

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

FIRST DIVISION

PHILIPPINE AIRLINES, INC. (PAL),
Petitioner,

C.T.A. CASE NO. 6819

Members:

- versus -

**ACOSTA, Chairperson
BAUTISTA, and
CASANOVA, JJ.**

**COMMISSIONER OF INTERNAL
REVENUE,**
Respondent.

Promulgated:

JAN 05 2010, 3:05pm

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DECISION

CASANOVA, J.:

Before Us are Petition for Review filed on November 21, 2003 and Amended Petition for Review filed on October 28, 2005 both seeking for the cancellation and withdrawal of the subject assessment of its Deficiency Minimum Corporate Income Tax, Expanded Withholding Tax and VAT-Compromise Penalty in the total amount of PHP986,502,742.03 for the fiscal year ending March 31, 1998.

As stipulated by the parties and borne by the records, the facts of this case are as follows:¹

Petitioner is a domestic corporation organized in accordance with the laws of the Republic of the Philippines with principal office at the 9th Floor, PAL Center, Legazpi St., Legazpi Village, Makati City.²

¹ Stipulation of Facts of the *Amended Joint Stipulation of Facts and Issues*, Division Docket, pp. 303-311.

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Respondent is the government agency in charge of assessment and collection of all national internal revenue taxes, fees, and charges, including the 2% Minimum Corporate Income Tax on Domestic Corporation (MCIT), imposed under Sec. 27(E) of the National Internal Revenue Code (NIRC), and the Expanded Withholding Tax required under Sec. 57 also of the NIRC, with principal office at the BIR National Office Building, Agham Road, Diliman, Quezon City³.

On July 15, 1998, petitioner filed its Tentative Annual Income Tax Return for the fiscal year ended March 31, 1998, showing a loss of PHP3,753,048,090.00 and unapplied excess creditable withholding tax of PHP1,028,248.00.⁴

On May 20, 1999, petitioner filed its Amended and Final Income Tax Return for the fiscal year ended March 31, 1998, showing a loss of PHP7,555,393,804.00, and unapplied excess creditable withholding tax of PHP1,028,248.00.⁵

Petitioner filed on July 26, 1999 with the office of the respondent a claim for refund dated July 15, 1999, of the unapplied expanded creditable withholding tax of PHP1,028,248.00 plus an additional amount of PHP33,018.00, or a total claim of PHP1,061,266.00.⁶

Not receiving any response from the respondent, petitioner filed on July 7, 2000 a Petition for Review with this Honorable Court numbered CTA Case No. 6134, praying that the respondent be ordered to refund to the petitioner the above-mentioned amount of PHP1,061,266.00.⁷ 

² *Amended Joint Stipulation of Facts*, par. 1, Division Docket, p. 303

³ *Amended Joint Stipulation of Facts*, par. 2, Division Docket p. 303

⁴ *Amended Joint Stipulation of Facts*, par. 3, Division Docket, p. 304

⁵ *Amended Joint Stipulation of Facts*, par. 4, Division Docket, p. 304

⁶ *Amended Joint Stipulation of Facts*, par. 5, Division Docket, p. 304

⁷ *Amended Joint Stipulation of Facts*, par. 6, Division Docket, p. 304

While the said petition for review was pending before this Honorable Court, respondent issued through the Large Taxpayers Service, Letter of Authority No. 00002139, dated August 10, 2000, authorizing the revenue officers named therein to investigate petitioner's internal revenue tax liabilities for the fiscal year ending March 31, 1998.⁸

On May 16, 2001, petitioner received a Preliminary Assessment Notice issued by the Large Taxpayers Service, dated March 27, 2001, assessing petitioner the amount of PHP1,624,206,679.32 as deficiency Franchise Tax, PHP678,905,498.33 as deficiency Expanded Withholding, and PHP100,000 or PHP25,000 penalty for non-filing of quarterly summary list of sales and purchases.⁹

On June 4, 2001, petitioner, through its VP-Financial Services Dept. Marianne C. Raymundo filed a written protest, dated May 30, 2001, against the aforementioned proposed assessment, stating the reasons why petitioner is not agreeable to the same.¹⁰

On July 2, 2001¹¹, petitioner received a Formal Letter of Demand from the respondent, dated June 7, 2001, with the Assessment Notice Nos. PT-98-000002, OTHT-98-000003 and EWT-98-000014¹² demanding the payment of the total amount of PHP2,380,895,737.43, the details of which as shown in said letter are quoted hereunder as follows:¹³ 

⁸ *Amended Joint Stipulation of Facts*, par. 7, Division Docket, p. 304-305; Exhibit E

⁹ *Amended Joint Stipulation of Facts*, par. 8, Division Docket, p. 305; Exhibit F

¹⁰ *Amended Joint Stipulation of Facts*, par. 9, Division Docket, p. 306; Exhibit G

¹¹ Exhibit H-4

¹² Exhibits H-1, H-2 & H-3

¹³ *Amended Joint Stipulation of Facts*, par. 10, Division Docket, p. 307-308; Exhibit H

