REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION
****

ISUZU AUTOPARTS MANUFACTURING CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondents.

C.T.A. CASE NO. 7265

Members:

ACOSTA, *P.J.*
BAUTISTA, and
CASANOVA, *JJ.*,

Promulgated:

JUL 16 2008 ; 1:00pm

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DECISION

ACOSTA, *P.J.*:

This is a Petition for Review filed by Isuzu Autoparts Manufacturing Corporation seeking the cancellation and withdrawal of the deficiency tax assessment for legal increments, including interest, surcharge, and compromise penalty for calendar year 2002 in the amount of P1,494,439.52.

The facts of the case, culled from the records are as follows:

Isuzu Autoparts Manufacturing Corporation (Petitioner) is a corporation duly registered with the Securities and Exchange Commission (SEC), with business address at No. 114 North Main Avenue, Phase 3, Laguna Technopark, Inc., Biñan, Laguna. It is registered with the Bureau of Internal Revenue (BIR), as shown by Certificate of Registration No. 97-5700630.[1]

Commissioner of Internal Revenue (Respondent) is the officer of the Bureau of Internal Revenue (BIR) empowered to enforce and implement the National Internal Revenue Code (NIRC) and related statutes, including the power to cancel disputed assessments.[2]

On November 1, 2001, petitioner and Isuzu Motors Ltd. (Isuzu) entered into a Technical Assistance Agreement (Technical Agreement), whereby the latter will provide technical information and assistance to the former with respect to the assembly and manufacture of certain types of transmissions in the Philippines.[3] Petitioner, in turn, would pay the royalties agreed upon. In the Supplemental Agreement, which forms an integral part of the Technical Agreement, it is provided that petitioner shall pay royalties at the end of April and October, to wit:

> "6.02 IAMC[4] shall furnish written reports to ISUZU by the **15th** of March and September of each year during the Royalty Period and within thirty (30) days after expiration of the Royalty Period, setting forth the quantity of all Licensed Transmissions and Licensed Components sold by IAMC during the preceding six (6) months' period (or, if sooner due to termination of this Agreement or otherwise, such shorter period as may be applicable) and the amount of royalties payable. IAMC shall pay, by the end of **April**, the royalties due indicated in a report submitted to ISUZU in March and shall pay, by the end of **October**, the amount of royalties indicated in a report submitted to ISUZU in September."[5]

On January 16, 2004, petitioner received a Letter of Authority from respondent's Regional Director for Revenue Region No. 9, Teodorica R. Arcega, authorizing Revenue Officer Romanito Guiuan and Group Supervisor Nena Joyce Geston to examine the former's books of accounts and other accounting records for

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[1] Paragraphs 1 and 2, Joint Stipulation of Facts and Simplification of Issues, *Rollo*, pages 166 to 167.
[2] Paragraph 3, Joint Stipulation of Facts and Simplification of Issues, *Rollo*, page 167.
[3] Exhibit "I", *Rollo*, pages 238 to 251.
[4] Isuzu Autoparts Manufacturing Corporation, herein petitioner.
[5] Exhibit "K", *Rollo*, pages 235 to 236.

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withholding tax (compensation, expanded, and final) for the period from January 1, 2002 to December 21, 2002.[6]

On May 6, 2004, respondent's Revenue District Officer for Revenue District No. 57, San Pedro, Laguna, issued a Preliminary 10-Day Letter to petitioner,[7] informing the latter that the result of the Revenue Officer's examination shows that petitioner is liable for deficiency taxes in the total amount of P5,747,094.86, inclusive of increments, computed as follows:[8]

I. Fringe Benefit Tax		P 57,545.32
II. Legal Increments (late payment)		
Final Tax on Royalty	P5,436,596.34	
Final Tax on Cash Dividends	252,953.20	5,689,549.54
		P5,747,094.86

In the letter dated May 12, 2004 sent by petitioner to respondent, petitioner agreed with the Revenue Officer's finding of tax deficiency computation for fringe benefit tax and final tax on cash dividends,[9] but requested a reduction of the legal increments on final tax on royalty.[10] Petitioner explained that:

> "IAMC[11] records the royalty expense monthly and withholds the tax upon payment and remits the tax on the 10th day of the month following the payment. xxx
>
> We have been assessed and paid the fine of P1,000 on months when we failed to withhold and remit final tax on March 26, 2003. Computed legal increments in Y2002 for royalty includes monthly surcharge of 25% including April, October and December where we filed and paid final tax. A compromise penalty of P1,000 per month was also charged on all months on top of the 25% surcharge and 20% interest per annum."

On May 28, 2004, petitioner paid the amount of P3,949,928.23 (should be P3,949,928.22) to the BIR arrived at as follows:[12]

[6] BIR Records, page 522.
[7] Received by petitioner on May 11, 2004.
[8] BIR Records, pages 608 to 610.
[9] The amount of 252,953.20 was later reduced to P219,226.10.
[10] BIR Records, pages 617 to 618.
[11] Isuzu Autoparts Manufacturing Corporation, herein petitioner.

Final Tax on Royalty	P	3,673,156.80
Fringe Benefit Tax		57,545.32
Final Tax on Cash Dividends		219,226.10
	P	**3,949,928.22**

Petitioner computed the deficiency legal increments for final tax on royalty as follows:[13]

2002	Tax Base	Final W/tax Rate	Basic Tax Due	Date Due RR 12-2001	Date Paid	Days Late	Interest 20%	Surcharge 25%	Total Increments	Penalty already paid	Date Paid
Jan	2,296,694.46	25%	574,173.62	4/10/2002	5/10/2002	30	9,438.47	143,543.40	152,981.87	1,000.00	3/26/2003
Feb	3,017,374.32	25%	754,343.58	4/10/2002	5/10/2002	30	12,400.17	188,585.90	200,986.06	1,000.00	3/26/2003
Mar	1,682,423.29	25%	420,605.82	4/10/2002	5/10/2002	30	6,914.07	105,151.46	112,065.52	1,000.00	3/26/2003
Apr	6,298,627.84	25%	1,574,656.96	7/10/2002	11/11/2002	124	106,990.39		106,990.39	With filing & payment	
May	4,035,559.85	25%	1,008,889.96	7/10/2002	11/11/2002	124	68,549.24	252,222.49	320,771.73	1,000.00	3/26/2003
June	5,384,861.50	25%	1,346,215.38	7/10/2002	11/11/2002	124	91,468.88	336,553.84	428,022.72	1,000.00	3/26/2003
July	6,284,429.97	25%	1,571,107.49	10/10/2002	11/11/2002	32	27,548.19	392,776.87	420,325.06	1,000.00	3/26/2003
Aug	10,162,793.16	25%	2,540,698.29	10/10/2002	11/11/2002	32	44,549.23	635,174.57	679,723.80	1,000.00	3/26/2003
Sept	9,584,273.65	25%	2,396,068.41	10/10/2002	11/11/2002	32	42,013.25	599,017.10	641,030.36	1,000.00	3/26/2003
Oct	5,962,748.09	25%	1,490,687.02	1/15/2003	4/10/2003	85	69,429.26		69,429.26	With filing & payment	
Nov	6,208,925.88	25%	1,552,231.47	1/15/2003	4/10/2003	85	72,295.71	388,057.87	460,353.58	1,000.00	3/26/2003
Dec	6,911,506.28	25%	1,727,876.57	1/15/2003	4/10/2003	85	80,476.44		80,476.44	With filing & payment	
TOTAL							**632,073.30**	**3,041,083.51**	**3,673,156.80**		

On June 16, 2004, the Revenue Officer prepared a Memorandum for the Revenue District Officer recommending that an Assessment Notice be issued to petitioner in the amount of P1,494,439.54, representing the remaining balance of the legal increments on late payment of final tax on royalty.[14]

On July 28, 2004, respondent, through Acting Regional Director Merlinda L. Ordoyo, issued a Preliminary Assessment Notice (PAN) informing petitioner of deficiency legal increments, including interest, surcharge, and compromise penalty for calendar year 2002 in the amount of P1,494,439.52 imposed for the late filing and payment of final withholding tax on royalties, computed as follows:[15]

[12] BIR Records, pages 616 and 620 to 621.
[13] Exhibit "DD-3", *Rollo,* page 289.
[14] Exhibit "2", BIR Records, page 626.
[15] Exhibit "F", *Rollo,* pages 227 to 229.

