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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

BENGUET CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 4795

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated : JUL 26 1996

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DECISION

This refers to an assessment issued against Benguet Corporation for alleged unremitted withholding taxes on compensation covering several months in 1988 to 1991 involving the total amount of P10,314,577.51 inclusive of penalties.

Petitioner is a domestic corporation duly organized and existing under Philippine laws.

On January 16, 1992, petitioner received from respondent a letter, dated January 10, 1992, demanding payment of the amount of P6,188,672.50, excluding penalties for late payment, as unremitted withholding taxes on compensation, computed as follows:

*"LIST OF ALLEGED PAYMENTS OF WITHHOLDING TAXES WITHOUT RECORDS IN THE BIR

Year Involved	Month	Amount Involved
1988	February	P 99,419.56
1989	May	244,623.25
	July	250,951.96
	September	260,803.87
	October	271,676.00
	November	259,970.75
	December	466,052.22
1990	March	P 225,979.42
	April	217,960.62
	May	220,174.42
	June	226,847.18
	July	224,038.21
	August	223,851.42
	September	227,850.67
	October	226,052.50
	November	231,806.28
	December	166,553.62
1991	January	235,156.56
	February	263,022.03
	March	263,211.87
	April	265,758.27
	May	266,628.27
	June	297,964.66
	July	275,930.12
	August	276,389.48
	TOTAL	P6,188,672.50

In the said letter, respondent stated that all the above-mentioned Payment Orders and Confirmation Receipts (P.O.'s and C.R.'s) as reflected in petitioner's Annual Return submitted to the former's Accounting Division,

*attached to the demand letter; pp. 13-14, CTA records were found to be fake or spurious, or not issued by the Bureau of Internal Revenue.

In a letter dated January 24, 1992 (pp. 15-16 CTA records) filed on the same date with the B.I.R., petitioner protested the assessment by stating that it had promptly remitted its withholding taxes within their due dates as follows:

Period Covered		Amount	Payment Order No.	Confirmation Number	Receipt Date	Managers Check Number
1988	- July	P 99,419.56	C3561280	B15655277	August 3, 1988	MBTC 004121
1989	- May	244,623.25	C5159861	B16987009	June 6, 1989	MBTC 004775
	- July	250,951.96	C5754532	B16957188	August 7, 1989	MBTC 004915
	- September	260,803.87	C5905436	B18047230	October 6, 1989	MBTC 005060
	- October	271,676.00	C6259515	B18182932	November 8, 1989	MBTC 005163
	- November	259,970.75	C6674582	B18213302	December 11, 1989	MBTC 005251
	- December	466,052.22	C6691234	B18240012	January 10, 1990	MBTC 005309
1990	- March	225,979.42	C7583675	B18968716	April 5, 1990	MBTC 005472
	- April	217,960.62	C7873934	B19804496	May 9, 1990	MBTC 005511
	- May	220,174.42	C8139372	B19911649	June 7, 1990	MBTC 005565
	- June	226,847.18	C8146010	B20221793	July 4, 1990	MBTC 005626
	- July	224,038.21	C8646668	B20352384	August 9, 1990	MBTC 005676
	- August	223,851.42	C8722924	B20373171	September 7, 1990	MBTC 005747
	- September	227,850.67	C8730603	B20919098	October 9, 1990	MBTC 005809
	- October	226,052.50	C9097279	B21218080	November 12, 1990	MBTC 005862
	- November	231,806.28	C9135076	B21022088	December 7, 1990	MBTC 005961
	- December	166,553.62	C9507546	B21040301	January 10, 1991	MBTC 006039
1991	- January	235,156.56	C9572127	B21052435	February 8, 1991	MBTC 006125
	- Febrary	263,022.03	C9967453	B21571715	March 8, 1991	MBTC 006196
	- March	263,211.87	C9986514	B21590125	April 8, 1991	MBTC 006242
	- April	265,758.27	C10964526	B22757202	May 8, 1991	MBTC 006299
	- May	266,628.27	C11002051	B22086397	June 7, 1991	MBTC 006357
	- June	297,964.66	C10521494	B22091424	July 8, 1991	MBTC 006400
	- July	275,930.12	C11478878	B22100984	August 7, 1991	MBTC 006490
	- August	276,389.48	C11721500	B23012438	September 9, 1991	MBTC 006559
	Total	P6,188,673.21				

Petitioner asserted in its protest letter that the confirmation receipts were duly validated by the receiving banks, namely: Philtrust Bank and UCPB, among others. It maintained further, that subject receipts are all accountable forms officially released by respondent's office. Moreover, the allegation of respondent that subject receipts are fake or spurious is a sweeping conclusion against petitioner, for such issue is still under investigation by the NBI.

Without answering petitioner's protest, on January 29, 1992, respondent's Collection Service issued and served on petitioner a Warrant of Distraint and/or Levy to enforce collection of the subject assessment this time in the increased amount of P10,314,579.51 as this already included penalties for late payment. Warrants of Garnishment were also served to the Central Bank and Metropolitan Bank, to garnish the proceeds from the sale of gold bars to the Central Bank, and the petitioner's deposits at the Metropolitan Bank.

To prevent disruption of petitioner's business operation, petitioner filed with respondent a written request for the lifting of the Warrant of Distraint and/or Levy and the Warrant of Garnishment. As a guarantee for the payment of subject assessment, petitioner posted a surety bond in the amount of P10,500,000.00. On account of the posting of said bond, respondent granted the lifting of the warrants.

On April 14, 1992, petitioner received respondent's letter, dated April 3, 1992, with the information that the demand letter previously sent to petitioner "is now considered final and unappealable", and that if settlement is not made within ten (10) days from receipt of April 3, 1992 letter, the bonding company (FGU Insurance Corporation) will be obliged to make the payment in accordance with the surety bond.

Consequently, by reason of this letter of April 3, 1992, on April 23, 1992, petitioner filed with this Court, the instant Petition for Review with Urgent Petition for Issuance of Injunction to Restrain Tax Collection Pending Appeal.

In a Resolution, (pp. 33-37, CTA records) dated May 22, 1992, this Court granted petitioner's request for the issuance of injunction to restrain tax collection pending appeal, provided, petitioner submits within fifteen (15) days from receipt of this resolution, a certification from the Supreme Court and the Court of Appeals, that FGU Insurance Company is a surety company of good standing, before the Court can approve the bond already posted by petitioner. The bond should be issued in favor of the Court of Tax Appeals and should have an indefinite term, that is, it shall remain enforceable while the case is pending in this Court.

On June 10, 1992, petitioner filed its Compliance (pp. 39-40, CTA records). Hence, this Court granted petitioner's motion and enjoined the Commissioner of Internal Revenue "to refrain from collecting the amount subject of this case through the warrant of distraint and/or levy and warrants of garnishment dated January 29, 1992 pending final adjudication of the merits of this case" (Resolution, pp. 50-51, CTA records).

On October 21, 1992, respondent filed his Answer (pp. 62-66, CTA records) and alleged the following as his special and affirmative defenses, to wit:

SPECIAL AND AFFIRMATIVE DEFENSES

> 7. In an investigation conducted by respondent's Special Projects Team, it was ascertained, discovered and confirmed that all the receipts (PO-CR) reflected in petitioner's Annual Return (W-3) submitted to respondent's Withholding Tax Division representing petitioner's alleged payments of withholding taxes on compensations covering several months in 1988 to 1991 were fake/spurious, not issued by respondent's bureau;
>
> 8. Contrary to petitioner's assertions, the Manager's Checks issued for the payment of the various withholding taxes on compensation for 1988 to 1991 were used in the purchase of loose stamps, as further verified and

discovered by respondent's Special Projects Team;

9. There being no valid payment of the withholding taxes on the various dates that they were supposed to be paid and remitted by the petitioner as withholding agent thereof to the respondent, the assessments therefor which are embodied in the final withholding tax (self-assessing) filed by the petitioner with respondent's bureau is now final and unappealable thereby conferring no jurisdiction upon this Honorable Court to take cognizance of the case;

10. The confirmation receipts issued by the authorized agent banks which accepted the alleged various payments for withholding tax made by the petitioner having been duly verified and confirmed as fake/spurious, said banks are therefore, responsible for what appears as their fraudulent acts and/or negligence and not the respondent's bureau which gave them the authority to accept petitioner's tax payment pursuant to Article 1909 of the Civil Code of the Philippines which states:

> "Art. 1909. The agent is responsible not only for fraud but also for negligence, which shall be judged with more or less rigor by the Court, according to whether the agency, was or was not for a compensation."

hence, the instant petition is dismissible under Section 1 (g), Rule 16 of the Rules of Court, as it states no cause of action against the petitioner.

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Preparatory to its presentation of evidence, on January 28, 1993, petitioner filed a Request for

Admission (pp. 72-76, CTA records) by respondent of the following matters:

> "1. That the BIR-Accountable Forms Division issued to BIR Region 4A, District 25, South Manila the following BIR payment Orders (CB Form No. 82-02-02):
>
> 1. C 11721500
> 2. C 5159861
> 3. C 5754532
> 4. C 6259515
> 5. C 6674582
> 6. C 6691234
> 7. C 7583675
> 8. C 7873934
> 9. C 8139372
> 10. C 8146010
> 11. C 8646668
> 12. C 8722924
> 13. C 8730603
> 14. C 9097279
> 15. C 9135076
> 16. C 9507546
> 17. C 9572127
> 18. C 9967453
> 19. C 9986514
> 20. C 10964526
> 21. C 11002051
> 22. C 10521494
> 23. C 11478878
> 24. C 5905436
>
> 2.That in August 1988, Mr. Rey T. Molina was a BIR employee assigned at BIR Region 4A, District 25, Port Area, Manila;
>
> 3.That from June 1989 to July 1991, Ms. Remedios C. Sandoval was the BIR Supervising Revenue Collection Officer at BIR Region 4A, District 25, South Manila;
>
> 4.That from August 1991 to September 1991, Ms. Luz N. Cayanan was the BIR Collection Agent at BIR Region 4A, District 25, South Manila;

5.That BIR Payment Order No. C 3561280 was issued to BIR Region 4A, District 24, Manila - Port Area by the BIR-Accountable Forms Division;

6.That the BIR Accountable Forms Division issued to Philtrust Bank the following Confirmation Receipts (Form CB 82-02-03), to wit:

1. B 15655277
2. B 16987009
3. B 16957188
4. B 18047230
5. B 18182932
6. B 18213302
7. B 18240012
8. B 18968716
9. B 19804496
10. B 19911649
11. B 20221793
12. B 20352384
13. B 20373171
14. B 20919098
15. B 21218080
16. B 21022088
17. B 21040301
18. B 21052435
19. B 21571715
20. B 21590125
21. B 22757202
22. B 22086397
23. B 22091424
24. B 22100984
25. B 23012438

7.That the BIR deposited in its account the following MBTC Manager Checks:

P 99,419.56	MBTC 004121
244,623.25	MBTC 004775
250,951.96	MBTC 004915
260,803.87	MBTC 005060
271,676.00	MBTC 005163
259,970.75	MBTC 005251
466,052.22	MBTC 005309
225,979.42	MBTC 005472
217,960.62	MBTC 005511
220,174.42	MBTC 005565
226,847.18	MBTC 005626
224,038.21	MBTC 005676

223,851.42	MBTC 005747
227,850.67	MBTC 005809
226,052.50	MBTC 005862
231,806.28	MBTC 005961
166,553.62	MBTC 006039
235,156.56	MBTC 006125
263,022.03	MBTC 006196
263,211.87	MBTC 006242
265,758.27	MBTC 006299
266,628.27	MBTC 006357
297,964.66	MBTC 006400
275,930.12	MBTC 006490
276,389.48	MBTC 006559

8.That the total sum of P6,188,672.50 representing these manager's checks was credited to the account of the Bureau of Internal Revenue and/or National Treasury-Philippines; and

9.That annotated at the dorsal sides of these checks (Annexes "A" to "A-24") is any of the following entries:

a. For the Account of Benguet Corporation
c/o L.C. Diaz and Company
Tel. # 818-32-02

b. For the Account of Benguet Corporation
c/o L.C. Diaz & Company - Port Area, Manila
Tel. # 80-43-25

c. For the Account of Benguet Corporation
c/o L.C. Diaz & Company
Tel. # 86-43-25

d. For the Account of Benguet Corporation
c/o L.C. Diaz & Company
3 F Don Jacinto Building
Salcedo St., Legaspi Village
Makati, Metro Manila

e. Benguet Corporation
ID - 31-04B-04827
TAN - B5236-F1856-A-8
c/o L.C. Diaz & Company
3 F Don Jacinto Building
Dela Rosa St., Legaspi Village
Makati, Metro Manila
Tel. # 86-43-25

f. For the Account of Benguet Corporation
c/o L.C. Diaz & Company
3 F Don Jacinto Building
Dela Rosa cor. Salcedo Sts., Legaspi Village
Makati, Metro Manila
Tel. # 86-46-25

g. For the Account of Benguet Corporation
c/o L.C. Diaz & Company - 2nd flr. LCD & Co. - Union Building
A. Bonifacio Drive, Port Area, Manila
Tel. # 80-43-25."

In the same Request for Admission (see last page thereof; p. 76 CTA records), petitioner also served upon respondent the following interrogatories, to wit:

"1. Is Mr. Rey T. Molina still employed with the BIR? If yes, what capacity and in what BIR office and address?

2. Is Ms. Remedios C. Sandoval still employed with the BIR? If yes, what capacity and in what BIR office and address?"

3. Is Ms. Luz N. Cayanan still employed with the BIR? If yes, what capacity and in what BIR office and address?"

Reply to petitioner's Request for Admission (pp. 115-119, CTA records) was filed by respondent on March 26, 1993. In his Reply, respondent stated that:

"1. He ADMITS the fact of issuance by respondent's Accountable Forms Division to Revenue Region No. 4-A., Revenue District Office #25 South Manila, of the various Payment Orders (PO's) enumerated under paragraph 1 of the Request for admission, as well as BIR Payment Order No. C356128 stated in paragraph 5 which was issued to Revenue Region No. 4-A, Revenue District Office No. 24, North Manila, but states in connection therewith that said Payment Orders although subsequently issued by said Revenue Districts for payment of unremitted withholding tax of the petitioner for the various amounts stated therein were thereafter verified by respondent's Special Projects Team to have been used by different taxpayers for the purchase of documentary stamps, the payments of which were effected elsewhere and for smaller amounts compared to those stated in the Payments Orders issued to the petitioner, using the various MBTC Manager's Checks issued for the account of the petitioner.

2. He ADMITS that in August 1988, Mr. Rey T. Molina was a BIR employee assigned at Revenue Region No. 4-A, Revenue District Office #25, Port Area, Manila, Ms. Remedios C. Sandoval as Supervising Revenue Collection Officer at Revenue Region No. 4A, Revenue District No. 25, South Manila from June 1989 to July 1991, and Ms. Luz C. Cayanan, as BIR Collection Agent at Revenue Region 4A, Revenue District No. 25, South Manila, as stated in paragraphs 2, 3 and 4, respectively, of the Request for Admission;

3. He ADMITS that respondent's Accountable Forms Division issued to PhilTrust Bank the various Confirmation Receipts enumerated under paragraph 6 of the Request of Admission but states in connection therewith that the same were subsequently issued by the said bank to different taxpayers other than the petitioner herein for various payments of documentary stamps, said payments having been effected outside Revenue Region No. 4A, Manila as verified by respondent's Special Projects Team;

4. He ADMITS that respondent deposited in its account the various MBTC Manager Checks enumerated under paragraph 7 of the Request for Admission but states in connection therewith that said checks were used by different taxpayers other than the petitioner for the payment of documentary stamps and not for the unremitted withholding tax involved herein as verified by respondent's Special Projects Team;

5. He ADMITS that the total amount of P6,188,672.50 representing the various MBTC Manager's Checks with the corresponding annotations at the dorsal sides thereof "For the account of Benguet Corporation, etc." (Annexes "A" to "A-24", Request for Admission) stated in paragraphs 8 and 9, respectively, of the Request for Admission, was credited to the account of respondent's bureau and/or the National Treasury of the Philippines, but states in connection therewith that said checks were actually and ultimately used by various taxpayers other than the petitioner to purchase documentary stamp, the payment of which were effected outside Revenue Region No. 4A as subsequently verified by respondent's Special Projects Team;

6. Respondent, in answer to the interrogatories embodied in the Request for Admission states that the 201 Files of respondent's Personnel Division indicate the present respective positions and assignment of the following:

(a) Rey T. Molina - Revenue Collection Officer, Collection Branch, Revenue Region 4A, Manila

(b) Ms. Remedios C. Sandoval - Revenue Officer III, Collection Branch, Revenue Region 4A, Manila

(c) Ms. Luz N. Cayanan - Revenue Officer I, Collection Branch, Revenue Region 4A, Manila."

On March 31, 1993, petitioner filed a Manifestation (p. 121, CTA records) stating "that the qualifying statements in paragraphs 1, 3, 4 and 5 of the respondent's reply to request for admission dated March

18, 1993 are evidentiary matters and therefore, not proper statements in the said reply."

In the hearings conducted, petitioner presented witnesses in the persons of Ms. Amelita Senayo, Payroll Manager of L.C. Diaz and Co., and Mr. Ferdinand Rabino, Section Manager of Corporate Accounting of Benguet Corporation. Respondent, for his part, presented as his sole witness, Mr. Leodegario Tenorio, Chief of the Collection Performance Audit Division of the B.I.R.. Both parties submitted their respective Formal Offer of Evidence, Comment to Formal Offer, and Memorandum in support of their cases.

The issues to be adjudicated in this case are:

1. Whether or not this Court has jurisdiction over the instant assessment; and

2. Whether or not petitioner <u>actually paid</u> the alleged unremitted withholding taxes for the months of July 1988, May to December 1989, March to December 1990, and January to August 1991, and therefore, no longer liable for the disputed withholding tax assessments.

The issue on jurisdiction was raised by respondent both in his answer and in his memorandum. He asserts that the instant case refers to spurious/fake receipts and does not involve a disputed assessment. Therefore, this Court has no jurisdiction to try the merits of the case.

We disagree. The case is clearly a disputed assessment. The first letter of respondent to petitioner dated January 10, 1992, demanded payment of the amount therein stated which is already an assessment in itself. It became a disputed assessment when it was protested by petitioner in its letter of January 24, 1992. Respondent's letter of April 3, 1992 was the final decision appealed to this Court by petitioner. In said letter, respondent reiterated reiterated its demand for payment of the alleged unremitted withholding taxes on compensation within ten (10) days from receipt thereof, otherwise, collection will be enforced through the summary remedies. It also stated that "the demand issued against Benguet Corporation is now considered final and unappealable".

As explained by Atty. Benjamin Aban in his <u>Law on Basic Taxation</u>, 1994 edition, p. 223 thereof:

> "x x x a letter of the Commissioner reminding a taxpayer of his obligation to pay taxes which <u>reiterates a previous demand</u> for the settlement of an assessment is in effect a <u>decision on disputed assessment</u> which is <u>appealable</u> to the Court of Tax Appeals (**Commissioner vs. Ayala Securities Corp.**, L-29485, May 31, 1976). This letter is tantamount to a <u>denial</u> of the request for reconsideration or <u>protest</u> of the respondent corporation on the assessment made by the petitioner, considering that <u>the said letter is in itself a reiteration of the demand by the</u>

BIR for the settlement of the assessment already made (*Ibid.*)."' (Underscoring supplied)

And even assuming, for the sake of argument, that the case at bar involves fake/spurious withholding tax and does not fall under the so-called disputed assessment, the same is still beyond question as covered by this Court's jurisdiction it being under the classification of "other matters" involving the BIR and the Bureau of Customs. Again, Atty. Aban defined the term "other matters" in his book, p. 229-230 thereof, in this manner:

> "Conformably with the principle of *ejusdem generis*, the term 'other matters' as regards the CTA's jurisdiction could be those cases which do not necessarily involve disputed assessments or refunds in the case of the BIR or those related to Customs protest or forfeiture cases but controversies which are still within the functions of the BIR and Customs.
>
> xxx xxx xxx
>
> It might also be possible that 'other matters' in the CTA's jurisdiction could also include questions relative to the propriety of tax collection as where the Commissioner proceeds to collect an assessment tax by distraint and levy even before the expiration of the three-month period prescribed under Sec. 207 of the Tax Code. Should this happen, the taxpayer could file a protest against the action taken and if this is denied, the taxpayer might consider the filing of an appeal with the CTA. x x x." (Underscoring supplied)

Viewed in the light of the foregoing, undoubtedly the case at bar is well within the jurisdiction of this Court.

Moreover, respondent appears already estopped from raising the issue on jurisdiction. As early as April 23, 1992, the date of filing of the instant petition for review, petitioner had also requested issuance of injunction to restrain collection of the subject assessment pending appeal. When this request was heard on May 15, 1992, respondent's counsel did not present any objection (see Minutes of Hearing, May 15, 1992, p. 28, CTA records), provided petitioner post a surety bond (p. 4, Resolution dated May 22, 1992; p. 35, CTA records). Hence, with the filing of the surety bond, the Court granted petitioner's request and directed the Commissioner of Internal Revenue, to refrain from collecting the amount subject of this case, through the warrant of distraint and/or levy and warrants of garnishment, pending adjudication of the merits of this case (Resolution dated June 24, 1992, pp. 50-51, CTA records). Despite the issuance of the injunction order/resolution, respondent in his answer which was filed on October 21, 1992, or almost four (4) months <u>after</u> the order of injunction, respondent still raised the issue that this Court has no jurisdiction to take cognizance of the instant case.

Clearly evident is the fact that prior to the filing of respondent's answer, respondent had already participated actively in the proceedings before this Court. First, as mentioned earlier, on May 13, 1992, when petitioner's urgent petition for issuance of injunction was heard, respondent did not interpose any objection. On the same date, he filed his first motion for extension of time to file his answer. The same was granted in an Order dated May 22, 1992. The second motion for extension was filed on June 10, 1992 and the same was granted in an Order dated June 12, 1992. On July 20, 1992, the third motion for extension was filed by respondent and this was again granted by the Court in an Order dated July 22, 1992. Then on September 15, 1992, respondent filed again his fourth request for extension of time of thirty days from September 10, 1992. At this juncture, it must be noted that when respondent filed his fourth motion on September 15, 1992, the thirty (30) day period of extension previously granted to it, had already expired on September 10, 1992. This was the reason why the Clerk of Court set the case for hearing on October 8, 1992 to find out why petitioner's counsel does not file any objection to such delay in filing respondent's answer. In that hearing, respondent's counsel had averred "that this case cannot yet be heard because he has not filed his Answer to the Petition for Review." (Minutes of Hearing on October 8, 1992; p. 60, CTA records). After seeking this Court's approval on his four (4) motions for extension of time to file answer, respondent suddenly raised the issue on jurisdiction in his answer filed only on October 21, 1992.

Obviously then, respondent's claim that this Court has no jurisdiction to take cognizance of this case is untenable. It runs counter to the well-settled rule that:

> "While lack of jurisdiction may be assailed at any stage, a party's active participation in the proceedings before the court without jurisdiction will estop such party from assailing the lack of jurisdiction." (**Echaus vs. Blanco**, 179 SCRA 704; **Romualdez vs. Regional Trial Court**, Br. 7 Tacloban City, 226 SCRA 408; (Underscoring supplied)

We now come to the second issue: whether or not petitioner actually paid the alleged unremitted withholding taxes for the months of July 1988, May to December 1989, March to December 1990 and January to August 1991, and therefore, no longer liable for the disputed withholding tax assessment. This issue was stated simply by respondent as: whether or not petitioner's alleged payments of the herein unremitted withholding taxes were valid.

We answer in the negative. We hold that there were no valid payments by petitioner of the herein unremitted withholding taxes. This is supported by the various pieces of evidence presented by both parties as explained hereunder.

On the part of petitioner, it presented and formally offered the pertinent MBTC checks, Payment Orders (PO's) and Confirmation Receipts (CR's) to prove its alleged payments of the so-called unremitted withholding taxes. Petitioner claims that the P.O.'s were duly issued by respondent's employees who were authorized to discharge such function. Similarly, the C.R.'s were issued by the employees of banks accredited by the respondent for the purpose of accepting tax payments for the government. On account that said P.O.'s and C.R.'s were duly issued by authorized employees both of the respondent and the banks, they should be presumed genuine according to petitioner, and not fake or spurious as claimed by respondent. Petitioner describes such conclusion of respondent as "too sweeping," for it has not yet been confirmed by findings of experts on the matter, like the National Bureau of Investigation (NBI).

The P.O.'s and C.R.'s issued to petitioner are genuine, considering that respondent admitted in his Reply to Request for Admission (see pars. 1 and 3 thereof; pp. 115-117, CTA records), that the P.O.'s enumerated under par. 1 of petitioner's Request, were issued by respondent's Accountable Forms Division to Revenue Region No. 4-A, and the latter subsequently issued the same to Revenue District Office (RDO) No. 25, South Manila and RDO No. 24, North Manila. However, respondent made the qualifying statement that the said P.O.'s were later on verified by respondent's Special Projects Team as to have been used by different taxpayers for the purchase of documentary stamps (Exh. "1," Respondent; p. 35, Folder I of BIR records). In the same way, respondent also admitted that his Accountable Forms Division issued to Philtrust Bank the various C.R.'s enumerated in par. 6 of petitioner's Request, but again qualifiedly stated, that the said C.R.'s were subsequently issued to different taxpayers, other than the herein petitioner, for various payments of documentary stamps. These facts were also verified by respondent's Special Projects Team. At this point, it must be made clear that what is at issue in this case is whether or not there was actual payment of petitioner's unremitted withholding taxes. Our answer is, there was no payment made for petitioner's withholding taxes.

When checks are used for payments, in settling obligations, the best evidence are the checls themselves. Thus, in the case at bar, considering that the P.O.'s and C.R.'s of petitioner, although seemingly genuine, do not appear in respondent's files/records, the best evidence in proving petitioner's alleged payments are the MBTC checks which were marked and offered as Exhibits "A", to "A-24", inclusive, of petitioner (pp. 149-173, CTA records). Our view is shared by no less than the petitioner, when the latter repeatedly stated in its Formal Offer of Evidence (pp. 128-132, CTA records) that the purpose/s of presenting or offering the different check/s as exhibits was/were to prove that petitioner paid and remitted to the BIR the withholding taxes on the salaries of its executives for the different subject periods. In the statement of the purpose of each check as exhibit, it was repeatedly indicated that it was remitted to the BIR for the payment of withholding tax. A careful scrutiny of these checks, however, revealed that they were not used to pay withholding taxes. The checks themselves confirm respondent's Special Projects Team's findings that they were used to purchase documentary stamps from the BIR. For on the dorsal sides of the subject checks, are handwritten notes that they were used to pay documentary stamps. As to how many pieces of documentary stamps were purchased for each denominations of P5.00 or P3.00, and even their respective serial numbers were also indicated at the back of each check. These notations were written legibly, and could not be presumed as to have escaped the attention of petitioner. They usually appeared side by side, with annotations "For the Account of Benguet Corporation c/o L.C. Diaz and Co.-Port Area, Manila Tel No. 86-43-25" which were also marked as Exhibits "C" to "C-24" of petitioner (p. 137, CTA records). Thus, the possibility that it was not read by petitioner is truly unimaginable, if not totally unbelievable. Oversight may be a defense for not having read it, if the annotation happened only in one check. But if it appeared on several checks, oversight will no longer hold water. The point deserving emphasis is the obvious fact that petitioner was fully aware as early as 1988, that its checks intended for payment of withholding taxes were actually used for the purchase of documentary stamps. Yet during the hearings of the case, petitioner's witnesses never offered any explanation on how and why these things happened to its checks. There being no oral or written explanation given by petitioner's witnesses relative to the aforesaid annotations that the checks were used for payment of documentary stamps, said annotations are deemed admitted to be true by petitioner for they formed part of the exhibits it offered. The checks speak for themselves. They were used as payments for documentary stamps purchased from the B.I.R. They cannot, therefore be considered as valid payments for the alleged unremitted withholding taxes. Well-entrenched is the rule that:

> "For evidence to be believed, it must not only proceed from the mouth of a credible witness but must be credible in itself such as the common experience and observation of mankind can approve as probable under the circumstances." (**People vs. Amar**, 232 SCRA 683; Underscoring supplied)

That petitioner's MBTC checks, Exhibits "A" to "A-24", are undeniably clear proofs of payments of documentary stamps, is corroborated by findings or written reports submitted by the Special Projects Team. Thus, on page 53, Folder I, BIR records, We find the report of Mr. Manuel J. Seijo, Revenue Collection Agent, stating, among others that the following MBTC checks:

	Check No.	Date	Amount	Exhibits
1)	004915	7-24-89	P250,951.96	"A-2"
2)	005060	9-25-89	260,803.87	"A-3"
3)	005163	10-24-89	271,676.00	"A-4"
4)	005251	11-23-89	259,970.75	"A-5"

5)	005309	12-19-89	466,055.27	"A-6"
6)	005472	3-26-90	255,979.42	"A-7"
7)	005511	4-24-90	217,960.62	"A-8"

were all personally handed to him by Mrs. Maria Bulaclac O. Aniel, District Collection Supervisor, RDO No. 33 (now 51), Pasay City, as payment for documentary stamps tax.

Another corroborating evidence, proving that the MBTC checks of petitioner were used to purchase loose documentary stamps, was the report, dated February 16, 1994, submitted by Mrs. Rosario Beltran, found on page 34, Folder I, B.I.R. records, stating that the following checks were presented to her as payments for loose documentary stamps by the representative of L.C. Diaz and Co. named "CANTRE" OR "CASTRE" on different dates, to wit:

Check No.	Date	Amount	Exhibits
005626	6-25-90	P226,847.18	"A-10"
005676	7-26-90	224,038.21	"A-11"
005747	8-24-90	223,851.42	"A-12"
005809	9-25-91	227,850.67	"A-13"
005862	10-23-90	226,052.50	"A-14"
005961	11-23-90	227,052.50	"A-15"
006039	**12-26-90	166,553.62	"A-16"
006125	1-25-91	235,156.56	"A-17"
006196	2-22-91	230,022.03	"A-18"
006242	3-20-91	263,211.87	"A-19"
006299	4-25-91	265,758.27	"A-20"
006357	5-26-91	266,628.27	"A-21"
006400	6-24-91	297,964.66	"A-22"
006490	7-25-91	275,930.12	"A-23"
006559	8-23-91	276,398.48	"A-24"

**Per file of petitioner, this date is December 18, 1990.

The foregoing reports, in addition to the annotations appearing on the dorsal sides of the checks, substantially establish the fact that said checks were used in the purchase of documentary stamp taxes and not in payment of petitioner's unremitted withholding taxes. It follows then, that petitioner failed to remit the withholding taxes on compensation of its employees. The reports were gathered by Mr. Leodegario Tenorio, Assistant Chief of the Collection Performance and Audit Division of the BIR, who was also one of the members of the Special Projects Team that conducted the investigation of the instant case. Mr. Tenorio was presented as witness for the respondent. And in the hearing of May 19, 1994, he testified that in the course of his investigation, he discovered that "the checks which were used for payment of withholding taxes and wages of Benguet Corporation, were not really used and submitted as payment for withholding taxes and wages. The same check was used in payment of documentary stamps of different denomination." (p. 32, T.S.N., Hearing on May 19, 1994; Underscoring supplied)

All the documentary and testimonial evidence of respondent controverted petitioner's allegation that "the questioned tax payments ceased and was extinguished when it actually remitted the checks in payment thereof, xxx." As borne by the BIR records of the case, the MBTC checks of petitioner were indeed actually remitted to the respondent's office, but they were not remitted as payment for the subject withholding taxes. They were remitted as payment by different taxpayers for loose documentary stamps of different denominations. As to how this happened is not the concern anymore of this Court. Although, it is Our honest opinion that L.C. Diaz and Co. is the best party to shed light on this, as it was such company which was authorized by Benguet Corporation to handle the latter's remittances of withholding taxes to the BIR. This was confirmed by no less than Amelita Senayo, the Payroll Head of the Payroll Division of L.C. Diaz and Co., when she was presented as witness for petitioner. Pertinent portion of her testimony reads as follows:

> "xxx
>
> Q. When you said you make payments for Benguet Corporation, what do you mean, to whom do you make payments?
>
> A. Payment of different executives and their net pay; we deposited that to the bank and we just withdraw that and also some remittances we prepare like the SSS and the withholding taxes.

Q. And when you said you prepare remittances of Benguet Corporation of withholding taxes, how do you do this?

A. We requested a check from them or the total payroll fund for them, then they send us the check. We prepare the corresponding remittance form and we personally remit that to the Bureau of Internal Revenue.

Q. And this practice has been going on how long, can you remember?

A. Since I was ... Before I was with LC Diaz and Co.

Q. So this practice has been going on since you can remember you were employed by LC Diaz. When you said you personally remit these manager's checks and withholding taxes to the Bureau of Internal Revenue, what do you mean by this? How do you do the remittance?

A. We prepare the monthly remittance form, then we send a messenger to the Bureau or the SSS and he just remit that.

xxx" (pp. 6-7, T.S.N. of hearing on April 13, 1993; Underscoring supplied)

The above-quoted testimony jibed with the statements of Mrs. Rosario Beltran as contained in her report, which We have earlier mentioned. We repeat such statements for emphasis, thus:

"Please be informed also that the aforecited checks ***were presented to me as

> payments for loose documentary stamps by the representative of L.C. Diaz and Co. named 'CANTRE' OR 'CASTRE' on different dates and the respective amounts indicated. xxx
>
> Please be informed further that before I accepted then deposited these checks, I first verified the genuineness and liquidity of the amounts of said checks from the banks concerned with the emphasis that it was presented to purchase loose documentary stamps. And the answer I got was to go ahead as the checks were good." (Underscoring supplied)

To recapitulate on the second issued, the Court resolves the same in favor of the respondent, based on the following observations.

The Official Receipts (O.R.'s) and the Confirmation Receipts (C.R.'s) presented by petitioner did not prove payments of subject withholding taxes. Although they were admitted by respondent, as bearing serial numbers of O.R.'s and C.R.'s that were duly issued respectively by the B.I.R. to its collecting agents in Manila, and to Philtrust also in Manila, the clear annotations at the back side of the checks, revealed that they were not applied as payments for withholding taxes. Hence, even if respondent also admitted the signatories in the O.R.'s are employees of the B.I.R., such will not also support petitioner's contention of payment of withholding taxes in question. Such signatories were never presented in

***Referring to MBTC checks marked as Exhibits "A-10" to "A-24" of petitioner.

court to identify and/or admit their signatures on the O.R.'s. Similarly, petitioner failed to present in court the signatories in the C.R.'s who were employees of the issuing bank for the purpose of identifying their signatures.

On the other hand, respondent was able to prove that the checks of petitioner were presented or remitted on different dates by the messenger of L.C. Diaz, as payments by different taxpayers for the purchase of loose documentary stamps. There were reports submitted by the collecting agents to the Special Projects Team (S.P.T.) of respondent's checks having been used by different taxpayers. It was Mr. Tenorio who consolidated and/or incorporated said reports in his own report, containing all the results of the S.P.T.'s investigation. Mr. Tenorio was presented in court to testify on his report.

That the checks used by different taxpayers were for the account of petitioner is, likewise, no proof that they were used for payment of the withholding taxes in question. The annotations that they were for payment of documentary stamps are more controlling. Such annotations were confirmed as true by the reports of respondent's collecting agents, as well as by the O.R.'s and C.R.'s on file with the respondent's office.

Petitioner presented the Payroll Head of L.C. Diaz, who testified that after withholding taxes, the same together with petitioner's manager's checks are handed to their messenger. The latter, in turn, presents the form and the check to the collecting agent of the B.I.R. and later to the authorized bank. The messenger of L.C. Diaz was not presented to testify on this matter, or at least to rebut the reports of respondent's collecting agents that he or she presented the manager's checks of petitioner for the purchase by other taxpayers of loose documentary stamps.

Therefor, even if respondent also admitted that the checks were for the account of petitioner, said checks entered the coffers of the government not as Benguet's payments for withholding taxes, but as somebody else's payments for loose documentary stamps. No evidence was adduced as to how and why this happened. However, it is important to mention that petitioner is a mere withholding agent of the B.I.R. As such, it has the mandatory obligation to remit without delay to the B.I.R. such taxes withheld, which actually constitute advance payments by petitioner's employees, for taxes due on their income earned. In the meantime that such funds, are still in the custody of petitioner, up to the time they are actually turned over or remitted to the B.I.R., petitioner is expected to exercise due diligence, and extra vigilance in the handling of such funds. Hence, when petitioner entrusted to L.C. Diaz the remittance of said funds to the B.I.R. as payments for withholding taxes, but for unknown reasons, L.C. Diaz failed to do so, petitioner should be held responsible for such act, omission or negligence. For well-settled is the rule that:

> "The negligence of the agent is imputable to the principal" (**Shell Co. vs. Firemen's Insurance Co.**, 100 Phil. 757).

Moreover, petitioner did not file any comment or objection to respondent's Formal Offer of Evidence (pp. 261-267, CTA records). Thus, in the Court's Resolution (pp. 271-272) promulgated on April 11, 1995, it was stated that:

> "After a thorough consideration of respondent's 'Formal Offer of Evidence' filed on October 20, 1994, consisting of Exhibits "1", "1-A", "1-B", "1-C", "1-D", "1-E", "1-F", "1-G", "@", and "#", and it appearing that petitioner failed to file its comment thereon within the time given by the court, thus implying its lack of objection thereto, the court resolves to ADMIT all said exhibits of respondent from "1" to "3" inclusive of the submarkings, subject to the Court's final evaluation of their purposes, materiality, relevancy and probative value in this case. xxxx"

Related to the above-cited resolution, is respondent's statement in her Memorandum, page 5 thereof (p. 307, CTA records), that:

> "xxx Said testimony of respondent's witness together with the corroborative documents/exhibits presented therefor were not controverted by the petitioner <u>thereby indicating the latter's acquiescence thereto</u> both as to their admissibility and purpose as evidence in this litigation. xxx"

Finally, it is important to note that:

> "Findings and conclusions of government officials warrant the presumption of regularity and correctness in the absence of proof to the contrary" (La **Campana Food Products, Inc. vs. Court of Appeals**, 221 SCRA 770).

WHEREFORE, in the light of all the foregoing, petition is hereby **DISMISSED**. Petitioner is ordered to pay to the respondent the total amount of P10,314,579.50, inclusive of penalties incident to late payment, representing petitioner's unremitted withholding taxes for 1988, 1989, 1990 and 1991.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

I CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

CERTIFICATION

I hereby certify that this 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 Judge
Court of Tax Appeals