

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FORMER SECOND DIVISION

PURATOS PHILIPPINES, INC.,
Petitioner,

CTA CASE NO. 7135

Members:

- versus -

CASTAÑEDA, JR., *Chairperson*
UY, *and*
PALANCA-ENRIQUEZ, JJ.

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

Promulgated:

JUL 2 1 2010

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DECISION

CASTAÑEDA, JR., J.:

This case involves a Petition for Review, seeking the cancellation of the deficiency income, withholding tax on compensation, expanded withholding, final withholding, and value-added tax assessments for taxable year 1998 in the aggregate amount of P28,134,059.25, including increments, broken down as follows:¹

	Basic Tax	Surcharge (25%)	Interest (20%)	Total
Income Tax	P 8,944,994.00	P -	P 8,989,106.30	P 17,934,100.30
Value-Added Tax				
Sale of goods	3,287,163.91	1,643,581.96	3,449,720.92	8,380,466.79
Royalties	104,005.64	-	109,148.93	213,154.57
Withholding Tax on Compensation				

¹ Exhibit "C"

Under-remittance	74,863.95	-	78,566.13	153,430.08
Expanded Withholding Tax	267,383.82	-	280,606.50	547,990.32
Final Withholding Tax				
Salary to Non-Resident Individual Not Engaged in Trade or Business	39,328.74	-	46,840.71	86,169.45
Royalties & Interest to Non-Resident Foreign Corp.	332,168.15	-	348,594.56	680,762.71
Late remittance of Withholding Taxes				
January	34,073.02	-	40,301.07	74,374.09
February	29,142.10	-	34,468.84	63,610.94
TOTAL	P13,113,123.33	P1,643,581.96	P13,377,353.96	P28,134,059.25

Petitioner Puratos Philippines Inc. is a domestic corporation, organized and existing under Philippine laws, with principal office at Mangosteen Street corner DBP Avenue, FTI Complex, Taguig, Metro Manila.²

Respondent Commissioner of Internal Revenue is the head of the Bureau of Internal Revenue (BIR), the government agency tasked with the duties and functions of assessing and collecting all national internal revenue taxes, fees, and charges, and the enforcement of all forfeitures, penalties, and fines connected therewith. Respondent holds office at the BIR Head Office Building, BIR Road, Diliman, Quezon City.

On March 31, 2004, petitioner received a Formal Assessment Notice³ dated March 29, 2004, which was issued by respondent to assess petitioner for alleged deficiency taxes for taxable year 1998. In the said Formal Assessment Notice, respondent assessed petitioner for deficiency income tax in the amount of P17,934,100.30, deficiency value-added tax (VAT) on sale of goods in the amount of P8,380,466.79, deficiency VAT on royalties *2c*

² Exhibit "A"; Par. 1, Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI), docket, p. 259

³ Exhibit "C"

paid to a non-resident foreign corporation in the amount of P213,154.57, deficiency withholding tax on compensation in the total amount of P291,415.11, deficiency expanded withholding tax in the amount of P547,990.32, deficiency final withholding tax in the total amount of P766,932.15, and compromise penalty of P28,000.00.

Consequently, petitioner filed a protest letter against the said Formal Assessment Notice on April 30, 2004.⁴

On June 29, 2004, petitioner submitted all the relevant supporting documents in relation to said protest letter, as evidenced by the Transmittal Letter⁵ dated June 29, 2004.

Respondent did not render a decision on petitioner's protest within the allowed one hundred eighty (180)-day period from the date of submission of all the relevant supporting documents; thus, prompting petitioner to file the instant Petition for Review on January 25, 2005.

In the Answer⁶ filed on May 13, 2005, respondent alleged the following Special and Affirmative Defenses:

- "6. He reiterates and repleads the preceding paragraphs of this answer as part of his Special and Affirmative Defenses;
7. Section 228 of the Tax Code, partly provides:

'Sec. 228. Protesting of Assessment. –
Such 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 Jr*

⁴ Exhibit "D"

⁵ Exhibits "E" and "E-1"

⁶ Docket, pp. 95-99

sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

In the instant case, since petitioner failed to submit within sixty (60) days all relevant documents in support of its protest filed on April 30, 2004, the subject assessments has already become final and executory by operation of law.

8. Since the subject assessments has already become final and executory, this Honorable Court has no jurisdiction to act on the instant petition.
9. Assuming arguendo that this Honorable Court has jurisdiction to act on the instant petition, petitioner were assessed for deficiency income tax, deficiency value-added tax, deficiency withholding tax on compensation, deficiency expanded withholding tax and deficiency final withholding tax, for taxable year 1998, for the reason that during the administrative investigation of its tax case, petitioner failed to substantiate or controvert by concrete evidence the BIR findings, on the following:

A.) Deficiency Income Tax:

1. Petitioner failed to withhold and remit in full the expanded and final withholding taxes due arising from its various income payments made during the year 1998, to wit: purchases, repair and maintenance, advertising, interest and royalties. Hence the same were disallowed as deductions from its gross income for failure to comply with the provision of Section 34(K) of the 1997 Tax Code.

2. Petitioner had carried over the net operating loss incurred during the year in the subsequent years pursuant to Section 34(D)(3) of the NIRC. Hence, its is appropriate that such loss should be taken into consideration in computing the correct income tax liability for the current year in order to recapture the income tax benefit realized in the following year because of such carry over. Thus, it cannot be offset against the current year assessment.

3. On the disallowed Interest and Royalties, 15% and 25 % were applied respectively pursuant to the RP-Belgian Treaty. *Je*

B.) Deficiency Value-Added Tax:

1. Petitioner failed to substantiate with pertinent official receipts the input taxes claimed in the amount of P3,287,163.86, as tax credits against its output taxes in violation of Sections 110 and 113 of the 1997 Tax Code;

2. Petitioner failed to file and pay in behalf of Puratos-Belgium (non-resident foreign corporation), the pertinent VAT attributable to the royalties received from Puratos-Philippines, in violation of Section 106(A) of the 1997 Tax Code and Section 4.102-1(a) of Revenue Regulations No. 7-95.

3. Petitioner's VAT returns for the year was a false return since pursuant to the findings of the BIR examiners, petitioner have excessively claimed an input tax by 70% of what was allowed. Hence, it is liable to pay the 50% surcharge under Section 248(B) of the 1997 Tax Code.

C.) Deficiency Withholding Tax on Compensation:

1. Petitioner failed to withhold and remit in full the corresponding withholding tax due on compensation in the amount of P74,863.95, in violation of Sections 78 & 81 of the 1997 Tax Code.

2. Petitioner failed to pay/remit its monthly withholding taxes for the months of January and February of 1998, within the time prescribed for its payment, imposed under Revenue Regulations No. 2-98, as amended by Revenue Regulations No. 6-2001, hence, it is liable to pay the 25% surcharge and 20% interest imposed under Sections 248(A) and 249 of the same code, as implemented by Revenue Regulations 2-98.

D.) Deficiency Expanded Withholding Tax:

1. Petitioner failed to withhold and remit in full the expanded and final withholding taxes due arising from its various income payments made during the year 1998, to wit: purchases, repair and maintenance, advertising, amounting to P246,226.08, in violation of Section 57 & 58 of the 1997 Tax Code, as implemented by Revenue Regulations No. 2-98.

2. Petitioner have erroneously applied adjustments of withholding taxes with negative amount of *92*

P21,157.74 charge against the other expanded withholding taxes. Hence, the same were added back in computing the correct expanded withholding tax due.

E.) Expanded Final Withholding Tax:

1. Petitioner failed to remit in full the final withholding tax due from payment of compensation amounting to P262,191.60 to Mr. Bernard Poplimont, a non-resident alien not engaged in trade or business in the Philippines, in violation of Section 25(B) of the 1997 Tax Code.

2. Petitioner failed to withhold and remit in full the corresponding final withholding taxes due arising from its payments of royalties and interest to Puratos-Belgium, a non-resident foreign corporation not engaged in business in the Philippines, in violation of Section 28(B) of the 1997 Tax Code, as implemented by Section 2.57.1 of Revenue Regulations No. 2-98.

3. Pursuant to the RP-Belgium Treaty, 25% withholding tax rate shall be imposed on Royalties while 15% withholding tax rate shall be imposed on interest.

10. The assessments issued against petitioner for deficiency income tax, deficiency value-added tax, deficiency withholding tax on compensation, deficiency expanded withholding tax and deficiency final withholding tax, for taxable year 1998, were made in accordance with law and regulations.

11. Pursuant to Section 218 of the 1997 Tax Code, it states that '*No Court shall have the authority to grant injunction to restrain the collection of any National Internal Revenue Tax, fee or charges imposed by this Code*', this Honorable Court, in the instant case, has no authority to restrain the collection of taxes (i.e. income and VAT) which has long become final, executory and demandable. The justification for the rule is found in several cases decided by the Supreme Court far back in the case of ***Churchill and Tait vs. Rafferty et al.***, 32 Phils. 580, which held that 'A provision in an internal revenue law prohibiting the court from enjoining the collection of an internal revenue tax is not invalid as opposed to the due process and equal protection clause of the constitution. It is upon taxation that the Government chiefly relies to obtain the means to carry on its operations and it is of the utmost importance that the means adopted to enforce the



collection of taxes levied should be summary and interfered with as little as possible.'

12. All presumptions are in favor of the correctness of tax assessments."

During trial, both petitioner and respondent presented their respective documentary and testimonial evidence.

On March 13, 2009, petitioner filed a Motion⁷ to manifest that it availed of tax amnesty under Republic Act No. 9480, and to pray for the setting aside of the assessments for deficiency income tax and deficiency VAT.

On March 23, 2009, petitioner filed a Supplemental Formal Offer of Evidence⁸ to formally offer documents in relation to its availment of tax amnesty; which was admitted by this Court in Resolution⁹ dated May 14, 2009. In the same Resolution, this Court declared that petitioner qualified for the tax amnesty and set aside the deficiency income tax assessment in the amount of P17,934,100.30 and the deficiency VAT assessment on sale of goods amounting to P8,380,466.79.

On May 25, 2009, the Court ordered the parties to file their respective memorandum within thirty days from receipt of the resolution.¹⁰

On August 7, 2009, the case was submitted for decision after petitioner filed its Memorandum on July 14, 2009 and respondent's manifestation that he is adopting all his arguments and affirmative defenses in his Answer filed on May 13, 2005 as part of his Memorandum. *je*

⁷ Docket, pp. 949-953

⁸ Docket, pp. 978-987

⁹ Docket, pp. 1038-1045

¹⁰ Docket, pp. 1064-1065

The issues¹¹, as jointly stipulated by the parties, are the following:

- "1. Whether or not the Formal Assessment Notice for deficiency income tax, value-added tax, withholding tax on compensation, expanded withholding tax and final withholding tax assessments, issued by the BIR to petitioner, for taxable year 1998 has already become final and executory pursuant to Section 228 of NIRC.
2. Whether or not petitioner is liable to pay the assessed deficiency Income Tax for taxable year 1998, to wit:
 - a. Whether or not petitioner withheld and remitted in full the expanded and final withholding taxes due arising from its various income payments made during the year 1998 such as purchases, repair and maintenance, advertising, interest and royalties, in compliance with the provision of Section 34 (K) of the 1997 Tax Code, hence should be allowed as deductions from gross income.
 - b. Whether or not the net operating loss incurred by petitioner during the taxable year 1998 should be added back and be taken into consideration in computing the correct income tax liability for the same year in violation of Section 34(D)(3) of the Tax Code, when petitioner paid income taxes based on the Minimum Corporate Income Tax (MCIT) for taxable year 1999.
3. Whether or not petitioner is liable to pay the assessed deficiency Expanded Withholding Tax for Taxable year 1998, as follows:
 - a. Whether or not petitioner withheld and remitted in full the expanded and final withholding taxes due arising from its various income payments made during the year 1998, such as purchases, repair and maintenance, advertising, in compliance with Sec. 57 & 58 of the 1997 Tax Code, as implemented by RR 2-98.
 - b. Whether or not petitioner erroneously applied adjustments of withholding taxes with negative amount of P21,157.74 against the other expanded withholding taxes, hence the same should be added back in computing the expanded withholding tax due *gr*

