

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

HPCO AGRIDEV CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 6355

**COMMISSIONER OF INTERNAL
REVENUE,**

Respondent.

Promulgated:

JUL 18 2002

Atty. Polin Arin

x ----- x

DECISION

This case stemmed from an assessment issued against petitioner for deficiency value-added tax and expanded withholding tax for the taxable year 1997 in the aggregate amount of P2,165,373.93, inclusive of surcharge, interests and compromise penalties.

The facts are simplified by the parties in their Joint Stipulation of Facts.

Petitioner is a corporation organized and existing under the laws of the Philippines with office address at corner Washington and Figueroa Streets, Silay City, Negros Occidental. It is engaged, among others, in the business of developing and leasing private agricultural lands and planting, cultivating and selling products of such lands.

On January 24, 2001, petitioner received Notice of Assessment Nos. 00007-2001 and 00008-2001 from the Bureau of Internal Revenue (BIR), together with the corresponding demand letter, all dated January 10, 2001.

As per said assessment notices and accompanying demand letter, there is allegedly due from petitioner deficiency taxes for taxable year 1997 in the total amount of P2,165,373.96, inclusive of interest, surcharge and compromise penalties, comprising of deficiency VAT and EWT, computed as follows:

DEFICIENCY VALUE-ADDED TAX (VAT)

Assessment Notice No. 00007-2001

Basic Tax Due	P 826,017.47
Add: 25% Surcharge	206,504.37
20% Annual Interest from 1/21/98 to 2/28/01 (.6205)	512,543.85
Compromise Penalty	<u>25,000.00</u>
Total Deficiency VAT	<u>P1,570,065.70</u>

DEFICIENCY WITHHOLDING TAX

Assessment Notice No. 00008-2001

Basic Tax Due	P 356,168.62
Add: 20% Annual Interest from 1/10/98 to 2/28/01 (.6265)	223,139.64
Compromise Penalty	<u>16,000.00</u>
Total Deficiency EWT	<u>P 595,308.26</u>

Petitioner protested the assessment notices in a letter dated February 22, 2001 addressed to the Regional Director of Revenue Region No. 12 (Bacolod City).

On April 20, 2001, petitioner submitted to respondent its Quarterly VAT Returns (BIR Form No. 2550) for the 1st to 4th quarters of taxable year 1997 and the Monthly Remittance Returns of Income Taxes Withheld (BIR Form No. 1743W) for the months of January to December of taxable year 1997.

For taxable year 1997, petitioner filed its Quarterly VAT Returns on the following dates:

<u>Period (1997)</u>	<u>Date Filed</u>
1 st Qtr.	4/25/97
2 nd Qtr.	7/21/97
3 rd Qtr.	10/20/97
4 th Qtr.	1/20/98

For taxable year 1997, petitioner filed its Monthly Remittance Returns of Income Taxes Withheld on the following dates:

<u>Period (1997)</u>	<u>Date Filed</u>
January	2/10/97
February	3/10/97
March	4/10/97
April	5/09/97
May	6/10/97
June	7/10/97
July	8/08/97
August	9/10/97
September	10/10/97
October	11/10/97
November	12/10/97
December	1/12/98

As of October 17, 2001, however, respondent had not yet resolved/decided petitioner's protest. Consequently, to prevent the assessment notices from becoming "final, executory and demandable" pursuant to Section 228 of the 1997 NIRC, petitioner filed the instant petition on November 16, 2001.

By way of answer, respondent raised the following Special and Affirmative Defenses:

- a) He reiterates and repleads the preceding paragraphs of this answer as part of his Special and Affirmative Defenses;
- b) The assessments for deficiency VAT and withholding tax for the year 1997 were issued within the prescriptive period provided by law;
- c) Petitioner was informed of the law and the facts on which the assessments are made, in compliance with Section 228 of the Tax Code;
- d) The assessments were issued in accordance with law and regulations; and
- e) All presumptions are in favor of the correctness of tax assessments.

The petitioner and the respondent likewise stipulated the issues to be resolved by this court, to wit:

- (1) Whether or not the right of the government to assess deficiency VAT and EWT for taxable year 1997 has already prescribed;
- (2) Whether or not the Assessment Notices are void for failure of the respondent to inform petitioner of the facts and the law upon which the assessment is based; and
- (3) Whether or not the imposition of surcharge and compromise penalties is proper.

With the facts and issues in this case having been jointly stipulated, the parties readily agreed that the only remaining issues for resolution are purely legal, hence, the instant petition can be resolved on the basis of the pleadings, admissions and memoranda of the parties. Thus, upon the submission of their respective memorandum, this case was considered submitted for decision.

Anent the first issue, petitioner posits that the right of the government to assess the deficiency VAT and EWT for taxable year 1997 has already prescribed inasmuch as

the assessment notices in question were issued only on January 10, 2001 and received by the petitioner on January 24, 2001. Respondent, on the other hand, argues that the assessments were issued within the prescriptive period. He asserts that the last day for the filing of the VAT return for the year 1997 is January 20, 1998. And since the assessment was issued on January 10, 2001, said issuance was within the three-year prescriptive period. As regards the EWT assessment, the same was issued within the period allowed by law for respondent had until March 1, 2001 within which to assess pursuant to Section 51(c) of the 1993 Tax Code.

