Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION
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COLLEGE ASSURANCE PLAN PHILS., INC., represented by its Senior Vice President ALFREDO R. COLLADO, Petitioner,	**C.T.A. CASE NO. 6522**
	Members:
- versus -	**ACOSTA,** *Chairperson* **BAUTISTA,** *and* **CASANOVA,** *JJ.*
HON. RENE G. BAÑEZ, in his Capacity as COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** JUL 10 2008 ; 1:15 pm

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DECISION

CASANOVA, J.:

The instant Petition for Review is a case for the cancellation of an Assessment issued by the respondent in the aggregate amount of P135,723,103.00 allegedly representing deficiency income taxes for the taxable year 1998.

THE FACTS

College Assurance Plan Philippines., Inc. (Petitioner) is a domestic corporation duly created and existing under Philippine laws with principal office at CAP Bldg., 126 Amorsolo Street, Legaspi Village, Makati City. It is duly represented by its Senior Vice President Alfredo R. Collado.[1]

The Commissioner of Internal Revenue (Respondent) is the chief official of the Bureau of Internal Revenue (BIR) mandated by law to enforce and implement

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[1] Paragraph 1, Joint Stipulation of Facts and Issues (JSFI); *Rollo*, page 113-114

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the provisions of the National Internal Revenue Code (NIRC) as well as related tax statutes and their implementing rules and regulations, including *inter alia*, the power to decide disputed assessments.[2]

On January 11, 2002, petitioner received a Pre-Assessment Notice (PAN) dated November 19, 2001, which notice can be assailed or protested within the period of fifteen (15) days upon receipt or until January 26, 2002.[3] The PAN contains among others that:

> "If you are not agreeable to the findings, you or your authorized representative may see the Chief, Large Taxpayer Audit & Investigation Division I (LTAID I) to clarify issues arising from the investigation and/or review of your tax case. However, if we do not hear from you within fifteen (15) days from receipt hereof, we will presume that you are agreeable to the proposed assessment in which case, the corresponding letter of demand will be sent to you upon approval of the report of investigation."

On January 24, 2002, respondent issued a Formal Letter of Demand and Assessment Notices dated January 17, 2002.[4]

On January 25, 2002, petitioner through its counsel filed a request for re-investigation.[5]

On June 10, 2002, petitioner's counsel received the "Final Decision on Disputed Assessment" dated May 13, 2002 duly signed by ACIR-Large Taxpayer's Service Edwin R. Abella, denying petitioner's protest of the deficiency assessment.[6]

On July 09, 2002, petitioner through counsel filed a request for reconsideration of the "Final Decision on Disputed Assessment" which request was granted through a letter dated July 10, 2002.[7]

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[2] Paragraph 2, JSFI; *Rollo*, page 114
[3] Exhibit "B"; Paragraph 3, JSFI; *Rollo*, page 114
[4] Paragraph 4, JSFI; *Rollo*, page 115
[5] Paragraph 5, JSFI; *Rollo*, page 114
[6] Paragraph 6, JSFI; *Rollo*, page 114
[7] Paragraph 7, JSFI; *Rollo*, page 114

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On August 13, 2002, a decision was reached by the Assistant Commissioner for Large Taxpayer Edwin Abella denying the petitioner's second request for re-investigation which was received by petitioner through counsel on September 02, 2002.[8]

Hence, the instant Petition for Review.

During trial, petitioner submitted testimonial and documentary evidence in support of its position.

On August 13, 2007, the case was submitted for decision without any memorandum filed by the respondent.

THE ISSUES

The issues, as agreed upon by petitioner and respondent in their Joint Stipulation of Facts and Issues, are the following:

1. Whether or not the petitioner is liable for deficiency expanded withholding tax in the amount of P10,455,749.33 including increments for taxable year 1998.

2. Whether or not the petitioner is liable for deficiency withholding tax on compensation in the amount of P7,795,247.48 including increments for taxable year 1998.

3. Whether or not the petitioner is liable for deficiency value-added tax in the amount of P117,472,106.19 including increments for taxable year 1998.

4. Whether or not collections of petitioner from installment contract receivables were included in their gross receipts resulting in an understatement of output VAT.

5. Whether or not receipts from petitioner's other income were included in petitioner's gross receipt.

6. Whether or not all revenues from petitioner's sale of educational plans were subjected to VAT.

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[8] Paragraph 8, JSFI; *Rollo*, page 115

7. Whether or not some of petitioner's input tax credits were allowable since it violated the invoicing requirements under Revenue Regulations No. 7-95.

<u>THE COURT'S RULING</u>

The Court shall discuss the issues stipulated by the parties with regard to deficiency tax assessment issued against petitioner.

I. Expanded Withholding Tax Deficiency (Assessment No. ET-98-000031)

Upon verification of the expenses subject to expanded withholding tax (EWT) in petitioner's 1998 adjusted trial balance, respondent found petitioner liable for deficiency EWT in the amount of P10,455,749.33 (inclusive of increments) pursuant to Revenue Regulations No. 2-98 in relation to Section 57 of the NIRC.

Petitioner, on the other hand, argued that the deficiency assessment has no legal and factual basis. Petitioner's witness, Lorna Martelino, explained the error of the deficiency EWT assessment, to wit:

"ATTY. SAN BUENAVENTURA:

Q. I'm showing to you *Exhibit "K"* can you please look at it thoroughly and tell this Honorable Court what relation has this previously marked *Exhibit "K"* to the findings which you mentioned?

MS. MARTELINO:

A. Sir, this is the same document that was given to us by the BIR on how they compute the deficiency payment on the expanded withholding tax.

ATTY. SAN BUENAVENTURA:

Q. Will you kindly explain to this Honorable Court what was the nature of the assessment as you said by assessment of expanded withholding tax?

MS. MARTELINO:

A. Well, the expenses presented in here indicates the tax rate on all the expenses that were given and one of the error made by the BIR in assessing our deficiency expanded withholding tax is charging the royalty fee at twenty percent (20%). The royalty

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here is just an incentive given to our sales associates so these should be subjected to five percent (5%) withholding tax. Also in this document the professional fees were subjected to ten percent (10%) there are some payments made to professionals that should not been subjected to ten percent (10%) because the general partnerships are exempt from these professional fees. The prizes and the awards were also subjected to one percent (1%) tax, the BIR Regulations on prizes and awards, for their exemplary performance in sales, these associates were given some awards which are P3,000.00 and below, so, these should not be subjected to expanded withholding tax.

ATTY. SAN BUENAVENTURA:

Q. You said that the royalty fees was *(sic)* charged at twenty percent (20%), what should have been the correct rate?

MS. MARTELINO

A. Five percent (5%), Sir"[9]

The Court finds such testimony insufficient to overcome the validity of the deficiency EWT assessment. By merely alleging that it was able to subject to EWT its claimed expenses for the year 1998, petitioner failed to present a scintilla of documentary proof to support the same. Furthermore, petitioner failed to reconcile its withholding tax remittances *vis-à-vis* its claimed expenses contained in the income tax return.[10] Allegations without proof do not deserve consideration.[11] Thus, this Court affirms such assessment arrived by respondent in this manner:

Total EWT due per investigation	P 26,781,169.54
EWT Remitted per return	20,248,563.40
Deficiency EWT (Under Remittance)	P 6,532,606.14
Add: Surcharge	
Interest	3,923,143.19
Compromise	-
Total Deficiency Expanded Withholding Tax	**P 10,455,749.33**

[9] TSN dated August 7, 2003, pages 14-16
[10] BIR Records, pages 467 to 468
[11] *Cabalen Management Co, Inc., et al. vs. Jesus P. Quiambao, et al.* (G.R. No. 169494. March 14, 2007.)

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II. Withholding Tax on Compensation (Assessment No. WT-98-000016)

After comparing the salaries subjected to withholding tax on compensation (WTC) contained in petitioner's alpha list as against the expenses claimed as salaries or remuneration contained in the Financial Statements, respondent found a deficiency WTC in the amount of P7,795,247.48, including interest.

According to petitioner, however, it had no deficiency on its WTC because the alleged compensation not subjected to withholding tax was composed of *"de minimis benefits"* or facilities and/or privileges that were furnished by the petitioner to its employees as means of promoting the health, goodwill, contentment, or efficiency of the latter which under pertinent laws and regulations are not considered as compensation subject to income tax and subsequently to withholding tax.

Upon examining the alphalist, Financial Statements, *Monthly Remittance Return of Income Taxes Withheld* (BIR Form 1601)[12] and computer print-out of employees benefits[13], the Court affirms respondent's assessment. The documentary evidence presented failed to show that the amount of P31,813,819.89 actually pertains to *"de minimis benefits"*. Petitioner should have presented its receipts to substantiate that these benefits were indeed incurred or paid. Hence, the assessment for deficiency WTC is proper, computed as follows:

Compensation subject to withholding per F/S	P 273,987,533.33
Less: Compensation subjected to withholding per Alphalist	242,173,713.46
Compensation not subjected to withholding	P 31,813,819.87
Rate of withholding (Average)	15.18%
Basic withholding tax deficiency on compensatioin	P 4,830,671.19
Add: Interest	2,964,576.29
Total deficiency withholding tax on compensation	**P 7,795,247.48**

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[12] BIR Records, pages 402 to 421
[13] *Exhibits "L-1" to "L-87"*

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III. Value-Added Tax (Assessment No. VT-98-000018)

Respondent assessed petitioner for deficiency value-added tax (VAT) computed as follows:

Revenue from sale of plans			P 2,479,723,134.00
Less:	Contribution to trust fund (per F/S)		1,224,140,500.00
Net Revenue			P 1,255,582,634.00
Add:	Other income	P 130,826,193.28	
	Installment contract receivable (beg)	141,407,209.00	
Less:	Installment contract receivable (end)	(81,803,302.00)	190,430,100.28
Gross receipts			P 1,446,012,734.28
Less:	Gross receipts per return		743,343,647.50
Vatable receipts not subjected to VAT			P 702,669,086.78
VAT Rate			10%
VAT Due			P 70,266,908.68
Add:	Disallowed Input VAT		3,128,022.45
Basic VAT Deficiency			P 73,394,931.13
Add:	Interest		44,077,175.06
Total Deficiency Final Withholding Tax			**P 117,472,106.19**

The foregoing assessment was based on the following findings of respondent:

a.) Verification disclosed that collections from Installment Contract Receivable representing sale of condominium units were not included in the gross receipts of the petitioner.

b.) Verification disclosed that receipts from other income were not included in the gross receipts thereby resulting to understatement of output VAT.

c.) Verification disclosed that not all revenue from sale of educational plans were subjected to VAT.

d.) Verification disclosed that some of petitioner's input tax credits were not allowable since they violated the invoicing requirements in pursuance to Revenue Regulations 7-95.

The Court shall discuss the propriety of each finding *in seriatim.*

a) Installment Contract Receivable

Petitioner argues that the Installment Contract receivable should not be subjected to VAT anymore because what constitutes this amount was already declared and taxed in the year of sale. To prove its argument, petitioner presented its *Buyer's Ledger Card*[14] and Monthly VAT declaration for July 1996 (BIR Form 2550A) with payment of P5,624,834.80[15]. Out of this amount, petitioner's witness, Ruth A. Castillo testified that P3,073,795.45 was attributable to the sale of condo units.[16] Ms. Castillo explained that the partial down payment amounting to 30% was paid in 1996 and the remaining amount to be paid in a certain period of time. She also testified that the VAT paid was based on the total contract price since per ruling, output tax is paid in full when they have paid more than 25% within the year of sale.

After carefully evaluating the evidence on hand, the Court finds petitioner to have failed in presenting sufficient evidence to invalidate the respondent's assessment. While petitioner faithfully paid the VAT in 1996, it cannot be concluded that the 1998 assessment was attributed to the 1996 VAT payment. For lack of documentary evidence, respondent's imposition of VAT on the sale of condo units worth P59,603,907.00 is in order.

b) Receipts from Petitioner's Other Income

In its Memorandum, petitioner alleges that the amount of its Other Income is only P63,028,944.24 while respondent contends that it is P146,364,796.00. Petitioner alleges that the difference of P83,335,851.76 represents the following:

1) License fees collected from new agents, which collections were remitted to SEC.

2) Experience refund from insurance.

3) Excess refund from the trust fund.

4) Realized income on unsold condo units.

5) Trust fund Income.

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[14] *Exhibits "KK1" to "KK5"*
[15] *Exhibit "L"*
[16] TSN, March 16, 2004, pages 8 to 13

A study of the records of the case reveals that respondent had already considered the license fees collected from agents worth P6,515,928.21[17], refund from insurance worth P7,099,068.74[18], and excess refund from trust fund worth P1,923,605.77[19] thereby reducing Other Income from P146,364,796.00 to P130,826,193.28. As to the realized income on unsold condo units and trust fund income, petitioner failed to present any documentary evidence to support the same. Thus, petitioner's Other Income in the amount of P130,826,193.28 shall be subjected to deficiency VAT.

c.) Sale of Educational Plans

To obtain the amount of gross receipts subject to VAT, petitioner argues that the amounts of P63,569,150.00, P33,558,138.88 and P1,396,097,439.00 representing imputed VAT, receipts from lapsed plans and provision of contribution to trust fund, respectively, should be deducted from the total revenue from the sale of educational plans amounting to P2,479,723,134.00.

Such argument is baseless. With respect to the imputed VAT and receipts from lapsed plans, petitioner failed to present any evidence supporting the same. As for the provision of contribution to trust fund worth P1,396,097,439.00, the *Valuation Certification*[20] to support petitioner's claim has no evidentiary value since the Court denied the admission of the same as being a mere photocopy, in violation of Best Evidence Rule.[21] Thus, respondent's assessment is affirmed.

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[17] BIR Records, page 530
[18] BIR Records, page 530
[19] BIR Records, page 530
[20] *Exhibit "N-3"*
[21] *Rollo*, page 299

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d.) Disallowed Input Tax Credits

Petitioner contends that its input tax credits should not be disallowed because its suppliers complied with the BIR invoicing requirements. In practice, petitioner allegedly deals only with VAT-registered suppliers.

On the other hand, respondent found that some of petitioner's input tax credits in the amount of P3,128,022.45 cannot be allowed since the invoicing requirements pursuant to Revenue Regulations No. 7-95[22] were violated. Respondent specifically provided the details of the disallowed input tax credits.[23]

The Court finds the disallowance proper. Petitioner failed to submit the sales invoices or official receipts pertaining to the disallowed input tax credits in order for this Court to ascertain whether or not there were indeed violations of the invoicing requirements.

Thus, petitioner is liable for the deficiency VAT in the amount of P117,472,106.19.

On a final note, though the issue of timeliness of the petition was not placed by both parties, the Court finds it necessary to declare that the petition was filed out of time. The "Final Decision on Disputed Assessment" dated May 13, 2002 was received by petitioner on June 10, 2002. The pertinent paragraph of Section 228 of the National Internal Revenue Code provides:

> "**Section 228.** *Protesting of Assessment.* – x x x
>
> x x x x
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of one hundred eighty (180)-day

[22] as per computation BIR Records, pages 535 to 543
[23] BIR Records, pages 535 to 543.

period; otherwise, the decision shall become final, executory and demandable."

Applying the foregoing provision, petitioner had thirty (30) days from receipt of the decision denying its protest, or until July 10, 2002, to file the instant petition. Since the petition was filed on August 9, 2002 which is beyond the 30-day period, the petition was filed out of time and can no longer be entertained by this Court. In *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue*[24], the Supreme Court ruled on the imperativeness of complying with the 30-day period as follows:

> "x x x [W]hile the right to appeal a decision of the Commissioner to the Court of Tax Appeals is merely a statutory remedy, nevertheless the requirement that it must be brought within 30 days is jurisdictional. If a statutory remedy provides as a condition precedent that the action to enforce it must be commenced within a prescribed time, **such requirement is jurisdictional** and failure to comply therewith may be raised in a motion to dismiss.
>
> In fine, the failure to comply with the 30-day statutory period would bar the appeal and deprive the Court of Tax Appeals of its jurisdiction to entertain and determine the correctness of the assessment."

Even if the receipt of the decision denying petitioner's second request for reconsideration on September 2, 2002 were to be made the reckoning point of the 30-day period, the Court still would not be able to acquire jurisdiction over the same since the petition was prematurely filed on August 9, 2002.

WHEREFORE, the Petition for Review is hereby **DENIED** for lack of merit. Moreover, considering that the Petition for Review was not timely filed, it is likewise **DENIED** for lack of jurisdiction by this Court. Even without the question of jurisdiction, the Court, upon a careful scrutiny of the records, found out that the Petition for Review is unmeritorious.

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[24] G.R. No. 168498. June 16, 2006

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Accordingly, petitioner is **ORDERED TO PAY** respondent the aggregate amount of P135,723,103.00 representing the following deficiency tax assessments for the taxable year 1998, computed as follows:

Type of Tax	Basic	Interest	Total
Expanded Withholding Tax	P 6,532,606.14	P 3,923,143.19	P 10,455,749.33
Withholding Tax on Compensation	4,830,671.19	2,964,576.29	7,795,247.48
VAT	73,394,931.13	44,077,175.06	117,472,106.19
	P 84,758,208.46	**P 50,964,894.54**	**P 135,723,103.00**

In addition, petitioner is **ORDERED TO PAY** respondent 20% delinquency interest on the total amount of P135,723,103.00 computed from September 2, 2002 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Justice
Chairperson, First Division

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