¹¹ Docket, pp. 263-266

4. Whether or not petitioner is liable to pay the assessed deficiency Value-Added Tax for taxable year 1998, as follows:
 - a. Whether or not petitioner properly substantiated with pertinent official receipts the input taxes claimed in the amount of P3,287,163.86, as tax credits against its output taxes in compliance with Sections 110 and 113 of the NIRC.
 - b. Whether or not petitioner filed and paid in behalf of Puratos-Belgium (non-resident foreign corporation), the pertinent VAT attributable to royalties received from Puratos-Philippines, in compliance with Section 106(A) of the 1997 Tax Code and Section 4.102-1(a) of RR No. 7-95.
 - c. Whether or not the petitioner for the year 1998 excessively claimed input tax by 70% of what was allowed, hence liable to pay the 50% surcharge under Section 248(b) of the 1997 Tax Code.
5. Whether or not petitioner is liable to pay the assessed deficiency Withholding Tax on Compensation for taxable year 1998, as follows:
 - a. Whether or not the petitioner withheld and remitted in full the corresponding withholding tax due on compensation in the amount of P74,863.95, in compliance with Sec. 78 & 81 of the 1997 Tax Code.
 - b. Whether or not petitioner paid the monthly withholding taxes for the month of January 1998 within the time prescribed for its payment, imposed under Rev. Reg. 2-98 as amended by Rev. Reg. No. 6-2001.
 - c. Whether or not petitioner paid the monthly withholding taxes for the month of February 1998 within the time prescribed for its payment, imposed under Rev. Reg. 2-98 as amended by Rev. Reg. No. 6-2001.
6. Whether or not petitioner is liable to pay the assessed deficiency Final Withholding Tax for taxable year 1998, as follows:
 - a. Whether or not petitioner remitted in full the final withholding tax due from the payment of compensation in the amount of P262,191.60 to a non-resident alien not engaged in trade or business in the

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Philippines, in compliance with Section 25(B) of the NIRC.

- b. Whether or not petitioner withheld and remitted in full the corresponding final withholding taxes due arising from its payments of royalties to Puratos-Belgium, a non-resident foreign corporation not engaged in business in the Philippines, in compliance with Sec. 28 (B) of the 1997 Tax Code, as implemented by Sec. 2.57.1 of RR-2-98.
 - c. Whether or not the interest payments made by petitioner were paid to Philippine Commercial International Bank and Deutsche Bank and not a non-resident foreign corporation, hence not subject to the final withholding tax imposed under Section 28 (B) of the 1997 Tax Code, as implemented by Sec. 2.57.1 of RR-2-98.
 - d. Whether or not 25% withholding tax rate shall be imposed on Royalties while 15% withholding tax rate shall be imposed on interest pursuant to the RP-Belgium Treaty.
7. Whether or not petitioner is liable to pay P17,934,100.30, P8,593,621.36, P291,415.11, P547,990.32, and P766,932.15 (inclusive of surcharges and interest), as deficiency income tax, deficiency value-added tax, deficiency withholding tax on compensation, deficiency expanded withholding tax and deficiency final withholding tax for taxable year 1998."

The foregoing issues can be summarized as follows:

"Whether or not petitioner is liable to pay P17,934,100.30 as deficiency income tax, P8,593,621.36 as deficiency value-added tax, P291,415.11 as deficiency withholding tax on compensation, P547,990.32 as deficiency expanded withholding tax, and P766,932.15 as deficiency final withholding tax for taxable year 1998, inclusive of compromise penalty, surcharges, and interests." *JK*

Availment of Tax Amnesty

Before this Court proceeds to the resolution of the issues raised by the parties, it shall address first the issue of petitioner's availment of tax amnesty.

It may be recalled that on March 13, 2009, petitioner filed a Motion¹² to manifest that it availed of tax amnesty under Republic Act No. 9480, and to pray for the setting aside of the assessments for deficiency income tax and deficiency VAT. Petitioner formally offered documents in relation to its availment of tax amnesty; which was duly admitted by this Court. In the Resolution dated May 14, 2009, the Court declared that petitioner qualified for the tax amnesty and set aside the deficiency income tax assessment in the amount of P17,934,100.30 and the deficiency VAT assessment on sale of goods amounting to P8,380,466.79.

Considering the foregoing, this Court shall only consider for resolution petitioner's deficiency VAT assessment on royalties, deficiency withholding tax assessment on compensation, deficiency expanded withholding tax assessment, and deficiency final withholding tax assessment for taxable year 1998.

Finality of the Formal Assessment Notice

Petitioner argues that it submitted the supporting documents on June 29, 2004, within sixty (60) days after it filed its protest letter on April 30, 2004, in compliance with Section 228 of the National Internal Revenue Code (NIRC) of 1997. It points out that this Court even took cognizance of the Transmittal 

¹² Docket, pp. 949-953

Letter of the supporting documents¹³ sent by petitioner to respondent and that such matter was already resolved by this Court in the Resolution dated May 14, 2009.

Respondent, on the other hand, claims that although petitioner filed its protest on April 30, 2004, it failed to submit the relevant supporting documents within sixty days thereof; hence, the assessments became final and executory.

At this juncture, the Court reckons it proper to quote Section 228 of the NIRC of 1997, 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:

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The taxpayers 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 the 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 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. *ju*

¹³ Exhibit “E”

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 one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable."

Here, petitioner received the Formal Assessment Notice for deficiency income tax, deficiency value-added tax, deficiency withholding tax, deficiency expanded withholding tax, and deficiency final withholding tax for taxable year 1998 on March 31, 2004¹⁴. Then, petitioner filed its protest on April 30, 2004 and submitted all relevant documents to respondent on June 29, 2004. Thus, the 180-day period referred to in Section 228 of the NIRC of 1997 commenced only after June 29, 2004 and ended on December 26, 2004.

The last day of the 30-day period to file the Petition for Review before this Court was on January 25, 2005. Since the instant Petition for Review was filed on January 25, 2005, this Court clearly has jurisdiction over the present case.

**Deficiency VAT on Royalties
Paid to Non-Resident Foreign
Corporation**

Respondent alleged that petitioner failed to withhold and to subsequently remit the pertinent VAT on royalties paid to Puratos-Belgium, a non-resident foreign corporation, in violation of Section 106(A) of the NIRC of 1997 and Section 4.102-1(a) of Revenue Regulations (RR) No. 7-95. As a *je*

¹⁴ Exhibit "C"

result, respondent assessed petitioner for deficiency VAT in the amount of P213,154.57 (inclusive of interest), computed as follows:¹⁵

Royalties per investigation	P 1,144,062.00
Output tax (1/11)	P 104,005.64
Less: Input tax	-
VAT Due	P 104,005.64
Less: Payments	-
Deficiency VAT	P 104,005.64
Add: 20% Interest (1.26.99 to 4.25.04)	109,148.93
Total amount due	P 213,154.57

On the other hand, the Court-commissioned Independent Certified Public Accountant (CPA)¹⁶ found the same amount of royalty payments, but computed the output tax due thereon differently, as shown below:¹⁷

Royalty expense per audited FS	P 1,144,062.00
Rate of withholding tax	10%
Withholding tax due	P 114,406.20
Add: Surcharge 25%	28,601.55
Add: 20% Interest (1.26.99 to 5.15.03)	98,400.77
Total deficiency WT on VAT	P 241,408.52

Petitioner presented no evidence to refute the foregoing. Pursuant to Section 114(C) of the NIRC of 1997, as herein quoted below, petitioner is required to withhold ten percent (10%) creditable VAT on its royalty payments to Puratos-Belgium, to wit:

“(C) *Withholding of Creditable Value-added Tax.* — The Government or any of its political subdivisions, instrumentalities or agencies, including government-owned or -controlled corporations (GOCCs) shall, before making payment on account of each purchase of goods from sellers and services rendered by contractors which are subject to the value-added tax imposed in Sections 106 and 108 of this Code, deduct and withhold the value-added tax due at the rate of three percent (3%) of the gross payment for the purchase of goods and six percent (6%) on gross receipts for services rendered by contractors on every sale or 

¹⁵ Exhibit “C”

¹⁶ Mr. Virgilio R. Santos of Virgilio R. Santos & Co., CPAs

¹⁷ Exhibit “RR”, page 12

installment payment which shall be creditable against the value-added tax liability of the seller or contractor: *Provided, however,* That in the case of government public works contractors, the withholding rate shall be eight and one-half percent (8.5%): ***Provided, further,*** That the payment for lease or use of properties or property rights to nonresident owners shall be subject to ten percent (10%) withholding tax at the time of payment. For this purpose, the payor or person in control of the payment shall be considered as the withholding agent.

The value-added tax withheld under this Section shall be remitted within ten (10) days following the end of the month the withholding was made." (*Emphasis supplied*)

Relative thereto, Section 4.114(C) of RR No. 2-98 provides:

"SECTION 4.114. *Withholding of Creditable Value-Added Tax*

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(C) *Returns and payment of taxes withheld.* — The withholding agents shall accomplish the Monthly Value-Added Tax Declaration (BIR Form 2550M) in duplicate and the amount withheld paid upon filing the return with the authorized agent banks located within the Revenue District Office (RDO) having jurisdiction over the place where the government office is located. In places where there are no authorized agent bank, the return shall be filed directly with the Revenue District Offices, Collection Offices or the duly authorized Treasurer of the city or municipality where the government office is located except in cases where the Commissioner otherwise permits.

The required return shall be filed and payments made within ten (10) days following the end of the month the withholding was made except taxes withheld for the 3rd month of the quarter which shall be remitted through a Quarterly Value-Added Tax Return (BIR Form 2550Q) to be filed not later than the 25th day after the end of the calendar quarter." (*Emphasis supplied*) 

Inasmuch as petitioner's royalty expenses as reflected in its 1998 Income Tax Return amounted to P1,144,062.00¹⁸, this Court finds the computation of the Independent CPA of the withholding VAT due, amounting to P114,406.20, to be in order. Absent any proof of remittance to the BIR, petitioner is liable to pay 10% deficiency VAT withholding in the amount of P114,406.20.

Deficiency Withholding Tax on Compensation

A. Under remittance - P74,863.95

Respondent alleged that petitioner under-remitted the withholding tax due on its employees' compensation in violation of Sections 78 to 81 of the NIRC of 1997, as shown below:¹⁹

Tax due per alphalist/investigation	P 1,187,547.30
Less: Payments	1,112,683.35
Under remittance	P 74,863.95

In arriving at the withholding tax due per alphalist/investigation, respondent adjusted the withholding tax due on the compensation of the following employees:

	Salaries & Other Forms of Compensation	Amount of Exemption	Taxable Income	Tax Due Per Alphalist	Tax Due Per BIR's Computation	Net Adjustment
Visabella, Ariel	95,738.64	56,000.00	39,738.64	2,447.73	3,960.79	1,513.06
Alviola, Michael	71,594.52	64,000.00	7,594.52	(120.27)	379.72	499.99
Fajardo, Ronnie	70,416.37	64,000.00	6,416.37	(179.18)	320.81	499.99
Alegre, Leopoldo	46,353.72	48,000.00		(582.31)	-	582.31
Barbadillo, Chona	49,982.15	40,000.00	9,982.15	(0.89)	499.10	499.99
Changco, Alfredo	62,551.29	56,000.00	6,551.29	(172.44)	327.56	500.00
Libornio, Eric	25,197.30	25,000.00	197.30	(490.14)	9.86	500.00

¹⁸ Exhibit "I3", line 25

¹⁹ Exhibit "C", Annex "A"

Total	902.50	5,497.84	4,595.34
Add: Total Tax Due for the year 1998 per Alphalist			1,182,951.96
Total Tax Due for the year 1998 per Investigation			1,187,547.30

Petitioner, on the other hand, averred that the amount of tax due per alphalist is only P1,113,683.51.²⁰ However, an examination of the said alphalist²¹ revealed that the amount of P1,113,683.51, which is alleged by petitioner to be the total tax due, actually pertains to the total amount of tax withheld for taxable year 1998. Moreover, as correctly found by respondent, the total tax due per alphalist in the amount of P1,182,951.96 should be adjusted to P1,187,547.30, based on the schedular income tax rates of 0% to 34% as provided by Section 24(A)(1) of the NIRC of 1997.

Considering that petitioner's total withholding tax remittances on compensation for the year 1998 as indicated in its Monthly Remittance Returns of Income Taxes Withheld (BIR Form No. 1743W and BIR Form No. 1601)²² amounted to only P1,112,683.35, as compared to the P1,187,547.30 total amount of tax due per alphalist, petitioner is liable to pay for basic deficiency withholding tax on compensation in the amount of P74,863.95.

B. Late Remittance

1. January - P34,073.02

Respondent's examiner imposed twenty-five percent (25%) surcharge and twenty percent (20%) interest on petitioner's withholding taxes due for the month of January amounting to P110,992.00, pursuant to Sections 248(A)(4) *Je*

²⁰ Exhibit "D", page 5

²¹ Exhibit "GGGG"; Exhibits "6" to "6-b"

²² Exhibits "K" to "V"

and 249 of the NIRC of 1997, as implemented by Section 2.80(C) of RR No. 2-98.

Section 2.58(A)(2)(a) and (b) of RR No. 2-98 provides for the period for filing and remittance of creditable and final income taxes withheld as follows:

*"SECTION 2.58. Returns and Payment of Taxes
Withheld at Source.*

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(2) WHEN TO FILE -

- (a) The withholding tax return, whether creditable or final, shall be filed and payments should be made **within ten (10) days after the end of each month** except for taxes withheld for December which shall be filed on or before January 25 of the following year.
- (b) For **large taxpayers**, the filing of the return and the payment of tax shall be made **within twenty five (25) days after the end of each month.**
(Emphasis supplied)

Petitioner's Monthly Remittance Return of Income Taxes Withheld (BIR Form No. 1743W) for the month of January showed that it remitted the withholding taxes on May 25, 1998.²³ In its protest letter, petitioner argued that it is a large taxpayer; therefore, interest for late remittance should be computed from January 26, 1998 to May 25, 1998 and not from January 11, 1998 to May 25, 1998 as assessed.²⁴

Further, petitioner contended that since it qualifies as a large taxpayer under Section 2(d) of Revenue Regulations No. 12-93, it should remit taxes withheld on or before the 25th day of the following month. Respondent *Re*

²³ Exhibit "K"

²⁴ Exhibit "D", page 5

countered that petitioner failed to submit proof, such as a written notification from the Commissioner of Internal Revenue, that it is indeed a large taxpayer.²⁵

For easy reference, Section 2(d) of RR No. 12-93 is quoted hereunder:

*"SECTION 2. Criteria for Selection of Large Taxpayers. - A 'Large Taxpayer' is a corporate taxpayer who has been **determined and notified by the Bureau of Internal Revenue (BIR) as having satisfied any of the following criteria for the year 1990 and/or succeeding years** relative to taxes paid:*

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d. *Withholding Tax* — Business establishment with annual withholding tax payment/remittance for all kinds of withholding taxes (i.e., on compensation, expanded, final taxes and on government money payments) of at least P1,000,000. For business establishments with decentralized withholding (branches registered or are required to register in the revenue district office where the branch is located, separately from the registration of the Head Office), the basis is the total amount of taxes withheld on all kinds of withholding taxes by all the branches.

Initially, 1,000 Large Taxpayers whose principal place of business is in Metro Manila shall be **notified** and monitored by the BIR to be selected from the ranking of identified Large Taxpayers based on primarily the number of criteria which such taxpayer satisfy and secondarily on the amounts paid for the abovementioned taxes. Thereafter, additional Large Taxpayers shall be notified and shall be covered by the law, rules and regulations on Large Taxpayers.

Once a taxpayer has been identified and notified as a Large Taxpayer, it shall continue to be classified as such until notified otherwise by the Commissioner of Internal Revenue." (*Emphasis supplied*)

From the foregoing, it is clear that the BIR shall first determine or identify a corporate taxpayer based on the taxpayer's compliance with the *Je*

²⁵ Exhibit "C-1"

criteria set forth by the rules. Afterwards, it shall notify the said taxpayer that it has been considered as a large taxpayer. This procedure remains and was not changed in Revenue Regulations No. 1-98, which among others, modified the criteria for determining large taxpayers. Moreover, Revenue Memorandum Circular No. 28-94 provides:

"3. A corporation shall not be considered a withholding agent for purposes of Section 1(n) of Revenue Regulations No. 6-85, as amended by Revenue Regulations No. 12-94, **unless such corporation has been determined and duly notified in writing by the Commissioner** that it has been selected as one of the top 5,000 corporations.

4. Any corporation which has been **duly classified and notified as a large taxpayer** by the Large Taxpayers Division of the BIR shall be considered one of the top 5,000 corporations *provided, however*, that its authority as a withholding agent shall be effective only upon receipt of written notice from the Commissioner that it has been classified as one of the top 5,000 corporations for purposes of these regulations." (*Emphasis supplied*)

In the present case, there is no showing that petitioner received such a notification from respondent. Consequently, pursuant to Sections 248(A)(4) and 249(A) of the NIRC of 1997, petitioner is liable to pay 25% surcharge and 20% interest, which shall be computed from the day the withholding taxes for the month of January became due for remittance, viz., on February 10, 1998 until they were paid on May 25, 1998.

2. February - P29,142.10

For the month of February, petitioner maintained that it is a large taxpayer and that there was no delay in its remittance of withholding taxes.

An examination of petitioner's Monthly Remittance Return (BIR Form No. 1743W) showed that the subject withholding taxes were remitted on 

March 25, 1998.²⁶ Thus, following the same argument and reasoning above, petitioner is liable to pay 25% surcharge and 20% interest for late remittance of taxes withheld in February 1998.

Deficiency Expanded Withholding Tax

Per Details of Discrepancies, respondent's examiner found that petitioner failed to withhold and remit in full the corresponding withholding taxes due arising from its various income payments, to wit:²⁷

	Income payment	Amount	Tax Rate	Tax Due	Remittance	Deficiency Tax
a)	Purchases	P 23,323,334.20	1%	P 233,233.34	P 12,343.11	P 220,890.23
b)	Repairs & Maintenance	677,141.00	1%	6,771.41	3,645.56	3,125.85
c)	Advertising	2,221,000.00	1%	22,210.00	-	22,210.00
	Total					P 246,226.08

Respondent also disallowed several adjustments of withholding taxes made by petitioner in the negative amount of P21,157.74, broken down as follows:

Month	Amount
March	P 1,062.50
May	5,481.59
July	1,684.38
August	3,661.60
September	9,149.53
December	118.14
Total	P 21,157.74

A. Purchases - P220,890.23

In its protest letter, petitioner alleged that it is not liable to pay deficiency expanded withholding tax on its purchases because it is not a large taxpayer.²⁸ Even assuming that it is a large taxpayer, most of its purchases *je*

²⁶ Exhibit "L"

²⁷ Exhibit "C", Annex "A"

²⁸ Exhibit "D", pages 3 to 4

consisted of imported purchases. Section 2.57.2 (M) of RR No. 2-98 requires only the withholding of tax from payments made to local suppliers of goods. In the present case, the tax due on its purchases from local suppliers had already been remitted, as shown in its tax returns.

The Court-commissioned Independent CPA also made the following findings:²⁹

"The (Petitioner), not being among those notified by the Commissioner to be one of the top five thousand (5,000) corporations, is not required to withhold the one percent (1%) withholding tax on its purchases from local suppliers of goods. xxx The (Petitioner) was required to withhold the one percent (1%) withholding tax on purchases from local supplier of goods only when it received the notification letter from the Revenue District Officer of Taguig dated June 14, 2004 (Schedule 24, Exhibit JJJJ)."

This Court agrees with the Independent CPA.

Section 2.57.2(M) of Revenue Regulations No. 2-98 clearly states:

"SECTION 2.57.2. Income Payment Subject to Creditable Withholding Tax and Rates Prescribed Thereon. -

xxx

xxx

xxx

(M) Income payments made by the top five thousand (5,000) corporations. - Income payments made by any of the top five thousand (5,000) corporations, as determined by the Commissioner, to their local supplier of goods — One percent (1%);

(1) The term 'goods' pertains to tangible personal property. It does not include intangible personal property as well as real property.

(2) The term 'local suppliers of goods' pertains to a supplier from whom any of the top five thousand (5,000) corporations, as determined by the Commissioner, regularly makes its purchases of goods. As a general rule, this term does not



²⁹ Exhibit "RR", page 6

include a casual purchase of goods, that is, purchases made from non-regular suppliers and oftentimes involving single purchases. However, a single purchase which involves one hundred thousand pesos (P100,000.00) or more shall be subject to a withholding tax.

(3) **A corporation shall not be considered a withholding agent for purposes of this Section, unless such corporation has been determined and duly notified in writing by the Commissioner that it has been selected as one of the top five thousand (5,000) corporations.**

(4) The withholding agent shall submit on a semestral basis a list of its regular suppliers of goods to the Revenue District Office (RDO) having jurisdiction over the withholding agent's principal place of business on or before July 31 and January 31 of each year." (*Emphasis supplied*)

Hence, respondent's assessment for deficiency expanded withholding tax on petitioner's purchases is devoid of legal basis and should be cancelled.

B. Repairs and Maintenance - P3,125.85

Anent its alleged failure to withhold taxes from payments on repairs and maintenance, petitioner explained that most of the items under this account comprised of payments for the repairs and maintenance of the vehicles used by its salespeople. It also included cost of materials used for repairs and maintenance of its office equipment, as well as some of the equipment used in its production department.³⁰

Per examination of the Independent CPA, the repairs and maintenance account amounting to P677,140.69 consisted of the following:³¹ 

³⁰ Exhibit "D", page 4

³¹ Exhibit "RR", page 7

Repairs & Maintenance	P 618,223.14
Pest Control	23,407.55
Garbage Collection	35,510.00
TOTAL	P 677,140.69

1. Repairs and Maintenance - P618,223.14

A scrutiny of the submitted schedules and corresponding vouchers³² showed that expenses recorded under “Repairs and Maintenance” are indeed not subject to expanded withholding tax as some of them were reimbursements and disbursements from the petty cash fund, except for the amount of P29,872.74, broken down as follows:

Exhibit	Supplier	Amount
TT-8 to 8.2	United Digital Systems	P 1,090.91
TT-21 to 21.2	United Digital Systems	363.64
TT-22 to 22.4	United Digital Systems	1,454.55
TT-32 to 32.3	United Digital Systems	1,727.27
TT-34 to 34.2	United Digital Systems	3,090.91
TT-45 to 45.2	ABM Computech Ent.	5,000.00
TT-64 to 64.2	Macdon Service Center	9,772.73
TT-84 to 84.2	Bridge Dimension Computer Sale	1,090.91
TT-95 to 95.2	Macdon Service Center	1,636.36
TT-103 to 103.1	Bridge Dimension Computer Sale	1,090.91
TT-108 to 108.2	Bridge Dimension Computer Sale	1,090.91
TT-147 to 147.1	United Digital Systems	909.09
TT-149 to 149.2	United Digital Systems	1,554.55
	TOTAL	P 29,872.74

The above-listed suppliers fall under Section 2.57.2(E)(4)(I) of Revenue Regulations No. 2-98 as “(p)ersons engaged in the installation of elevators, central air conditioning units, computer machines and other equipment and machineries and the maintenance services thereon” subject to one percent (1%) withholding tax.

Moreover, the Independent CPA found that repairs and maintenance expense amounting to P27,198.55 is not properly substantiated; thus, the *Je*

³² Exhibit “TT”, inclusive of sub-markings

same should be disallowed for petitioner's failure to prove that said expenses are not subject to expanded withholding tax.

2. Pest Control - P23,407.55

The amount of P23,407.55 represents payments made by petitioner to SJO Pest Control Services for space spraying and fumigation for the control of flying/crawling insects and rodent trapping, as evidenced by the supporting vouchers, sales invoices, and official receipts.³³ Since the said services are not among those enumerated as subject to expanded withholding tax under Revenue Regulations No. 2-98, as amended, respondent's deficiency expanded withholding tax assessment corresponding to these income payments should be cancelled.

3. Garbage Collection - P35,510.00

As regards petitioner's payments for garbage collection, the Independent CPA found that the income payments to Food Terminal Incorporated were subjected to expanded withholding tax, with the exception of the amount of P4,950.00.³⁴ However, examination of the vouchers and other supporting documents³⁵ revealed that the expanded withholding taxes on garbage collection expense, in the aggregate amount of P305.60 ($P35,510.00 - P4,950.00 \times 1\%$), were not reflected in the corresponding vouchers. Moreover, the Alphalist of Income Payments Subjected to Expanded Withholding Tax³⁶ does not include Food Terminal Incorporated.

Thus, pursuant to Section 2.572.2(E)(4)(o) of RR No. 2-98, petitioner is liable *je*

³³ Exhibit "UU", inclusive of sub-markings

³⁴ Exhibit "RR", page 7

³⁵ Exhibit "VV", inclusive of sub-markings

³⁶ Exhibit "HHHH"

to pay 1% deficiency expanded withholding tax on the entire garbage collection expense of P35,510.00.

C. Advertising - P22,210.00

With reference to respondent's assessment for deficiency withholding tax on petitioner's advertising expense, petitioner stated in its protest letter that the said income payments were not made to contractors or subcontractors enumerated in RR No. 2-98. Its advertising expense was purportedly spent mainly on cooking demonstrations, seminars, and product samples; the costs of which were not paid to advertising agencies or any subcontractors. The advertising materials were sourced from its supplies and the activities were conducted by its own employees.³⁷

Based on the Independent CPA Report, petitioner's advertising expense for the year 1998 consisted of the following:³⁸

Item	Exhibit	Amount
Advertising	WW	P 146,356.00
Exhibits	XX	962,080.81
Give-aways	YY	441,327.66
Ingredients	ZZ	7,405.96
Samples	AAA	301,060.81
Visit to customers	BBB	45,102.00
Sales promotion	CCC	276,991.38
Testing products	DDD	40,676.32
TOTAL		P 2,221,000.94

The Independent CPA likewise found that the amount of P146,356.00 classified under "Advertising" represents payments for advertisements in newspapers, journals, and magazines.³⁹ The rest of the expenses pertain to petitioner's purchases of materials for exhibits, preparation of samples for *je*

³⁷ Exhibit "D", page 3

³⁸ Exhibit "RR", page 7

³⁹ Exhibit "RR", page 8

testing purposes and other items as give-aways to customers, employees, and other business associates, as well as transportation and meal expenses of employees during their regular visits to current and prospective customers. However, the claimed advertising expense in the amount of P344,153.08, broken down below, was not properly substantiated.⁴⁰

Item	Amount
Advertising	P -
Exhibits	177,835.57
Give-aways	114,809.72
Ingredients	6,143.60
Samples	1,316.20
Visit to customers	42,853.00
Sales promotion	-
Testing products	1,194.99
TOTAL	P 344,153.08

This Court finds the Independent CPA Report pertaining to petitioner's advertising expense to be in order. Advertisements placed by petitioner in newspapers, journals or magazines fall under Section 2.57.2(E)(4)(f) of Revenue Regulations No. 2-98, which provides that "those principally engaged in the publication or printing of any newspaper, magazine, review or bulletin which appears at regular intervals, with fixed prices for subscription and sale" are not subject to expanded withholding tax. The rest of the items included in petitioner's advertising expense account are valid expenses incurred in the course of its business, which are not among those enumerated under RR No. 2-98 as subject to expanded withholding tax. Nevertheless, the unsubstantiated portion in the amount of P344,153.08 should be disallowed for petitioner's failure to prove that the said expense is not subject to expanded withholding tax. *Je*

⁴⁰ Exhibit "RR", page 8 and Exhibit "WW"

D. Adjustments - P21,157.74

Petitioner did not refute or offer evidence contrary to the findings of respondent's examiner. The Court-commissioned Independent CPA also did not mention the said adjustments in his Report. Consequently, respondent's assessment should remain.

Deficiency Final Withholding Tax

A. On Salaries Received by a Non-Resident Individual Not Engaged in Business - P39,328.74

Respondent assessed petitioner for deficiency final withholding tax (FWT) for failure to remit in full the FWT due on the amount of P262,191.60, representing compensation paid to Mr. Bernard Poplimont, a non-resident alien not engaged in trade or business in the Philippines.⁴¹

Petitioner averred that it has fully remitted the withholding tax due on the compensation paid to Mr. Poplimont.⁴² On the other hand, the Independent CPA found that petitioner paid the sum of P306,881.17 as compensation to Mr. Poplimont and final taxes were withheld thereon in the total amount of P76,720.29, as shown below:⁴³

Exhibit	Date	Amount	FWT
III-4	3/16/98	P 173,911.60	P 43,477.90
III-1	4/8/98	97,108.00	24,277.00
	4/30/98	35,861.57	8,965.39
Total		P 306,881.17	P 76,720.29

Further verification showed that final withholding taxes of P26,219.16 were found by respondent's examiner to have been remitted. However, *fe*

⁴¹ Exhibit "C", Annex "A"

⁴² Exhibit "D", page 4

⁴³ Exhibit "RR", page 15 and Exhibit "III"

petitioner did not submit its Alphalist of Payees subjected to final withholding tax for the year 1998 and other documents by which the Court can ascertain that petitioner remitted the remaining P50,501.13 final withholding tax (P76,720.29 less P26,219.16). Pursuant to Section 25(B) of the NIRC of 1997, as implemented by Section 2.57.1(C)(1) of RR No. 2-98, petitioner is thus liable to pay 25% deficiency final withholding tax of P50,501.13, computed as follows:

Final taxes due (P306,881.17 x 25%)	P 76,720.29
FWT remitted	26,219.16
Deficiency FWT	P 50,501.13

