REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CAMARA STEEL INDUSTRIES, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5960

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

FEB 19 2004

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D E C I S I O N

This is a Petition for Review seeking for the cancellation and nullification of the various assessment notices as well as formal demand letters issued by herein respondent against the petitioner on January 19, 1999 for the taxable year 1995, in the aggregate amount of P110,456,269.44, detailed as follows:

Exhs.	Kind of Tax	Amount
A, A-4	Deficiency Income Tax	P 80,136,412.40
B, B-4	Deficiency Withholding Tax on compensation	3,439,943.28
C	Deficiency Withholding Tax at source	315,268.39
D	Deficiency Expanded Withholding tax	326,521.44
E, F	Compromise Penalty for non-filing	10,000.00
G, G-2	Deficiency Value Added Tax	26,228,123.93
	T O T A L	110,456,269.44

Petitioner Camara Steel Industries, Inc. is a domestic corporation engaged in the manufacture of drums and liquid petroleum gas cylinders with address at

Santolan Road, San Juan, Metro Manila *(Joint Stipulation of Facts, paragraph 1, CTA docket, p. 85)*.

In 1995, petitioner manufactured and sold LPG cylinders and steel drums to various industrial users belonging to the Top 5,000 Corporations that withheld the 1% tax on payments made to the former. The taxes withheld were unused because during the same period, petitioner was also paying its quarterly estimated income tax liabilities. When these quarterly payments were added to the 1% withheld taxes at year-end, they exceeded petitioner's actual income tax liability for the year. Because of the overpayment, petitioner filed a claim for refund of overpaid income tax with this court for the amount of P1,991,069.00 docketed as CTA Case No. 5469. On March 8, 1999, this court rendered a decision awarding to petitioner the reduced amount of P1,808,447.48 *(Joint Stipulation of Facts, paragraph 6, CTA docket, p.86).* Said CTA decision became final and executory on March 26, 1999 by the lapse of the period to appeal, there being no appeal made on the same by either or both parties, and has, by the Entry of Judgment Order of this court on April 15, 1999, been recorded in the book of Entries of Judgments *(Joint Stipulation of Facts, paragraph 7, CTA docket p. 86)*

Pending the promulgation of the said CTA decision, or on February 15, 1999, petitioner received from respondent several assessment notices and formal demand letters for taxable year 1995, assessing petitioner of deficiency income tax, deficiency withholding tax on compensation, deficiency withholding tax at source, deficiency expanded withholding tax, compromise penalty for non-filing and deficiency value-added tax *(Exhibits A to G)* in the total amount of P110,456,269.44.

On February 24, 1999, petitioner filed a letter of protest *(Exhibit H)* to the BIR, justifying the various disallowances and discrepancies allegedly found by the respondent, which gave rise to the deficiency assessments. Petitioner likewise requested for a reinvestigation by way of conferences in order for them to present their own evidence. On April 23, 1999, petitioner again sent a letter *(Exhibit J)* to the respondent reiterating its explanation and presenting its defenses as to the deficiency tax assessments issued by the respondent. Together with the said letter, petitioner also submitted to the Bureau of Internal Revenue a copy of this court's decision in CTA Case No. 5469 *(Exhibit J-3)* together with supporting documents such as its 1995 Annual Income Tax return, 1995 Quarterly Income Tax Returns, Schedule of Creditable Tax Withheld—With Certificates and Entry of Judgment of CTA Case No. 5469 *(Exhibit K)*.

However, respondent took no action on petitioner's protest. This inaction of respondent prompted petitioner to file an appeal to this court by way of Petition for Review on November 19, 1999.

On December 23, 1999, respondent filed his Answer to the instant petition and raised therein the following Special and Affirmative Defenses, to wit:

1. Taxes are the lifeblood of the government. Thus, the same should be collected without unnecessary hindrance or delay. It is the means by which the government is able to defray the expenses necessary for its existence. Concomitantly, tax laws should be strictly construed against the taxpayer and those

claiming refund or exemption must undoubtedly prove their entitlement to the same. The assessment issued by the Bureau of Internal Revenue against Camara Steel Industries, Inc., has fully satisfied the requirements set forth in Section 228 of the National Internal Revenue Code, as amended. Issued with the assessment notice is the Demand Letter against Camara Steel Industries, Inc. It must be noted that both were issued on the same date, January 19, 1999. The demand letter that went with the assessment notice had explained in a detailed manner how the respondent arrived at its assessment.

