

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FIRST DIVISION

**INTERGEN MANAGEMENT
SERVICES (PHILIPPINES), LTD.,**
Petitioner,

C.T.A. CASE NO. 6797

Members:

- versus -

ACOSTA, Chairperson
UY, and
FABON-VICTORINO, JJ.

**COMMISSIONER OF INTERNAL
REVENUE,**
Respondent.

Promulgated:

JAN 26 2010; 11:35am

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DECISION

UY, J.:

This Petition for Review filed by petitioner, Intergen Management Services (Philippines), Ltd., against respondent, Commissioner of Internal Revenue, seeks the cancellation and withdrawal of the deficiency income tax, deficiency value-added tax (VAT), and deficiency withholding tax assessments issued against it for taxable year 1998.

THE FACTS

Petitioner, Intergen Management Services (Philippines), Ltd., is a corporation duly organized and existing under and by virtue of the laws of the Cayman Islands,



British West Indies, and authorized by the Philippine Securities and Exchange Commission (SEC) to establish a branch and engage in business in the Philippines.¹

On the other hand, respondent is the duly appointed Commissioner of Internal Revenue mandated by law to enforce and implement the provisions of the National Internal Revenue Code (NIRC) as well as related tax statutes and their implementing rules and regulations, including the power to issue deficiency tax assessments and evaluate and decide upon the merits of the protest against deficiency tax assessments, with office address at the Bureau of Internal Revenue (BIR), National Office Building, Diliman, Quezon City.²

Petitioner is principally engaged in the business of performing management services for electric generation facilities in the Philippines, and is registered with the BIR with Tax Identification No. 047-005-295-344 and BIR Certificate of Registration bearing RDO Control No. 97-047-008861.³

On December 10, 2002, respondent issued a Formal Letter of Demand⁴ with its accompanying Details of Discrepancies⁵, together with three (3) Assessment Notices⁶ bearing a demand number 43465, assessing petitioner for alleged deficiency income tax, deficiency value-added tax, and deficiency withholding tax for taxable year 1998 in the aggregate amount of ₱ 38,812,592.08, inclusive of interest.⁷ Said documents were received by petitioner on December 19, 2002.⁸

On December 16, 2002, petitioner availed of the BIR's Voluntary Assessment and Abatement Program (VAAP) with regard to the alleged deficiency VAT and paid

¹ Par. 1, Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 285.

² Par. 2, Admitted Facts, JSFI, Docket, p. 285.

³ Pars. 3 and 4, Admitted Facts, JSFI, Docket, p. 286.

⁴ Exhibit "A".

⁵ Exhibit "A-1".

⁶ Exhibits "B", "C", and "D".

⁷ Par. 5, Admitted Facts, JSFI, Docket, p. 286.

⁸ Par. 16, Admitted Facts, JSFI, Docket, pp. 287 to 288.



the total amount of ₱ 869,693.22, which amount corresponds to 110% of the alleged basic VAT deficiency for taxable year 1998.⁹

On January 17, 2003, petitioner filed with respondent a protest letter dated January 17, 2003 presenting its legal arguments, explanations and supporting documents against the subject assessments.¹⁰ Thereafter on March 18, 2003, petitioner submitted to respondent additional documents in support of its arguments against the subject assessments.¹¹

On October 14, 2003, petitioner filed the instant Petition for Review.

On November 21, 2003, respondent filed his "Answer"¹² interposing the following Special and Affirmative Defenses:

"6. The availment of the VAAP specifically for Value-added tax for the year 1998 does not affect or amend the assessment for deficiency income tax and withholding taxes, assuming that the figures stated and made basis for the computation are accurate and true;

7. The assessment for deficiency income, business and withholding taxes are valid and in accordance with law;

8. The burden of proof is upon the petitioner to prove that the assessment issued by the respondent is indeed null and void."

Meanwhile, after the filing of the said Petition, respondent, through its Revenue District Office No. (RDO) 43, continued its evaluation of the administrative protest filed by petitioner.¹³

In the course of its evaluation of petitioner's request, there were several discussions between representatives of the respondent and petitioner. As a consequence thereof, petitioner was informed by the handling revenue examiners that based on their initial review of the protest, the supporting documents and

⁹ Par. 8, Admitted Facts, JSFI, Docket, p. 286.

¹⁰ Pars. 6 and 17, Admitted Facts, JSFI, Docket, pp. 286 and 288. Exhibit "E".

¹¹ Par. 7, Admitted Facts, JSFI, Docket, p. 286.

¹² Docket, pp. 212 to 214.

¹³ Par. 9, Admitted Facts, JSFI, Docket, p. 286.

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reconciliation schedules submitted by the petitioner, that petitioner was not able to submit supporting documents with respect to certain items of the assessments, specifically: (a) proof of withholding on its payments for janitorial services, and (b) certain salaries and expenses claimed as deductions from gross income. Petitioner was likewise informed that the other items of the assessments were still pending review and that there was a possibility that these items would be cancelled or reduced.¹⁴

Pursuant to the discussions between respondent and petitioner, RDO 43 issued two (2) Payment Forms (BIR Form No. 0605)¹⁵ to cover the payment of deficiency income tax in the amount of ₱ 398,352.37 and for the deficiency withholding tax in the amount of ₱ 76.30, both inclusive of penalties and interest, with the corresponding tax type codes:¹⁶

<u>"Amount Paid"</u>	<u>Tax Type Code</u>
(1) Php 76.30	WE
(2) Php 398,352.37	IT

On May 21, 2004, petitioner paid the said amounts, with the representation that its payments shall be credited as full settlement of petitioner's liability under the respondent's questioned assessments for withholding and income tax.¹⁷

On October 22, 2004, the parties filed their Joint Stipulation of Facts and Issues, which was approved by this Court per its Resolution promulgated on November 24, 2004.¹⁸ Thereafter, petitioner proceeded to present its oral and documentary evidence. On the other hand, during the scheduled initial presentation of respondent's evidence on January 14, 2008, respondent manifested that his only

¹⁴ Pars. 10 to 11, Admitted Facts, JSFI, Docket, pp. 286 to 287.

¹⁵ Exhibits "LL" and "MM".

¹⁶ Par. 12, Admitted Facts, JSFI, Docket, p. 287.

¹⁷ Pars. 13 to 14, Admitted Facts, JSFI, Docket, p. 287.

¹⁸ Docket, p. 291.



reliable and relevant witness, Revenue Officer Jesusa Agdeppa, is already in the United States, and that, by reason thereof, respondent will be submitting the case for decision. The Court then instructed the parties to file their respective memorandum.

Only petitioner filed its Memorandum on April 8, 2008¹⁹ and this case was considered submitted for decision in the Resolution dated April 15, 2008²⁰, without respondent's memorandum.

On December 22, 2008, petitioner filed a Submission attaching certain documents in connection with its availment of tax amnesty under Republic Act No. (RA) 9480. In view of such availment, the Court, through a Resolution dated February 5, 2009, deemed as partially withdrawn the instant Petition for Review insofar as the assessment for deficiency income tax and VAT for taxable year 1998 is concerned, and considered the case as submitted for decision, only as regards the remaining issue on the deficiency withholding tax.²¹

On February 24, 2009, petitioner filed a Motion for Clarification and/or Consideration,²² praying for the modification of the said Resolution dated February 5, 2009, (i) by confirming that petitioner is entitled to all the immunities and privileges under Section 6 of RA 9480, and (ii) the assessments for deficiency income tax and VAT for the year 1998 be deemed cancelled and terminated, but without stating that the Petition for Review be deemed partially withdrawn with respect thereto.

In a Resolution dated March 19, 2009²³, the Court set aside the assessment for deficiency income tax and VAT for taxable year 1998, solely in view of petitioner's

¹⁹ Docket, pp. 547 to 588.

²⁰ *Id.*, p. 594.

²¹ *Id.*, pp. 628 to 629.

²² *Id.*, pp. 630 to 639..

²³ *Id.* pp. 640-643



availment of the tax amnesty under RA 9480. It likewise recalled and set aside its earlier Resolution dated April 15, 2008.

THE ISSUES

The parties jointly stipulated the following issues²⁴ for this Court's resolution:

"1. Whether or not Petitioner is liable for any deficiency income tax for the taxable year 1998.

1.a Whether or not Petitioner can validly claim as a deduction from gross income the amount of P4,530 which it erroneously classified as 'real estate tax'.

1.b Whether or not Petitioner's 'salaries and wages' which were claimed as a deduction for the taxable year 1998 are substantiated by sufficient evidence/documents.

1.c Whether or not Petitioner properly subjected all its 'professional fee' payments to the appropriate withholding tax, where applicable.

2. Whether or not Petitioner is liable for any deficiency value-added tax for the taxable year 1998.

2.a Whether or not the creditable input taxes of the Petitioner for the taxable year 1998 are substantiated by sufficient evidence/documents.

2.b Whether or not the availment by the Petitioner of the BIR's VAAP through the payment of the VAT for the taxable year 1998 amounting to P869,693.22 entitles the Petitioner to a suspension of the audit case, pending final evaluation and approval of the BIR's Technical Working Group-Final Validation of Discrepancy (TWG-FVD).

3. Whether or not Petitioner is liable for any deficiency withholding tax for the taxable year 1998.

3.a Whether or not Petitioner withheld the proper taxes on its 'rental', 'professional fee' and 'janitorial' payments for the taxable year 1998."

However, in view of petitioner's availment of the tax amnesty program under RA 9480 and the setting aside of the deficiency income tax and deficiency VAT assessments for taxable year 1998, Our determination would be confined only with

²⁴ Factual and Legal Issues Submitted, JSFI, Docket, pp. 288 to 289.

the third issue and its sub-issue, to wit: "Whether or not Petitioner is liable for any deficiency withholding tax for the taxable year 1998," and "Whether or not Petitioner withheld the proper taxes on its 'rental', 'professional fee' and 'janitorial' payments for the taxable year 1998."

Petitioner's arguments

Anent the assessment of deficiency withholding tax, petitioner asserts that the same is void as it failed to state the facts and law upon which such assessment was made; and assuming for the sake of argument however, that the assessment is valid, it has allegedly shown that all expanded withholding tax due were paid in 1998.

Petitioner also points out that it paid the amounts of ₱ 398,352.37 and ₱ 76.30, as indicated in the Payment Orders issued by respondent's RDO 43. According to petitioner, it paid the amounts under the said Payment Orders with the representation that such payment shall be credited as full settlement of petitioner's liability under the questioned assessment.

Respondent's counter-argument

Respondent contends that the assessment for withholding taxes is valid and in accordance with law; and that the burden of proof is upon petitioner to prove that the assessment issued by respondent is indeed null and void.

THIS COURT'S RULING

It is a basic rule in taxation that in issuing an assessment against the taxpayer, Section 228 of the National Internal Revenue Code (NIRC) of 1997 requires that the taxpayer should be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.



Petitioner contends that the assessment for deficiency withholding tax is void because it allegedly failed to state the facts and the law on which the said assessment was made.

For easy reference, the Details of Assessments/ Discrepancies²⁵, as regards the subject assessment, provide as follows and We quote:

“III. **DEFICIENCY WITHHOLDING TAX** – Scrutiny of various expense accounts per Financial Statements subject to withholding tax under Revenue Regulations No. 2-98 disclosed that the you are still liable in the amount of P944,589.32, computed as follows:

Rental	2,640,000.00	5%	P	132,000.00
Professional Fees	7,464,845.45	10%		746,484.45
Janitorial	3,385.78	1%		33.86
Total			P	878,518.31
Less: Payment made				441,778.10
Basic Deficiency EWT			P	436,740.21”

A careful reading of the foregoing will easily show that the factual basis for the subject assessment reflect the reason therefor, *i.e.*, that certain expenses indicated in petitioner’s Financial Statements were not subjected to withholding tax; while the law upon which the same is based is “*Revenue Regulations No. 2-98*”.

Such being the case, petitioner is deemed informed of the factual and legal bases for the deficiency withholding tax assessment for taxable year 1998. Thus, the assailed assessment is valid.

Petitioner likewise submits that the withholding of taxes for rental and professional fees are clearly reported in the Annual Information Return of Income Tax Withheld on Compensation, Expanded and Final Withholding Taxes – BIR Form No. 1604, filed on February 1, 1999.²⁶ Petitioner claims that the attachment²⁷ to said return shows the imposition of the appropriate withholding tax rates.

²⁵ Exhibit “A-1”.

²⁶ Exhibit “L”.

²⁷ Exhibits “L-4” & “L-5”.



Furthermore, to prove that it did not incur deficiency withholding tax, petitioner presented before this Court its Monthly Remittance Returns of Income Taxes Withheld for the months of January to December 1998,²⁸ Quarterly Remittance Return of Fringe Benefit Tax for the first to fourth quarters of 1998,²⁹ Annual Information Return of Income Tax Withheld on Compensation, Expanded and Final Withholding Taxes for the year 1998³⁰ as well as the alpha list³¹ for the same year, Withholding Taxes Summary³² and Certifications of the BIR's Revenue Accounting Division.³³ These documents allegedly show that petitioner religiously filed the corresponding returns and remitted the taxes it withheld.

However, the Court finds that the total amount in the said alpha list does not tally with the amount reflected in the annual return and the actual payments made per monthly and quarterly remittance returns. Moreover, although petitioner provided a Withholding Taxes Summary,³⁴ the amounts reflected per such summary do not correspond to withholding tax type per remittance return.

Therefore, considering petitioner's failure to show and to reconcile such discrepancy, respondent's assessment should be upheld in line with the well-settled rule that the determinations and assessments of the BIR are presumed correct and made in good faith.³⁵ The taxpayer has the duty of proving otherwise.³⁶ Failure to

²⁸ Exhibits "N", "O", "P", "Q", "R", "S", "T", "U", "V", "W", "X", "Y", "Z", "AA", "BB", "CC", "DD", "EE", "FF" & "GG".

²⁹ Exhibits "HH", "II", "JJ" & "KK".

³⁰ Exhibits "L" & "M".

³¹ Exhibits "L-2", "L-4", "L-6", "M-3" & "M-4".

³² Exhibit "VV-4".

³³ Exhibits "WW-1", "WW-2" & "WW-3".

³⁴ Exhibit "VV-4".

³⁵ *Marcos II vs. Court of Appeals, et al.*, G.R. No. 120880, June 5, 1997.

³⁶ *Id.*



present proof of error in the assessment will justify the judicial affirmance of said assessment.³⁷

Anent the fact that petitioner paid the amount of ₱ 76.30³⁸ with the representation that its payment shall be credited as full settlement of petitioner's liability under the questioned withholding tax assessment, while such understanding has been approved by respondent by jointly stipulating the same with the petitioner,³⁹ such "*full settlement*" **cannot** be held as valid and binding upon the Court because the same was not done in accordance with law.

We look into the authority of the Commissioner to compromise, abate and refund or credit taxes as provided under Section 204(A) of the NIRC of 1997 which read as follows:

"SEC. 204. Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes. — The Commissioner may –

(A) Compromise the payment of any internal revenue tax, when:

- (1) A reasonable doubt as to the validity of the claim against the taxpayer exists; or
- (2) The financial position of the taxpayer demonstrates a clear inability to pay the assessed tax.

The compromise settlement of any tax liability shall be subject to the following minimum amounts:

- (a) For cases of financial incapacity, a minimum compromise rate equivalent to ten percent (10%) of the basic assessed tax; and
- (b) For other cases, a minimum compromise rate equivalent to forty percent (40%) of the basic assessed tax.

Where the basic tax involved exceeds One million pesos (P1,000,000) or where the settlement offered is less than the prescribed minimum rates, the compromise shall be subject to the

³⁷ *Id.*

³⁸ Exhibit "LL".

³⁹ Par. 14, Admitted Facts, JSFI, Docket, p. 287.



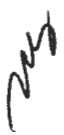
approval of the Evaluation Board which shall be composed of the Commissioner and the four (4) Deputy Commissioners.”

Based on the foregoing authority of the Commissioner of Internal Revenue to compromise the payment of any internal revenue tax, there are two (2) instances when this authority may be exercised, namely, first, when there is a reasonable doubt as to the validity of the claim against the taxpayer exist, in which case, the minimum compromise rate is equivalent to forty percent (40%) of the basic assessed tax; and secondly, when the financial position of the taxpayer demonstrates a clear inability to pay the assessed tax, in which case, the minimum compromise rate is equivalent to ten percent (10%) of the basic assessed tax.

In the instant case, there is no indication that a reasonable doubt exists as to the validity of the assessment for deficiency withholding tax in question; neither did petitioner prove that its financial position demonstrates a clear inability to pay the assessed amount.

And even if We assume that a ground exists as would justify the compromise thereof, the minimal amount of P 76.39 paid by petitioner as “full settlement” of its withholding tax liabilities hardly reached either of the minimum compromise rates provided by law, *i.e.*, 10% or 40% of the basic assessed deficiency withholding tax amounting to ₱ 436,740.21. Correspondingly, the assessment for deficiency withholding tax must be upheld.

Although as a general rule, purely administrative and discretionary functions may not be interfered with by the courts, but when the exercise of such functions by the administrative officer is tainted by a failure to abide by the command of the law,



then it is incumbent on the courts to set matters right, with the Supreme Court having the last say on the matter.⁴⁰

Thus, the discretionary power of respondent to enter into compromises cannot be superior over the power of judicial review by the courts.⁴¹ It is never meant to be absolute, uncontrolled and unrestrained. No such unlimited power may be validly granted to any officer of the government, except perhaps in cases of national emergency.⁴²

WHEREFORE, all the foregoing considered, the instant Petition for Review pertaining to the subject withholding tax assessment for taxable year 1998 is hereby **DENIED**. Accordingly, petitioner is **ORDERED TO PAY** respondent the amount of **FOUR HUNDRED THIRTY SIX THOUSAND SEVEN HUNDRED FORTY PESOS AND TWENTY ONE CENTAVOS (₱ 436,740.21)**, representing deficiency withholding tax for the said taxable year, computed as follows:

	<u>Income Payments</u>	<u>Rate</u>	<u>Tax Due</u>
Rental	2,640,000.00	5%	₱ 132,000.00
Professional Fees	7,464,845.45	10%	746,484.45
Janitorial	3,385.78	1%	33.86
Total			₱ 878,518.31
Less: Payment made			441,778.10
Basic Deficiency EWT			<u>₱ 436,740.21</u>

In addition to said amount, petitioner is likewise **ORDERED TO PAY** (i) a twenty five percent (25%) surcharge thereon, pursuant to Section 248(A)(3) of the NIRC of 1997; (ii) a deficiency interest, also on the same tax base, at the rate of twenty percent (20%) per annum from January 26, 1999 until fully paid in accordance with Section 249(B) of the NIRC of 1997; and (iii) a delinquency interest,

⁴⁰ *Leongson, et al. vs. Court of Appeals, et al.*, No. L-32255, January 30, 1973, 151 Phil. 314.

⁴¹ *Philippine National Oil Company vs. Court of Appeals, et al.*, G.R. Nos. 109976 and 112800, April 26, 2005

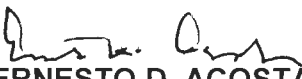
⁴² *Id.*, citing *Primicias vs. Fuguso*, No. L-1800, January 27, 1948, 80 Phil. 71.

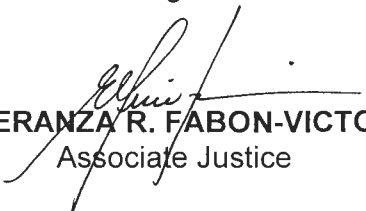
likewise on the same tax base, at the rate of twenty percent (20%) per annum from January 10, 2003 until fully paid, pursuant to Section 249(C)(3) of the NIRC of 1997.

SO ORDERED.


ERLINDA P. UY
Associate Justice

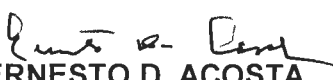
WE CONCUR:


ERNESTO D. ACOSTA
Presiding Justice


ESPERANZA R. FABON-VICTORINO
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, 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.


ERNESTO D. ACOSTA
Presiding Justice
Chairperson, First Division