made not later than the last days 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.*)

The above provisions were implemented by Revenue Regulations No. (RR) 2-98, which was subsequently amended by RR 12-01. Section 2.57.4 thereof, provides when the obligation to withhold arises. The said section reads:

> **"Section 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 payment is **paid or payable, or the income payment is accrued or recorded as an expense or asset, whichever is applicable, in the payor's books, whichever comes first**. The term "payable" refers to the date the obligation becomes due, demandable or legally enforceable.
>
> *Provided, however,* that where income is not yet paid or payable but the same has been recorded as an expense or asset, whichever is applicable, in the payor's books, **the obligation to withhold shall arise in the last month of the return period in which the same is claimed as an expense or amortized for tax purposes.**
>
> *Example* — X Corporation, a domestic corporation which reports income and expenses on a calendar year basis, issues 2-Year bonds with face value of P100,000,000 at a discount amounting to P6,000,000 on January 1, 2002 to twenty five (25) investors. It records in its books the amortized portion of the discount as expense in the amount of P250,000/month (P6,000,000 divided by 24 months).
>
> Since the discount is not yet paid or payable but the aliquot portion of which has already been recorded as expense for tax purposes, the withholding of the 20% final tax shall be done on the last month of the quarter **when the same has been claimed as an expense in the quarterly income tax returns/final adjustments returns** filed by X Corporation.
>
> Thus, in the above illustration, the amortized discount to be recorded by X Corporation for the months of January, February and March 2002 amounting to P750,000 shall be subject to 20% final tax of P150,000 come March 2002, which tax shall be remitted within 10 days after the quarter ending March 2002 (that is, on or before April

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> 10, 2002). The said withholding tax shall be reported in its *Monthly Remittance Return of Final Income Taxes Withheld* required to be filed in April 2002. On the other hand, for the calendar quarter ending December 2002, the withholding of the final tax for the amortized discount pertaining to the months of October, November and December shall be done in December 2002 and the remittance thereof shall be on or before January 15, 2003. The said withholding tax shall be reported in its *Monthly Remittance Return of Final Income Taxes Withheld* required to be filed in January 2003.

Applying the foregoing provision to this case, the duty of petitioner to withhold arises when the royalty payments were paid, becomes payable, or were accrued/recorded as expense in petitioner's books, whichever comes first. The second paragraph however, provides that if petitioner recorded the royalty payments as expense, although they were not yet paid or payable, the obligation to withhold shall be within the last month of the return period in which the royalty payments were claimed as expenses for tax purposes.

Undisputedly, petitioner recorded in its books the royalty payments on a monthly basis for calendar year 2002. However, it bears stressing that the recording of the royalty payments as expense, although they were not yet paid or payable, is not enough to justify the application of the rule enunciated in the second paragraph of Section 2.57.4 of Revenue Regulations No. 2-98, as amended. There is an additional requirement to be complied, *i.e.*, that the royalty payments should have been **claimed as expense or amortized for tax purposes.**

A closer examination of the evidence presented disclosed that petitioner failed to prove that the royalty payments were actually claimed as expenses for tax purposes. Petitioner submitted its Monthly Remittance Returns[3] and Annual Information

[3] Exhibits "M","N","O","P","Q","R","S","T","U","V","W", "X", and "Y".

Return[4]. However, such pieces of evidence only prove the payment of the withholding tax to the government. They do not show that the royalty payments were actually claimed as expenses for tax purposes, a requirement under the second paragraph of Section 2.57.4 of Revenue Regulations No. 2-98, as amended.

Since the second paragraph is inapplicable, there is a need to assess the other factors to determine when petitioner's obligation to withhold arose.

First is the payment of the royalties; it is observed that evidence on record is bereft of any indication as to when the subject royalty payments have been made by petitioner to a non-resident foreign corporation during the calendar year 2002. It follows then that payment of the royalties cannot be used as basis in knowing when the obligation to withhold commences.

Second, when the royalties became payable or due; Section 6.02 of the Technical Assistance Agreement dated November 1, 2001[5] by and between petitioner and ISUZU, as amended (TAA), provides when the subject royalty became "payable", to wit:

> IAMC shall furnish **written reports** to ISUZU by the end **15th** of March and September of each year during the Royalty Period and within thirty (30) days after expiration of the Royalty Period, **setting forth** the quantity of all Licensed Transmissions and Licensed Components sold by IAMC during the preceding six (6) months' period (or, if sooner due to termination of this Agreement or otherwise, such shorter period as may be applicable) and **the amount of royalties payable**. IAMC shall pay, by the end of **April**, the royalties due indicated in a report submitted to ISUZU in March and shall pay, by the end of **October**, the amount of royalties indicated in a report submitted to ISUZU in September.

Based on the foregoing, the obligation of petitioner to withhold should start on April and October, the period when the royalties became payable. Unfortunately for

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[4] Exhibit "Z".
[5] Exhibit "I".

petitioner, evidence is wanting as to the amount of royalties that were due by April and October. The supposed "written reports" required to be submitted by petitioner to ISUZU, pursuant to Section 6.02 of the TAA, "*setting forth the amounts of royalties payable*" would have enabled this Court to properly determine and compute the exact amount of royalties that became payable. The amount of royalties that were due by April and October would have been the starting point for computing the deficiency legal increments in interest for calendar year 2002.

Accordingly, due to the insufficiency of evidence available to refute the assessment made against petitioner by the Bureau of Internal Revenue (BIR) on the imposition of interest in the amount of ₱ 284,134.38, this Court is constrained to uphold the assessment based on the presumption of its correctness. Thus, the obligation of petitioner to withhold, arose at the time that it recorded the royalties as expense, *i.e.*, monthly.

It is a well-settled rule that the determinations and assessments of the BIR are presumed correct and made in good faith. The taxpayer has the duty of proving otherwise. In the absence of proof of irregularities in the performance of official duties, an assessment will not be disturbed. Even an assessment based on estimates is *prima facie* valid and lawful, where it does not appear to have been arrived at arbitrarily or capriciously. The burden of proof is upon the complaining party to show clearly that the assessment is erroneous. Failure to present proof of error in the assessment will justify the judicial affirmance of said assessment.[6]

[6] *Marcos II vs. Court of Appeals, et al.,* G.R. No. 120880, June 5, 1997.

IN VIEW OF ALL THE FOREGOING, the Motion of respondent is hereby **GRANTED**. The Decision promulgated on July 16, 2008 is hereby **MODIFIED** as follows—

> **WHEREFORE**, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO CANCEL/WITHDRAW** the assessment issued against petitioner in the amount of P12,000.00, representing deficiency legal increments in compromise penalties for calendar year 2002. However, petitioner is **ORDERED TO PAY** respondent the assessment in the reduced amount of P1,482,439.52, representing deficiency tax assessment for legal increments in interests for calendar year 2002, and surcharges for the months of April, October, and December for the same calendar year.
>
> In addition, petitioner is hereby **ORDERED TO PAY** respondent twenty percent (20%) delinquency interest on the amount of P1,482,439.52, computed from October 29, 2004 until full payment thereof, pursuant to Section 249(C) of the NIRC of 1997.
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> **SO ORDERED.**

ERNESTO D. ACOSTA
Presiding Justice

We concur:

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

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's Division.

ERNESTO D. ACOSTA
Presiding Justice