2. The principle of *res adjudicata*, as alleged by the petitioner, does not apply in the instant petition. First and foremost, nothing on record would substantiate the allegation of the petitioner that the judgment of the Court of Tax Appeals in CTA Case No. 5469 had become final and executory. All that was presented was the decision of the Honorable Court which was promulgated on March 8, 1999. Nothing was mentioned in the instant petition that the above-mentioned decision was never appealed nor the reglementary period within which to file an appeal had expired without the respondent filing an appeal thereto. Even assuming that the said decision had become final and executory, nevertheless it may even be subject to review by higher courts.

3. Secondly, it is to be stressed that the petition bearing CTA Case No. 5469 is in the nature of a claim for refund while the petition bearing CTA case No. 5960 (the instant petition) is in the nature of a disputed assessment. For *res adjudicata* to attach the following requisites must concur: (1) the former judgment was final; (2) the judgment was on the merits; (3) it was rendered by a court having jurisdiction over the subject matter and the parties; (4) there is between the first and second actions, identity of parties and of subject matter. It is very clear from the foregoing that the fourth requisite was not satisfied. Thus, it is this very reason that barred the application of *res adjudicata;*

4. In addition, petitioner's contention that Ms. Ruth Vivian G. Gadia, Chief of the Assessment Division, had no authority to issue the questioned assessment is likewise erroneous. Section 10 of the National Internal Revenue Code, as amended, the very same section relied upon by the petitioner is very explicit that the Regional Director may, under the rules and regulations, policies and standard formulated by the Commissioner, shall, within the

region and district offices under his jurisdiction, **administer** and enforce internal revenue laws, and rules and regulations, including assessment and collection of all internal revenue taxes, charges and fees;

5. As to the contention of the petitioner that the value-added tax assessment against the petitioner is barred by prescription, the respondent is of the belief that the said contention is bereft of merit in fact and in law. Attached as Annex "L" to the Petition for Review is the waiver of the statute of limitations under the National Internal Revenue Code executed by Camara Steel Industries, Inc. through its Vice President Alberto M. Albano. Under the said waiver, "Camara Steel Industries, Inc., in consideration of the approval by the Commissioner of Internal Revenue of my request for investigation and/or consideration of my pending internal revenue case involving the assessment of various amounts for the year 1995 only, hereby waive the running of the prescriptive period provided for in Section 203 and 223 and other relevant provisions of the National Internal Revenue Code, and consent to the **assessment and collection** of the taxes which may be found due after reinvestigation and reconsideration at any time before or after the lapse of the period of limitations fixed by said Sections 203 and 223 and other relevant provisions of the National Internal Revenue Code, but not after December 31, 1999". Thus, it is very clear from the foregoing that the value added tax assessment has not yet prescribed.

The issues to be resolved in the instant case are as follows:

1. Whether or not the alleged deficiency income tax assessment does not contain the necessary factual and legal basis which in effect is a violation of the due process and whether said tax assessment case has been barred by *res adjudicata* in the refund case awarded in CTA Case No. 5469;

2. Whether or not petitioner is liable to pay the deficiency expanded withholding tax in the amount of P326,521.44, deficiency withholding tax on compensation in the amount of P3,439,943.28 and deficiency withholding tax at source in the amount of P315,268.39

3. Whether or not the value-added tax assessments are barred by prescription and does not satisfy the legal requirements under Section 228 of the Tax Code.

4. Whether or not petitioner is liable to pay the P10,000.00 compromise penalty for failure to file BIR Form 1701-B.

I. DEFICIENCY INCOME TAX

Petitioner, in its memorandum, prayed that the assessment for deficiency income tax be cancelled on the following grounds:

a) Lack of factual and legal bases; and
b) Res adjudicata

Petitioner claims that respondent's deficiency income tax assessment lacks factual and legal bases. According to petitioner, the letters of demand it received did not contain any statement of facts or explanation on how the discrepancies in the assessments were arrived at for they merely showed a list of alleged disallowances and discrepancies perfunctorily summarized and conveniently masqueraded as assessments. Petitioner likewise questioned the procedure involved in the issuance of the assessments, challenging the authority of the examiner to recommend issuance of the assessments when his main task was to merely review the work done at the Revenue District Office level and remand it back to the District examiners for the latter to resolve the doubts or cloudy issues raised by the former. Petitioner likewise pointed out the irregularity in the discharge of the official functions of the examiner considering that in his testimony during the hearing on March 29, 2001, he admitted that he was constrained to make the preliminary assessment due to the fact that the docket was prescribing; thus, his findings hinges merely on his belief that petitioner should be held liable for deficiency taxes.