Under Section 203 of the 1997 Tax Code, it is clearly provided that:

Section 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 the 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 case where the 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 the 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.

Corollary thereto, then Section 110 of the NIRC, in relation to Section 2 of Revenue Regulations No. 5-93, provides that “every person liable to pay the value-added tax shall file a quarterly return of the amount of his/its gross sales or receipts within twenty (20) days following the close of each taxable quarter prescribed for each taxpayer.”

Pursuant to Section 203 in relation to Section 110 of the Tax Code and Section 2 of Revenue Regulations No. 5-93, the period to assess commences after the last day prescribed by law for the filing of the return. In the case of VAT, it is twenty (20) days

following the close of each taxable quarter. Hence, if the return was filed earlier than the last day allowed by law, the period to assess shall still be counted from the last day prescribed for filing of the return. However, if the return was filed beyond the period prescribed by law, the three-year period shall be counted from the day the return was filed. Therefore, respondent had until the following dates within which to assess petitioner for deficiency VAT:

<u>Period (1997)</u>	<u>Date Filed</u>	<u>Last Day to File Return</u>	<u>Last Day to Assess</u>
1 st Qtr.	4/25/97	4/20/97	4/25/00
2 nd Qtr.	7/21/97	7/20/97	7/21/00
3 rd Qtr.	10/20/97	10/20/97	10/20/00
4 th Qtr.	1/20/98	1/20/98	1/20/01

Respondent alleges that the last day for the filing of VAT return for the year 1997 was January 20, 1997. Since the assessment notice was issued on January 10, 2001, it was issued well within the prescriptive period.

We do not agree.

Under then Section 110 of the Tax Code, as implemented by Section 2 of Revenue Regulations No. 5-93, the taxpayer is required to file a quarterly VAT return not later than twenty days following the close of each quarter. For each quarter, the taxpayer is mandated to file an adjusted and complete return. A final or adjustment return is not required in the case of value-added tax, unlike in the case of an annual Income Tax Return filed for income tax purposes. In other words, each taxable quarter shall have its

own prescriptive period and not just after twenty days following the close of the last quarter for the taxable year as what respondent espouses.

Furthermore, although the assessment notices were dated or issued on January 10, 2001, it does not necessarily mean that the assessments were made on said date. The “issue” date is necessarily anterior to the date of actual release or mailing of the assessment notice and/or demand letter. The Supreme Court on several occasions ruled that it is the date when the demand letter or notice of assessment is released, mailed or sent to the taxpayer that constitutes an actual assessment (**Republic vs. Limaco & de Guzman Commercial Co., Inc., 5 SCRA 990; Basilan Estates, Inc. vs. Commissioner of Internal Revenue, et al., 21 SCRA 17**). The law does not require that the demand or notice be received within the prescriptive period. As long as the release thereof is effected before prescription sets in, the assessment is deemed made on time even if the same is actually received by the taxpayer after the expiration of the prescriptive period (**Basilan Estates, Inc. vs. Commissioner, *supra***).

As disclosed by the records in this case, both the assessment notices and demand letter were mailed only on January 16, 2001 (BIR Records, pages 234 to 236). Apparently, the assessments made on January 16, 2001 for deficiency VAT covering the taxable year 1997 had already prescribed with respect to the first, second and third quarters thereof.

It is the position of the petitioner that by applying the same law, regulation and jurisprudence, the respondent had until the following dates within which to assess the alleged deficiency withholding tax, *viz*:

<u>Period (1997)</u>	<u>Date Filed</u>	<u>Last Day to File Return</u>	<u>Last Day to Assess</u>
January	2/10/97	2/10/97	2/10/00
February	3/10/97	3/10/97	3/10/00
March	4/10/97	4/10/97	4/10/00
April	5/09/97	5/10/97	5/10/00
May	6/10/97	6/10/97	6/10/00
June	7/10/97	7/10/97	7/10/00
July	8/08/97	8/10/97	8/10/00
August	9/10/97	9/10/97	9/10/00
September	10/10/97	10/10/97	10/10/00
October	11/10/97	11/10/97	11/10/00
November	12/10/97	12/10/97	12/10/00
December	1/12/98	1/25/98	1/25/01

But respondent disagrees. He avers that the last day to file a creditable withholding tax return for the year 1997 is March 1, 1998 in accordance with Section 51(c) [actually Section 51(d)] of the 1993 Tax Code, to wit:

“(d) *Annual returns.* - Every withholding agent required to deduct and withhold taxes under Section 50 shall submit to the Commissioner of Internal Revenue a reconciliation statement of quarterly payments and list of payees and income payments. In the case of final withholding taxes, the return shall be filed on or before January 31 of the succeeding year, and for creditable withholding taxes, not later than March 1 of the year following the year for which the annual report is being submitted. x x x”

We are not persuaded by respondent’s arguments.

