REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CENTRAL CEMENT CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 4312

BIENVENIDO TAN, in his capacity as Commissioner of Internal Revenue,
Respondent.

x - - - - - - - - - - - - - x

9/1/93

D E C I S I O N

A letter from the Bureau of Internal Revenue ("BIR") dated March 9, 1988 was received by petitioner on even date informing it of a proposed (tentative) assessment for alleged deficiency income tax for fiscal year ended June 30, 1987 in the total amount of P4,202,118.00, inclusive of interest computed up to March 15, 1988. (Annex "A", C.T.A. Records, pp. 8-9.) A period of ten (10) days from receipt thereof was given petitioner within which to dispute the proposed assessment otherwise, it would become final and the necessary formal assessment notice will be issued.

Petitioner seasonably responded to respondent's letter on March 18, 1988 (or 9 days from receipt of letter) by disputing the proposed assessment. (Annex "B", C.T.A. Records, p. 10.)

There was no reply to petitioner's March 18, 1988 letter instead, another letter from the BIR dated May 13, 1988 was received by petitioner on May 19, 1988. This time the proposed assessment amounted to P5,404,339.50, including a 25% surcharge and 20% per annum interest. Comprising the aforesaid assessment are deficiency income tax of P5,400,847.99 and deficiency expanded withholding tax of P3,491.62. (Annex "C", C.T.A. Records, pp. 11-14.) Again petitioner was granted ten (10) days from receipt thereof to dispute the proposed assessment otherwise, it becomes "final and executory".

On May 27, 1988 (or 8 days from receipt of letter), petitioner through a letter of even date expressed vehement objections to the proposed assessment and requested that it be reviewed, reconsidered and thereafter withdrawn. (Exhibits "D", "D-1", "D-2".)

Instead of a reply thereto, petitioner received on September 20, 1988 from the BIR a final assessment notice (Exhibit "E") for alleged deficiency income tax and expanded withholding tax computed as of August 15, 1988 shown below:

	INCOME	EWT
Basic Tax	P3,954,053.00	P2,081.48
Surcharge	988,513.25	520.37
Interest	946,501.42	1,749.22
Compromise Penalty	1,000.00	300.00
TOTAL	P5,890,067.67*	P4,651.07*

*Detailed computation shown in Exhibit "4".

A protest was seasonably lodged by petitioner with the respondent Commissioner of Internal Revenue on September 23, 1988. (Exhibit "F".)

While awaiting resolution of the protest, an undated Warrant of Levy on Real Property (Exhibit "G") and an undated Warrant of Distraint of Personal Property (Exhibit "H") were served on petitioner on December 1, 1988. Undated Warrants of Garnishment were likewise served on two of petitioner's depository banks namely, Philippine Commercial International Bank, PCI Bank Towers, Makati (Exhibit "I") and International Corporate Bank, 111 Paseo de Roxas, Makati (Exhibit "J") on December 6, 1988 and December 7, 1988, respectively. All the foregoing warrants were issued under the signature of respondent.

Petitioner assailed the issuance of the warrants and sought their recall in a letter filed with respondent on December 12, 1988 on the ground that the warrants are null and void for having been issued prematurely and in violation of the taxpayer's right to due process, the protest filed not having been acted upon by respondent. (Exhibits "K", "K-1", "K-2" and "K-3".)

The warrants were not recalled by respondent despite the petitioner's insistence and the foregoing contentions.

In view thereof, petitioner filed with this Court on December 15, 1988 the instant petition for review with urgent motion for injunction. It is respectfully prayed that the assessment be set aside for lack of legal and factual basis and that respondent be restrained from enforcing the warrants in question for being null and void.

This Court found the issuance of warrants of distraint and levy and warrants of garnishment in violation of Section 207 of the National Internal Revenue Code which only authorizes the issuance of warrants "not earlier than three months nor later than six months from receipt of the demand". ("Resolution", C.T.A Records, pp. 31-38.) The dispositive portion of said resolution promulgated on December 21, 1988 provides:

WHEREFORE, finding the motion for injunction of petitioner Central Cement Corporation well founded and meritorious, and there being no objection on the part of respondent, the said motion is GRANTED.