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2002	Tax Base	Final W/tax Rate	Basic Tax Due	Date Due	Date Paid	Days Late	Interest 20%	Surcharge 25%	Compromise	Total
Jan	2,296,694.46	25%	574,173.62	2/10/2002	5/10/2002	89	28,000.80	143,543.40	1,000.00	172,544.20
Feb	3,017,374.32	25%	754,343.58	3/10/2002	5/10/2002	61	25,213.68	188,585.90	1,000.00	214,799.57
Mar	1,682,423.29	25%	420,605.82	4/10/2002	5/10/2002	30	6,914.07	105,151.46	1,000.00	113,065.52
Apr	6,298,627.84	25%	1,574,656.96	5/10/2002	11/10/2002	185	159,622.76	393,664.24	1,000.00	554,287.00
May	4,035,559.85	25%	1,008,889.96	6/10/2002	11/10/2002	154	85,133.73	252,222.49	1,000.00	338,356.22
June	5,384,861.50	25%	1,346,215.38	7/10/2002	11/10/2002	124	91,468.88	336,553.84	1,000.00	429,022.72
July	6,284,429.97	25%	1,571,107.49	8/10/2002	11/10/2002	93	80,061.92	392,776.87	1,000.00	473,838.79
Aug	10,162,793.16	25%	2,540,698.29	9/10/2002	11/10/2002	62	86,314.13	635,174.57	1,000.00	722,488.71
Sept	9,584,273.65	25%	2,396,068.41	10/10/2002	11/10/2002	32	42,013.25	599,017.10	1,000.00	642,030.36
Oct	5,962,748.09	25%	1,490,687.02	11/10/2002	4/10/2003	151	123,339.04	372,671.76	1,000.00	497,010.79
Nov	6,208,925.88	25%	1,552,231.47	12/10/2002	4/10/2003	121	102,915.07	388,057.87	1,000.00	491,972.94
Dec	6,911,506.28	25%	1,727,876.57	1/15/2003	4/10/2003	90	85,210.35	431,969.14	1,000.00	518,179.49
TOTAL							916,207.67	4,239,388.64	12,000.00	5,167,596.32
Less: Amount Paid by the Taxpayer *(Form 0605 dated 05/28/04)*										3,673,156.80
Deficiency Legal Increments										**1,494,439.52**

On October 8, 2004, petitioner received a Final Assessment Notice[16] (FAN) dated September 30, 2004, wherein petitioner is required to pay the deficiency taxes for legal increments, interest, surcharge, and compromise penalty for calendar year 2002, the details are quoted, to wit:

Royalty	P85,938,562.52
Multiply by final Tax Rate	25%
Tax Due	P21,484,640.63
Less Tax Paid	P24,484,640.63
Deficiency Tax (Overpayment)	
Add: Penalties	
Surcharge	
Interest	
Compromise	P 5,167,596.32
Less: Amount Paid by Taxpayer	3,673,156.80
Total Amount Payable/(Overpayment)	P 1,494,439.52

On November 8, 2004, petitioner filed its protest against the FAN with Revenue Region No. 8, attaching therein its supporting documents.[17]

Pursuant to Section 228 of the NIRC, petitioner had until June 6, 2005 within which to file a Petition for Review with this Court. This is within thirty (30) days

[16] Exhibit "G", *Rollo*, pages 230 to 231.
[17] Exhibit "E", *Rollo*, pages 221 to 226.

from the lapse of one hundred eighty (180) days after the submission of the documents supporting the protest.[18]

Hence, the instant *Petition for Review* filed on June 6, 2005.

Respondent filed her *Answer* on August 30, 2005[19] interposing the following special and affirmative defenses:

> 1. The assessment was issued in accordance with law and pertinent regulations.
>
> 2. Petitioner failed to pay in full the legal increments imposed under RMC No. 1-90 for late filing and payment of final withholding tax on royalties resulting to a deficiency legal increments of P1,494,439.52.
>
> 3. Finally, all presumptions are in favor of the correctness of tax assessments. The good faith of tax assessors and the validity of their actions are presumed. They are presumed to have taken into consideration all the facts to which their attention was called (CIR vs. construction Resources of Asia, Inc. 145 SCRA 671). It is incumbent upon the taxpayer to prove the contrary (Mindanao Bus company vs. CIR, 1 SCRA 538; CIR vs. Antonio Tuazon, Inc., 173 SCRA 397), and failure to do so shall vest legality to respondent's actions and assessments.

Pre-trial conference commenced on September 23, 2005. Both parties filed their *Joint Stipulation of Facts and Simplification of Issues* on January 31, 2006.[20] Thereafter, pre-trial was terminated on February 13, 2006.[21]

Petitioner presented Divina Gracia Completo, its Accounting Manager, as witness, and documentary evidence marked as *Exhibits "A"* to *"DD"*, inclusive of their submarkings. The Court admitted all the evidence in Resolutions dated November 28, 2006 and February 13, 2007.[22]

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[18] Paragraph 17, Petition for Review, *Rollo*, page 6.
[19] *Rollo*, pages 118 to 121.
[20] *Rollo*, pages 166 to 170.
[21] *Rollo*, page 174.
[22] *Rollo*, pages 295 and 307.

Respondent, on the other hand, presented Romanito P. Guiuan, Revenue Officer III assigned at the Revenue District Office No. 57, San Pedro, Laguna, BIR, as witness, and documentary evidence marked as *Exhibits "1"* and *"2"*, inclusive of their submarkings. The Court admitted all the evidence in Resolutions dated August 2, 2007 and September 21, 2007.[23]

The case was deemed submitted for decision on January 16, 2008 without both parties filing their respective Memorandum,[24]

The issues, as jointly stipulated by the parties, are as follows:

> "1. Whether or not royalty payment can be accrued as an expense on a monthly basis, although it had not actually been paid or had not yet become payable;
>
> 2. Whether or not the obligation to pay withholding taxes on royalty payments arises on the last month of the return period in which the same is claimed as an expense, *i.e.* the quarterly income tax return; and
>
> 3. Whether or not Petitioner can be held liable for deficiency legal increments, such as, monthly interest, surcharge, and compromise penalty, relative to final withholding taxes for royalty payments in the total amount of Pesos: One Million Four Hundred Ninety-Four Thousand Four Hundred Thirty-Nine and 52/100 (Php1,494,439.52)."

Considering that the issues are interrelated, the Court shall discuss these issues simultaneously.

The crux of the controversy is the proper time for withholding taxes on the royalty payments and the time when obligation to pay for legal increments arises.

For clarification, it appears that respondent's assessment for legal increments is on account of the difference in the parties' interests' computation, the surcharges

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[23] *Rollo,* pages 340 and 350.
[24] *Rollo,* page 362.

that were not included by petitioner in its computation, and the compromise penalties allegedly due for taxable year 2002. The computation is as follows:

Months	Difference in the Interests' Computation	Surcharges Due	Compromise Penalties	
January	18,562.33		1,000.00	
February	12,813.51		1,000.00	
March	none		1,000.00	
April	52,632.37	393,664.24	1,000.00	
May	16,584.49		1,000.00	
June	none		1,000.00	
July	52,513.73		1,000.00	
August	41,764.90		1,000.00	
September	none		1,000.00	
October	53,909.78	372,671.76	1,000.00	
November	30,619.36		1,000.00	
December	4,733.91	431,969.14	1,000.00	
Total	**284,134.38**	**1,198,305.14**	**12,000.00**	**1,494,439.52**

Foremost, Isuzu is liable to pay a final tax of thirty-two percent (32%) in accordance with Section 28(B)(1) of the NIRC for royalty payments received from petitioner. Section 28(B)(1) of the NIRC partly declares that:

> "**SEC. 28.** *Rates of Income Tax on Foreign Corporations.* –
>
> xxx xxx xxx
>
> (B) *Tax on Nonresident Foreign Corporation.* -
>
> (1) *In General.* - Except as otherwise provided in this Code, a foreign corporation not engaged in trade or business in the Philippines shall pay a tax equal to thirty-five percent (35%) of the gross income received during each taxable year from all sources within the Philippines, such as interests, dividends, rents, royalties, salaries, premiums (except reinsurance premiums), annuities, emoluments or other fixed or determinable annual, periodic or casual gains, profits and income, and capital gains, except capital gains subject to tax under subparagraphs (c) and (d): *Provided*, That effective 1, 1998, the rate of income tax shall be thirty-four percent (34%); effective January 1, 1999, the rate shall be thirty-three percent (33%); and, effective January 1, 2000 and thereafter, the rate shall be thirty-two percent (32%)."

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By virtue of the RP-Japan Tax Treaty[25] and BIR Ruling DA-ITAD 41-01[26] dated April 10, 2001, the foregoing rate was reduced to 25%. The relevant provisions of the RP-Japan Tax Treaty states:

> **"ARTICLE 12**
>
> (1) Royalties[27] arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other Contracting State.
>
> (2) However, such royalties may also be taxed in the Contracting State in which they arise, and according to the laws of that Contracting State, but if the recipient is the beneficial owner of the royalties the tax so charged shall not exceed:
>
> > (a) 15 per cent of the gross amount of the royalties if the royalties are paid in respect of, the use of or the right to use cinematographic films and films or tapes for radio or television broadcasting;
> >
> > (b) **25 per cent of the gross amount of the royalties in all other cases.**" (*Emphasis supplied*)

Before petitioner pays the royalties to Isuzu, it must withhold the 25% final tax thereon in accordance with Section 57 of the NIRC, which states:

> **"SEC. 57.** *Withholding of Tax at Source.* –
>
> (A) *Withholding of Final Tax on Certain Incomes*. - Subject to rules and regulations the Secretary of Finance may promulgate, upon the recommendation of the Commissioner, requiring the filing of income tax return by certain income payees, the tax imposed or prescribed by Sections 24(B)(1), 24(B)(2), 24(C), 24(D)(1); 25(A)(2), 25(A)(3), 25(B), 25(C), 25(D), 25(E), 27(D)(1), 27(D)(2), 27(D)(3), 27(D)(5), 28 (A)(4), 28(A)(5), 28(A)(7)(a), 28(A)(7)(b), 28(A)(7)(c), **28(B)(1)**, 28(B)(2), 28(B)(3), 28(B)(4), 28(B)(5)(a), 28(B)(5)(b), 28(B)(5)(c); 33; and 282 of this Code on specified items of income shall be withheld by payor-corporation and/or person and paid in the

[25] "Convention on the Avoidance of Double Taxation and the Prevention of Fiscal Evasion between the Republic of the Philippines and Japan" entered on February 13, 1981.

[26] BIR Records, pages 491 to 493.

[27] Article 12(4) defines the term "royalties" as payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films and films or tapes for radio or television, broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.

> same manner and subject to the same conditions as provided in Section 58 of this Code." (*Emphasis supplied*)

To implement the foregoing provision, the Secretary of Finance promulgated Revenue Regulations No. 2-98[28] dated April 17, 1998. Section 2.57.4 of Revenue Regulations No. 2-98, upon which respondent anchors the assessment, was later amended by Revenue Regulations No. 12-2001, and partly provides that:

> "**Sec. 2.57.4.** *Time of withholding.* — The obligation of the payor to deduct and withhold the tax under Section 2.57 of these Regulations arises at the time an income payment is paid or payable, or the income payment is accrued or recorded as an expense or asset, whichever is applicable, in the payor's books, whichever comes first. The term *"payable"* refers to the date the obligation becomes due, demandable or legally enforceable."

In relying solely on the afore-quoted portion of Section 2.57.4, respondent neglected to consider the rest of the provision, which reads:

> "*Provided, however,* that where income is not yet paid or payable but the same has been recorded as an expense or asset, whichever is applicable, in the payor's books, the obligation to withhold shall arise in the last month of the return period in which the same is claimed as an expense or amortized for tax purposes.
>
> Example — X Corporation, a domestic corporation which reports income and expenses on a calendar year basis, issues 2-year bonds with face value of P100,000,000 at a discount amounting to P6,000,000 on January 1, 2002 to twenty five (25) investors. It records in its books the amortized portion of the discount as expense in the amount of P250,000/month (P6,000,000 divided by 24 months).
>
> Since the discount is not yet paid or payable but the aliquot portion of which has already been recorded as expense for tax purposes, the withholding of the 20% final tax shall be done on the last month of the quarter when the same has been claimed as an expense in the quarterly income tax returns/final adjustments returns filed by X Corporation.

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[28] Implementing Republic Act No. 8424, "An Act Amending The National Internal Revenue Code, as Amended Relative to the Withholding on Income Subject to the Expanded Withholding Tax and Final Withholding Tax, Withholding of Income Tax on Compensation, Withholding of Creditable Value-Added Tax and Other Percentage Taxes".

> Thus, in the above illustration, the amortized discount to be recorded by X Corporation for the months of January, February and March 2002 amounting to P750,000 shall be subject to 20% final tax of P150,000 come March 2002, which tax shall be remitted within 10 days after the quarter ending March 2002 (that is, on or before April 10, 2002). The said withholding tax shall be reported in its Monthly Remittance Return of Final Income Taxes Withheld required to be filed in April 2002. On the other hand, for the calendar quarter ending December 2002, the withholding of the final tax for the amortized discount pertaining to the months of October, November and December shall be done in December 2002 and the remittance thereof shall be on or before January 15, 2003. The said withholding tax shall be reported in its Monthly Remittance Return of Final Income Taxes Withheld required to be filed in January 2003."

After carefully evaluating the pieces of evidence of both parties, this Court finds petitioner to have partially complied and paid the legal increments in accordance with Section 2.57.4.

When petitioner accrued the royalty payments as expenses on a monthly basis even when it had not actually paid or had not yet become payable, it was using the accrual method of accounting. The employment of such method of accounting, or any method for that matter, as long as it clearly reflects income, is recognized in Section 43 of the NIRC, which provides:

> "**Section 43.** *General Rule*. - The taxable income shall be computed upon the basis of the taxpayer's annual accounting period (fiscal year or calendar year, as the case may be) **in accordance with the method of accounting regularly employed in keeping the books of such taxpayer,** but if no such method of accounting has been so employed, or if the method employed does not clearly reflect the income, the computation shall be made in accordance with such method as in the opinion of the Commissioner clearly reflects the income. If the taxpayer's annual accounting period is other than a fiscal year, as defined in Section 22(Q), or if the taxpayer has no annual accounting period, or does not keep books, or if the taxpayer is an individual, the taxable income shall be computed on the basis of the calendar year." (*Emphasis supplied*)

This Court will now determine when the obligation to withhold final taxes on royalty payments arises after having settled that petitioner's employment of the accrual method is justified.

To reiterate, in the first paragraph of Section 2.57.4, the obligation to withhold arises at the time an income payment is paid or payable, or the income payment is accrued or recorded as an expense or asset, whichever comes first. Hence, respondent computed the interest based on the number of days late from the tenth day of each month after withholding.

However, a reading of the second paragraph thereof shows that the obligation to withhold income which is not yet paid but has been recorded as an expense shall arise in the last month of the return period in which the same is claimed as an expense or amortized for tax purposes. In the example given in the same provision, the last month of the return period is on the last month of the quarter when the same has been claimed as an expense in the quarterly income tax returns/final adjustments returns filed by the corporation. As applied to petitioner's case, the obligation to withhold arose on the months of March (for the first quarter), June (for the second quarter), August (for the third quarter) and December 2002 (for the fourth quarter). The obligation to remit occurs on or before the tenth day after the quarter which, in petitioner's case, was April 10, 2002, July 10, 2002, October 10, 2002 and January 15, 2003. Admittedly, petitioner failed to pay on those dates. Following Section 2.57.4, petitioner correctly computed and paid the interest based on the number of days it was late, that is, counting from the tenth day of the month after each quarter.[29] Therefore, respondent's assessment with respect to interest in the amount of P284,134.38, has no bases in law.

Respondent must be guided that in construing statutes, the particular words, clauses and phrases should not be studied as detached and isolated expressions, but the whole and every part of the statute must be considered in fixing the meaning of any of its parts and in order to produce a harmonious whole.[30] This construction also applies to rules and regulations issued by administrative or executive officers pursuant to the procedure or authority conferred by law upon the administrative agency, which have the force and effect or partake the nature of a statute. The reason is that statutes express the policies, purposes, objectives, remedies, and sanctions

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[29] BIR Records, pages 620 to 621.
[30] Aisporna vs. Court of Appeals, G.R. No. L-39419, April 12, 1982.

intended by the legislature in general terms. The details and manner of carrying them out are oftentimes left to the administrative agency entrusted with their enforcement. That is why a revenue regulation is binding on the courts as long as the procedure fixed for its promulgation is followed.[31]

With respect to petitioner's liability for surcharges, it posits that it is not liable to any surcharge for the months of April, October, and December since it filed the corresponding returns on time. However, a scrutiny of the pieces of evidence submitted by petitioner reveal otherwise. While it is true that it filed the returns on time, nonetheless, petitioner failed to pay on time the taxes for said months. In fact, petitioner admitted in the computation presented before this Court that it belatedly paid the taxes. To emphasize, relevant portions of petitioner's computation[32] is reproduced below:

2002	Tax Base	Final W/tax Rate	Basic Tax Due	Date Due RR 12-2001	Date Paid	Days Late	Interest 20%	Surcharge 25%	Total Increments	Penalty already paid	Date Paid
xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	
Apr	6,298,627.84	25%	1,574,656.96	7/10/2002	11/11/2002	124	106,990.39		106,990.39	With filing & payment	
xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	
Oct	5,962,748.09	25%	1,490,687.02	1/15/2003	4/10/2003	85	69,429.26		69,429.26	With filing & payment	
xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	
Dec	6,911,506.28	25%	1,727,876.57	1/15/2003	4/10/2003	85	80,476.44		80,476.44	With filing & payment	
xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	
TOTAL							632,073.30	3,041,083.51	3,673,156.80		

From the table above, it shows that petitioner was late in the payment of the final withholding tax on royalty payments. For the month of April, it was 124 days late, while for the months of October and December, it was 85 days late. Being so, it is accountable for the 25% surcharge in accordance with Section 5.4 and 5.5 of RR No 12-99, implementing Section 248 of the NIRC. Petitioner computed the total increments in the amount of P3,673,156.80 and paid it to respondent. But the total amount failed to include the amount of surcharges for the months of April, October, and December. Hence, petitioner is liable to pay the amount of P1,198,305.14, representing surcharges for the months of April, October, and December.

[31] Commissioner of Internal Revenue vs. Solidbank Corporation, G.R. No. 148191, November 25, 2003.
[32] Exhibit "DD-3", *Rollo*, page 289.

On the compromise penalties, while petitioner admitted that it paid the monthly compromise penalties for the calendar year 2002 except for the months of April, October, and December, then again, it asserted that the assessment for the compromise penalties should be cancelled, explaining that:

> "With respect to the imposition of compromise penalties, the Honorable Court of Tax Appeals in CTA Case No. 4954, BPI Securities Corporation vs. Commissioner of Internal Revenue, stated that: 'It is well settled doctrine that compromise penalty cannot be imposed without the agreement and conformity of the taxpayer' (Collector of Internal Revenue vs. University of Sto. Tomas, et al., G.R. Nos. L-11274 & L-11280, November 28, 1958, 104 Phil. 1062 Unrep., the Collector of Internal Revenue v. Bautista, et al., G.R. Nos. L-12250 & 12259, May 27, 1959, 105 Phil 1326 Unrep).
>
> The non-imposition of compromise penalty is also consistent with the illustrations and examples under Section 5 of RR No. 12-99. Therefore, the assessment for compromise penalty should be cancelled."

In petitioner's Protest Letter[33] against respondent's FAN, it posited that it paid the compromise penalties for all the months of calendar year 2002 except for the months of April, October, and December, for which it claimed not being liable to compromise penalties, as the returns consequent to such months were filed on time.

A review of applicable jurisprudence reveal that "the Court has no jurisdiction to compel a taxpayer to pay the compromise penalty because by its very nature, it implies a mutual agreement between the parties in respect to the thing or subject matter compromised, and the choice of paying it or not paying it distinctly belongs to the taxpayer."[34] In other words, without the taxpayer consenting to the compromise penalty, its imposition cannot be mandatorily enforced. "The imposition of the compromise penalty without the conformity of the taxpayer is illegal and unauthorized."[35]

[33] Exhibit "E", *Rollo*, pages 221 to 226.
[34] Philippine International Fair, Inc. v. Collector of Internal Revenue, G.R. Nos. L-12928 and L-12932, March 31, 1962 (4 SCRA 774).
[35] Commissioner of Internal Revenue vs. Lianga Bay Logging Co., Inc. G.R. No. 35266, January 21, 1991 (193 SCRA 86).

However, in the above-quoted case of *Philippine International Fair, Inc. vs Collector of Internal Revenue*,[36] the Supreme Court likewise explained the inapplicability of their ruling in sustaining the payment of compromise penalties in the cases of *Macondray vs. Collector of Internal Revenue*[37] and in *Sanchez vs. Collector of Internal Revenue*[38] on the ground that the taxpayers consented to the imposition of the penalties **through payment**, to quote:

> The cases relied upon by the Collector of Internal Revenue are not applicable to the present because the taxpayer involved in the ***Macondray case voluntarily paid the 'multas' demanded or imposed on him to avoid further imposition of 'multas'. In the Sanchez case the taxpayer paid the tax demanded of her plus the sum of P50.00 as compromise, under protest, but does not appear to have specifically raised any objection against the said compromise either in the lower court or in this Court***. Our decision affirming those rendered by the lower court in said cases cannot, therefore, be cited to support the proposition that in proceedings like the present the Court of Tax Appeals or this Court may render judgment in favor of the government and against the taxpayer for the payment of the alleged 'compromise' which, as the Solicitor General admits, is really a 'penalty' to avoid prosecution for violation of the provisions of the Tax Code unless of course, the taxpayer gives his consent thereto.*(Emphasis supplied*

In the same wise, petitioner paid the compromise penalties for the months of January, February, March, May, June, July, August, September, and November.[39] Petitioner's payment of the compromise penalties implies a consent or conformity on the imposition of said penalties. Thus, petitioner can be held liable thereof. Notwithstanding though, respondent has no bases to collect again the amount of P9,000.00 representing the compromise penalties for the said months, the same being sufficiently paid by petitioner.

But for the months of April, October, and December,[40] it is clear that petitioner did not pay the compromise penalties on the belief that it is not liable for its payment because the corresponding returns were filed on time. It follows that

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[36] *Supra*, Note 35.
[37] G.R. No. L-2624, September 29, 1951.
[38] G.R. No. L-7521, October 18, 1955.
[39] Exhibits "M", "M-3", "N", "N-3", "O", "O-3", "Q", "-3", "R", "R-3", "S", "S-3", "T", "T-3", "U", "U-3", "W" and "W-3" .
[40] Exhibit "P", "V", and "X", *Rollo*, pages 258, 271, and 276, respectively.

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petitioner did not consent to the imposition of the compromise penalties for such months. Hence, petitioner should not be held liable for the compromise penalties amounting to P3,000.00 to which it did not consent.

For all the foregoing, the assessment of respondent should be reduced by P12,000.00 representing the compromise penalties for the calendar year 2002.

WHEREFORE, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO CANCEL/WITHDRAW** the assessment issued against petitioner in the amount of P296,134.38, representing deficiency legal increments in interest and compromise penalties for calendar year 2002. However, petitioner is **ORDERED TO PAY** respondent the assessment in the reduced amount of P1,198,305.14, representing deficiency tax assessment for legal increments in surcharges for the months of April, October, and December for calendar year 2002.

In addition, petitioner is hereby **ORDERED TO PAY** respondent the twenty percent (20%) delinquency interest on the amount of P1,198,305.14, computed from October 29, 2004 until full payment, pursuant to Section 249(C) of the NIRC of 1997.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

We concur:

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII 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