REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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GOLDEN LAOAG FOODS CORPORATION, Petitioner,	**C.T.A. CASE NO. 7013**
	Members:
- versus -	**ACOSTA,** *Chairperson* **BAUTISTA,** and **CASANOVA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent,	**Promulgated:** DEC 23 2008 ; 11:40 am

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DECISION

BAUTISTA, *J.*:

The Petition for Review involves a protest against the assessments for deficiency income tax, value-added tax, and withholding tax for calendar year ending December 31, 2000 in the aggregate amount of P5,207,964.23, inclusive of interest and penalties.

Golden Laoag Foods Corporation (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 Los Martirez dela Patria near F. Castro St., Laoag City. Petitioner is principally engaged in the business of establishing, operating and maintaining restaurants, coffee shops, refreshments parlors, cocktail lounges and cater foods.[1] It is registered with the Bureau of Internal Revenue (BIR) as evidenced by its Tax Identification No. 005-508-945-000 and BIR Certificate of Registration bearing RDO Control No. V-99-01-001282.[2]

On the other hand, respondent is the duly appointed Commissioner of Internal Revenue mandated by law to enforce and implement the provisions of the National Internal Revenue Code, related tax statutes, and their implementing rules and regulations; including the power to issue deficiency tax assessments and evaluate and decide upon the merits of the protest against deficiency tax assessments. He holds office at the BIR National Office Building, Diliman, Quezon City.[3]

On April 19, 2004, petitioner received from respondent a Formal Letter of Demand dated April 13, 2004 and the corresponding Assessment Notices Nos. IT-01-00-005-508-945, WT-01-00-005-508-945, and VT-01-00-005-508-945, all dated April 14, 2004, for alleged deficiency tax liabilities for calendar year ended December 31, 2000, to wit:[4]

A. Withholding Tax

	Management Fee	**Rental**	**Contractors**
January	P 2,399.93	P 9,237.14	P 10,704.46
February	2,480.94	9,418.32	9,832.74
March	2,128.90	8,268.85	5,588.37
April	2,359.61	9,438.44	6,343.22
May	2,318.71	9,274.85	4,893.74
June	14,988.25	8,353.01	4,559.88
July	8,539.76	17,359.04	4,188.68
August	8,365.65	12,162.61	3,732.78
September	1,917.68	12,170.72	3,599.17

[1] Par. 1, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 154
[2] Par. 3, JSFI, Docket, p. 155
[3] Par. 2, JSFI, Docket, pp. 154-155
[4] Par. 4, JSFI, Docket, pp. 155-156

October	8,794.96	12,479.83	4,221.34
November	8,229.19	8,516.76	3,314.59
December	8,619.81	10,079.25	5,292.87
Total	71,143.39	126,758.82	66,271.84
Gross Payments	P1,422,867.80	P2,535,176.40	P6,627,184.00
Per FS/Audit	2,455,683.95	3,222,280.45	
Discrepancy	P1,032,816.15	P 687,104.05	
Withholding Tax	P 122,784.20	P 161,114.02	
Less: Amount Remitted	77,843.39	137,006.32	
Deficiency Tax	P 44,940.81	P 24,107.70	
Add: Interest	29,279.23	15,706.33	
Total	P 74,220.04	P 39,814.03	P 114,034.07

Increments for late payment of tax withheld

	Management Fee	Rentals	
Base Amount	P 6,700.00	P 10,247.50	
Interest	111.67		111.67
January 10, 2001 to February 10, 2002			
December 10, 2001 to February 10, 2002		150.75	150.75
January 10, 2001 to March 10, 2001		157.50	157.50
Fringe Benefit Tax			
Fringe Benefits	P 97,683.35		
Basis	P 437,769.63		
Fringe Benefit Tax		P140,086.28	
Add: Surcharge		35,021.57	
Interest		91,267.15	
Compromise Penalty		16,000.00	282,375.00
TOTAL			**P396,828.99**

B. Income Tax

Taxable Income/Return		P 779,431.00
Adjustments:		
Disallowed Expenses		
Donations	P 18,759.95	
Taxes & Licenses	32,984.70	
Freight & Cartages (Service Fee)	804,750.65	
Depreciation- Bldg.	1,129,613.28	
Depreciation- machinery and equipment	658,574.76	2,644,683.34
Taxable Income/Return		3,424,114.34
Tax Due		1,095,716.59
Less: Tax Paid		249,418.00
Deficiency Tax		846,298.59
Add: Interest		514,271.28
TOTAL		**P1,360,569.87**

C. Value-Added Tax

Sales per Return			P 52,686,781.00
Output Tax			P 5,268,678.10
Less: Input Tax per Return		P3,698,936.12	
Less: Disallowed input tax			
Chicken	P 293,171.08		
Building	1,123,873.20		
Machineries & Equipment	672,299.46	2,089,343.74	1,609,592.38
VAT Due			P 3,659,085.72
Less: VAT Paid/Carry-Over			2,130,417.23
Total			P 1,528,668.49
Add: VAT carried over on succeeding year			560,675.19
Deficiency VAT			P 2,089,343.68
Add: Interest			1,361,221.69
TOTAL			**P 3,450,565.37**
TOTAL FOR ALL TAXES			**P 5,207,964.23**

On May 12, 2004, petitioner filed a Protest Letter presenting its legal arguments, explanations and supporting documents against the subject assessment.[5]

In a Letter dated May 25, 2004, respondent denied petitioner's Letter of Protest and recommended the issuance of warrant of distraint and levy for the collection of the assessed taxes. Respondent likewise stated that any protest on the denial should now be filed with the proper court.[6]

Hence, petitioner filed a Petition for Review with this Court on June 25, 2004.

Respondent, in his Answer[7], averred the following Special and Affirmative Defenses:

> "(3) Petitioner seeks to set aside thru this instant *Petition* the deficiency assessments issued against it,

[5] Par. 5, JSFI, Docket, p. 156
[6] Par. 6, JSFI, Docket, p. 157
[7] Pars. 3-9, Answer, Docket, pp. 106-110

particularly income tax, withholding tax and value-added tax on the following grounds, to wit: (1) that respondent's right to assess has prescribed; (2) that the donation in the amount of Php: 24,836.96, which was disallowed as such by respondent BIR, is not proper because according to it the same is not a donation in [the real sense] but rather a legitimate advertising expense, hence the 5% cap on donation should not be imposed; (3) that the disallowed taxes and licenses in the amount of Php: 36,716.91 represent the amount paid by way of interest on delinquent tax liabilities, hence, are deductible from its gross income as interest incurred in connection with its trade or business; (4) that the disallowed freight and cartage (service fee) in the amount of Php: 804,750.85 for failure to present written agreement to support thereof, is not proper because even if there was no written contract or agreement on this service, the existence of invoices and receipts evidencing the payment of the consideration for the services rendered sufficiently establishes the service agreement; (5) that the amount of Php: 1,788,188.04 which represents petitioner's depreciated amount relative to its fixed assets pertaining to buildings, machinery and equipment which was disallowed by respondent BIR is erroneous because those buildings, machinery and equipment are owned by petitioner. It is the petitioner and not Golden Arches Development Corporation, who actually possesses the said properties and exercises all the rights and ownership of the same. Petitioner booked the subject buildings, machinery and equipment as assets in its Financial Statement and other records;

(4) On the issue of prescription, be it noted that the questioned Formal Letter of Demand/Final Assessment Notice dated 13 April 2004 covering petitioner's tax liabilities for the taxable period 2000 was issued by BIR-Revenue Region 1, Calasiao Pangasinan and sent to petitioner last 14 April 2004. Petitioner filed its 2000 Income Tax Return (ITR) last 16 April 2001, which is beyond the period allowed and prescribed under the law. Section 203 of the 1997 Tax Code is applicable in this case and provides for the period of limitation upon assessment and collection. Said section states that:

> 'Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for collection of such taxes shall be begun after the expiration of such period: [P]rovided, That in case where a return is filed beyond the period prescribed by

law, the three year-period shall be counted from the day the return was filed...'

Applying the above-cited provision in the instant case, three (3) years from 16 April 2001 (which is the date of filing of petitioner's ITR) is 16 April 2004, hence the government has until that date to make an assessment relative to petitioner's tax liabilities for the period covering 2000. Obviously, the Formal Letter of Demand/Assessment Notice, which was released by herein respondent last 14 April 2004, although received by petitioner only last 19 April 2004, is within the period in which the government is authorized to make an assessment. The law does not require that the demand or notice be received within the prescriptive period as held in the case of ***Republic vs. Tan Kim En,*** (CA-G.R. No. 28743-R, 29 February 1964). The case of ***Basilan Estates, Inc. vs. CIR,*** finds application in this instant petition. **In that case Court clearly ruled that so long as the release thereof (assessment notice or demand) is effected before the prescription sets in, the assessment is deemed made on time even though the same is actually received by the taxpayer after the expiration of the prescriptive period**;

(5) On the contention that the disallowed donation in the amount of Php: 24,836.96 is not a donation ***per se*** but rather a legitimate advertising expense, we *disagree*. It bears stressing that the 'donation' account was used. In the protest filed, no proofs were presented to substantiate that said donation account was indeed a legitimate advertising expense. Thus, the 5% ceiling was imposed disallowing the amount of Php: 18,759.95;

(6) On the issue that the disallowed taxes and licenses in the amount of Php: 36,716.91 represent the amount paid by petitioner by way of interest on delinquent tax liabilities, hence, are deductible from its gross income as interest incurred in connection with its trade or business, again we disagree. The said assessment was due to the inclusion of penalties, particularly of surcharge and compromise penalty for late remittance of withholding taxes;

(7) The disallowance of freight and cartages (service fee) in the amount of Php: 804,750.85 for failure to present any written agreement to support the claim that petitioner entered into an agreement service with HAVI Foods, is proper because petitioner failed to adduce the written agreement in

order that the claim for deductions wo[u]ld have legal and factual basis;

(8) Lastly, the Php: 1,788,188.04 which represents petitioner's depreciated amount relative to its affixed assets pertaining to buildings, machineries and equipment was disallowed by respondent BIR, on the ground that the subject buildings, machineries and equipment are not owned by petitioner per investigation. Audit of fixed assets showed that the building, machineries and equipment were recorded as part of petitioner's asset. However, a copy of the building permit and tax declarations showed that the subject properties are declared under the name of Golden Arches Development Corporation. Further verification also revealed that an Operator's Lease Agreement was executed between Golden Arches Development Corp., and petitioner, which provides that petitioner will pay a percentage rent of 4% based on gross sales for the use of the building in addition to the base rent (rental of lot). In as much as there was no proof presented evidencing the transfer of ownership from the lessor to the lessee, petitioner has no basis to claim the depreciation expense.

(9) Finally, it is well settled rule in taxation that 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."

Pre-trial conference was set on October 22, 2004.[8] The Pre-Trial Briefs were filed by petitioner on October 19, 2004[9] and by respondent on October 20, 2004[10].

During the pre-trial conference on October 22, 2004, petitioner manifested that it paid a portion of the assessment equivalent to one-fourth (¼) of the amount assessed.[11]

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[8] Docket, p. 114; pp. 3-4, October 22, 2004 TSN
[9] Docket, pp. 117-127
[10] Docket, pp. 128-136
[11] Docket, p. 142

The parties' Joint Stipulation of Facts and Issues[12] filed on January 7, 2005 was approved in a Resolution[13] dated January 11, 2005.

The parties subsequently filed a Manifestation and Supplemental Joint Stipulation[14] on September 5, 2005, which the Court granted in a Resolution[15] dated September 27, 2005.

In a Resolution[16] dated November 2, 2006, the Court disposed of petitioner's Formal Offer of Evidence[17] filed on May 5, 2006, with respondent's Motion to Admit Attached Comment[18] and its Comment (On Petitioner's Formal Offer of Evidence)[19] filed on June 14, 2006. While, respondent's Formal Offer of Evidence[20] filed on September 7, 2007, with petitioner's Comment (on Respondent's Formal Offer of Evidence)[21] filed on September 24, 2007, was resolved in a Resolution[22] dated October 4, 2007.

In a Resolution[23] dated January 4, 2008, the case was submitted for decision after taking into consideration the Memorandum[24] filed by petitioner on December 21, 2007 and respondent's Memorandum[25] filed on December 26, 2007.

Hence, this decision.

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[12] Docket, pp. 154-159
[13] Docket, p. 160
[14] Docket, pp. 256-259
[15] Docket, pp. 263-264
[16] Docket, pp. 324-326
[17] Docket, pp. 279-311
[18] Which was granted in a Resolution dated September 18, 2006, Docket, p. 322
[19] Docket, pp. 312-316
[20] Docket, pp. 366-368
[21] Docket, pp. 370-371
[22] Docket, p. 373
[23] Docket, p. 440
[24] Docket, pp. 389-423
[25] Docket, pp. 424-437

Statement of Issues

The following are the issues[26] as agreed upon by the parties:

"Prescription

1. Whether or not respondent's right to assess petitioner for alleged deficiency withholding tax, income tax and VAT for CY 2000 has prescribed.

Deficiency Withholding Tax Assessment

2. Whether or not petitioner failed to withhold in the amount of P44,940.81 on its management fees for CY 2000.

3. Whether or not petitioner failed to withhold tax in the amount of P24,107.70 on its rental payments for CY 2000.

4. Whether or not the housing, transportation and meal allowances granted to petitioner's employees in CY 2000 qualify as *de minimis* benefits, which are not subject to fringe benefits tax.

Deficiency Income Tax Assessment

5. Whether or not respondent was correct in treating the amount of P18,759.95 as a donation and not as [a] legitimate advertising expense as argued by petitioner.

6. Whether or not by classifying the said amount as a donation, respondent is justified in imposing the 5% cap as provided under the law.

7. Whether or not petitioner's expenses for taxes and licenses in CY 2000 in the amount of P32,984.70 should be disallowed as a deduction from its gross income.

8. Whether or not the freight and cartage fees paid by petitioner in CY 2000 in the amount of P804,750.85 should be disallowed as a deduction from its gross income.

[26] Pars. 1-11, JSFI, Docket, pp. 157-158

9. Whether or not respondent was correct in disallowing the amount of P1,788,188.04, representing petitioner's depreciation expenses on its fixed assets, on the ground that petitioner failed to prove ownership of the buildings, machinery and equipment.

Deficiency VAT Assessment

10. Whether or not the input VAT from petitioner's purchases of marinated chicken for CY 2000 in the amount of P293, 171.08 should be disallowed.

11. Whether or not the input VAT on petitioner's buildings, and machineries and equipment, for CY 2000 in the amounts of P1,123,873.20 and P672,299.46, respectively, should be disallowed."

The Court's Ruling

Prescriptive periods to make an assessment

Section 203 of the National Internal Revenue Code (NIRC) of 1997, as amended, provides for the period within which the BIR can make an assessment, thus:

> "**SEC. 203. Period of Limitation Upon Assessment and Collection.** – Except as provided in Section 222, **internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return**, 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, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day." *(Emphasis supplied)*

As stated above, the BIR has three years, counted from the date of actual filing of the return or from the last date prescribed by law for the filing of such return, whichever comes later, to assess a national internal revenue tax or to begin a court proceeding for the collection thereof.

Considering that petitioner's deficiency assessments consist of withholding taxes, income taxes, and value-added taxes, the filing of the required returns involve different periods.

In cases of withholding taxes, the relevant provision is hereby quoted:

> "**SEC. 58. Returns and Payment of Taxes Withheld at Source.** –
>
> **(A) Quarterly Returns and Payments of Taxes Withheld.** – Taxes deducted and withheld under Section 57 by withholding agents shall be covered by a return and paid to, except in cases where the Commissioner otherwise permits, an authorized agent bank, 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 return for final withholding tax shall be filed and the payment made within twenty-five (25) days from the close of each taxable 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 withholding was made: *Provided*, That **the Commissioner, with the approval of the Secretary of Finance, may 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." *(Emphasis supplied)*

Revenue Regulations No. 2-98 provides for the period for the filing of the return, in the following manner:

> "**SECTION 2.58.** *Returns and Payment of Taxes Withheld at Source.*
>
> xxx xxx xxx
>
> (2) *WHEN TO FILE –*
>
> (a) **The withholding tax return, whether creditable or final, shall be filed and payments should be made within ten (10) days after the end or each month except for taxes withheld for December which shall be filed on or before January 25 of the following year.**" *(Emphasis supplied)*

From the foregoing, the three-year period within which respondent can validly issue an assessment shall be counted from the last day required by law for filing a monthly remittance return, which is ten (10) days after the end of each calendar month, except December, which is twenty-five (25) days after the end of December; or the date of actual filing of the return, whichever is later.

On the other hand, in cases of income taxes, Section 77(B) of the NIRC of 1997, as amended, provides for the period for filing income tax return, to wit:

> "**SEC. 77. Place and Time of Filing and Payment of Quarterly Corporate Income Tax.** –
>
> **(A)** xxx
>
> **(B) Time of Filing the Income Tax Return. – The corporate quarterly declaration shall be filed within sixty (60) days following the close of each of the first three (3) quarters of the taxable year. The final adjustment return shall be filed on or before the fifteenth (15th) day of April, or on or before the fifteenth (15th) day of the fourth (4th) month following the close of the fiscal year, as the case may be.**" *(Emphasis supplied)*

It is long established in our jurisdiction that the first three (3) quarterly returns are mere installments of the annual tax due, and the final adjustment return is the one truly reflective of the operations of an establishment.[27] Thus, the three-year period is to be reckoned from the fifteenth (15th) day of April or the fifteenth (15th) day of the fourth (4th) month following the close of the fiscal year, as the case may be; or the date of actual filing of the final adjustment return, whichever is later.

Finally, in cases of value-added taxes, Section 114(A) of the NIRC of 1997, as amended, provides as follows:

> "**SEC. 114. Return and Payment of Value-added Tax.** –
>
> **(A) In General.** – 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-five (25) days following the close of each taxable quarter prescribed for each taxpayer**: *Provided, however,* That VAT-registered persons shall pay the value-added tax on a monthly basis." *(Emphasis supplied)*

By plain reading from the provision, the running of the three-year period within which the BIR can make an assessment is reckoned from the filing of the quarterly VAT returns. Unlike in corporate income tax, which is reported and paid on installment every quarter, but is eventually subjected to a final adjustment at the end of the taxable year, VAT is computed and paid on a purely quarterly basis without need for a final adjustment at the end of the taxable year.[28] Hence, each return has its own prescriptive period.

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[27] Commissioner of Internal Revenue vs. TMX Sales, Inc., G.R. No. 83736, January 15, 1992
[28] Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, G.R. No. 141104 and 148763, June 8, 2007

Computation of the three-year period

In has been held in **National Marketing Corporation vs. Tecson**[29], that a year is equivalent to three hundred sixty-five (365) days regardless of whether it is a regular year or a leap year; citing Article 13 of the Civil Code, which states.

> "**ARTICLE 13.** When the law speaks of years, months, days or nights, it shall be understood that **years are of three hundred sixty-five days each**; months, of thirty days; days, of twenty-four hours, and nights from sunset to sunrise.
>
> If the months are designated by their name, they shall be computed by the number of days which they respectively have.
>
> In computing a period, the first day shall be excluded, and the last included." *(Emphasis supplied)*

In the case of **Commissioner of Internal Revenue vs. Primetown Property Group, Inc.**[30], it is however declared that Section 31, Chapter VIII, Book I of the Administrative Code of 1987, being the more recent law, governs the computation of legal periods. *Lex posteriori derogat priori.* Section 31, Chapter VIII, Book I of the Administrative Code provides:

> "**SECTION 31.** *Legal Periods.* — **' Year' shall be understood to be twelve calendar months;** 'month' of thirty days, unless it refers to a specific calendar month in which case it shall be computed according to the number of days the specific month contains; 'day', to a day of twenty-four hours and; 'night' from sunrise to sunset." *(Emphasis supplied)*

In this manner, the three-year periods are computed as follows:

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[29] L-29131, August 27, 1969
[30] G.R. No. 162155, August 28, 2007

A. Withholding tax liabilities:

Exhibits	Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) for the Year 2000	Date of Filing	Last day of the 3-year period within which to issue an assessment
"CC-1"	January	April 11, 2000	April 11, 2003
"CC-2"	February	April 11, 2000	April 11, 2003
"CC-3"	March	April 11, 2000	April 11, 2003
"CC-4"	April	May 10, 2000	May 10, 2003
"CC-5"	May	June 9, 2000	June 9, 2003
"CC-6"	June	July 7, 2000	July 7, 2003
"CC-7"	July	August 10, 2000	August 10, 2003
"CC-8"	August	September 12, 2000	September 12, 2003
"CC-9"	September	October 10, 2000	October 10, 2003
"CC-10"	October	November 10, 2000	November 10, 2003
"CC-11"	November	December 11, 2000	December 11, 2003
"CC-12"	December	January 10, 2001	January 10, 2004

B. VAT liabilities

Exhibits	Quarterly VAT Tax Returns for the Year 2000	Date of Filing	Last day of the 3-year period within which to issue an assessment
"G"	1st Quarter	April 25, 2000	April 25, 2003
"J"	2nd Quarter	July 25, 2000	July 25, 2003
"M"	3rd Quarter	October 16, 2000	October 25, 2003
"P"	4th Quarter	January 24, 2001	January 25, 2004

C. Income tax liabilities

Petitioner filed its Annual Income Tax Return for calendar year 2000 on April 16, 2001.[31] Therefore, the three-year period is counted from the actual filing, which is April 16, 2001, and will prescribe on April 16, 2004; within which the BIR may validly issue an assessment thereof.

Hence, respondent had the abovementioned periods within which to issue the corresponding deficiency tax assessments.

[31] Par. 8, JSFI, Docket, p. 157

Validity of the assessments

Due process requires that an assessment must be served on and received by the taxpayer.[32] In this case, it is uncontroverted that petitioner received the Formal Letter of Demand dated April 13, 2004, and the corresponding Assessment Notices dated April 14, 2004 on April 19, 2004, or beyond the three-year prescriptive period.

It is well settled that an assessment is made within the prescriptive period if notice to this effect is released, mailed or sent by the CIR to the taxpayer within said period. Actual receipt thereof by the taxpayer within the prescriptive period is not necessary.[33]

Apparently, the Assessment Notices pertaining to withholding and VAT liabilities were issued beyond the three-year period. However, the Assessment Notice made for petitioner's deficiency income tax, albeit received beyond the prescribed period, has been released within the prescriptive period; *ergo*, the assessment of the deficiency income tax is deemed timely made.

Deficiency income taxes

During the pre-trial conference on October 22, 2004, petitioner manifested that it had paid a portion of the amount being assessed.[34]

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[32] Barcelon, Roxas Securities, Inc. vs. Commissioner of Internal Revenue, G.R. No. 157064, August 7, 2006; Commissioner of Internal Revenue vs. Pascor Realty and Development Corporation, 368 Phil. 714 (1999)
[33] Collector of Internal Revenue vs. Bautista, 105 Phil. 1326 (1959)
[34] Docket, p. 142

Based on the revised deficiency tax assessment, the following are reflected:[35]

Taxable Income per Return		779,431.00
Adjustments: Disallowed expenses		
Donation	18,759.95	
Taxes and Licenses	32,984.70	
Freight and Cartages (Service Fee)	63,161.31	
Depreciation – Building	1,129,613.28	
Depreciation – Machinery and Equipment	658,574.76	1,903,094.00
Total Income per Audit		2,682,525.00
Tax Due		858,408.00
Less: Tax Paid		249,418.00
Deficiency Income Tax		608,990.00
Add: Interest		392,189.56
Total		**1,001,179.56**

The Court further quotes the following:[36]

"A. Deficiency Income Tax

1. Donation – The amount of P18,759.95 is in excess of the 5% limit for corporation pursuant to Section 34 (H) of NIRC, hence, disallowed.

2. Taxes and licenses – The inclusion of surcharge and compromise penalties for late remittance of withholding taxes in this account is not acceptable pursuant to Section 34 (C) of the Tax Code.

3. Freight and Cartages (Service Fee) – Portion of this account which amounts to P63,161.31 was disallowed for failure to substantiate adequate records pursuant to Section 34 A of the NIRC.

4. Depreciation of the building and machinery and equipment amounting to P1,129,613.28 and P658,574.76 respectively were disallowed for failure to substantiate the same with proper evidences that the said building and machinery and equipment are already owned by Golden Laoag Foods Corporation."

From the first assessment, the disallowed freight and cartages (service fee) of P804,750.65 was reduced to P63,161.31, which likewise reduced the

[35] Exhibit "R-6"; Docket, pp. 397-401
[36] Pars. 1-4, pp. 400-401, BIR Records

deficiency income tax assessment. With this, petitioner's deficiency income tax resulted in the reduced amount of P1,001,179.56.

However, based on the records of the case, a BTr-BIR Deposit Slip[37] issued by Chinabank on July 6, 2004, showed that the amount of P1,001,179.56 for deficiency income tax was already paid by petitioner. Hence, the reduced assessment for deficiency income tax was already satisfied and is now rendered moot.

WHEREFORE, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, the assessments for deficiency income tax, value-added tax, and withholding tax for calendar year ending December 31, 2000 are hereby **CANCELLED** and **WITHDRAWN.**

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

On leave
ERNESTO D. ACOSTA
Presiding Justice

CAESAR A. CASANOVA
Associate Justice

[37] Exhibit "R-5"

ATTESTATION

I attest 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.

LOVELL R. BAUTISTA
Acting Chairperson
First Division

CERTIFICATION

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

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice