REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY

SECOND DIVISION

BURGUNDY REALTY CORPORATION, *Petitioner,*	**C.T.A. CASE NO. 6615**
	Members:
-versus-	CASTAÑEDA, JR., Chairman UY, and PALANCA-ENRIQUEZ, JJ.
HON. COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**Promulgated:** MAR 2 3 2006

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DECISION

PALANCA-ENRIQUEZ, J.:

Legal Principle Involved

A Large Taxpayer is defined and determined under *Section 245 of the National Internal Revenue Code* (hereafter "NIRC") *of 1997, as amended*, and *Section 3 of Revenue Regulations No. 01-98.*

Is herein petitioner a Large Taxpayer within the contemplation of the aforesaid provisions?

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THE CASE

This issue is before Us in this Petition For Review filed on March 17, 2003 by Burgundy Realty Corporation (hereafter "petitioner"), which seeks to cancel the Assessment Notices, both dated December 20, 2002 issued by the Commissioner of Internal Revenue (hereafter "respondent") for deficiency withholding tax for taxable year 1999, with the corresponding penalties and interest.

THE FACTS

In their "Joint Stipulation of Facts", the parties agreed on the following facts:

1. That petitioner is a Taxpayer since 1993.

2. That petitioner received from then Commissioner of Internal Revenue Liwayway Vinzons-Chato a letter dated 06 June 1997, advising petitioner of its classification as one of the country's Top 5000 Corporations.

3. That prior to said letter, petitioner was remitting taxes on or before the 10th day of the succeeding month.

4. That petitioner, pursuant to the letter, started remitting taxes on or before the 25th of each succeeding month for years, 1998-1999.

5. That in the year 2000, petitioner reverted to the payment of withholding taxes on or before the 10th day of each succeeding month.

6. That respondent sent Assessment Notices to petitioner starting in January 2002, directing petitioner to pay various amounts, claiming that petitioner had been delayed in the remittances of its expanded withholding tax.

7. That in reply thereto, petitioner protested said Assessment Notices.

8. That respondent sent formal demands for payment to petitioner for payment of the expanded withholding tax and as for compromise penalties, which demands petitioner did not agree to.

In his Answer, respondent alleged by way of special and affirmative defenses:

> "Sections 248 and 249 of the National Internal Revenue Code of 1997 specifically provides for the imposition of civil penalties and interests on taxpayers liable under the situations provided therein. Section 248 of the said Code governs the imposition of civil penalties. In the case of the herein Petitioner, it was assessed surcharges due to its delay in the payment the withholding tax liability. Section 248 provides that: '*There shall be imposed, in addition to the tax required to be paid, a penalty equivalent to twenty-five percent (25%) of the amount due, in the following cases: (1) Failure to file any return and pay the tax due thereon as required under the provisions of this Code or rules and regulations on the date prescribed; (2) Unless otherwise authorized by the Commissioner, filing a return with an internal revenue officer other than those with whom the return is filed; (3) Failure to pay the deficiency tax within the time prescribed for its payment in the notice of assessment, and (4) Failure to pay the full or part of the amount of tax shown on any return required to be filed under the provisions of this (NIRC) Code or rules and regulations,*

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> *or the full amount of tax due for which no return is required to be filed, on or before the date prescribed for its payment xxx xxx xxx xxx'* Contrary to the allegations of the Petitioner in paragraph 5 of the Petition that it only reverted back to the former manner of payment on the 10th day of each month sometime in the year 2000, attached to the Petition is Schedule 1 of the Formal Letter of Demand sent by the Bureau of Internal Revenue to the Petitioner, showing the date of remittances of the withholding tax liability of the Petitioner.
>
> Section 249 of the National Internal Revenue Code of 1997, on the other hand, mandates the imposition of interest on the late remittances of the withholding tax liability of the Petitioner. Under the said provision, '*There shall be assessed and collected on any unpaid amount of tax, interest at the rate of twenty percent (20%) per annum, or such higher rate as may be prescribed by rules and regulations, from the date prescribed for payment until the amount is fully paid.* In the case of the Petitioner, it is required to remit its withholding tax liability not later than the tenth (10th) day of the succeeding month following the transaction. In the schedule prepared by the herein respondent, it was very clear that there was a delay in the payment of the withholding tax liability which, consequently, justifies the imposition of both civil penalties and interest."

Petitioner presented Geronima Alonzo, as witness, and submitted its "Formal Offer of Evidence", which was admitted by the Court.

On the other hand, during the hearing on September 14, 2005, counsel for respondent manifested that he is adopting the evidence presented by the petitioner and moved that he be granted thirty (30) days from September 14, 2005 within which to file his memorandum, which the Court granted. Petitioner was granted twenty (20) days from notice to file its memorandum.

Only respondent has complied thereto, and the case was deemed submitted for decision on December 6, 2005.

ISSUES

As stipulated upon by the parties, the following are the issues for this Court's consideration:

I

WHETHER OR NOT THE PETITIONER SHALL BE CONSIDERED A LARGE TAXPAYER.

II

WHETHER OR NOT THE PETITIONER SHOULD REMIT EXPANDED WITHHOLDING TAXES ON OR BEFORE THE 10^{TH} DAY OF THE SUCCEEDING MONTH.

III

WHETHER OR NOT PETITIONER IS IN DELAY IN THE REMITTANCE OF WITHHOLDING TAX AS TO JUSTIFY THE IMPOSITION OF COMPROMISE PENALTIES, SURCHARGE AND INTEREST.

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The above issues raised being intertwined, since the deadline of the monthly remittance of withholding tax would depend on the determination of whether or not petitioner is a large taxpayer, while the imposition of compromise penalties, surcharge and interest would depend on the determination of the deadline of the monthly remittance of withholding tax, shall be discussed jointly.

THE COURT'S RULING

The petition is partially meritorious.

Section 245 of the NIRC of 1997, as amended, defines a "large taxpayer" as a taxpayer who satisfies any of the following criteria:

> "(1) Value-Added Tax (VAT) – Business establishment with VAT paid or payable of at least One hundred thousand pesos (P100,000) for any quarter of the preceding taxable year.
>
> (2) Excise Tax – Business establishment with excise tax paid or payable of at least One million pesos (P1,000,000) for the preceding taxable year;
>
> (3) Corporate Income Tax – Business establishment with annual income tax paid or payable of at least One million pesos (P1,000.000) for the preceding taxable year; and
>
> (4) Withholding Tax – Business establishment with withholding tax payment or remittance of at least One million pesos (P1,000,000) for the preceding taxable year.

Provided, however, That the Secretary of Finance, upon recommendation of the Commissioner, may modify or add to the above criteria for determining a large taxpayer after considering such factors as inflation, volume of business, wage and employment levels, and similar economic factors.

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Corollary thereto, *Section 3 of Revenue Regulations No. 01-98 (Re-Defining the Term "Large Taxpayers", Modifying the Criteria For Determining Large Taxpayers, and Prescribing the Time, Place and Manner of Filing of Tax Returns and Payment of Taxes by Large Taxpayers Amending Further RR No. 12-93, as Amended by RR 3-94)*, provides for the criteria for determination of Large Taxpayers, as follows:

"SEC. 3. *Criteria For Determination of Large Taxpayers*. – A "Large Taxpayer" is a taxpayer who has been classified as such, and has been duly notified by the Commissioner of Internal Revenue as having satisfied any or a combination of the following criteria:

"1. As to tax payment:

a. *Value-Added Tax (VAT)* – Any taxpayer with net VAT paid or payable of at least P100,000 per quarter;

b. *Excise Tax* – Any taxpayer with annual excise tax paid or payable of at least P1,000,000;

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c. *Income Tax* – Any taxpayer with annual income paid or payable of at least P1,000,000;

d. *Withholding Tax* – Any taxpayer with annual withholding tax payment/remittance for all kinds of withholding taxes (i.e., on compensation, expanded, final and government money payment) of at least P1,000,000; (For taxpayers, business establishments and government offices with branches/units, the basis is the total annual taxes withheld by the Head Office and all the branches/units.)

e. *Percentage Taxes* – Any taxpayer with percentage taxes of at least P100,000 per quarter; or

f. *Documentary Stamp Taxes* – Any taxpayer with aggregate annual documentary stamp taxes of at least P1,000,000.

2. As to financial condition and results of operations:

a. *Gross Sales/Receipts* – Any taxpayer with total annual gross sales/receipts of P1,000,000,000; and

b. *Net Worth* – Any taxpayer with a total Net Worth at the close of each calendar or fiscal year of at least P300,000,000."

The aforequoted provisions are very clear. For a taxpayer to be considered as a Large Taxpayer, the taxpayer has to be classified as a

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Large Taxpayer and duly notified by the Commissioner of Internal Revenue of its status as such.

Petitioner failed to present clear and convincing proof of its affirmative allegation that it has been duly classified and notified as a Large Taxpayer by the Large Taxpayers Division of the BIR. No Certificate of Large Taxpayer was presented by the petitioner to prove its classification as such and to justify its late remittances of withholding tax on or before the 25^{th} of the succeeding month following the transaction.

The letter of the then BIR Commissioner Liwayway Vinzons-Chato, dated June 6, 1997, does not classify petitioner as a Large Taxpayer, but only classified it as one of the country's Top 5,000 Corporations. The letter reads as follows:

> "**BURGUNDY REALTY CORP.**
> RM. 602-603 NOVEL PLAZA COND., 110 VALERO ST.
> SALCEDO VILLAGE, MAKATI
>
> Gentlemen:
>
> The Bureau of Internal Revenue would like to inform you that your corporation has been classified as one of the country's Top 5000 Corporations, for purposes of compliance with the Expanded Withholding Tax regulations under Revenue Regulations No. 12-94 and Revenue Memorandum Circular No. 28-94.

In this regard, you are designated as a Withholding Agent in accordance with the aforesaid regulations, and as such, you are required to:

1. Withhold a one percent (1%) creditable income tax on your income payments to your local supplier of goods. Casual purchases of goods shall not be subject to such tax, unless the total cost of such purchases shall amount to P100,000.00 or more, in which event you shall be required to withhold the tax.

2. Remit taxes withheld on a monthly basis, *not later than the 10th day of the succeeding month*, or for LARGE TAXPAYERS, not later than the 25th day of the succeeding month.

3. Issue the required withholding tax statement to payees within thirty (30) days from the end of such payees' taxable quarter.

4. Submit a list of your regular suppliers on a semestral basis (i.e., on or before June 30 and December 31 of each year), to the Revenue District Office having jurisdiction over your principal place of business. However, the initial list of your supplier must be submitted within fifteen (15) days from your receipt of this letter.

Please be advised that the withholding on your purchase of goods shall commence ten (10) days from your actual receipt of this communication.

We are furnishing you copies of Revenue Regulations No. 12-94 and Revenue Memorandum Circular No. 28-94, for your reference.

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We look forward to your timely response in this matter, and we thank you for your cooperation in our efforts to improve the efficiency of the tax collection process.

Sincerely yours,

(SGD.)LIWAYWAY VINZONS-CHATO
Commissioner Of Internal Revenue"
(*Exhibit "E"*)

Nowhere in the letter does it say that petitioner was classified as a Large Taxpayer. The fact that petitioner has been classified as one of the country's Top 5,000 Corporations does not automatically consider and classify it as a Large Taxpayer.

In this regard, *Revenue Memorandum Circular No. 28-94, entitled "Creditable Withholding Tax on Income Payments by Top 5,000 Corporations"* provides for the top 5,000 Corporations' manner of payment of withholding taxes. Paragraph 5 thereof provides:

> "5. The withholding agent shall remit the herein taxes withheld and file the required withholding tax return within the tenth (10th) day of the following month through duly accredited agent banks in places covered by the New payment Control System (NPCS) of the Collection Agent or duly authorized treasurer of the municipality where the aforesaid withholding agent's legal residence or principal place or business is located."'

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The above provision is clear. The withholding agent shall remit the taxes withheld and file the required withholding tax return, on or before the tenth (10th) day of the month following the transaction.

As can be seen in the Schedule prepared by the respondent, attached to the petition at bench, petitioner remitted the subject withholding taxes for the months of April to November 1999 beyond the prescribed last date of remittance, to wit:

Period Covered	Nature of Withholding Tax	Due date of Remittance	Date Remitted	No. of Days late
April 1999	Compensation	5/10/99	5/13/99	3
	Expanded	5/10/99	5/13/99	3
May 1999	Compensation	6/10/99	6/22/99	12
	Expanded	6/10/99	6/22/99	12
June 1999	Compensation	7/12/99	7/23/99	11
	Expanded	7/12/99	7/23/99	11
		(7/10/99 fell on a Saturday)		
July 1999	Compensation	8/10/99	8/28/99	18
	Expanded	8/10/99	8/28/99	18
August 1999	Compensation	9/10/99	9/27/99	17
	Expanded	9/10/99	9/27/99	17
September 1999	Compensation	10/11/99	11/3/99	22
	Expanded	10/11/99	11/3/99	22
		(10/10/99 fell on a Sunday)		
October 1999	Compensation	11/10/99	11/25/99	15
	Expanded	11/10/99	11/25/99	15
November 1999	Compensation	12/10/99	12/22/99	12
	Expanded	12/10/99	12/22/99	12

Clearly, there was delay on the part of petitioner in remitting the withholding taxes for taxable year 1999, which justifies the imposition of

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both civil penalties and interest, as provided for under *Sections 248(A)(4) and 249(B) and 249(C)(3) of the NIRC of 1997, as amended*, to wit:

> "SEC. 248. *Civil Penalties.* —
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> (A) There shall be imposed, in addition to the tax required to be paid, a penalty equivalent to twenty-five percent (25%) of the amount due, in the following cases:
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> xxx xxx
>
> (4) Failure to pay the full or part of the amount of tax shown on any return required to be filed under the provisions of this Code or rules and regulations, or the full amount of tax due for which no return is required to be filed, on or before the date prescribed for its payment."
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> "SEC. 249. *Interest.* —
>
> (A) *In General.* — There shall be assessed and collected on any unpaid amount of tax, interest at the rate of twenty percent (20%) per annum, or such higher rate as may be prescribed by rules and regulations, from the date prescribed for payment until the amount is fully paid.
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> (B) *Deficiency Interest.* — Any deficiency in the tax due, as the term is defined in this Code, shall be subject to the interest prescribed in Subsection (A) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof.
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> (C) *Delinquency Interest.* — In case of failure to pay:
> xxx xxx
>
> (3) A deficiency tax, or any surcharge or interest thereon on the due date appearing in the notice and demand

of the Commissioner, there shall be assessed and collected on the unpaid amount, interest at the rate prescribed in Subsection (A) hereof until the amount is fully paid, which interest shall form part of the tax."