The return required under Section 51(d) is what is commonly called or known as the Annual Information Return of Income Tax Withheld on Compensation, Expanded and Withholding Taxes wherein the withholding agent is required to submit to the Bureau a list of payees and income payments for the appropriate taxable year. It is not an adjustment return as required of corporations to be filed under Section 76 of the Tax

Code, as amended. Such monthly returns already provide for any adjustment for previous month(s) payments. In other words, each monthly return is in itself already a complete return. Further, we do not believe that the same Annual Information Return falls in the same category as the Final Adjustment Return required of a corporation, so that the reckoning period would start from March 1 at the latest, following the year for which the annual report is being submitted. As clearly termed by the law, it is but an annual report of payments withheld and remitted for the subject year. Thus, Section 1 of Revenue Regulations No. 3-93, implementing Section 51 of the Tax Code, is the applicable provision considering that it specifies the period for the filing of monthly return and remittance of taxes withheld, quoted hereunder for easy reference:

Section 1. Section 2 of Revenue Regulations No. 5-85 is hereby amended to read as follows:

“Section 2. - MONTHLY RETURN AND REMITTANCE OF TAXES WITHHELD. - Taxes deducted and withheld on:

- (i) compensation income;
- (ii) income payments subject to the creditable (expanded) withholding taxes; and
- (iii) income subject to final withholding taxes shall be remitted within ten (10) days after the end of each calendar month with the filing of appropriate return (BIR Form 1743-W). However, taxes withheld from the last compensation/income payment for the calendar year (December) shall be remitted on or before the 25th day of January of the succeeding year.”

Apparently, the three (3)-year period within which respondent has to assess petitioner of expanded withholding tax shall be counted from the last day required by law for filing a monthly remittance return, which is ten (10) days after the end of each calendar month (save December) and twenty-five (25) days after the end of December for taxes withheld from the last compensation/income payment for the said month. Consequently, the assessment notice received by the petitioner on January 24, 2001 for deficiency expanded withholding tax had already prescribed for the months of January to November of 1997.

Having resolved that only the assessment for deficiency VAT for the last quarter of 1997 and the assessment for deficiency expanded withholding tax for December of 1997 were issued within the period allowed by law, we now tackle the issue of whether or not the assessment notices issued therefor are valid.

Petitioner maintains that the assessment notices are void for failure to inform it of the facts and the law upon which they are based, in violation of Section 228 of the Tax Code, as implemented by Revenue Regulations No. 12-99.

Respondent, however, counters that petitioner was informed of the result of the investigation of its 1997 internal revenue tax liabilities in the pre-assessment notice dated October 6, 2000 relying upon the case of **Toledo Power Company vs. Court of Tax Appeals, CTA Case No. 5881, March 5, 2002.**

Although this Court ruled in the Toledo case that the requirement to inform petitioner of the law and the facts on which the assessment was made under Section 228 of the Tax Code refers to the pre-assessment notice, we do not concur with the

respondent that the pre-assessment notice dated October 6, 2000 already informed the petitioner on how the assessment was arrived at. In the case of Toledo, the Court found that petitioner was fairly informed because it was able to categorically explain how the assessment came about in its protest letter. Therefore, it was held therein that the allegation that petitioner was not informed of the law and facts on how the assessment was made did not hold water.

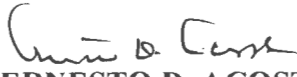
In the case at bar, the pre-assessment notice merely stated that “please be informed that as a result of the review of the report of investigation, x x x, on your company’s internal revenue tax liability for the year 1997, there has been found due and collectible from your company the amount of P2,088,353.78 as deficiency value-added and withholding taxes, inclusive of penalties, as per attached computation sheet.” (BIR records, page 216). While there was an attached audit sheet to the pre-assessment notice, the same, however, merely stated the sections of the NIRC or the revenue regulations where the stated computations were based. There was no explanation whatsoever on how the assessment was arrived at. Neither did the demand letter dated January 10, 2001 contain information on the law and facts on which the assessment was made (BIR records, page 234). Ditto with the assessment notices both dated January 10, 2001 (BIR records, pages 235 and 236). It must be stressed that Section 228 of the Tax Code is quite precise in providing that “the taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void”.

Lastly, as to the question of propriety of the imposition of compromise penalty, the same becomes moot and academic in view of the findings that the assessments were

issued out of time and were void for failure to inform petitioner of the law and facts on which they were made.

WHEREFORE, in view of all the foregoing, the assessments issued against petitioner for deficiency VAT and EWT in the total amount of P2,165,373.93 covering the year 1997 are hereby **CANCELLED** and **SET ASIDE**.

SO ORDERED.


ERNESTO D. ACOSTA
Presiding Judge

I CONCUR:


JUANITO C. CASTAÑEDA, JR.
Associate Judge

CERTIFICATION

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 Judge