Respondent Commissioner of Internal Revenue and his agents are hereby enjoined from enforcing the warrants of distraint and levy served upon petitioner and warrants of garnishment upon petitioner's depository banks without necessity of filing surety bond pending final determination of the case.

SO ORDERED.

In its "Answer" dated February 24, 1989 (C.T.A. Records, pp. 46-50), respondent reiterated the propriety of its assessments for deficiency income and expanded withholding taxes for fiscal year ended June 30, 1987, and prayed to this Court that petitioner be ordered to pay the same, to wit:

I. Deficiency Income Tax		
Net Loss per Return		(P 3,080,940.00)
Add: Disallowed expenses		
1. Deficiency withholding tax	P 39,564.00	
2. Bonus paid to PNCC	100,000.00	
3. Unexplained difference in cost of sales	3,694,580.00	
4. Unreported proceeds from sales of property and equipment	1,235,453.00	
5. Income payments to contractors not subject to EWT	208,148.83	5,274,745.00(SIC)
6. Deficiency documentary stamp tax		6,600.00
Add: Unexplained increase in net worth		9,096,889.00
Taxable Net Income Per Investigation		P11,297,294.00(SIC)
Income Tax due thereon (35%)		3,954,053.00
Surcharge (25%)		988.513.25
Interest from 10/16/87 to 9/30/88 (19.15%)		946,501.42
Compromise penalty for late filing		1,000.00
TOTAL AMOUNT DUE and COLLECTIBLE		P 5,890,067.67

II. Deficiency Expanded Withholding Tax

Parking Fee	P	3,217.20
Kooler Industries		2,880.00
Metro car rental		40,520.00
Various branch contractors		161,531.63
Income payments not subjected to EWT		208,148.83
EWT due thereon (1%)		2,081.48
Surcharge (25%)		520.37
Interest up to 9/30/88		1,749.22
Compromise penalty		300.00
TOTAL AMOUNT DUE and COLLECTIBLE	P	4,651.07

(BIR records, p. 189.)

The evidence offered by petitioner (Exhibits "A" to "X" - with sub-markings) in the hearing of this case were all admitted by this Court in its resolution dated February 20, 1991. (C.T.A. Records, pp. 99-100.) Petitioner also presented as its witness Antonio Dumaliang, the company's comptroller.

On the other hand, respondent's evidence marked as Exhibits "1" to "6" (with sub-markings) were likewise admitted by this Court in its resolution dated December 3, 1991. (C.T.A. Records, pp. 126-127.) For its witness, respondent presented Raul Magtagnob, a member of the BIR investigation team.

The issues of the case to be resolved by the Court are the following:

1. Whether or not this Court has jurisdiction over this case.

2. Whether or not the assessment of the petitioner for deficiency income tax of P5,890,067.67 and deficiency expanded withholding tax of P4,651.07 for taxable year 1987 is correct.

The contention of respondent is that this Court has not acquired jurisdiction to act on this petition. He claims there is no decision yet on petitioner's protest. His issuance of the warrants of distraint, levy and garnishment allegedly does not constitute a decision on the protest which is appealable to the Court of Tax Appeals.

However, the matter of jurisdiction was neither raised by respondent in his "Answer" (C.T.A. Records, pp. 46-50) nor in the trial on the merits of this case. In fact, respondent through counsels actively participated in the proceedings before this Court which run for over two years without being heard to question the Court's jurisdiction. It was only when the case was submitted for decision that respondent raised for the first time in its memorandum that this Court is without jurisdiction. (Id., pp. 171-204.)

Jurisdiction is the authority to hear and determine a cause - the right to act in a case.. (Herrera vs. Barretto and Joaquin, 25 Phil., 245;

Conchada vs. Director of Prisons, 31 Phil. 4; **U.S vs. Limsiongco**, 41 Phil., 523.) It is the power and authority conferred on a court by the constitution and laws to hear and determine causes between parties and to carry its judgments into effect. (21 C.J.S., 29.) In determining whether a case lies within or outside the jurisdiction of a court resort to the consequent statutory enactment is indispensable. [Francisco, The Revised Rules of Court in the Philippines, Vol. 1 (2d) p. 106.] Towards this end, what is crucial in the determination of the jurisdiction of the court is the averments in the pleadings taken as a whole. Once jurisdiction is acquired it continues until the case is finally terminated. (**Pamintuan vs. Tigalo**, 53 Phil. 1; **Philippine Land Air Sea Labor Union (PLASLU), Inc., vs. CIR**, 93 Phil. 747; **Tuvera vs. de Guzman**, L-20547, April 30, 1965.)

While lack of jurisdiction may be assailed at any stage, a party's active participation in the proceedings before the court without jurisdiction will estop such party from assailing such lack of jurisdiction. (**Garcia vs. Court of Appeals**, 202 SCRA 228; **Salen vs. Dinglasan**, 198 SCRA 623.) One who subjects himself to the jurisdiction of a court, even where he would not otherwise be subject to suit, becomes subject to any valid claim asserted against him directly relating to the subject of his voluntarily initiated proceeding. To permit one to invoke the exercise of jurisdiction within the general powers of the court and then to reverse its orders upon the ground that it had no jurisdiction would be to allow one to trifle with courts. The principle is one of estoppel in the interest of a sound administration of the laws. (**Young Men Labor Union Stevedores vs. Court of Industrial Relations**, et al., No. L-20307, February 26, 1965 citing **Perkins vs. Benguet Consolidated Mining Company**, et al., No. L-1981-82, May 28, 1954).

In the case at bar, the warrants of distraint, levy and garnishment were issued by respondent knowing fully well that the deficiency assessments were under protest by petitioner. Even when the issuance of the warrants were objected to by petitioner for being in violation of the Tax Code, respondent did not lift said warrants. It is by respondent's own doing that administrative remedies available to petitioner were effectively shut-off thereby, leaving petitioner with no recourse but to seek relief from this Court.

Taking cognizance of the petition for review with urgent motion for injunction, this Court found the aforesaid motion meritorious and granted the same. ("Resolution", C.T.A. Records, pp. 31-38.) Respondents were enjoined from enforcing the warrants pending "final determination" of the case. (*Ibid.*) At this time, there was no objection on the part of respondent. In its "Answer" it reiterated its assessments and prayed that this Court order petitioner to pay the same. In the subsequent proceedings before this Court which lasted for over a couple of years and where respondent actively participated, the question of jurisdiction was never raised. By its own acts, respondents at the very least recognized this court's jurisdiction over the case and voluntarily submitted to its authority. It is therefore estopped from assailing this court's jurisdiction over the case. Accordingly, it cannot be allowed now to deny this court's jurisdiction, for do so would be to make a mockery of the law and judicial process.

We now proceed to look into the merits of the deficiency income tax assessment of P5,890,067.67. This was principally on account of the alleged unexplained increase in net worth of P9,096,889.00 and disallowed expenses of P5,281,345.00.

A. Unexplained increase in net worth-

P9,096,889.00

The BIR examiners arrived at the above-stated amount as follows:

Paid-in Capital Per Financial Statement 6/30/86	P14,300,000.00
Less: Additional Stockholders contribution to the capital accounts as provided under Section 4(d) of Revenue Regulations No. 14-86	4,000,000.00
Adjusted Capital	P10,300,000.00
Add: Retained Earnings	10,624,022.00
Total	P20,924,022.00
Add: Reserve for Doubtful Accounts	2,434,496.00
Net worth as of 6/30/86	P23,358,158.00
Reported Net Worth per E.O. No. 41	14,261,629.00
Unexplained increase in net worth	P 9,096,889.00
(BIR Records, p. 135)	

Petitioner availed of the one-time tax amnesty covering unpaid income taxes for the fiscal years ending June 30, 1981 to June 30 1986 pursuant to Executive Order No. 41 as implemented by Revenue Regulation No. 14-86. The immunities and privileges enjoyed by petitioner upon compliance with the conditions of the tax amnesty and the rules and regulations issued pursuant thereto are quoted below:

"Section 6. Immunities and Privileges.-

xxx xxx xxx

a) The taxpayer shall be relieved of any income tax liability on any untaxed income from January 1, 1981 to December 31, 1985, including increments thereto and penalties on account of the non-payment of the said tax. Civil, criminal or administrative liability arising from the non-payment of the said tax, which are actionable under the National Internal Revenue Code, As amended, are likewise deemed extinguished.

b) The taxpayer's tax amnesty declaration shall not be admissible in evidence in all proceedings before judicial, quasi-judicial or administrative bodies, in which he is a defendant or respondent, and the same shall not be examined, inquired or looked into by any person, government official, bureau or office.

c) The books of account and other records of the taxpayer for the period from January 1, 1981 to December 31, 1985 shall not be examined for income tax purposes: Provided, That the Commissioner of Internal Revenue may authorize in writing the examination of the said books of accounts and other records to verify the validity or correctness of a claim for grant of any tax refund, tax credit (other than refund on credit of withheld taxes on wages), tax incentives, and/or exemptions under existing laws. (Underscoring supplied.)

xxx xxx xxx."

In relation to the foregoing, any officer or employee of the Bureau of Internal Revenue or any government entity who inquires, questions or attempts to inquire into the tax amnesty declaration filed by any taxpayer pursuant to Executive Order

No. 41 shall be guilty of grave misconduct for which he may summarily be dismissed. (Section 8, E.O. No. 41.)

The net worth of the taxpayer as declared in the sworn statement filed shall be considered as his true net worth as of January 1, 1986 for the purpose of determining his future tax liabilities. Any unexplained increase in his net worth after January 1, 1986 shall be considered taxable income in the year when such increase was established or discovered. (Section 7, E.O No.41.)

In the case of a corporate entity on the fiscal year basis, the increase in net worth shall mean the excess of net worth as of the end of his 1985 fiscal year over the net worth as of the beginning of his 1981 fiscal year. For this purpose all fiscal years beginning on or after August 1, 1980 shall be considered as fiscal year 1981 and all fiscal years ending on or before June 30, 1986 shall be considered as fiscal year 1985. [Section 4(c), Revenue Regulations No. 14-86.]

A consideration of all the provisions of E.O No. 41, taken as a whole, will evidently show that there is no legal basis for respondent to assess petitioner for deficiency income tax on account of the discrepancy arising from a recomputation of the net worth as of June 30, 1986. The same is still covered by the immunity granted by said tax amnesty law. Violations thereof cannot be countenanced. Results of clearly prohibited acts should be thrown out, never to be given due course.

Even then, the alleged unexplained increase in net worth of P9,096,889.00 has been accounted as well as amply explained and substantiated by petitioner as follows (Exhibit "L"):

a)	Customs duties and taxes paid on imported machineries and equipment for plant upgrading which were already claimed as deduction in the Income Tax Return (ITR) for fiscal year ended June 30, 1984 but capitalized for financial accounting purpose.......................... (Exhibits "N", "N-9" and Exhibits "O", "O-2", "O-5" and "O-7".)	P8,996,889.00
b)	Difference in allowance for doubtful account.................. (Exhibit "M-4".)	100,000.00
	TOTAL.........	P9,096,889.00

Fully disclosed in petitioner's audited financial statements for fiscal year ended 1984 is the treatment of the P8,996,889.00 customs duties and taxes. Provided in Note 7 thereof is the following:

"7. PROVISION FOR INCOME TAX

> The company reported as deduction from income for tax purposes customs duties and taxes amounting to P8,996,889.00 incurred in 1984 on the importation of a certain machinery and equipment which were capitalized for financial reporting purposes. Accordingly, no income tax for 1984 has been provided in the accounts." (Exhibit "N-9")

The aforestated amount was likewise reported in its Schedule of Taxes and Licenses for fiscal year ended June 30, 1984 which were claimed as deductions (Exhibit "O-2") and the same amount was added to the loss per return in the Reconciliation of Net Income and Analysis of Changes in Retained Earnings/ Computation of Tax Due (Exhibit "O-7").

The company's comptroller testified under oath on the foregoing and explained in detail the discrepancy noted referring at the same time to the evidence presented, to wit:

Q. Mr. Witness, apparently, based on your tax amnesty return and the computation of the BIR , there is a difference of P9,096,889.00. How do you account for or reconcile such difference?

A. As I have stated a while ago, the BIR computation was made on the basis of the financial accounting report of the company which is found on Exhibits M-3 and M-4 wherein under the net worth method computation, that is current assets less the

current liabilities and including the long term debt. We also have to deduct the capital stock which exclude the additional increase in capitalization during the year, and we have to add back the allowance for doubtful accounts. The BIR resulted to a net worth computation of P23,259,518.00 which is computed in accordance with the financial accounting purposes and not on tax accounting purposes.
(T.S.N. October 9, 1989 pp. 11-12.)

xxx xxx xxx

Q. For tax purposes, Mr. Witness, What was the net worth of your corporation for the fiscal year ended 1986?

A. For fiscal year ended 1986, considering the beginning of 1981 which is the coverage of the tax amnesty, it would be P14,261,629.00.
(Id., pp. 19-20.)

xxx xxx xxx

Q. How did you arrive at such amount, Mr. Witness?

A. Based on the computation of net worth, given all the formulas as I have stated in the financial reporting purposes, there is only a difference that you have to take into consideration. That is the deduction of the customs duties and taxes paid on plant properties and equipment which includes..... in 1984 we paid the taxes and duties amounting to P8,996,889.00 and under this computation we deducted in the 1984 the same amount as one-time expenses for the fiscal year.

Q. Mr. Witness can you go over the document and refer exactly to the particular document wherein you made that one-time deduction of the P8,996,889.00 representing customs duties and taxes paid on machineries and equipment.

A. It is found in Exhibits O, O-2, O-5, and O-7.
(Id., p. 20)

xxx xxx xxx

Q. How do you account for the remaining difference of P100,000.00?

A. The difference of P100,000.00 corresponds to the allowance for doubtful accounts?

Q. In the documents which were previously marked as exhibits, would you refer to the specific document where the P100,000.00 is being mentioned.

A. Exhibit L and Exhibit M-4.
(Id., p. 15)

xxx xxx xxx

Q. Would there be any increase in the net worth of your corporation for the ending of fiscal year 1986 as compared to the beginning net worth of 1987?

A. None.

Q. So far as you are concerned, Mr. Witness there is no unexplained increase in net worth?

A. Yes, there is none?
(Id., pp. 20-21)

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In contrast, respondent's examiner revealed during the cross-examination by petitioner's counsel the following:

Q. Mr. Witness, in arriving at this alleged net worth for tax purposes, did you take into consideration the amount of P8,996,889.00 which was capitalized for financial reporting purposes but was reported as one-time deduction from income for tax purposes?

A. We were not made aware of that during our investigation, that is why the same was not taken into consideration. As a matter of fact, if I may add when the taxpayer's representative request for a reconsideration of our preliminary assessment, the same thing as being cited here by the counsel of the taxpayer have already been alleged in their letter praying for reconsideration. But the same was not also given due course because they were not proven, and they were not documented, and they were not even substantiated.

Q. But, Mr. Witness, do I take it to mean that this particular position was brought into your attention?

A. It was brought to our attention after the preliminary investigation. It was brought to our attention only during the reconsideration period, and the same was not taken into consideration also because of lack of substantiation that would prove contrary to the report.

Q. Mr. Witness, going over page 3 of the memorandum which you prepared personally, is it not a fact that you were apprised even prior to the reconsideration of such position specifically the statement "The allegation forwarded by the taxpayer's representative that the net worth as of June 30, 1986 appearing in the tax amnesty return was arrived at using the tax accounting approach and not the

> financial accounting approach, is irrelevant to discussion." So, in effect, Mr Witness, you have been apprised by the representative of the petitioner of this particular position?
>
> A. They were saying another thing during our investigation but the same cannot be considered because, you know, in the BIR as in the courts, we go by the appraisal of evidences, and mere statements cannot be given consideration. Because they were saying this thing and they were saying another thing, and we cannot verify.
> (T.S.N. September 13, 1991, pp. 20-23)

The unyielding stance of respondent do not impress Us since it is not anchored on solid ground but strikes Us as rather whimsical in the light of the clarity of petitioner's explanation, substantiated by documentary evidence. The correct net worth for tax purposes of P14,261,629.00 as reflected in petitioner's tax amnesty return (Exhibit "M"), not the net worth for financial statement purposes of P23,358,518.00 (Exhibit "L") would have been arrived at by respondent had it properly taken cognizance of petitioner's contention and evidence. Accordingly, there was no unexplained increase in net worth which can give rise to a deficiency income tax assessment.

B. Disallowed expenses claimed - P5,281,345.00

The items comprising the above arranged according to their materiality are as follows:

(1) Unexplained difference in cost of sales - P3,694,580.00

This was arrived at by respondent's examiners through the following computation: (BIR records, p. 136, par. 3.)

Cost of sales per Manufacturing Statement	P140,662,893.00
Cost of sales per I.T.R.	144,357,473.00
Difference	P 3,694,580.00

Petitioner's explanation of the discrepancy was not given credence by respondent allegedly on account of its failure to substantiate the same.

The records of the case belie such allegation as petitioner has in fact submitted proof supporting its accounting of the difference noted, to wit:

Cost of sales per Manufacturing Statement		P140,662,893.00
Cost of Sales per I.T.R.	P144,357,473.00	
Less: Unrecognized depreciation on capitalized foreign exchange loss deducted from cost of sales for income tax purposes. (Exhibits "Q-1", and "Q-2")	1,559,987.00	142,797,486.00
Discrepancy		2,134,593.00
Purchases of cement from Hi-Cement Corp.:		
Exhibit "R-2"	P 707,256.00	
Exhibit "R-3"	35,853.82	
Exhibit "R-4"	507,888.57	
Exhibit "R-5"	439,766.46	
Exhibit "R-6"	379,168.10	
Exhibit "S-1"	37,899.22	2,107,832.17
Discrepancy		P 26,760.83

The difference of P26,760.83 was claimed by petitioner under "Others" but failed to present evidence to established the same unlike the other items. Consequently, We have to disallow the amount of P26,760.83.

In the testimony of the company's comptroller, the following were likewise disclosed:

xxx xxx xxx

Q. Mr. Witness, regarding the amount of depreciation and capitalized foreign exchange loss, did the BIR have any question regarding this?

A. None.

Q. How about your treatment of that amount? Did the BIR made any comment on that?

A. None also.

Q. Also regarding the purchases of cement amounting to P2,134,593.00, did the BIR question whether such purchase were made or not?

A. None. In fact, I have already furnished them these documents during their examination.
(T.S.N., October 9, 1989, p. 26)

B. (2) Unreported proceeds from sale of property and equipment-P1,235,453.00.

The BIR came out with the aforestated figure in the following manner (BIR records, p. 2, par. 4):

Net proceeds from disposal of property and equipment per Statement of Changes in Financial Position for FY ended June 30, 1987 (Exhibit "Q-13")	P1,385,000.00
Gross sales price from sale of transportation equipment per I.T.R. (Exhibit "Q-1")	149,637.00
Unreported Proceeds from sales of equipment	P1,235,453.00

In assailing the BIR findings, petitioner merely presented an analysis of the proceeds from disposal of property and equipment (Exhibit "T-1") sans any corroborating evidence. Petitioner's explanation of the difference, quoted below, is by itself hard to believe compounded by the absence of any supporting document:

Q. How would reconcile the difference of P1,235,453.00, Mr. Witness?

A. The bulk of this amount referred to the equipment which was acquired last fiscal year prior to year 1987 from a company Central Cement Marketing Corporation. This is distinct from our company, Central Cement Corporation, in which we acquired this equipment for purposes of payment of their account with us. And the following fiscal year, knowing that the company has been making a profitable operation, we decided to return the equipment, and therefore, there is no gain or loss realized for this transaction. And that is why, the only report that was reflected in the ITR or the income tax return under Schedule 2-a, found on Exhibit Q-1, the amount of

> P149,637.00 reflects only the sale to other company other than the Central Cement Marketing Corporation. (T.S.N. October 9, 1989 pp. 27-28)

The disallowance by respondent of the discrepancy found in the reported proceeds from the disposal of property and equipment amounting to P1,235,453.00 is therefore proper.