"Assessment No. PT 98-000002

"A. Franchise Tax

	1997
Gross Taxable Income per books	PHP 52,389,133,788.68
Multiply by rate of tax	2%
Franchise Tax Due	1,047,782,675.77
Less: Tax Payments/credits	-
Basic tax still due	1,047,782,675.77
Add: 20% Interest per annum	628,669,605.46
Deficiency Franchise Tax	1,676,452,281.23

"Details of discrepancies:

Verifications disclosed that gross taxable income per books amounted to P52,389,133,788.68. When multiplied by the rate of Franchise Tax of 2% it resulted to a basic deficiency tax of P1,676,452,281.23. On the other hand, for income tax purposes, analysis of accounts per books disclosed that there is a deficiency basic income tax of P4,041,252,950.48. In accordance with Presidential Decree No. 1590, you are liable to income tax or franchise tax whichever is lower. You are therefore assessed the deficiency franchise tax.

"Assessment No. EWT 98-000014

"B. Expanded Withholding Tax

	1998
Basic Expanded Withholding Tax Due	PHP 437,964,840.74
Add: 20% interest per annum	266,378,615.46
Deficiency Expanded Withholding Tax	704,343,456.20

"The withholding and remittance of creditable taxes withheld from various payors were properly complied with except for some income payments, which were not subjected to withholding tax. This resulted to a deficiency in the remittance of EWT in the amount of 

P704,343,456.20 inclusive of interest pursuant to Sec. 50 of the 1997 NIRC and its implementing regulations RR 2-98.

"C. Others

Upon audit, it was found that no quarterly summary lists of sales and purchases were filed in violation of Sec. 3 of Revenue Regulations No. 6-98. Hence, you were assessed the amount of P100,000.00 or P25,000.00 for every violation in accordance with Revenue Memorandum Order No. 1-90."

On July 13, 2001, petitioner wrote the respondent protesting the PHP2,380,896,737.43¹⁴ assessment contained in its June 7, 2001 letter of demand.¹⁵

Petitioner received an undated letter from the OIC, Large Taxpayers Service of the Bureau of Internal Revenue Estelita C. Aguirre, entitled "Final Decision on Disputed Assessment" on October 23, 2003 making reference to petitioner's above-mentioned July 13, 2001 written protest and demanding the immediate payment of the amount of an adjusted deficiency tax assessment in the total amount of PHP986,502,742.03, which according to the said letter "is premised on the following":¹⁶

"I. Deficiency Income Tax – MCIT P136,750,950.99

It was found out during the re-investigation that PAL incurred a total net loss of P6,410,894,815.79, therefore a deficiency MCIT on gross income was assessed pursuant to RR-9-98.

II. Deficiency Expanded Withholding Tax

Basic Expanded Withholding Tax Due	P 437,964,840.74
Interest from April 25, 1998 to July 15, 2001	<u>266,378,615.46</u>
Total Deficiency Expanded Withholding Per FAN	<u>704,343,456.20</u>
Add: Interest up to September 30, 2003	<u>145,308,334.84</u>
Total	<u>849,651,791.04</u>

¹⁴ Should be PHP2,380,895,737.43

¹⁵ *Amended Joint Stipulation of Facts*, par. 11, Division Docket, p. 308; Exhibit I

¹⁶ *Amended Joint Stipulation of Facts*, par. 12, Division Docket, p. 308; Exhibit J, Division Docket, p. 36

Verification disclosed that there are certain income payments that were not subjected to expanded withholding tax in violation of Sec. 57 of NIRC and the implementing regulations of RR-2-98. Per re-investigation no adjustment was made in the original assessment, except for the adjustment in the computation of interest.

III. VAT-Compromise Penalty P100,000 or P25,000 per quarter for failure to file summary list sales and purchases in violation of Sec. 3 Revenue Regulation 6-98.

The records of this case disclosed that you have not introduced any documentary evidence to dispute the validity of our said findings."

Hence, petitioner filed the instant Petition for Review¹⁷ with this Court on November 21, 2003.

On January 28, 2004, respondent filed its Answer¹⁸ to the said Petition interposing several special and affirmative defenses.

Thereafter, petitioner and respondent filed their Pre-Trial Briefs on April 27, 2004 and April 26, 2004, respectively.¹⁹

Consequently, the parties, through their counsels, submitted their Joint Stipulation of Facts and Issues²⁰ on May 18, 2004 which was approved in a Resolution dated June 9, 2004. On the same Resolution, the pre-trial conference is considered terminated.²¹

On July 16, 2004, petitioner moved for the commissioning of an Independent External Auditor which was granted during the hearing dated July 21, 2004.²²

Meanwhile, petitioner filed on January 31, 2005 a Motion for Summary Judgment²³ praying that the assessment of its deficiency expanded withholding

¹⁷ Division Docket, p. 1

¹⁸ Division Docket, pp. 57-61

¹⁹ Petitioner's Pre-Trial Brief, Division Docket, pp. 75-84; Respondent's Pre-Trial Brief, Division Docket, pp. 69-73

²⁰ Division Docket, pp. 92-99

²¹ Division Docket, p. 100

²² Motion to Commission Independent External Auditor, Division Docket, pp. 103-104; Minutes, Division Docket, p. 108

assessment of PHP849,651,791.04 and deficiency minimum corporate income tax assessment of PHP136,750,950.99 for the fiscal year ended March 31, 1998 be cancelled on the ground of prescription under Section 203 of the National Internal Revenue Code of 1997, as amended.

Respondent filed its "Opposition (Re: Motion for Summary Judgment)" on March 11, 2005 to which petitioner filed its "Reply to Opposition to Petitioner's Motion for Summary Judgment" on April 7, 2005.

The said Motion was later denied in a Resolution²⁴ dated May 11, 2005 and the case was set for hearing for the initial presentation of petitioner's evidence.

On October 28, 2005, petitioner filed its Amended Petition for Review.²⁵ On the basis of the said Amended Petition, respondent prepared its Amended Answer which was attached to its Motion to Admit Amended Answer filed on November 24, 2005. The same was admitted in a Resolution dated February 3, 2006.

In its Amended Answer²⁶, respondent raised defenses summarized as follows:

- "4. Petitioner was informed of the law and the facts on which the assessments are made in compliance with Section 228 of the Tax Code.
5. Pursuant to the Letter of Authority No. 0002139 dated August 10, 2000, an investigation was conducted in order to verify the tax liability, if any, of PAL for the fiscal period ending March 31, 1998. Results of the investigation disclosed that the taxpayer was liable to pay total deficiency taxes in the amount of Php2,380,895,737.43, broken down into deficiency franchise tax, Php1,624,206,679.32, and deficiency expanded withholding taxes, Php678,905,498.33.

²³ Division Docket, pp. 122-134

²⁴ Division Docket, pp. 177-180

²⁵ Division Docket, pp. 202-216

²⁶ Division Docket, pp. 250-259

6. This Preliminary Assessment Notice was duly sent to and received by petitioner. In fact, petitioner filed a protest to the proposed assessment on June 4, 2001.
7. The Formal Letter of Demand received by the taxpayer on July 2, 2001 is accompanied by the Final Assessment Notices for deficiency franchise tax in the amount of Php1,676,452,281.23, expanded withholding tax in the amount of Php704,343,456.20, and other assessment for failure to submit quarterly summary list of sales and purchases in the amount of Php100,000.00, all for fiscal year ending March 31, 1998.
8. xxx xxx xxx
9. The taxpayer protested these assessments and asked for reinvestigation/review of the same in a letter dated July 13, 2001. The letter categorically indicated the taxpayer's request for reinvestigation. Accordingly, Tax Verification Notice No. 1999-00201240 was issued to the examiner of the case to review the original audit results.
10. Thus, reinvestigation was conducted and as a result thereof, a Final Decision on Disputed Assessment was received by petitioner on October 23, 2003. In said result of reinvestigation, the assessment for franchise tax was modified taking into consideration petitioner's arguments in its protest. Thus, instead of the franchise tax, petitioner was assessed the Minimum Corporate Income Tax at a substantially reduced amount of Php136,750,950.99, while the expanded withholding tax assessment was likewise reduced to Php849,651,791.04, and the penalty for non-submission of quarterly summary list of sales and purchases was affirmed at Php100,000.00 or Php25,000.00 for each of the four quarters petitioner failed to file summary lists.
11. xxx xxx xxx
12. Regarding the deficiency income tax (MCIT), the examiners found that :

xxx xxx xxx

Considering that PAL incurred a total net loss for the fiscal period ending March 1998, a deficiency MCIT was assessed in the total amount of P136,750,950.99 inclusive of penalties computed based on the provisions of Revenue Regulations No. 9-98 per 

reinvestigation. Instead of the deficiency franchise tax in the amount of P1,676,452,281.23 as previously assessed in the Formal Letter of Demand, the assessment was modified to deficiency MCIT.

13. It is thus crystal clear that the assessment for deficiency MCIT is the result of the reinvestigation which petitioner itself requested. Since the original assessment from whence the request for reinvestigation sprung from was issued within the prescriptive period of making assessments, the final decision on disputed assessment resultant of that request for reinvestigation cannot be ascribed with taint of nullity due to prescription.
14. Anent the Deficiency Expanded Withholding Tax:

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d. However, Section 3.1.5 Paragraph 3 of Revenue Regulation 12-99 on Disputed Assessment states **"The taxpayer shall submit the required documents in support of his protest within sixty (60) days from date of filing of his letter of protest, otherwise, the assessment shall become final, executory and demandable. The phrase "submit the required documents" includes submission or presentation of the pertinent documents for scrutiny and evaluation by the Revenue Officer conducting the audit.** Since the taxpayer was not able to present the required documents within the time frame provided for under Sec. 3.1.5 Paragraph 3 of Revenue Regulation 12-99, no adjustment was made on the deficiency expanded withholding tax in the Final Assessment Notice, except for the computation of interest.

15. The assessment for Compromise Penalty of P100,000.00 or P25,000 per quarter is still reiterated for failure to file summary list of sales and purchases in violation of Sec. 3, Revenue Regulation 6-98.
16. It is beyond doubt that since the grant of petitioner's franchise, numerous amendments have been made on the income tax law applicable. In fact, petitioner might have benefited during the past years from these amendments. The MCIT is one of the numerous amendments brought into the income tax law by the 1997 Tax Code. It being a part of the income tax law is beyond any dispute. It is not even an alternative to income tax law, as the provisions of the income tax and the MCIT are designed to

reconcile with each other. Suffice it to state that the provision on the MCIT is an integral part of the 1997 income tax law. Thus, in each and every computation of income tax due from 1998 onwards, a corporation is always called to apply the provisions of the MCIT beginning its fourth year from commencement of business operation. It is very clear then that petitioner's rambling about the MCIT'S applicability to its operations cannot hold water. Petitioner, under P.D. 1590, is still subject to ordinary income tax laws prevailing during the taxable year and not to the tax code existing during the ancient times when its franchise was granted.

17. The assessment for expanded withholding tax was issued within the prescriptive period. Section 58 (c) of the 1997 Tax Code states categorically that the annual information return for creditable withholding taxes shall be filed not later than March 1 of the year following the year for which the annual return is being submitted. Since in this case the year for which petitioner is being assessed deficiency withholding taxes is 1998, petitioner's annual information return is due on March 1, 1999. Thus, under Section 203 of the Tax Code, respondent has until March 1, 2002 to assess petitioner for expanded withholding taxes.
18. The assessments were issued in accordance with the existing law and regulations.
19. Assessments are prima facie presumed correct and made in good faith. The taxpayer has the duty of proving otherwise. In the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed. All presumptions are in favor of tax assessments. (Cagayan Robina Sugar Milling Company vs. Court of Tax Appeals, et. al., G.R. No. 122451, October 12, 2000).
20. Failure to present proof of error in the assessment will justify judicial affirmation of said assessment. (Commissioner of Internal Revenue vs. Court of Appeals, et. al. G.R. No. 104151 and 105563, March 10, 1995)"

Petitioner then filed on February 23, 2006 its Reply to the Amended

Answer.²⁷ 

²⁷ Division Docket, pp. 270-273

On April 27, 2006, a hearing was held granting the continuation of the Pre-trial and for the parties to submit an amended Pre-trial Brief. Accordingly, Respondent's Amended Pre-Trial Brief²⁸ and Amended Pre-Trial Brief for Petitioner²⁹ were filed on May 15, 2006 and May 23, 2006, respectively. Also, an Amended Joint Stipulation of Facts and Issues³⁰ was filed by both parties on August 25, 2006 which was approved in a Resolution dated August 28, 2006. In the said Amended Joint Stipulation of Facts and Issues, the genuineness, due execution and veracity of the following documents are admitted:

- a. Letter of Authority No. 00002139 dated August 10, 2000;
- b. Preliminary Assessment Notice dated March 27, 2001;
- c. Formal Letter of Demand dated June 7, 2001 together with the Final Assessment Notice;
- d. Audit Result/Assessment Notice NO. PT-98-000002 dated June 6, 2001;
- e. Audited Result/Assessment Notice No. PT-98-00003 dated June 6, 2001;
- f. Audit Result/Assessment Notice No. PT-98-00014 dated June 6, 2001; and
- g. Final Decision on Disputed Assessment issued by the OIC-Large Taxpayers Service, Estelita C. Aguirre.

Thereafter, trial ensued, giving both parties the opportunity to present its evidence.

Subsequently, the case was submitted for decision taking into consideration respondent's "Memorandum" filed on August 7, 2009 and petitioner's Memorandum" filed on September 8, 2009.³¹ 

²⁸ Division Docket, pp. 277-282

²⁹ Division Docket, pp. 285-296

³⁰ Division Docket, pp. 303-311

³¹ Respondent's Memorandum, Division Docket, pp. 690-700; Petitioner's Memorandum, Division Docket, pp. 703-739

STATEMENT OF ISSUES

Parties submitted the following issues for this Court's disposition:

- "1. Whether or not petitioner is exempt from the deficiency 2% Minimum Corporate Income Tax by virtue of its Franchise, Presidential Decree No. 1590.
2. Whether or not the deficiency 2% Minimum Corporate Income Tax assessment against petitioner for the fiscal year ending March 31, 1998 complied with the due process requirements under the provisions of Revenue Regulations No. 12-85 and Revenue Regulations No. 12-99.
3. Whether or not the deficiency 2% Minimum Corporate Income Tax assessment against petitioner for the fiscal year ending March 31, 1998 and received by the latter on October 23, 2003, was issued beyond the prescriptive period of three (3) years from the filing of the return for issuing deficiency assessments under Section 203 of the National Internal Revenue Code (NIRC), hence, invalid.
4. Whether or not the deficiency expanded withholding tax assessment for the fiscal year ended March 31, 1998, against the petitioner totaling PHP849,651,791.04, which was contained in the Formal Letter of Demand of the respondent and received by the petitioner on July 2, 2001, was also issued beyond the prescriptive period of three (3) years from the filing of the return for issuing deficiency assessments under Section 203 of the NIRC, hence, invalid.
5. Whether or not petitioner is subject to the VAT-Compromise Penalty assessed by respondent against it for the fiscal year ending March 31, 1998.

The foregoing issues may be summarized into three:

1. Whether or not petitioner is liable to pay the deficiency 2% Minimum Corporate Income Tax for the fiscal year ending March 31, 1998;
2. Whether or not petitioner is liable to pay the deficiency expanded withholding tax assessment for the fiscal year ended March 31, 1998. 

3. Whether or not petitioner is subject to the VAT-Compromise Penalty assessed by respondent against it for the fiscal year ending March 31, 1998.

Anent the first issue, this Court answers in the negative.

Sections 13 and 14 of Presidential Decree No. 1590, the franchise of PAL, provides:

Section 13. In consideration of the franchise and rights hereby granted, the grantee shall pay to the Philippine Government during the life of this franchise whichever of subsections (a) and (b) hereunder will result in a lower tax:

(a) The basic corporate income tax based on the grantee's annual net taxable income computed in accordance with the provisions of the National Internal Revenue Code; or

(b) A franchise tax of two per cent (2%) of the gross revenues derived by the grantee from all sources, without distinction as to transport or non-transport operations; provided, that with respect to international air-transport service, only the gross passenger, mail, and freight revenues from its outgoing flights shall be subject to this tax.

The tax paid by the grantee under either of the above alternatives shall be in lieu of all other taxes, duties, royalties, registration, license, and other fees and charges of any kind, nature, or description, imposed, levied, established, assessed, or collected by any municipal, city, provincial, or national authority or government agency, now or in the future, including but not limited to the following:

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The grantee, shall, however, pay the tax on its real property in conformity with existing law.

For purposes of computing the basic corporate income tax as provided herein, the grantee is authorized:

- (a) To depreciate its assets to the extent of not more than twice as fast the normal rate of depreciation; and 

(b) To carry over as a deduction from taxable income any net loss incurred in any year up to five years following the year of such loss.

Section 14. The grantee shall pay either the franchise tax or the basic corporate income tax on quarterly basis to the Commissioner of Internal Revenue. Within sixty (60) days after the end of each of the first three quarters of the taxable calendar or fiscal year, the quarterly franchise or income-tax return shall be filed and payment of either the franchise or income tax shall be made by the grantee.

A final or an adjustment return covering the operation of the grantee for the preceding calendar or fiscal year shall be filed on or before the fifteenth day of the fourth month following the close of the calendar or fiscal year. The amount of the final franchise or income tax to be paid by the grantee shall be the balance of the total franchise or income tax shown in the final or adjustment return after deducting therefrom the total quarterly franchise or income taxes already paid during the preceding first three quarters of the same taxable year.

Any excess of the total quarterly payments over the actual annual franchise or income tax due as shown in the final or adjustment franchise or income-tax return shall either be refunded to the grantee or credited against the grantee's quarterly franchise or income-tax liability for the succeeding taxable year or years at the option of the grantee.

The term "gross revenues" is herein defined as the total gross income earned by the grantee from; (a) transport, nontransport, and other services; (b) earnings realized from investments in money-market placements, bank deposits, investments in shares of stock and other securities, and other investments; (c) total gains net of total losses realized from the disposition of assets and foreign-exchange transactions; and (d) gross income from other sources. (Emphases ours.)"

The afore-mentioned provisions leave no room for interpretation. PAL's franchise exempts it from paying any tax other than the option it chooses: either the "basic corporate income tax" or the two percent gross revenue tax.³² Stated differently, PAL shall have the privilege to choose between two options in the 

³² Commissioner of Internal Revenue vs. Philippine Airlines, Inc. GR No. 160528, October 9, 2006

payment of its tax liability. PAL may opt to pay the Government either basic corporate income tax or franchise tax, whichever is lower. The said payment shall be in lieu of other taxes.

In filing its income tax return for the fiscal year ended March 31, 1998 with the BIR, PAL reported no net taxable income for the period, resulting in zero basic corporate income tax³³, which would necessarily be lower than any franchise tax due from PAL for the same period. Consequently, petitioner in this case naturally chose to pay its basic corporate income tax which, as earlier stated, resulted in a zero tax liability

Nevertheless, respondent assessed petitioner of deficiency income tax-MCIT in the amount of P136,750,950.99 pursuant to the Final Decision on Disputed Assessment issued by respondent. Respondent contends that MCIT is an integral part of the 1997 income tax law and thus, the same should be applied by a corporation to each and every computation of its income tax due from 1998 onwards. It further contends that petitioner is still subject to ordinary income tax laws prevailing during the taxable year and not to the tax code existing during the ancient times when its franchise was granted.

Respondent's arguments are not tenable.

PAL's franchise or PD 1590, which is a special law specifically governing the franchise of PAL, was issued on June 11, 1978. While the NIRC of 1997, which is a general law on national internal revenue taxes, took effect on January 1, 1998. As properly argued by the petitioner, the rule is that on a specific matter, the special

³³ Exhibit W

law shall prevail over the general law, which shall be resorted to only to supply deficiencies in the former. Basic in statutory construction is the rule that the enactment of a later legislation which is a general law cannot be construed to have repealed a special law unless expressly so stated. Well-settled in this jurisdiction is the doctrine that a "special statute, provided for a particular case or class of cases, is not repealed by a subsequent statute, general in its terms, provisions and applications, unless the intent to repeal or alter is manifest, although the terms of the general law are broad enough to include the cases embraced in the special law."³⁴ Clearly, PAL's franchise, or PD 1590, should prevail over the provisions of the NIRC of 1997, as amended, which imposes MCIT on domestic corporation.

In a number of cases, this Court has already ruled on PAL's liability to pay MCIT pursuant to its franchise under PD No. 1590. More specifically, in the case of Philippine Airlines Inc. (PAL) vs. Commissioner of Internal Revenue³⁵, having the same parties and subject to the same question of law, this Court ruled:

"Although the MCIT is a component of the corporate income tax system in this jurisdiction, petitioner cannot be held liable to pay the P272,421,886.58 MCIT assessed by the respondent for its fiscal year ending March 31, 2001 because MCIT is not the basic corporate income tax referred to in Section 13 of petitioner's franchise. XXXX

The basic corporate income tax mentioned in petitioner's franchise refers to the 35% income tax on the taxable income of domestic corporations under Section 27(A) of the 1997 NIRC, as amended by Republic Act No. 9937. The tax base thereof, as expressly specified in Section 13 of petitioner's franchise, is petitioner's annual net taxable income. On the other hand, the MCIT under Section 27(E)(1) is imposed on the gross income of a corporation. Therefore, the MCIT, imposed as it is upon gross income, cannot be made to apply to herein petitioner by virtue of the 

³⁴ Sps. Ricaña vs. Court of Appeals, GR. No. 122850, January 5, 2001; Laguna Lake Development Authority vs. Court of Appeals, 251 SCRA 42, 56 (1995)

³⁵ CTA Case No. 7010, July 31, 2006

express provision in its franchise that its basic corporate income tax shall be based on its annual net taxable income. It is in this sense that MCIT qualifies as "other taxes" from which the petitioner had been granted tax exemption by its franchise."

Moreover, the issue as to whether petitioner PAL is subject to MCIT considering the privileges granted to it by PD 1590, its franchise, has already been settled by the Supreme Court in the case of Commissioner of Internal Revenue vs. Philippine Airlines³⁶, which also affirmed our previous rulings regarding the subject issue. In addressing the same, the Highest Tribunal finds that the basic corporate income tax for which PAL is liable under Section 13(a) of Presidential Decree No. 1590, does not cover MCIT under Section 27(E) of the NIRC of 1997 since the basis for the first is the annual net taxable income, while the basis for the second is gross income. The Highest Court pointed out the difference between the basic corporate income tax and the MCIT under Section 27(E) of the NIRC of 1997 in this wise:

"First, Section 13(a) of Presidential Decree No. 1590 refers to "basic corporate income tax." In Commissioner of Internal Revenue v. Philippine Airlines, Inc., the Court already settled that the "basic corporate income tax," under Section 13(a) of Presidential Decree No. 1590, relates to the general rate of 35% (reduced to 32% by the year 2000) as stipulated in Section 27(A) of the NIRC of 1997.

Section 13(a) of Presidential Decree No. 1590 requires that the basic corporate income tax be computed in accordance with the NIRC. This means that PAL shall compute its basic corporate income tax using the rate and basis prescribed by the NIRC of 1997 for the said tax. There is nothing in Section 13(a) of Presidential Decree No. 1590 to support the contention of the CIR that PAL is subject to the entire Title II of the NIRC of 1997, entitled "Tax on Income."

Second, Section 13(a) of Presidential Decree No. 1590 further provides that the basic corporate income tax of PAL shall be based on its annual net taxable income. This is consistent with Section 27(A) of the NIRC of 1997, which provides that the rate of basic

³⁶ GR No. 180066, July 7, 2009

corporate income tax, which is 32% beginning 1 January 2000, shall be imposed on the taxable income of the domestic corporation.

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Pursuant to the NIRC of 1997, the taxable income of a domestic corporation may be arrived at by subtracting from gross income deductions authorized, not just by the NIRC of 1997, but also by special laws. Presidential Decree No. 1590 may be considered as one of such special laws authorizing PAL, in computing its annual net taxable income, on which its basic corporate income tax shall be based, to deduct from its gross income the following: (1) depreciation of assets at twice the normal rate; and (2) net loss carry-over up to five years following the year of such loss.

In comparison, the 2% MCIT under Section 27(E) of the NIRC of 1997 shall be based on the gross income of the domestic corporation. The Court notes that gross income, as the basis for MCIT, is given a special definition under Section 27(E)(4) of the NIRC of 1997, different from the general one under Section 34 of the same Code.

XXXX Noticeably, inclusions in and exclusions/deductions from gross income for MCIT purposes are limited to those directly arising from the conduct of the taxpayer's business. It is, thus, more limited than the gross income used in the computation of basic corporate income tax.

