# REPUBLIC OF THE PHILIPPINES
# COURT OF TAX APPEALS
# QUEZON CITY

**IBM PHILIPPINES, INC.,**
Petitioner,

- versus -

C.T.A. CASE NO. 6526

**THE COMMISSIONER OF INTERNAL REVENUE,**
Respondent.

Promulgated:
AUG 20 2004
EPApolinario

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# D E C I S I O N

This petition seeks to declare void and to cancel the deficiency income tax assessment, including increments, in the amount of P140,529,667.36 and the deficiency expanded withholding tax assessment, including increments, in the amount of P14,877,324.81 issued by respondent against the petitioner for the taxable year ended 1995.

The following are the antecedents as revealed by the records of the case:

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office address at the 2nd – 4th Floors, IBM Plaza, Eastwood City, Libis, Quezon City.

On April 15, 1996 petitioner filed its Annual Income Tax Return for taxable year ended 1995. Petitioner also filed its Monthly Remittance Return of Income Taxes Withheld for the said taxable year *(par. 8, Stipulation of Facts).*

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Petitioner is a Large Taxpayer falling under the jurisdiction of the Large Taxpayers Service under Revenue District Office No. 116 *(par. 5, Stipulation of Facts)*. Petitioner was transferred by the BIR from the jurisdiction of RDO No. 50 – South Makati to the jurisdiction of the Large Taxpayers Service (RDO No. 116) on September 1, 1998 *(par. 7, Stipulation of Facts)*.

On March 22, 2001, petitioner filed a notice of change of address with the Large Taxpayers Service indicated as: 2nd to 4th Floors, IBM Plaza, 8 Eastwood Avenue, Eastwood City Cyberpark E. Rodriguez Jr. Avenue, Libis, Quezon City. Consequently, the Large Taxpayers Service issued a new Certificate of Registration to petitioner reflecting its new address *(par. 6, Stipulation of Facts)*.

On October 23, 2001, petitioner's representative personally received from the Large Taxpayer's Collection and Enforcement Division, the Collection Letter dated October 19, 2001 addressed to petitioner at its present address. Attached to the said letter were the following: 1) Demand Letter; 2) Details of Discrepancies; and 3) two Assessment Notices both numbered 000668-95-01-833 for deficiency income tax and deficiency expanded withholding tax *(par. 3, Summary of Admitted Facts)*.

In the aforesaid Collection Letter, respondent Commissioner of Internal Revenue (CIR) demanded from petitioner payment in an aggregate amount of P155,406,992.17, representing deficiency income tax and expanded withholding

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tax, inclusive of surcharge, interest, and compromise penalties for the taxable year 1995 under Assessment/Demand No. 000668-95-01-833 allegedly issued on July 18, 2001 *(par. 4, Summary of Admitted Facts)*, broken down as follows:

| KIND OF TAX | TAX DUE | SURCHARGE | INTEREST | COMPROMISE | TOTAL AMOUNT |
|---|---|---|---|---|---|
| Income Tax | 54,316,895.85 | 13,579,223.96 | 72,608,547.55 | 25,000.00 | 140,529,667.36 |
| W.E. | 5,598,982.72 | 1,399,745.68 | 7,855,596.41 | 25,000.00 | 14,877,324.81 |
| | | | | **TOTAL** | **P 155,406,992.17** |

On October 24, 2001, petitioner protested the deficiency assessments for income tax and expanded withholding tax on the ground that it did not receive a Preliminary Assessment Notice and it came to know of the Final Assessment Notices only upon receipt of the Collection Letter dated October 19, 2001 *(par. 7, Summary of Admitted Facts)*. Petitioner filed supplemental protests on November 19, 2001 and November 22, 2001 with respondent *(pars. 8 & 9, Summary of Admitted Facts)*.

Due to respondent's failure to resolve petitioner's protest within 180-day reglementary period, petitioner was constrained to file a petition for review with this court on August 16, 2002.

The parties in their Joint Stipulation of Facts and Issues filed on December 2, 2002 and approved by this court on December 9, 2002, stipulated the following issues to be resolved, to wit:

1. Whether or not respondent observed due process in the issuance of the deficiency income tax and expanded withholding tax assessments;

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2. Whether or not the deficiency income tax and expanded withholding tax assessments are barred by prescription;

3. Whether or not the deficiency income tax and expanded withholding tax assessments have factual and/or legal basis; and

4. Whether or not the disallowed expenses can be subjected to both deficiency income tax and expanded withholding tax assessments.

Believing that there are no genuine issues as to any material fact both with respect to issues 1, 2 and 4, petitioner filed a Motion for Summary Judgment on January 10, 2003. It argued that as to the issues 1 and 2, they may be resolved by this court based on the Joint Stipulation of Facts and Issues and the BIR Records. On the other hand, the facts necessary to resolve Issue No. 4 are admitted and apparent on the face of the Formal Demand Letter. On the other hand, the respondent maintains that while Issue Numbers 1, 2 and 4 are legal issues, Issue Number 3 which is "Whether or not the deficiency income tax and expanded withholding tax assessments have factual and/or legal basis" is a factual issue which would require the presentation of evidence. The bases of the respondent are the following: a) The assessments for deficiency income tax and expanded withholding tax are based on the findings of the examiner that petitioner failed to withhold/remit tax on salaries and wages, professional fees and rent expenses in violation of Revenue Regulations No. 5-85 as amended by Revenue Regulations No. 2-98. Hence, said expenses are not allowable as

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deductions; and b) The amount of P16,981,280.29 claimed by petitioner as creditable withholding tax is unsupported.

Respondent, further asserts that petitioner in its motion, stated that a proposed decision withdrawing and canceling the deficiency income and expanded withholding tax assessments was prepared by the Appellate Division and is now for approval and signature of Commissioner. However, it submits that said proposal, being merely recommendatory and not yet approved by the Commissioner of Internal Revenue, does not bind this court.

This court, in a Resolution promulgated on March 28, 2003, denied petitioner's Motion for Summary Judgment. Petitioner's subsequent Motion for Reconsideration was likewise denied on July 8, 2003.

Aggrieved by the resolution of this court, petitioner went to the Court of Appeals asking for relief. In its January 30, 2004 Decision, the Court of Appeals granted the petition, the dispositive portion of which reads:

> "**WHEREFORE**, the instant Petition is hereby **GRANTED**. The Resolution of the Court of Tax Appeals dated March 28, 2003 and July 8, 2003 are hereby **ANNULED AND SET ASIDE**. The Court of Tax Appeals is **ORDERED to GRANT** petitioner's Motion for Summary Judgment and to render summary judgment thereon."

The petitioner claims that it only learned of the deficiency income and expanded withholding tax assessments for the taxable year ended 1995 on October 23, 2001 when it received a call from Large Taxpayers Collection and Enforcement Division instructing petitioner to send a representative to receive a

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Collection Letter therefrom dated October 19, 2001. Petitioner's representative personally received from the Large Taxpayer Collection and Enforcement Division the said Collection Letter *(par. 1, Stipulation of Facts).*

The docket shows, however, that sometime in May 2001, the Revenue Enforcement Officers of Revenue District Office No. 50 - South Makati, reported the results of their 1995 tax investigation of petitioner and prepared the following: (i) various internal BIR forms all dated May 10, 2001, consisting of the General Information, Report on Taxpayers Delinquent Taxes, Audit Report on Value-Added Tax, Audit Report on Withholding Tax on Compensation, Audit Report on Expanded Withholding Tax and Audit Report on Income Tax, (ii) a Pre-Assessment Notice dated May 10, 2001 and (iii) a Ist Indorsement dated May 10, 2001 for signature by the Revenue District Officer transmitting the docket of the assessment to the Chief of the Assessment Division of Revenue Region No. 8 *(par. 10, Summary of Admitted Facts).* The docket of the subject deficiency tax assessments was received by the Revenue District Office on May 22, 2001 and then by the Assessment Division on May 31, 2001 *(par. 11, Summary of Admitted Facts).*

On June 4, 2001, respondent issued the Pre-Assessment Notice to petitioner by Registered Mail No. 1447 addressed to petitioner's old address at Paseo de Roxas, Makati City *(par. 3, Stipulation of Facts).* And based on the certification of the Makati Central Post Office, Registered Mail No. 1447 was

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returned to sender for reason that the addressee moved out to an unknown address and the same was delivered back to sender and duly received by the sender's authorized representative Gerry Martinez on June 21, 2001 *(par. 4, Stipulation of Facts).*

The Formal Demand Letter and the Assessment Notices were mailed to petitioner's old address at Paseo de Roxas, Makati City on July 20, 2001. Since petitioner had moved to the IBM Plaza in Libis, Quezon City, the letter was returned to sender by the post office on July 23, 2001 with the notation that the addressee "MOVED-OUT" *(par. 12, Summary of Admitted Facts).*

Clearly from the above admitted and stipulated facts, petitioner did not receive the pre-assessment notice as well as the demand letter and final assessment notices since they were mailed to its old address. Unquestionably, petitioner first came to know of the subject assessments only on October 23, 2001.

It must be noted that at the time petitioner changed its address, it was already under the jurisdiction of the Large Taxpayers Service for when the Large Taxpayers Service was created by Executive Order No. 175, petitioner had long been considered by the respondent as a large taxpayer. Both the Large Taxpayers Service and Revenue Region No. 8 have knowledge that petitioner is a large taxpayer. It must be pointed out that the parties have stipulated that petitioner is large taxpayer falling under the jurisdiction of the Large Taxpayers

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Service under Revenue District Office No. 116 and that petitioner was transferred by the BIR from the jurisdiction of RDO No. 50 - South Makati to the jurisdiction of the Large Taxpayers Service (RDO No. 116) on September 1, 1998 *(pars. 5 & 7, Stipulation of Facts).*

Really, respondent cannot feign ignorance of petitioner's new address. Petitioner filed a notice of change of address with the Large Taxpayer Service on March 22, 2001 and complied with the requirements for the change of its address. In fact, the Large Taxpayers Service issued a new Certificate of Registration to petitioner reflecting its new address *(par. 6, Stipulation of Facts).*

This case involves the taxable year 1995. As also stipulated, petitioner filed its 1995 income tax return on April 15, 1996. Petitioner's monthly remittance return of income taxes withheld were filed on the following dates:

| | |
|---|---|
| January | February 27, 1995 |
| February | March 27, 1995 |
| March | April 25, 1995 |
| April | May 25, 1995 |
| May | June 26, 1995 |
| June | July 25, 1995 |
| July | August 25, 1995 |
| August | September 25, 1995 |
| September | October 25, 1995 |
| October | November 27, 1995 |
| December | January 25, 1996 |

For the month of November, petitioner filed the monthly remittance return of income tax withheld on December 26, 1995 *(CTA Records, pages 216-218).* Pursuant to Section 203 of the Tax Reform Act of 1997, respondent had three

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years therefrom to assess petitioner of deficiency income tax and expanded withholding tax, *viz*:

> **SEC. 203**. *Period of Limitation Upon Assessment and Collection.* - Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for 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.

However, petitioner executed a Waiver of Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code, covering income tax and 3$^{rd}$ and 4$^{th}$ quarter business tax liabilities, up to July 31, 2001 *(par. 13, Summary of Admitted Facts).* Thus, with respect to deficiency income tax assessment, respondent had until July 31, 2001 to assess petitioner thereof. But as regards the expanded withholding tax assessment, respondent had until January 25, 1999 to assess petitioner of the same.

The subject Demand Letter, Details of Discrepancies and Assessment Notices, although all dated July 18, 2001, were admittedly sent to petitioner's old address at Paseo de Roxas, Makati City on July 20, 2001. Considering that petitioner had moved to IBM Plaza in Libis, Quezon City, the mailed matter was returned to sender by the post office on July 23, 2001 with the notation that the addressee "MOVED-OUT".

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Apparently therefore, petitioner did not receive the above demand letter, details of discrepancies and assessment notices. It had actual knowledge of the present deficiency tax assessments only on October 23, 2001 when its representative personally received the Collected Letter dated October 19, 2001. In view thereof, both the assessments for deficiency income tax and expanded withholding tax have been issued beyond the three-year prescriptive period allowed by law to assess petitioner of any internal revenue taxes.

For the purpose of safeguarding the taxpayers from any unreasonable examination, investigation or assessment, our tax law provides a statute of limitations. The Supreme Court, as early as the case of *Republic vs Ablaza, 108 Phil. 1108 [1960]*, had elucidated the significance of the period of assessment, thus:

> The law prescribing a limitation of actions for the collection of the income tax is beneficial both to the Government and to its citizens; to the Government because tax officers would be obliged to act promptly in the making of assessment, and to citizens because after the lapse of the period of prescription citizens would have a feeling of security against unscrupulous tax agents who will always find an excuse to inspect the books of the taxpayers, not to determine the latter's real liability, but to take advantage of every opportunity to molest peaceful, law abiding citizens. Without such a legal defense, taxpayers would furthermore be under obligation to always keep their books and keep them open for inspection subject to harassment by unscrupulous tax agents.

The right of the government to assess petitioner's deficiency taxes for taxable year 1995 having prescribed, this court deems it unnecessary to delve on the other issues presented in this case.

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**WHEREFORE**, the deficiency income tax and expanded withholding tax assessments issued against petitioner for the taxable year 1995 in the aggregate amount of P155,406,992.17 are hereby **CANCELLED** and **SET ASIDE**.

**SO ORDERED**.

**ERNESTO D. ACOSTA**
Presiding Justice

**WE CONCUR:**

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

**LOVELL R. BAUTISTA**
Associate Justice

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

I hereby certify that the above decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

**ERNESTO D. ACOSTA**
Presiding Justice

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