REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY
FIRST DIVISION

IMS HEALTH PHILIPPINES, INC.
(formerly IMS Philippines, Inc.)
Petitioner,

- versus -

C.T.A. CASE NO. 6330

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

MEMBERS:

ACOSTA, E., Chairman
BAUTISTA, L.,
CASANOVA, C., JJ

Promulgated:
DEC 2 9 2004 *[signature]*

x - x

DECISION

BAUTISTA, J.:

This case seeks for the cancellation and withdrawal of three (3) Assessment Notices all numbered 000032-97-091-705 issued by respondent against petitioner on January 10, 2001 for alleged deficiency income, expanded withholding, and value-added taxes for the taxable year 1997, in the amounts of P392,612.82, P168,598.68 and P3,718,064.50, respectively.

As borne out from the records, the facts of this case are as follows:

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with business address at the 2nd Floor, DPSI Business Center, 210 Nicanor Garcia Street, Bel-Air Village, Makati City. It is engaged in the survey, collection and analysis of data concerning the Philippine pharmaceutical industry. *(Par. 1, Facts Admitted, Joint Stipulation of Facts and Issues)*

It is registered for both its VAT-taxable and VAT-exempt activities, by virtue of its Bureau of Internal Revenue (BIR) Certificate of Registration No. 8RC 0000015932 issued on June 30, 1996, as publisher of newspaper, journals and periodicals *(Exhibit "CC")*.

Petitioner is a Philippine subsidiary of a U.S. corporation and provides the healthcare market, by publication, with studies, diagnosis product sales, doctor prescribing habits and other marketing promotions, that allow their subscribers and clients to monitor the performance of their products as against the competition. Further, petitioner derives income through (i) the sale of syndicated publications in book and software forms; (ii) undertaking customized *ad hoc* studies; and (iii) conducting training courses. The books published by petitioner are sold to its subscribers, and are released on a monthly, quarterly, annual and semestral basis. *(pp. 7 to 8, TSN, June 11, 2002; Petitioner's Memorandum)*

The following are its main publications with their corresponding description, thus:

1. Philippine Pharmaceutical Index (PPI) – a <u>quarterly publication</u> regarding pharmaceuticals/drugs, and the sales of ethical and proprietary products. It provides information on market size, market growth and the market shares of manufacturers in the industry. PPI has a monthly version, the PPI Monthly Supplement Report (PPI-MSR)

2. Philippine Hospital Pharmaceutical Audit (PHPA) – a <u>quarterly publication</u> regarding the purchase and usage of pharmaceutical products in the hospital market. Buyers of the publication use the PHPA to analyze the performance of their products in the market *vis a*

vis those of competitors. The PHPA provides information on market volume, market size and percentage changes.

3. Philippine Medical Data Index (PMDI) – a publication released on a semestral basis. The same provides information on patterns of diseases and their treatment by doctors in the Philippine medical practice.

4. Price Monitoring Report (PMR) – a smaller publication listing the changes in the pricing of pharmaceutical products is also provided.

5. Drug Distribution Data (DDD) – a publication providing data on changes in customer's derived market, sales data for a customer's products as well as competitive products the customer may choose. It also provides information on changes in market volume. This publication, due to its focus on the performance of a subscriber's products in the market (as the sales data is compiled based on the client's territorial definition), is subjected to the 10% VAT *(Pages 2 & 3, Petitioner's Memorandum; Exhibits "GG"," HH", "EE", "FF", "II", "JJ" & " CCC").*

On January 10, 2001, respondent issued three (3) Assessment Notices, all numbered 000032-97-01-705 and a Demand Letter *(A, AQ-1, A-2, A-3)*, consisting of petitioner's outstanding tax liabilities, inclusive of increments, in the amounts of P392,612.82, P168,598.68 and P3,718,064.50 representing deficiency income tax, expanded withholding tax and value added tax respectively for the taxable year 1997. These assessment notices were received by petitioner on January 17, 2001 *(Pars. 3 & 4, Facts Admitted, Joint Stipulation of Facts and Issues).* Details of these assessments are shown below:

Deficiency Income Tax

Taxable income per return	P22,823,382.00
Add: Disallowance per investigation	
Representation & entertainment	227,487.20
Adjusted Net Income	P23,050,869.20

Tax due thereon	P 8,067,804.22
Less: Tax paid	7,875,261.22
Basic Tax due	P 192,543.00
Add: Surcharge	48,135.75
Interest 04-16-98 to 02-12-01	135,934.07
Suggested compromise penalty	16,000.00
TOTAL AMOUNT DUE	**P 392,612.82**

Deficiency Expanded Withholding Tax

Motor Vehicle	P3,479,778.09	x	1%	P 34,797.78
Uniform	314,579.41	x	1%	3,145.79
Panel	5,222,111.17	x	1%	52,221.11
Outside Staff Services	525,850.63	x	1%	5,258.50
Security	86,344.19	x	1%	863.44
Repairs & Maintenance	255,022.00	x	1%	2,550.22
Leasehold Improvements	1,439,780.65	x	1%	14,397.81
Tax Due				P 113,234.65
Less: Tax paid/withhold				35,742.52
Basic Tax due				P 77,492.13
Add: Surcharge				19,373.03
Interest 01-11-98 to 02-12-01				59,733.52
Suggested compromise Penalty				12,000.00
TOTAL AMOUNT DUE				**P 168,598.68**

Deficiency Value Added Tax

Taxable receipts per returns		P 14,849,563.29
Add: Adjustments per investigation:		
Sales for the period	P 43,494,286.00	
Less: Accounts per investigation	10,287,278.33	
Collection during the year	P 33,207,003.67	
Less: Sales subjected to VAT	14,849,567.29	18,357,440.38
Taxable sales		P 33,207,003.67
Output tax		P 3,320,700.36
Less: Creditable input tax	P 1,242,275.68	
Paid/return	242,580.65	1,484,856.33
Basic Tax due		P 1,835,844.03
Add: Surcharge		458,961.00
Interest 01-26-98 to 02-12-01		1,398,259.47

Suggested compromise Penalty		25,000.00
TOTAL AMOUNT DUE	**P**	**3,718,064.50**

On February 13, 2001, petitioner filed its administrative protest against the subject tax assessments with the Regional Director's Office, Revenue Region No. 8. *(Par. 6, Facts Admitted, Joint Stipulation of Facts and Issues)*

A supplemental protest was likewise filed by petitioner on September 7, 2001, with the Revenue District Officer of North Makati (RDO 49), reiterating its disagreement with the subject income tax, expanded withholding tax and value-added tax assessments.

Not being able to receive any response from the respondent within the one hundred eighty day period prescribed by law, petitioner filed the instant petition for review with this Court on September 10, 2001, within the thirty-day period after the lapse of the said one hundred eighty day period seeking for the cancellation and withdrawal of the aforementioned assessments.

However, on February 13, 2003, and during the trial of this case, petitioner received respondent's Final Decision on Disputed Assessment *(Exhibit "BBB")* dated February 4, 2003 wherein petitioner's administrative protest was ruled upon by the respondent.

In his decision, respondent reduced petitioner's deficiency expanded withholding tax to P67,539.56 which the latter paid on March 14, 2002 under DBP Official Receipt Nos. 443765 and 443766 *(Exhibit "BBB").* Accordingly, the expanded withholding tax assessment was cancelled and the issue on the validity of such assessment has been rendered moot.

Moreover, in the same decision, respondent sustained the assessment for deficiency VAT, which now amounted to P4,161,247.10. Respondent adjusted the assessment for alleged deficiency income tax for the taxable year 1997. Representation expenses which were previously disallowed as a deduction for income tax purposes were subsequently accepted. However, respondent still indicated that there was a deficiency, alleging that a part of petitioner's creditable withholding tax was disallowed. The aforestated deficiency income tax for the taxable year 1997 was, thus, computed at P131,034.07. Details are shown below:

A) DEFICIENCY VALUE ADDED TAX:

Taxable Sales per investigation	P33,207,003.67
Multiply by: VAT Rate	10%
Output tax due	P 3,320,700.37
Less: Allowable Input Tax	1,242,275.68
VAT Payable	P 2,078,424.69
Less: VAT Paid	242,580.65
Deficiency VAT	P 1,835,844.04
Add: Surcharge (25%)	458,961.01
Interest (01/26/98 – 2/25/03)	1,866,442.05
TOTAL AMOUNT PAYABLE	P 4,161,247.10

B) DEFICIENCY INCOME TAX

Taxable Income per investigation		P23,050,869.20
Less: Representation expense		227,487.20
Adjusted Taxable Income per reinvestigation		P22,823,382.00
Multiply by: Tax Rate		35%
Tax due thereon		P 7,988,184.00
Less: Tax due per return	P7,988,184.00	
Less: unsupported Tax Credit	58,967.26	7,929,216.74
Deficiency Income Tax		P 58,967.26
Add: Surcharge (25%)		14,741.81
Interest (04/16/98 – 02/25/03)		57,325.00
TOTAL AMOUNT PAYABLE		P 131,034.07

During the pre-trial conference, the parties have stipulated on the following issues:

"1. Whether or not the assessments were made and issued in accordance with existing laws, rules and regulations;

2. Whether or not petitioner's representation and entertainment expenses that were claimed as deductions for income tax purposes for taxable year 1997 are duly substantiated in accordance with applicable laws and regulations;

3. Whether or not petitioner correctly withheld and remitted its expanded withholding tax liabilities for the 1997 taxable year, in accordance with provisions of Revenue Regulations No. 6-85, and other applicable regulations;

4. Whether or not petitioner's sale of its published books is exempt from Value Added Tax;

5. Whether or not the right of Respondent to issue the deficiency VAT assessment for taxable year 1997 is barred by prescription; and

6. Whether or not the right of Respondent to issue the deficiency expanded withholding tax assessment for 1997 is barred by prescription.

However, due to the subsequent payment made by petitioner on its deficiency expanded withholding tax assessment, the only issues resolution are as follows:

1. Whether or not the assessments were made and issued in accordance with existing laws, rules and regulations;

2. Whether or not petitioner's sale of its published books is exempt from VAT.

3. Whether or not the right of respondent to issue the deficiency VAT assessment for the taxable year 1997 is barred by prescription.

4. Whether or not the right of respondent to issue the deficiency income tax assessment for the taxable year 1997 is barred by prescription.

At this point, the pertinent provision of the Tax Code delving on the matter of validity of an assessment, particularly, Section 228 of the 1997 National Internal Revenue Code (NIRC) is hereunder quoted for easy reference, to wit:

> "**SEC. 228. Protesting of Assessment.** - When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however,* That a preassessment notice shall not be required in the following cases:
>
> xxx xxx xxx
>
> **The taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.**
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> Such an assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180) day period; otherwise, the decision shall become final, executory and demandable." *(Emphasis supplied)*

Based on the foregoing and upon evaluation of the subject assessments, this Court finds that these were issued in accordance with the provisions of Section 228 of the 1997 NIRC. The Demand Letter and Details of Discrepancies clearly indicated the law and the facts which brought about the issuance of these assessments, sufficient to satisfy the requirement of proper notice and knowledge.

The Court proceeds to resolve the issue of prescription of VAT assessments.

The pertinent portion of Section 110 of the National Internal Revenue Code (NIRC), as amended provides that, "Every person liable to pay the value-added tax imposed under this title shall file a quarterly return of the amount of his gross sales or receipts within twenty (20) days following the close of each taxable quarter prescribed for each taxpayer xxx".

In addition, pursuant to Section 203 of the same Code, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return.

It must be noted that prior to the effectivity of the 1997 NIRC in 1998, the taxpayer is required to file its quarterly VAT return not later than twenty (20) days of the month following the close of each quarter as opposed to twenty-five (25) days provided in the 1997 NIRC. And considering that petitioner's VAT transactions were incurred in 1997, the twenty (20) day period prescribed under the old NIRC would apply.

In the case at bar, upon verification of the available records, petitioner's VAT returns for the taxable year 1997 were filed on the following dates, to wit:

QUARTER	Required Date of Filing	Actual Date of Filing of Return	Last day of the three-year prescriptive period.
First	April 20, 1997	No data available	April 20, 2000
Second	July 20, 1997	July 21, 1997	July 20, 2000
Third	October 20, 1997	October 20, 1997	October 20, 2000
Fourth	January 20, 1998	January 20, 1998	January 20, 2001

From the foregoing data, respondent's right to assess petitioner's second and third quarter VAT returns has already prescribed, considering that the assessments were received by the petitioner on January 17, 2001, beyond the three-year prescriptive period.

The assessment having been issued beyond the three-year prescriptive period.

However, with respect to petitioner's first quarter VAT return, respondent's right to assess the same has not yet prescribed. There was no return presented by petitioner to this Court, leading to a presumption that it failed to file its first quarter VAT return. For its failure to file the said VAT return, Section 223 of the NIRC applies, which states that, respondent has the right to assess such return at any time within ten (10) years from the discovery of such omission. Accordingly, this portion of the VAT assessment must be sustained.

Likewise, the petitioner' fourth quarter VAT return is not yet time barred.

On the issue of exemption from VAT of its sale of published books, respondent contends that petitioner is liable for VAT on its sale of services and use or lease of properties. The phrase "Sale or Exchange of Services" as enumerated in Section 102 (a)(3) of the NIRC, as amended, declares that it shall include, "the supply of scientific, technical, industrial or commercial knowledge or information". Respondent further explains that petitioner's research work in the form of a book, is exclusively sold to the subscriber with existing subscription contract with petitioner. Such contract requires confidentiality and the books cannot be purchased over the counter, thus, it is a contract of service and not publication of books.

On the other hand, petitioner argues that it is a sale of books which falls within the VAT exemption. It explains that it publishes four syndicated books and two supplements on a monthly, quarterly or semestral basis to any interested party who enters into a subscription agreement with petitioner. The contents of the books are derived mainly from existing data, statistics and records that are readily available from their main sources.

The records and pieces of evidence show the following:

The Philippine Pharmaceutical Index (PPI) which has been published by petitioner since 1968 and its supplement, the PPI-MSR, is basically a drugstore audit. It presents information on the changing market size, market growth and manufacturer's shares in the industry. The PPI sources its data on a monthly basis from two data sources: (1) Distributors and Direct Manufacturers (DDM) and (2) a sample of 230 drugstores nationwide. The panel of 230 drugstores (independent stores with 1-2 branches) supply sales data for companies that do not provide DDM data into the IMS system. A projection factor is then applied on this sales data. This panel consists of both independent stores (drugstores with 1 to 2 branches) and chains (more than 2 branches)

The Philippine Hospital Pharmaceutical Audit (PHPA) is a compilation of the purchases and usage of pharmaceutical products in private, industrial and government hospitals, with a comparative analysis of products based on volume, market share and percentage change information. It covers private and government hospitals plus government agencies, clinics with beds, industrial hospitals and hospital traders. PHPA

Acquires its data on a monthly basis from two data sources: DDM and a sample of 99 hospitals nationwide.

The Philippine Medical Data Index (PMDI), published by petitioner since 1977, contains an analysis of the patterns and the treatment of diseases encountered in medical practice in the Philippines. It tracks patients, consultations and treatments prescribed in the primary care sector of a country and is obtained from a panel of five hundred (500) doctors (general practitioners and specialists) in the four regions of Metro Manila, Luzon, Visayas and Mindanao. Meanwhile, the Philippine Monitoring Report (PMR) merely lists the changes in the pricing of pharmaceutical products available in the market.

Petitioner claims that the PPI, PPI-MSR, PHPA, PMDI and PMR are merely compilations, indices and analyses of the gathered data, aimed at helping the buyers thereof in the development and marketing of their respective products. And because of their minimal degree of technical content, the said books can be described at best, as general references, primarily for the healthcare industry and its allied fields, medical practitioners, as well as anyone who may be interested.

Petitioner further argues that if ever it can be held liable for VAT, it will only be for its *Ad Hoc* projects (e.g. Focus group discussions, Usage/Attitude/Image studies, etc) and publication of the Drug Distribution Data (DDD). The DDD is a regular publication with a standard report format for all its customers, and follows similar data collection methodology like the other publications. However, since DDD is customized, to some extent to customer's needs inasmuch as the customers specify the derived market and territory definition, the same can perhaps be subject to the 10% VAT.

Petitioner furthermore explains that the agreements are merely the evidence of the contract of sale of books and not a contract for the performance of services as erroneously alleged by respondent. Petitioner's use of subscription agreements rather than selling the books "over the counter" is a marketing strategy used by petitioner to ensure that the books are readily made directly available to their target audience. Considering that the books contain data useful only to the pharmaceutical and healthcare industries as well as medical practitioners, petitioner's marketing strategy prevents the wastage that would occur had the books been placed in stores for the general public.

We favor petitioner's contentions.

Section 2 of Republic Act (R.A.) No. 8241, amending R.A. No. 7716, otherwise known as the Expanded Value-Added Tax Law and other Pertinent Provisions of the National Internal Revenue Code, as amended, provides:

> "SEC. 4. Section 103 of the National Internal Revenue Code, as amended is hereby further amended to read as follows:
>
> > "SEC. 103. Exempt Transactions. – The following shall be exempt from the value-added tax:
> >
> > xxx xxx xxx
> >
> > (y) Sale, importation, printing or publication of books and any newspaper, magazine, review, or bulletin which appears at regular intervals with fixed prices for subscription and sale and which is not devoted principally to the publication of paid advertisements"

Clearly from the foregoing provision of law, petitioner's sale of the following books, namely, PPI, PPI-MSR, PHPA, PMDI and PMR is exempt from the imposition of the 10% VAT.

Contrary to respondent's assertions, the Subscription Agreement between petitioner and Merck, Sharp & Dohme Philippines for the sale of PHPA *(Exhibit "6"),* which was presented in evidence by the respondent, did not disclose any undertaking to conduct a study regarding any matter or to prepare a report based on the subscriber's specifications, but provides for the sale of such publication. Pertinent portion of the agreement is quoted hereunder:

> " xxxx This Memorandum of Agreement is between IMS Philippines, Inc. xxx and Merck, Sharp & Dohme Philippines xxx covering the terms and conditions under which IMS Philippines, Inc. (hereinafter called A), agree to furnish and Merck, Sharp, & Dohme Philippines (hereinafter called B), agree to purchase the Philippine Hospital Pharmaceutical Audit xxx. The following is concluded:
>
> That A will:
>
> 1. Provide B with four (4) consecutive quarterly issues of the Report beginning with the issue covering"

Therefore, the subscription agreement does not fall within the purview of a contract for the sale of services.

Moreover, the three (3) requisites for exemption are present in this case. First, the aforementioned books appear at regular intervals, either at monthly, quarterly or semestral basis. Second, they are priced at fixed amounts for subscription and sale as mentioned in the aforementioned subscription agreement. And, third, the same are not devoted principally to the publication of paid advertisements.

Hence, the deficiency VAT assessment is cancelled.

Anent the issue of prescription of petitioner's deficiency income tax assessment, the Court rules in the negative.

Petitioner maintains that the original assessment issued on January 10, 2001 only covered disallowed representation expense, which was later cancelled. It claims further that when respondent issued his Final Decision on Disputed Assessment *(Exhibit "BBB")* dated February 4, 2003, the same mentioned a new item, particularly, a deficiency income tax assessment which is an additional assessment not covered in the original assessment dated January 10, 2001; which counting from the date of the involved transaction is beyond the prescribed three (3) year period to assess. Hence, respondent's right to assess the alleged additional assessment has already prescribed.

Upon review of the records, it appears that in the original assessment issued on January 10, 2001 *(Exhibits "A" & "A-3")*, respondent merely deducted from the Total Tax Due of P8,067,804.22, the amount of P7,875,261.22 representing petitioner's tax payment instead of the sum of P7,988,184.00 *(Exhibit "J"),* thereby resulting in a discrepancy in the amount of P112,922.78, representing the disallowed tax credits.

However, contrary to petitioner's allegations, the amount of P112,922.78 actually formed part of the original assessment. There was no additional assessment to speak of. In fact, in the Final Decision on Disputed Assessment *(Exhibit "BBB")*, respondent reconsidered part of the disallowed tax credits in the amount of P53,955.52, thereby, increasing the total payment of P7,875,261.22 to P7,929,216.74. As a result thereof, the unsupported tax credits of P58,967.26 represents the basic deficiency income tax due for the taxable year 1997 *(Page 3 of Exhibit BBB).*

Prescinding from the foregoing, the deficiency income tax assessment in the amount of P58,967.26 as declared in the Final Decision on Disputed Assessment has not yet prescribed.

While the deficiency income assessment has not prescribed, the same must still be cancelled inasmuch as the amount covered by the Final Decision on Disputed Assessment was sufficiently substantiated with certificates of creditable withholding tax submitted by petitioner, thus, negating respondent's finding.

WHEREFORE, Assessment Notices Numbered 000032-97-091-705 for deficiency income and value added taxes for the taxable year 1997, are hereby **CANCELLED** and **WITHDRAWN** for lack of legal basis.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

(on leave)
ERNESTO D. ACOSTA
Presiding Justice

CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the First Division of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

LOVELL R. BAUTISTA
Acting Chairman, First Division