Given the fundamental differences between the basic corporate income tax and the MCIT, presented in the preceding discussion, it is not baseless for this Court to rule that, pursuant to the franchise of PAL, said corporation is subject to the first tax, yet exempted from the second.

xxx Although both are income taxes, the MCIT is different from the basic corporate income tax, not just in the rates, but also in the bases for their computation. Not being covered by Section 13(a) of Presidential Decree No. 1590, which makes PAL liable only for basic corporate income tax, **then MCIT is included in "all other taxes" from which PAL is exempted.** (*emphasis supplied*)

In addition, to sustain the position of the respondent and allow its assessment of petitioner's MCIT would create a third option for petitioner as to the payment of its tax liability and would as well negate the intent of the said franchise, which is for 

petitioner to pay the lower tax liability, all in clear violation of the provisions of PD

1590. Thus, in the same case, the Highest Tribunal said:

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the evident intent of Section 13 of Presidential Decree No. 1520 is to extend to PAL tax concessions not ordinarily available to other domestic corporations. Section 13 of Presidential Decree No. 1520 permits PAL to pay whichever is lower of the basic corporate income tax or the franchise tax; and the tax so paid shall be in lieu of all other taxes, except only real property tax. Hence, under its franchise, PAL is to pay the least amount of tax possible.

Section 13 of Presidential Decree No. 1520 is not unusual. A public utility is granted special tax treatment (including tax exceptions/exemptions) under its franchise, as an inducement for the acceptance of the franchise and the rendition of public service by the said public utility. In this case, in addition to being a public utility providing air-transport service, PAL is also the official flag carrier of the country.

The imposition of MCIT on PAL, as the CIR insists, would result in a situation that contravenes the objective of Section 13 of Presidential Decree No. 1590. In effect, PAL would not just have two, but three tax alternatives, namely, the basic corporate income tax, MCIT, or franchise tax. More troublesome is the fact that, as between the basic corporate income tax and the MCIT, PAL shall be made to pay whichever is higher, irrefragably, in violation of the avowed intention of Section 13 of Presidential Decree No. 1590 to make PAL pay for the lower amount of tax."³⁷

In the light of all the foregoing considerations, this Court is left with no choice but to concur with petitioner's assertion that it is exempt from payment of MCIT by virtue of Presidential Decree No. 1590.

As to the second issue, this Court finds that the assessment for the Deficiency Expanded Withholding Taxes was made beyond the three (3) year prescriptive period as mandated by Section 203 of the NIRC of 1997, as amended. 

³⁷ Supra, note 34

Section 203 of the NIRC of 1997 provides:

"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 return was filed, 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 for the filing thereof shall be considered as filed on such last day."

Respondent maintains that the assessment for expanded withholding tax was issued within the prescriptive period, arguing that since Section 58 (c) of the 1997 Tax Code requires that the annual information return for creditable withholding taxes shall be filed not later than March 1 of the year following the year for which the annual return is being submitted, respondent in this case has until March 1, 2002 to assess petitioner for expanded withholding taxes. Thus, its assessment notice dated July 2, 2001 was made within the three (3) year prescriptive period.

Respondent's use of Section 58 (c) of the 1997 Tax Code is quite misplaced.

It bears stressing that Section 58 (c) of the 1997 Tax Code is a mere reproduction of Section 51 (d) under the 1993 Tax Code. In the case of HPCO Agridev Corporation vs. Commissioner of Internal Revenue, the CIR failed to persuade this Court in contending that the last day to file a creditable withholding tax return for the year should be in accordance with then Section 51(c) (actually Section 51(d) of the 1993 Tax Code and now Section 58(c) of the NIRC of 1997) from which the three (3) year prescriptive period for assessment is to be reckoned. This Court in the said case held to wit:

"Said provision of the 1993 Tax code requires the submission of an Annual Information Return of Income Tax Withheld on

Compensation, Expanded and Withholding Taxes wherein the withholding agent is required to submit to the Bureau a list of payees and income payments for the appropriate taxable year. It is not an adjustment return as required of corporations to be filed under Section 76 of the Tax Code, as amended. **Such monthly returns already provide for any adjustment for previous month(s) payments. In other words, each monthly return is in itself already a complete return.** Further, we do not believe that the same Annual Information Return falls in the same category as the Final Adjustment Return required of a corporation, so that the reckoning period would start from March 1 at the latest, following the year for which the annual report is being submitted. As clearly termed by the law, it is but an annual report of payments withheld and remitted for the subject year."³⁸ (*emphasis supplied*)

Clearly, Section 58 (c) of the NIRC of 1997 does not find application in the present case. Likewise, this Court has consistently ruled that the three (3) year prescriptive period for expanded withholding tax shall commence to run from the last day for filing of the Monthly Remittance Return of Income Taxes Withheld³⁹ and not from the filing of an Annual Information Return.

Now in determining the last day for respondent to assess petitioner of Expanded Withholding Tax for the period April 1997 to March 1998, we should first establish the applicable provisions to ascertain the reckoning of the three year prescriptive period. From April 1997 to December 1997, the applicable provision is Section 51 of the 1977 Tax Code, as amended. The same was implemented by Section 1 of Revenue Regulations No. 3-93 specifying the period for the filing of monthly return and remittance of taxes withheld.

Section 51 of the NIRC of 1977, as amended, provides:

"Section 51. Return and payment of taxes withheld at source. 

³⁸ HPCO Agridev Corporation vs. Commissioner of Internal Revenue, CTA Case No. 6355, July 18, 2002

³⁹ Avon Products MFG., Inc., vs. The Commissioner of Internal Revenue, CTA Case No. 5980, January 20, 2005

(a) Quarterly returns and payment of taxes withheld- Taxes deducted and withheld under Section 53 (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 the withholding was made."

While Section 1 of Revenue Regulations 3-93 provides:

"Section 1. Section 2 of Revenue Regulations No. 5-85 is hereby amended to read as follows:

"Section 2. MONTHLY RETURN AND REMITTANCE OF TAXES WITHHELD—Taxes deducted and withheld on:

(i) compensation income;
(j) income payments subject to the creditable (expanded) withholding taxes; and

(k) 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 day of January of the succeeding year."

As to the Expanded Withholding Tax for the months of January to March of 1998, the applicable provision is Section 58 (a) of the NIRC of 1997, (a mere reproduction of Section 51 (a) of the NIRC of 1993) which was implemented by Revenue Regulations 02-98. 

Section 2.58 of Revenue Regulations 02-98 provides:

"Section 2.58. Returns and Payment of Taxes Withheld at Source ----
(A) **Monthly return and payment of taxes withheld at source.**

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(2) WHEN TO FILE—

(a) The withholding tax return, whether creditable or final, shall be filed and payment should be made within ten (10) days after the end of each month except for taxes withheld for December which shall be filed on or before January 25 of the following year.

(b) **For large taxpayers, the filing of the return and payment of tax shall be made within twenty five (25) days after the end of each month.**

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From the afore-mentioned provisions, the last day for filing of petitioner's Monthly Remittance Return of Income Taxes Withheld is on or before the 10th day of the following month or from the date of filing thereof, if filed after such last day as to the expanded withholding tax for the months of April to November 1997; on or before the 25th day of January of the succeeding year as to expanded withholding tax for the month of December 1997; and on or before the 25th day of the following month or from the date of filing thereof, if filed after such last day as to the expanded withholding tax from the months of January to March 1998.

In conformity with the above-stated provisions and discussion, the last day of the statute of limitation for each month covering the period from April 1997 to March 1998 are summarized as follows:

Period	Date filed	Last Day to File Return	Last Day to Assess
April 1997	May 27, 1997	May 10, 1997	May 27, 2000
May 1997	June 25, 1997	June 10, 1997	June 25, 2000
June 1997	July 25, 1997	July 10, 1997	July 25, 2000

July 1997	August 25, 1997	August 10, 1997	August 25, 2000
August 1997	September 25, 1997	September 10, 1997	September 25, 2000
September 1997	October 27, 1997	October 10, 1997	October 27, 2000
October 1997	November 25, 1997	November 10, 1997	November 25, 2000
November 1997	December 29, 1997	December 10, 1997	December 29, 2001
December 1997	January 26, 1998	January 25, 1998	January 26, 2001
January 1998	February 25, 1998	February 25, 1998	February 25, 2001
February 1998	March 25, 1998	March 25, 1998	March 25, 2001
March 1998	April 27, 1998	April 25, 1998	April 27, 2001

Considering that the Formal Letter of Demand with Notice of Assessment for the Expanded Withholding Tax was issued on June 7, 2001 and the last day to assess in accordance with the afore-mentioned provisions is April 27, 2001, the subject assessment of the Expanded Withholding Tax for the period of April 1997 to March 1998 was clearly made beyond the three (3) year prescriptive period as mandated by law.

As regards the last issue, we cannot uphold the said compromise penalties. Based on the evidence presented, there is no indication that petitioner voluntarily entered into a compromise with the respondent. It has been judicially held that compromise penalties being an imposition based upon mutual agreement or consent by petitioner, cannot be compulsorily imposed to those who do not agree to its imposition.⁴⁰ Thus, we cannot sustain respondent's assessment of compromise penalty against the petitioner. 

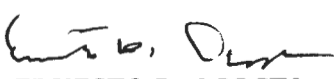
⁴⁰ Atlas Consolidated Mining and Development Corporation (doing business under the name Atlas-Itochu Consortium) vs. Commissioner of Internal Revenue, CTA Case No. 5671, August 29, 2002

WHEREFORE, premises considered, the instant **Petition for Review** and **Amended Petition for Review** are hereby **GRANTED**. Accordingly, the Formal Letter of Demand dated June 7, 2001 with Assessment Notice Nos. PT-98-000002, OTH-98-000003, EWT-98-000014, the Final Decision on Disputed Assessment for the payment of Deficiency Minimum Corporate Income Tax of PHP136,750,950.99, Deficiency Expanded Withholding Tax of PHP849,651,791.04 and VAT Compromise penalty of PHP100,000 or PHP25,000 per quarter are hereby **CANCELLED** and **WITHDRAWN**.

SO ORDERED.


CAESAR A. CASANOVA
Associate Justice

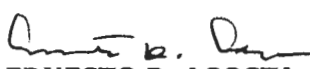
WE CONCUR:


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
Chairman, First Division