Pursuant to the aforequoted provisions of *Section 248(A)(4) and 249(B) of the NIRC of 1997, as amended*, a 25% penalty or surcharge and 20% deficiency interest shall be imposed upon petitioner in the total amount of P376,398.31, computed as follows :

Period Covered	Nature of Withholding Tax	No. of Days late	Basic Tax	25% Surcharge	20% Interest	Total Withholding Tax Due	Less: Tax Paid	Deficiency Increments Due
Apr-99	Compensation	3	P 77,271.02	P 19,317.76	P 127.02	P 96,715.80	P 77,271.02	P 19,444.78
	Expanded	3	62,943.15	15,735.79	103.47	78,782.41	62,943.15	15,839.26
May-99	Compensation	12	79,369.48	19,842.37	521.88	99,733.73	79,369.48	20,364.25
	Expanded	12	88,883.67	22,220.92	584.44	111,689.03	88,883.67	22,805.36
Jun-99	Compensation	11	78,151.90	19,537.98	471.05	98,160.93	78,151.90	20,009.03
	Expanded	11	72,264.68	18,066.17	435.57	90,766.42	72,264.68	18,501.74
Jul-99	Compensation	18	78,880.74	19,720.19	778.00	99,378.93	78,880.74	20,498.19
	Expanded	18	145,957.91	36,489.48	1,439.58	183,886.97	145,957.91	37,927.06
Aug-99	Compensation	17	80,067.40	20,016.85	745.83	100,830.08	80,067.40	20,762.68
	Expanded	17	137,600.61	34,400.15	1,281.76	173,282.52	137,600.61	35,681.91
Sep-99	Compensation	22	84,755.74	21,188.94	1,021.71	106,966.39	84,755.74	22,210.65
	Expanded	22	117,901.59	29,475.40	1,421.28	148,798.27	117,901.59	30,896.68
Oct-99	Compensation	15	74,682.84	18,670.71	613.83	93,967.38	74,682.84	19,284.54
	Expanded	15	96,924.86	24,231.22	796.64	121,952.72	96,924.86	25,027.86
Nov-99	Compensation	12	76,733.98	19,183.50	504.55	96,422.03	76,733.98	19,688.05
	Expanded	12	107,010.68	26,752.67	703.63	134,466.98	107,010.68	27,456.30
			P1,459,400.25	P364,850.06	P11,550.24	P1,835,800.55	P1,459,400.25	P376,398.31

In addition, petitioner should be held liable to pay 20% delinquency interest on the above amount of P376,398.31 computed from January 21, 2003 until full payment thereof, pursuant to *Section 249(C)(3) of the NIRC of 1997, as amended.*

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However, as regards the compromise penalty of P208,000.00, the same is without factual and legal basis. No compromise penalty may be imposed on petitioner as compromise requires mutual consent of the parties. It is well-settled that the Court has no jurisdiction to compel a taxpayer to pay the compromise penalty because by its very nature, it implies a mutual agreement between the parties in respect to the thing or subject matter that is so compromised, and the choice of paying or not paying it distinctly belongs to the taxpayer (*Phil. International Fair, Inc. vs. The Collector of Internal Revenue, 4 SCRA 781*). Absent a showing that herein petitioner consented to the compromise penalty, its imposition should be deleted. The imposition of the same without the conformity of the taxpayer is illegal and unauthorized (*Commissioner of Internal Revenue vs. Liangga Bay Logging Co., Inc., 193 SCRA 92-93*).

WHEREFORE, premises considered, the Petition For Review is hereby partially **GRANTED**. The assessment against petitioner for compromise penalty in the amount of P208,000.00 is hereby **CANCELLED and SET ASIDE**. However, petitioner is hereby **ORDERED TO PAY** respondent Commissioner of Internal Revenue the amount of P376,398.31 representing 25% surcharge and 20% deficiency interest for late remittance of withholding taxes (compensation and expanded) for the taxable year 1999. In addition, petitioner is hereby **ORDERED TO PAY** respondent 20% delinquency interest on the amount of P376,398.31 computed from January 21, 2003 until the amount is fully paid.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

A T T E S T A T I O N

I attest that the conclusions in the above Decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairman, Second Division

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

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairman's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.

ERNESTO D. ACOSTA
Presiding Justice

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