This court, after going over the records of the case, does not concur with the arguments and observations of the petitioner. From the facts so stated, we believe that there is sufficient compliance with Section 228 of the Tax Code, which, for easy reference, is hereby quoted as follows:

> "***SEC. 228. Protesting of Assessment***.- When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: xxx
>
> The taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void."

By indicating in the demand letter the items of disallowances and discrepancies, respondent was able to apprise petitioner of the reason why there is a tax still due. The tenor of the protest letter sent by petitioner would indicate that petitioner clearly understood the nature of the assessment notices issued against him and knew for a fact that the deficiency assessments were brought about by some significant disallowances and discrepancies in the returns and financial statements submitted. And besides, petitioner could not have intelligently protested the assessments had it not been aware of the bases thereof. So it is preposterous to say that petitioner does not know of the bases of the assessments when in fact it has fully explained the reasons for the existence of each of the items of disallowances and discrepancies. Said demand letters and assessment notices have verily met the purpose of giving due process to the taxpayer by the fact of notice and the giving of opportunity to be heard to the petitioner. As ruled by this court,

> "Since we rule that by petitioner's actual knowledge of the bases of the assessments, the requirement under Section 228 of the Tax Code that 'the taxpayer be informed of the law and the facts on which the assessment is made' is deemed to have been complied, it follows then that the assessments xxx are not null and void, even if the same failed to state the law and facts on which they were based ***(Belle Corporation vs. CIR, CTA Case No. 5930, April 4, 2002)***

We give no merit to petitioner's observation that there is irregularity in the procedure employed in the issuance of the assessments. The several discrepancies found by the examiner were based on various BIR returns which according to Section (3)(3.1.3.)(ii) of Revenue Regulations No. 12-99 were valid bases for assessments. As provided in the said revenue regulations, when a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent, the BIR can proceed to issue a formal assessment notice even in the absence of a preliminary assessment. The findings of the Commissioner are based on the financial documents presented to him. The result of his evaluation of the said documents should be given a presumption of regularity in the performance of his duty. Except of course for human errors and inadvertence, we cannot see any reason why his findings cannot be given weight in the absence of controverting evidence to prove otherwise.

As to the defense that the instant case is barred by *res adjudicata*, this court is not convinced that said principle finds application in the case at bar. Time and again, the Supreme Court has held that for a judgment to be a bar to a subsequent case, the following requisites must concur: (1) it must be a final judgment; (2) the court which resolved it had jurisdiction over the subject matter and the parties; (3) it must be a judgment on the merits; and (4) there must be identity between the two cases, as to the parties, subject matter and cause of action ***(American Inter-fashion Corporation vs. Office of the President, 197 SCRA 409; Philippine Trust Company vs. CA, et al, G.R. No. 124658, December 15, 1999; Cagayan de Oro Coliseum, Inc. vs. CA, G.R. No. 129713 , December 15, 1999; Ayala Land, Inc. vs. Marietta Valisno, G.R. No. 135899, February 2, 2000; Arenas vs. CA, G.R. No. 126640, November 23, 2000; Sta. Lucia Realty and Development, Inc., et al vs. Leticia Cabrigas, G.R. No. 134895, June 19, 2001).***

While it is true that there is identity of parties involved in both CTA Case No. 5469 as well as in the instant case and that there was already a final judgment on the merits rendered by the same court as to the former, the same does not constitute *res adjudicata*. The judgment rendered in CTA Case No. 5469 cannot be *res judicata* in the case at bar because the rights asserted and the reliefs prayed for in the instant case are entirely different, separate and distinct from the rights asserted and the reliefs demanded in the prior case. The cause of action and subject matter in CTA Case No. 5469 is a claim for refund of the overpaid income tax for the year 1995 in the amount of P1,991,069.00 while in the instant case, what is involved is a petition for the cancellation of assessments in the aggregate amount of P110,456,269.44. It is to be noted that as a rule, there is identity of causes of action when there is identity of the facts essential to the maintenance of the two actions, or when the same evidence would support and establish said causes of action ***(Lucien Tran Van Nghia vs Rufus B. Rodriguez, et al G.R. No. 139758, January 31, 2000).*** We see this situation not obtaining in the instant case. While a claim for refund requires presentation of the pertinent income tax returns as well as certificates of creditable taxes withheld, a petition to cancel assessment requires more documents to dispute the alleged various discrepancies and disallowances imputed by the respondent. In fine, there is no ***res judicata*** to justify the cancellation of the income tax assessment issued by the respondent in the case at bar.

And another thing going against petitioner's case involving his attempt to set aside and cancel the challenged assessments is his utter failure to present supporting documents that will strengthen his case. The reasons and defenses raised by petitioner in its protest were not sufficiently established during trial. As can be clearly inferred from its protest letter, all his explanations were based on his promise to present documents that could support his contention. However, said documents, were never presented to the BIR, not even to this court. We have often ruled that in case of disputed assessments, the burden of proof is on the taxpayer to establish the fact that it is indeed not liable for any deficiency taxes subject of the assessment. Thus, for failure of the petitioner to show documents that would substantiate its arguments, then the assessment for deficiency income tax should be upheld.

II. DEFICIENCY EXPANDED WITHHOLDING TAX, DEFICIENCY TAX WITHHELD ON COMPENSATION, DEFICIENCY TAX WITHHELD AT SOURCE

As to the deficiency expanded withholding tax, we rule that petitioner once again failed to overcome the presumption of the correctness of assessment. As they had stated in their protest letter, they are collating all the necessary documents to trace the source of the discrepancy and forward it to the BIR as soon as possible. However, petitioner failed to make good its commitment to submit said documents to controvert the discrepancy. Thus, for failure to adduce evidence to support its defense, the assessment for expanded withholding tax should likewise be upheld.

As to the deficiency tax withheld on compensation, respondent computed it as follows:

Deficiency Tax Withheld on Compensation (Exhibit B-4)

Tax Withheld on Compensation	
Per Alpha List	P 6,399,783.41
Less: Per 1743 IR	4,246,993.32
Basic Deficiency Tax	P 2,152,790.09
Add: Interest	1,287,153.19
Total Amount Due & Payable	**P 3,439,943.28**

After examining petitioner's Alpha List and BIR Form 1743-IR, this court found that the grand total of taxes withheld on compensation per Alpha List is P4,246,993.31 which is the same as that reflected in petitioner's Annual Information Return of Income Tax Withheld on Compensation, Expanded and Final Withholding Taxes – BIR Form 1743-IR. This in effect belies the alleged discrepancy claimed by respondent. Thus, the assessment for deficiency tax withheld on compensation should be cancelled.

As to Deficiency Tax Withheld at source, respondent found that there is a discrepancy between petitioner's remittances of the said taxes when compared with the total amount found in the schedule of taxes withheld at source. Thus:

Deficiency Tax Withheld at Source (Exhibit C)

Tax Withheld at Source		
Per Alpha List	P	1,803,847.72
Less: Per 1743 IR		1,606,546.02
Basic Deficiency Tax	P	197,301.70
Add: Interest		117,966.69
Total Amount Due & Payable	**P**	**315,268.39**

However, after a scrutiny of petitioner's BIR Form 1743-IR, we found that respondent examiner's addition is inaccurate. In petitioner's Annual Information Return of Income Tax Withheld on Compensation, Expanded and Final Withholding Taxes – BIR Form 1743-IR, the following amounts were verified:

TAXES WITHHELD-EXPANDED

Month	Tax Withheld
January	P 96,324.27
February	83,046.59
March	92,406.52
April	78,329.14
May	164,888.97
June	168,880.66
July	186,225.20
August	146,183.73
September	282,172.07
October	197,301.70
November	154,160.41
December	153,928.46
Total	**P 1,803,847.72**

From the above list, the total expanded withholding taxes declared by petitioner was P1,803,847.72 which is the same amount reflected in its Alpha List. For this reason, since no discrepancy was found, petitioner's assessment for deficiency Tax Withheld at Source in the amount of P315,268.39 should likewise be cancelled.

III. DEFICIENCY VALUE-ADDED TAX

Respondent assessed petitioner for deficiency value-added tax as follows:

Value-Added Tax Deficiency (Exhibit G-1)

Sales		P 453,253,937.00
Miscellaneous Income		6,187,304.00
Undeclared income		74,603.76
Disposal of Equipment		5,336,167.84
Total		P 464,852,012.60
Rate		10%
Tax Due		P 46,485,201.26
Less: Payments/Credits		
Input Tax per return	P 33,974,078.23	
Less: Unsupported Input Tax		
- Importation	11,348,125.00	
Net	P 22,625,953.23	
Payments per Return	7,391,323.58	
Tax Withheld	53,803.46	30,071,080.27
Basic Deficiency Value Added Tax		P 16,414,120.99
Add : Interest		9,814,002.94
Total Amount Due & Payable		**P 26,228,123.93**

Petitioner asserts that petitioner's VAT assessment has already prescribed pursuant to Section 203 of the 1995 Tax Code, to wit:

> **SEC. 203.** ***Period of limitation upon assessment and collection.*** - Except as provided in the succeeding section, internal revenue taxes shall be assessed within three 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 a case where a return is filed beyond the period prescribed by law, the three-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.

Respondent, on the other hand, asseverates that prescription as a defense cannot be raised by the petitioner as there was a Waiver of Statute of Limitations (Exhibit I) duly executed by the petitioner. However, upon examination of the said waiver, this court found that it was not indeed signed by the Commissioner or by any of his authorized officer. Worth stressing at this point is the importance of the signature of the Commissioner in the copy of the waivers being given to petitioner in order to protect both the government and the taxpayer from any arbitrary amendments which can possibly be done with the waiver. The waiver of prescription should be validly signed by both parties. Thus, Revenue Memorandum Order No. 20-90 provides in part:

Revenue Memorandum Order No. 20-90

> ***Subject: Proper Execution of the Waiver of the Statute of Limitations under the National Internal Revenue Code***
>
> xxx xxx xxx
>
> 2. The <u>waiver shall be signed by the taxpayer himself or his duly authorized representative.</u> In the case of a corporation, the waiver must be signed by any of its responsible officials.

> Soon after the waiver is signed by the taxpayer, the Commissioner of Internal Revenue or the revenue official authorized by him, as hereinafter provided, shall sign the waiver indicating that the Bureau has accepted and agreed to the waiver. The date of such acceptance by the Bureau should be indicated x x x.
>
> x x x x x x x x x
>
> 4. The waiver must be executed in three (3) copies, the original copy to be attached to the docket of the case, the second copy for the taxpayer and the third copy for the Office accepting the waiver. The fact of receipt by the taxpayer of his/her file copy shall be indicated in the original copy"(Underlining supplied).

Thus, after assiduously inspecting the quarterly VAT returns, the following dates of filing as well as the three-year prescriptive period were adduced, thus:

QUARTER INVOLVED	DATE FILED	PRESCRIPTIVE PERIOD
1st Quarter	April 20, 1995	April 20, 1998
2nd Quarter	July 20, 1995	July 20, 1998
3rd Quarter	October 20, 1995	October 20, 1998
4th Quarter	January 22, 1996	January 21, 1999

It must be recalled that the assessment notices sent to petitioner were all issued on January 19, 1999. Counting from the date of the filing of each of the quarterly VAT return, we can safely conclude that the three-year period provided by law to make an assessment for the 1st to the 3rd quarter has lapsed. However, for the fourth quarter deficiency VAT, it should be noted that the end of the three-year period for such assessment for the 4th quarter VAT return is January 21, 1999. Since the assessment notice was issued on January 19, 1999, then clearly, the assessment for 4th quarter deficiency VAT is not time-barred.

Therefore, petitioner is liable for Deficiency Value-Added Tax for the 4th quarter in the amount of P5,446,382.75, computed as follows:

Sales		P100,190,842.70
Miscellaneous Income		984,309.40
Undeclared income		74,603.76
Disposal of Equipment		5,336,167.84
Total		P106,585,923.70
Rate		10%
Tax Due		P 10,658,592.37
Less: Payments/Credits		
Input Tax per return	P 8,692,943.83	
Less: Unsupported Input Tax		
- Importation	2,544,706.00	
Net	P 6,148,237.83	
Payments per Return	745,331.04	
Tax Withheld	356,773.97	7,250,342.84
Basic Deficiency Value Added Tax		P 3,408,249.53
Add : Interest		2,038,133.22
Total Amount Due & Payable		**P 5,446,382.75**

IV. COMPROMISE PENALTY FOR FAILURE TO FILE BIR-FORM 1701-B

With regard to respondent's issuance of the assessment for petitioner's compromise penalty due to failure to file BIR Form No. 1701-B in the amount of P10,000.00, this court is of the view that it is bereft of legal and factual basis. Thus, in the case of ***Atlas Consolidated Mining and Development Corporation (doing business under the name Atlas-Itochu Consortium), CTA Case No. 5671, August 29, 2002,*** the court ruled in this wise:

"Because of the evident violation committed by the petitioner with regards to the reportorial requirement as provided in Section 254 of the Tax Code, involving non-filing of monthly VAT declarations, non-filing of quarterly VAT returns and non-filing of quarterly VAT summary, respondent imposed a corresponding compromise penalty for each violation. However, we cannot sustain the said compromise penalties. Section 254 of the Tax Code clearly provides that the penalties provided by law shall only be imposed upon conviction, which fact is wanting in the present case. Moreover, as facts would demonstrate, there is no showing that petitioner voluntarily entered into a compromise with the respondent. It even set up the defense that it has complied with the requirements, which, of course is belied by the documentary evidence available. It has been judicially held that compromise penalties being an imposition based upon mutual agreement or consent by petitioner, cannot be compulsorily imposed to those who do not agree to its imposition. Thus, as held by the Supreme Court in an old case entitled *The Philippine International Fair, Inc. vs. Collector, GR Nos. L-12928 and L-12932, March 31, 1962 (4 SCRA 774).*

> "This Court has no jurisdiction to compel a taxpayer to pay the sum (compromise penalty) because by its nature it implies a mutual agreement between the parties in respect to the thing or subject matter which is so compromised."

It can be inferred from the foregoing pronouncement that the imposition of the compromise penalty against a taxpayer presupposes consent on the part of both parties in the absence of which the compromise penalty is not binding nor cannot be mandatorily enforced. In the case at bar, it is evident that petitioner did not concur with the compromise penalty imposed by the respondent. Necessarily, this court cannot compel petitioner to pay the compromise penalty against its will.

However, it must be noted that in situations like this, respondent is not left without a remedy. Violation of the reportorial requirements prescribed by law carries with it criminal sanctions. The compromise penalty incident to the violation is suggested merely in lieu of criminal prosecution. As clearly worded in RMO 1-90, thus:

> "III. Guidelines and Instructions
>
> (5) Since compromise penalties are only amounts suggested in settlement of criminal liability and may not therefore be imposed or exacted in the event that a taxpayer refuses to pay the suggested compromise penalty, the violation shall be referred for criminal action as above-mentioned."

Needless to say, in the case at bar, conviction for failure to observe the reportorial requirement is likewise wanting. Neither did the petitioner as well as the respondent mutually assent to the imposition of the compromise penalty for non-filing of the required return. Be that as it may, the compromise penalty of P10,000 being assessed against the petitioner is not proper. Thus, said assessment should likewise be set aside and cancelled.

WHEREFORE, in view of the foregoing, the respondent's assessment for deficiency withholding tax on compensation, deficiency withholding tax at source and compromise penalty for failure to file BIR Form No. 1701-B for the year 1995 and deficiency VAT for the 1st, 2nd and 3rd quarters of 1995 are hereby **CANCELLED** and **SET ASIDE**. However, petitioner is hereby **ORDERED TO PAY** the respondent deficiency income tax and deficiency expanded withholding tax for the year 1995 and deficiency VAT for the 4th quarter of 1995 in the aggregate sum of P85,909,316.59 (inclusive of 20% deficiency interest), broken down as follows:

Deficiency Income Tax	P 80,136,412.40
Deficiency Expanded Withholding Tax	326,521.44
Deficiency Value-Added Tax	5,446,382.75
Total Amount Payable	P 85,909,316.59

In addition, petitioner is **ORDERED TO PAY** the respondent 20% delinquency interest on P85,909,316.59 computed from March 16, 1999 until fully paid pursuant to Section 249(c) of the 1995 Tax Code.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

LOVELL R. BAUTISTA
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