B. (3) <u>Income payments not subjected to expanded withholding tax - P208,148.83</u>.

This particular disallowance was not contested by petitioner in its protest letter to the BIR. Based on the concept of exhaustion of administrative remedies, a question not previously brought up in the administrative forum cannot be raised for the first time in court. **(Aguinaldo Industries Corporation vs. Commissioner of Internal Revenue,** No. L-29790, February 25, 1982, 112 SCRA 136). In the petition for review and the memorandum filed with this Court, the above-mentioned item was not disputed. Accordingly, respondent's finding that various income payments amounting to P208,148.83 have to be disallowed for not being subjected to the expanded withholding tax pursuant to Section 30(j) [now Section 29(j)] of the Tax Code, is sustained.

B. (4) <u>Bonus paid to PNOC - P100,000.00</u>.

The basis in disallowing the above is that they allegedly pertain to bonuses paid to PNOC employees and there is no justification for it. Revenue Officer Raul Magtagnob in his testimony categorically stated in court that:

> Q. Are you sure about that, Mr. Witness, that these bonuses were specifically paid to PNOC employees?
>
> A. Our verification states that these were paid because the vouchers were addressed to them?
> (T.S.N. September 13, 1991, p. 10.)

As rebuttal, petitioner referred to the Coal Supply Agreement by and between PNOC and Central Cement Corporation (Exhibit "X") whereby Article XII.2 thereof provides:

> 2. <u>Bonus on Heating Value</u>
>
> If the heating value of specification coal as analyzed under Article X of this Agreement is between 9,500 BTU/Lb. (As Received) and 9,600 BTU/Lb. (As Received), no bonus with respect to heating value shall be made. If the heating value of specification coal as analyzed under this Agreement is above 9,600 BTU/Lb. (As Received), a bonus shall be applied as follows:
>
> $$\text{Bonus} = \frac{H - 9,500}{9,500} \times \text{Selling Price}$$

Where = Heating value in BTU/Lb. (As Received) as analyzed under Article X of this Agreement.

xxx xxx xxx

The best evidence which under the circumstances affords the greatest certainty of establishing the fact in question are the vouchers alluded to by the BIR examiner. However, petitioner who has possession of said documents did not produce them instead, it capitalized on the supply contract which does not even suffice to overcome the presumption of correctness of the BIR findings. Hence, the disallowance of the P100.000.00 is valid.

B. (5) Others - P46,164.00

The other expenses disallowed namely, deficiency withholding tax of P39,564.00 and deficiency documentary stamp tax of P6,600.00 were not disputed by petitioner in its protest letter to BIR. They were neither raised in the petition for review nor in the memorandum filed in this court. We therefore find in favor of respondent.

In summary, computed below is petitioner's income tax liability for fiscal year ended June 30, 1987:

Net loss per return		(P3,080,940.00)
Add: Disallowed expenses		
1. Deficiency withholding tax	P 39,564.00	
2. Bonus paid to PNOC employees	100,000.00	
3. Unexplained difference in cost of sales	26,760.83	
4. Unreported proceeds from sale of property and equipment	1,235,453.00	
5. Income payments not subjected to withholding tax	208,148.83	
6. Deficiency documentary stamp tax	6,600.00	1,616,526.66
Net loss per investigation		(P1,464,413.34)

As to the deficiency expanded withholding tax assessment of P4,651.07 (inclusive of increments), the same has already become final, executory and demandable for failure of petitioner to file a protest with the Commissioner of Internal Revenue within thirty (30) days from receipt of the final assessment pursuant to Section 229 of the Tax Code, as amended.

WHEREFORE, the deficiency income tax assessment issued to Central Cement Corporation in the amount of P5,890,067.67 is hereby cancelled for lack of merit. However, petitioner is ordered to pay respondent Commissioner of Internal Revenue the deficiency expanded withholding tax of P4,651.07 (inclusive of increments) plus delinquency interest of 20% per annum from September 15, 1988 until paid pursuant to Section 249(c)(3) of the National Internal Code of 1988.

SO ORDERED.

Quezon City, Metro Manila, September 1, 1993.

ERNESTO A. ACOSTA
Presiding Judge

WE CONCUR:

MANUEL K. GRUBA
Associate Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation among the members of the Court of Tax Appeals in accordance with Section 13 Article VII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals