REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

BANK OF COMMERCE,
Respondent.

CTA EB NO. 654
(CTA Case No. 6668)

Present:

Acosta, P.J.
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Palanca-Enriquez,
Fabon-Victorino,
Mindaro-Grulla, and
Cotangco-Manalastas, JJ.

Promulgated:

MAR 14 2011 Apolinario 9:00 a.m.

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DECISION

BAUTISTA, J.:

The Case

Before the Court *En Banc* is a Petition for Review[1] filed by petitioner Commissioner of Internal Revenue on July 12, 2010, pursuant to Rule 8 of the Revised Rules of the Court of Tax Appeals, praying that the Decision[2] promulgated on January 8, 2010, and the Resolution[3] dated June 18, 2010 issued by the former

[1] *Rollo*, CTA EB No. 654 (CTA Case No. 6668), pp. 1-33, with Annexes.
[2] Penned by Associate Justice Juanito C. Castañeda, Jr., with Associate Justices Erlinda P. Uy, and Olga Palanca-Enriquez, concurring; *Ibid.*, pp. 11-26; *Annex "A."*
[3] *Ibid.*, pp. 27-30; *Annex "B."*

Second Division of the Court ("Court in Division") be reversed and set aside, and a new one be rendered ordering respondent Bank of Commerce to pay the deficiency withholding tax in the amount of ₱1,946,818.96, plus interest from July 31, 2002 pursuant to Sections 248 and 249 of the 1997 National Internal Revenue Code ("NIRC"), as amended.

Antecedent Facts

The relevant antecedents are succinctly stated by the Court in Division in its Decision dated January 8, 2010 as follows:

> Bank of Commerce (Petitioner)[4] is a banking corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office address at 12th Floor, Bankers' Centre Building, 6764 Ayala Avenue, Makati City.
>
> Respondent Commissioner of Internal Revenue[5] is the Head of the Bureau of Internal Revenue (BIR) who is granted by law with the power to assess and collect all national internal revenue taxes, fees, and charges and to enforce all forfeitures, penalties, and fines connected therewith. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.
>
> On June 21, 2002, petitioner received from respondent copies of the Formal Letter of Demand and Assessment Notice Nos. INC-97-000043, WC-97-000025, EWT-97-000044, FT-97-000022, CWT-97-000001, OT-97-000013, DST-97-000044, and DST2-97-000018, all dated June 14, 2002, assessing petitioner deficiency income tax, withholding tax on compensation, expanded withholding tax, final tax, creditable withholding tax, onshore tax, and documentary stamp taxes in the aggregate amount of ₱119,457,207.24, inclusive of compromise penalty and increments for taxable year 1997.
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> Petitioner protested the assessment via a letter filed with the BIR Large Taxpayer Service Division on July 19, 2002. Petitioner had until September 17, 2002 within which to submit its supporting documentary evidence.

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[4] Herein respondent.
[5] Herein petitioner.

On March 16, 2003, the 180-day period within which respondent is mandated by law to render a decision on the protest lapsed without respondent's action on petitioner's protest. As such, petitioner had thirty (30) days from said date, or until April 15, 2003, within which to appeal to this Court.

In order to protect its rights, petitioner instituted the present action on April 14, 2003.

In his Answer filed on June 18, 2003, respondent interposed the following Special and Affirmative Defenses:

> "6. The assessments were issued within the period allowed by law considering that valid Waivers of Statutes of Limitations were executed by the parties.
>
> 7. The assessments have factual and legal bases.
>
> a) INCOME TAX
>
> 1. Bad Debts Written Off (₱8,590,431.14)
>
> Verification disclosed that there was an unaccounted difference of ₱1,277,611.58 between the write-off per financial statements against that of the schedule submitted, and a request for write-off that was not recognized by the BSP in the amount of ₱7,312,819.56, hence, disallowed as part of expense pursuant to Section 34(E) of the Tax Code because said accounts could not be ascertained to be worthless.
>
> 2. Tax and Licenses
>
> The amount of ₱503,995.91 was disallowed as an item of deduction because petitioner failed to substantiate its deductibility.
>
> b) WITHHOLDING TAX ON COMPENSATION
>
> Pursuant to Section 57 of the NIRC, the employer as a withholding agent shall be liable for the correct withholding and remittance of the amount required to be deducted and withheld based

on all remunerations received by their employees. Verification disclosed that when total tax due was compared against the actual tax remittance, there was a discrepancy, resulting to a deficiency tax.

c) EXPANDED WITHHOLDING TAX

There were items that were not subjected to EWT which resulted in the deficiency assessment amounting to ₱177,401.09.

d) FINAL TAX - INTEREST EXPENSE

Verification disclosed that final tax on savings and time deposits as well as deposit substitutes were found to be inadequately remitted when compared to the schedule of interest expense resulting to an assessment of ₱1,573,401.05, inclusive of interest, in accordance with Section 27(D)(1) of the NIRC, as amended, which provides that interest on Philippine Currency Bank Deposits and yield or any other monetary benefit from deposit substitutes and from trust fund and similar arrangements received by domestic corporation shall be subject to 20% tax.

e) ONSHORE INCOME

Pursuant to Section 27(D)(3) of the NIRC, as amended, interest income derived from foreign domestic currency loans granted by depository banks under the expanded foreign currency deposit system to residents shall be subject to a final income tax at the rate of ten percent of such income

Petitioner argues that the liability for payment of the onshore tax rests on the payor as withholding agent and not on the payee. Under the Code, the liability of the payor or withholding agent is separate and distinct from the payee or recipient of the interest income. It cannot be denied that petitioner as the recipient of the interest income may be properly assessed if no tax was paid on the interest income it received.

f) CREDITABLE WITHHOLDING TAX

The deficiency assessment in the amount of ₱6,648,339.42 represents the penalties for late payment of creditable withholding tax.

g) DOCUMENTARY STAMP TAX

Verification disclosed that the taxpayer failed to affix the documentary stamp tax on the following transactions: loans and discounts, customers' liabilities under letters payable, increase in capitalization and DST on real property in violation of the provisions of Sections 175, 179, 180 and 182 of the NIRC.

h) DOCUMENTARY STAMP TAX (INDUSTRY ISSUE)

Verification disclosed that Special Savings Deposits is an interest bearing account and has the feature of Time Deposit Account. They are certificates of deposits subject to DST under Section 180 of the Tax Code."

The case was set for Pre-Trial Conference on September 5, 2003. Petitioner's Pre-Trial Brief and respondent's Pre-Trial Brief were filed on August 29, 2003 and November 3, 2003, respectively. On March 22, 2004, the parties submitted their Joint Stipulation of Facts and Issues.

During trial, petitioner was able to present its documentary and testimonial evidence to support its claims and contentions; while respondent was deemed to have waived his right to present evidence for failure to appear at the scheduled initial presentation of evidence on January 31, 2007 and March 5, 2007.

On October 31, 2007, the Court issued a Resolution submitting this case for Decision, considering that petitioner had already submitted its Memorandum on September 11, 2007 and the report of this Court's Record Division that respondent filed no Memorandum.

On December 26, 2007, petitioner filed a Motion (to Suspend Collection of Alleged Tax Liabilities), praying for the suspension of collection of its alleged tax liabilities pending the final disposition of the present case. The motion was denied by the Court in a Resolution dated April 1, 2008.

Petitioner moved for the reconsideration of the said Resolution alleging, among others, its availment of the Tax Amnesty Law under Republic Act (R.A.) No. 9480. Petitioner's Motion was treated by this Court as a Motion to Partially Withdraw the Petition, which was also granted in Resolution dated August 8, 2008; hence, the instant case was deemed to be partially withdrawn and was considered closed and terminated subject to the provisions of R.A. No. 9480. In the same Resolution, this Court set the case for the marking of respondent's documentary evidence and initial presentation of evidence on the issue of deficiency withholding taxes.

Petitioner filed a Motion for Partial Judgment on October 23, 2008, praying for the cancellation of Assessment Notice Nos. WC-97-000025, EWT-97-000044, and CWT-97-000001 dated June 14, 2002, on the ground of prescription. Consequently, on February 3, 2009, the Court promulgated a Resolution canceling and setting aside Assessment Notice Nos. EWT-97-000044 and CWT-97-000001; while sustaining the validity of Assessment Notice No. WC-97-000025.

On March 2, 2009, petitioner filed a Motion for Partial Reconsideration of the Court's Resolution dated February 3, 2009, specifically, praying that an Order be issued canceling Assessment Notice No. WC-97-000025 on the ground of prescription. The Court however denied the said Motion for lack of merit in a Resolution dated April 27, 2009.

On May 26, 2009 and June 24, 2009, petitioner and respondent respectively submitted their memoranda.

Petitioner moved to reopen trial for the purpose of submitting its Monthly Withholding Tax Returns, copies of which were attached to the BIR Records, in order to prove the filing, the date of filing, and their contents, pertinent to its allegation of prescription of Assessment Notice No. WC-97-000025. The same was granted by the Court in a Resolution dated July 22, 2009. Accordingly, petitioner presented its supplemental evidence, which was later formally offered in Court and admitted in a Resolution dated September 24, 2009.

The case was submitted for decision on November 4, 2009, after the parties filed their respective Supplemental Memorandum.[6]

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[6] *Rollo*, pp. 12-17.

The Ruling of the Court in Division

The following issues were stipulated by the parties for resolution by the Court in Division, *viz.*:

"15. Income Tax

a. Whether the disallowance of the amount of ₱8,590,431.14 representing bad debts written-off as part of expenses is proper.

b. Whether the disallowance of the amount of ₱503,995.91 representing Taxes and License as part of expenses is proper.

c. Whether [r]espondent's[7] right to assess deficiency income tax has already prescribed when it issued the Formal Letter of Demand and Assessment Notices.

16. Withholding Tax on Compensation

a. Whether [p]etitioner[8] is liable for deficiency withholding tax on compensation.

b. Whether [r]espondent's right to assess deficiency withholding tax on compensation has already prescribed when it issued the Formal Letter of Demand and Assessment Notices.

17. Expanded Withholding Tax

a. Whether [p]etitioner is liable for deficiency expanded Withholding Tax on certain income payments.

b. Whether [r]espondent's right to assess deficiency expanded withholding tax on certain income payments has already prescribed when it issued the Formal Letter of Demand and Assessment Notices.

18. Final Tax - Interest Expense

a. Whether [p]etitioner is liable for deficiency 20% final tax on savings and time deposits as well as deposit substitutes.

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[7] Herein petitioner.
[8] Herein respondent.

b. Whether [r]espondent's right to assess final tax on interest expense has already prescribed when it issued the Formal Letter of Demand and Assessment Notices.

19. Creditable Withholding Tax

a. Whether [p]etitioner is liable to surcharge, interest and compromise penalty for the late remittance of the creditable withholding tax on the sale of real property.

b. Whether [r]espondent's right to assess surcharge, interest and compromise penalty for the late remittance of the creditable withholding tax on the sale of real property has already prescribed when it issued the Formal Letter of Demand and Assessment Notices.

20. Documentary Stamp Tax (DST)

a. Whether [p]etitioner is liable for deficiency DST on various adjustments (debits) and other transactions *i.e.*, letters of credit transactions; domestic bills purchased; and adjustments on debits in the amount of ₱75,706,314.95.

21. Documentary Stamp Tax – Industry Issue

a. Whether [p]etitioner is liable for deficiency DST on its Special Savings Deposits in the amount of ₱17,416,612.13 inclusive of surcharge."[9]

Inasmuch as Assessment Notice Nos. INC-97-000043, EWT-97-000044, FT-97-000022, CWT-97-000001, OT-97-000013, DST-97-000044, and DST2-97-000018 were already cancelled pursuant to Resolutions dated August 8, 2008,[10] and February 3, 2009,[11] the Court in Division proceeded with the sole issue of "whether or not petitioner[12] is liable for deficiency withholding tax on compensation in the amount of ₱11,946,818.96 under Assessment Notice No. WC-97-000025."

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[9] *Rollo*, pp. 18-19.
[10] *Records*, (CTA Case No. 6888), pp. 522-523.
[11] *Id.*, at pp. 540-548.
[12] Herein respondent.

Based on the records of the case, and on Section 203 of the 1977 Tax Code, the Court in Division found that the assessment for deficiency withholding tax on compensation was issued beyond the three-year prescriptive period. It also negated petitioner's claim that the ten (10)-year prescriptive period for the issuance of assessment as provided under Section 223 of the 1977 Tax Code was applicable to the case at bench.

Accordingly, the Court in Division disposed of the case as follows:

> **WHEREFORE**, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, Assessment Notice No. WC-97-000025 is hereby **CANCELLED** and **SET ASIDE**.
>
> **SO ORDERED.**[13]

Aggrieved, the petitioner filed a Motion for Reconsideration on February 10, 2010, which was denied for lack of merit by the Court in Division in its Resolution promulgated on June 18, 2010.[14]

The Issues

Hence, the present Petition for Review wherein petitioner raises the following arguments, *viz.*:

I. RESPONDENT IS LIABLE FOR DEFICIENCY WITHHOLDING TAX ON COMPENSATION ASSESSMENT UNDER NOTICE NO. WC-97-000025; and

II. THE RIGHT OF PETITIONER TO ASSESS RESPONDENT THE SUBJECT DEFICIENCY HAS NOT YET PRESCRIBED.[15]

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[13] *Rollo*, p. 25.
[14] *Id.*, at pp. 27-30.
[15] *Id.*, at pp. 4-6.

Petitioner's Arguments

Petitioner asserts that while a comparison between the salaries and wages claimed per financial statements and per alpha-list of respondent shows no discrepancy, however, when the total tax due is compared against the actual remittance, a discrepancy will result to a tax deficiency in the amount of ₱11,946,818.96. Pursuant to Section 57 of the 1997 NIRC, and considering that assessments are *prima facie* presumed correct and made in good faith, respondent therefore is liable for the said deficiency tax.

Petitioner claims as well that since respondent failed to declare certain tax payments required to be withheld and remitted, the statutory period of limitation is that found in Section 222(a) of the 1997 NIRC, which prescribes a period of ten (10) years from discovery thereof. In the alternative, she also avers that the amount sought to be collected from respondent is not the tax itself, but for the enforcement of the withholding tax provisions of the 1997 NIRC, specifically Section 251 thereof. She posits then that the liability of respondent as a withholding agent is a penalty, and thus, the period of limitation provided under Section 203 finds no application in the case at bench.

Respondent's Counter-arguments

In its Comment, respondent counters that the alleged basic deficiency tax of ₱6,264,704.75 pertains to tax-exempt compensation and other benefits, which petitioner improperly considered as taxable. Even assuming that the alleged basic deficiency tax does not pertain to tax-exempt compensation and other benefits, petitioner argues that it correctly remitted the taxes withheld on compensation in the total amount of ₱24,847,841.74 for the taxable year 1997, as evidenced by its Annual Information Return of Income Tax Withheld on Compensation, Expanded and Final Withholding Taxes, and copies of Alphabetical Lists.

Respondent also contends that petitioner cannot argue that the deficiency withholding tax covered by Assessment Notice No. WC-97-000025 is only a penalty pursuant to Section 251 of the 1997 NIRC, and therefore, not covered by the period of limitation under Section 203 of the same Code. It claims that the penalty mentioned under Section 251 cannot be independently imposed without the assessed deficiency withholding tax for the said penalty is merely an addition to the tax. Further, the aforementioned provision applies only to tax evasion cases, wherein it presupposes a prior conviction before the penalty can be imposed against the withholding agent.

The Ruling of the Court En Banc

The Court *En Banc* finds the Petition for Review bereft of merit.

Since the subject deficiency withholding tax involves the taxable year 1997, and Republic Act No. 8424, entitled *"An Act Amending the National Internal Revenue Code, as amended,"* or the Tax Reform Act of 1997, took effect only on January 1, 1998, then the applicable provision is Section 203 of the 1977 Tax Code, as amended, which provides as follows:

> SECTION 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. (*Boldfacing supplied.*)

The afore-quoted provision mandates the BIR to assess internal revenue taxes within three (3) years from the last day prescribed by law for the filing of the return or the actual date of filing of such return, whichever comes later. Stated differently, an assessment issued after the three (3)-year period is deemed invalid.

Corollary thereto, the relevant provision in cases of withholding taxes is quoted as follows:

> SECTION 51. *Returns and Payment of Taxes Withheld at Source.* – (a) *Quarterly Returns and Payment of Taxes Withheld.* – Taxes deducted and withheld under Section fifty-three (now 50) shall be covered by a return and paid to the Revenue District Officer, Collection Agent, or duly authorized Treasurer of the city, or municipality where the withholding agent has his legal residence or principal place of business or where the withholding agent is a corporation, where the principal office is located. The taxes deducted and withheld by the withholding agent shall be held as a special fund in trust for the Government until paid to the collecting officers. The Commissioner of Internal Revenue may, with the approval of the Secretary of Finance, require these withholding agents to pay or deposit the taxes deducted or withheld at more frequent intervals when necessary to protect the interest of the Government. The return for final withholding tax shall be filed and the payment made within 25 days from the close of each calendar quarter, while the return for creditable withholding taxes shall be filed and the payment made not later than the last day of the month following the close of the quarter during which withholding was made.

In relation thereto, Revenue Regulations No. 18-93 dated October 25, 1993, as amended, provides for the period for filing the required return, which states:

SECTION 1. Section 2 of Revenue Regulations No. 5-85, as amended by Revenue Regulations No. 3-93, is hereby further amended to read as follows:

> "Sec. 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 of January of the succeeding year. *Provided*, further, that taxes withheld by Large Taxpayers, as identified and notified by the Bureau of Internal Revenue pursuant to Republic Act No. 7646, as implemented by Revenue Regulations No. 12-93, shall be remitted within twenty-five (25) days after the end of each calendar month with the filing of appropriate return (BIR Form 1743-W)."

Thus, the three (3)-year period within which petitioner can validly issue an assessment is reckoned from: (a) the last day required by law for filing a monthly remittance return, which is twenty five (25) days after the end of each calendar month; or (b) the date of actual filing of the return, whichever is later.

From the filing of the Monthly Withholding Tax Returns for Compensation starting January 1997 and ending on December 1997, petitioner has three (3) years within which to issue an assessment against respondent, or at the earliest, on February 25, 2000 up to the latest on January 26, 2001.[16]

[16] *Id.*, at p. 21.

Based on the records of the case, respondent received the Formal Letter of Demand, with Assessment Notice No. WC-97-000025, both dated on June 14, 2002, on June 21, 2002. Clearly, the same was issued beyond the 3-year prescriptive period.

However, petitioner insists that respondent failed to declare certain tax payments required to be withheld and remitted. Thus, she posits that the proper statutory period of limitation is that found in Section 222(a) of the 1997 NIRC, which has the very same words as that of Section 223(a) of the 1977 Tax Code, to wit:

> **SEC. 222.** *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* –
>
> (a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission: *Provided,* That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.
>
> xxx xxx xxx

In cases of (1) fraudulent returns; (2) false returns with intent to evade tax; and (3) failure to file a return, the period within which to assess the tax is 10 years from the discovery of the fraud, falsification or omission, as the case may be.

A "false return" is that which contains wrong information due to mistake, carelessness or ignorance.[17] A "fraudulent return with intent to evade tax" is a crime involving moral turpitude as it entails willfulness and fraudulent intent on the part of the individual.[18] As for "failure to file an income tax return," the mere omission is

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[17] Aznar *v.* Court of Tax Appeals, No. L-20569, August 23, 2974, 58 SCRA 519.
[18] Republic of the Philippines *v.* Marcos II, G.R. Nos. 130371 & 130855, August 4, 2009, 595 SCRA 43.

already a violation regardless of the fraudulent intent or willfulness of the individual.[19]

In this regard, the Court in Division found as follows:

> As indicated in the above table, petitioner[20] filed its Monthly Remittance Returns of Income Taxes Withheld for taxable year 1997. Moreover, respondent[21] did not allege much less prove that the returns were false or fraudulent as contemplated under Section 223 of the NIRC of 1977, as amended. On the other hand, petitioner has satisfactorily shown that it properly withheld and remitted the withholding taxes on its employee's compensation for taxable year 1997.[22]

Considering that there was no evidence showing that respondent filed a false or fraudulent return, and records show that it filed its monthly remittance returns, petitioner's contention cannot stand.

In the same way the assertion made by petitioner that the present case is "not for the collection of the tax but for the enforcement of the withholding tax provisions of the 1997 NIRC" must fail.

Section 251 of the 1997 NIRC states:

> **SEC. 251.** *Failure of a Withholding Agent to Collect and Remit Tax.* – Any person required to withhold, account for, and remit any tax imposed by this Code or who willfully fails to withhold such tax, or account for and remit such tax, or aids or abets in any manner to evade any such tax or the payment thereof, shall, in addition to other penalties provided for under this Chapter, be liable upon **conviction** to a penalty equal to the total amount of the tax not withheld, or not accounted for and remitted. (*Boldfacing supplied.*)

[19] *Id.*
[20] Herein respondent.
[21] Herein petitioner.
[22] *Rollo*, p.22.

A reading of the aforequoted provision would readily show that the penalty of "equal to the total amount of the tax not withheld and remitted" is upon the *conviction* of the person who failed to perform the required acts.

The above-quoted provision is not applicable to the present case since conviction requires a criminal proceeding with a different quantum of evidence.

Thus, the Court *En Banc* affirms the Court in Division's cancellation of the Formal Letter of Demand and Assessment Notice No. WC-97-000025 for having been issued beyond the period allowed by law.

The Court *En Banc* further quotes with approval the disquisition made by the Court in Division, to wit:

> As reflected in the Formal Letter of Demand, Assessment Notice No. WC-97-000025 and Schedule 1-1997 Computation of Deficiency Taxes, respondent[23] computed the alleged deficiency withholding tax on compensation as follows:
>
> xxx xxx xxx
>
> The said assessment was based on the examiner's finding that: "Pursuant to Section 57 of the NIRC, the employer as a withholding agent shall be liable for the correct withholding and remittance of the amount required to be deducted and withheld based on all remuneration received by their employees. A comparison between the salaries and wages claimed per financial statements and per alpha-list showed no discrepancy, however, when total tax due was compared against the actual tax remittance there was a discrepancy, resulting to a deficiency tax of ₱11,946,818.96, inclusive of interest."
>
> A close examination of petitioner's[24] 1997 Alphalists of Active and Resigned Senior Officers, Alphalists of Active and Resigned Junior Officers, and Consolidated Alphalists of Active and Resigned Employees and as illustrated in the Affidavits of petitioner's witnesses, Ms. Elvira Muñoz and Ms. Rowena N. Morada, the alleged basic deficiency tax of ₱6,264,704.75 arose from the following:

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[23] Herein petitioner.
[24] Herein respondent.

xxx xxx xxx

As can be seen in the Alphalist of Active and Resigned Senior Officers, the amount of ₱6,356,601.26 pertains to the withholding tax on compensation of petitioner's senior officers in the amount of ₱23,339,763.10, which was also included in the printed totals shown in the Alphalists of Active and Resigned Junior Officers. Accordingly, the amounts of ₱80,737,921.36 and ₱17,302,600.42 already represent the gross compensation and withholding tax, respectively, not only of the junior officers but also of the senior officers of petitioner. Consequently, there was double take-up of the amounts of ₱23,339,763.10 and ₱6,356,601.26, representing gross compensation and withholding tax, respectively, of petitioner's senior officers, in respondent's computation of petitioner's deficiency withholding tax on compensation for taxable year 1997.

As to the amount of ₱29,734.54, representing withholding taxes from previous employment of petitioner's junior officers, petitioner is not liable for the remittance thereof.

Anent the amount of ₱121,631.05, the same was arrived at by deducting petitioner's actual tax remittance of ₱24,847,841.74 per BIR Form No. 1743-IR from the ₱24,969,472.79 tax remittance indicated by the BIR in computing the alleged deficiency basic tax of ₱6,264,704.75. Apparently, the amount of ₱121,631,05 was a mere result of respondent's erroneous take-up of petitioner's total tax due remittance for the year 1997.[25]

The Court *En Banc* sees no reason to deviate from the above findings.

In fine, since the Formal Letter of Demand and Assessment Notice No. WC-97-000025 dated June 14, 2002 were found to be issued beyond the prescriptive period, the Court *En Banc* finds no compelling reason to warrant a reversal of the assailed Decision and Resolution.

WHEREFORE, the Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the impugned Decision of the Court in Division dated January 8, 2010

[25] *Rollo*, pp. 22-24.

and its Resolution dated June 18, 2010, in CTA Case No. 6668 are hereby **AFFIRMED**.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of this Court.

ERNESTO D. ACOSTA
Presiding Justice