**B. On Royalties and Interest
Paid to Non-Resident Foreign
Corporations - P332,168.15**

According to respondent, petitioner failed to withhold and remit in full the corresponding FWT due on its payment of royalties and interest to Puratos-Belgium, a non-resident foreign corporation not engaged in trade or business in the Philippines.⁴⁴

In its protest letter, petitioner argued that the 1998 interest expense of P2,331,886.00 represents interest payments to Philippine Commercial International Bank and Deutsche Bank; hence, Section 2.57.1(l) of RR No. 2-98 imposing a final tax on income derived by non-resident foreign corporations does not apply.⁴⁵

The Independent CPA stated that respondent's examiner erroneously attributed part of petitioner's remittance of P76,313.87 for FWT on royalty as FWT on interest. There were no remittances of final withholding tax on 

⁴⁴ Exhibit "C", Annex "A"

⁴⁵ Exhibit "D", page 4

interest as the interest expense of petitioner for the year represents payments to local banks for borrowed funds.⁴⁶

Below is a summary of the interest payments made by petitioner:

Bank	Exhibit	Amount
Deutsche Bank	EEE	P 687,155.04
PCIB	FFF	1,711,785.28
Total interest expense		P 2,398,940.32

A scrutiny of the supporting documents examined by the Independent CPA and submitted to this Court revealed that petitioner has properly substantiated its interest expense only up to the amount P1,958,589.08, broken down as follows:

Bank	Exhibit	Amount
Deutsche Bank	EEE-1 to EEE-9.1	P 687,242.25
PCIB	FFF-1 to FFF-31	1,271,346.83
Total interest expense		P 1,958,589.08

Therefore, pursuant to Section 28(B)(5)(a) of the NIRC of 1997, as implemented by Section 2.57.1(I)(5) of RR No. 2-98, in relation to Article 11(2) of the RP-Belgium Tax Treaty, petitioner is liable to pay fifteen percent (15%) deficiency FWT on the unsubstantiated interest expense of P373,296.92 (P2,331,886.00 less P1,958,589.08).

Anent respondent's assessment for deficiency FWT on royalties, petitioner argued that the assessment merely resulted from the erroneous computations made by respondent's examiner⁴⁷, as allegedly admitted by Revenue Officer Dominador Callangan in his testimony before this Court on March 12, 2008.⁴⁸ 

⁴⁶ Exhibit "RR", page 9

⁴⁷ Petitioner's Memorandum, par. 40

⁴⁸ Transcript of Stenographic Notes, March 12, 2008

Based on the Independent CPA's verification, petitioner remitted the amount of P285,974.25 FWT on royalties paid to Puratos-Belgium for the year 1998.⁴⁹ However, the amount of P285,974.25 does not reconcile with the FWT on royalties reflected in the Monthly Remittance Returns of Income Taxes Withheld (BIR Form No. 1743W and BIR Form No. 1601)⁵⁰.

Therefore, due to petitioner's failure to prove that final withholding taxes on royalties paid to Puratos-Belgium (a non-resident foreign corporation) were remitted in full, petitioner is liable to pay 25% deficiency FWT on royalties, pursuant to Section 28(B)(1) of the NIRC of 1997, as implemented by Section 2.57.1(I)(1) of RR No. 2-98, in relation to Article 11(2) of the RP-Belgium Tax Treaty.

In sum, petitioner should be held liable for deficiency VAT on royalties paid to a non-resident foreign corporation, deficiency withholding tax on compensation, deficiency EWT, and deficiency FWT for taxable year 1998, as computed below:

I	VAT on Royalties paid to NRFC		
	Royalties per audit		P 1,144,062.00
	10% Withholding VAT		P 114,406.20
	Add: 25% Surcharge		28,601.55
	Total Amount Due		P 143,007.75
II	Withholding Tax on Compensation		
	WT due per audit		P 1,187,547.30
	Less: Payments		1,112,683.35
	Deficiency tax		P 74,863.95
	Add: 25% Surcharge		18,715.99
	Total Amount Due		P 93,579.94
III	Expanded Withholding Tax		
	a) Purchases	P -	
	b) Repairs & maintenance		
	Repairs & maintenance:		
	Of computers	P 29,872.74	

⁴⁹ Exhibits "GGG" and "HHHH"

⁵⁰ Exhibits "K" to "V"

	Unsubstantiated portion	27,198.55	
	Total	P 57,071.29	
	Pest Control	-	
	Garbage Collection	35,510.00	P 92,581.29
	c) Advertising		344,153.08
	Total Income Payments		P 436,734.37
	Tax Rate		1%
	EWT due		P 4,367.34
	Less: Payments/Remittances		15,988.67
	Deficiency EWT		P (11,621.33)
	Add: Adjustments Per Returns		21,157.74
	Deficiency EWT as adjusted		P 9,536.41
	Add: 25% Surcharge		2,384.10
	Total Amount Due		P 11,920.51
IV	Final Withholding Tax		
	a) Salary to NRA not ETB		
	FWT due (P306,881.17 x 25%)		P 76,720.29
	Less: Payments per Return		26,219.16
	Deficiency FWT		P 50,501.13
	Add: 25% Surcharge		12,625.28
	Total Amount Due		P 63,126.41
	b) Royalties and Interest		
	Interest (P373,296.92 x 15%)		P 55,994.54
	Royalties (P1,144,061.55 x 25%)		286,015.39
	Total tax due		P 342,009.93
	Less: Payments per return		303,630.25
	Deficiency tax		P 38,379.68
	Add: 25% Surcharge		9,594.92
	Total amount due		P 47,974.60
V.	Deficiency on Increments for Late Remittance of Withholding Taxes		
	a) January		
	WT due - January		P 110,992.00
	Add: 25% Surcharges	P 27,748.00	
	20% Interest (2.10.98 to 5.25.98)	6,385.84	34,133.84
	Total tax due		P 145,125.84
	Less: Payments		110,992.00
	Total Amount Due		P 34,133.84
	b) February		
	WT due - February		P 99,923.58
	Add: 25% Surcharges	P 24,980.90	
	20% Interest (3.10.98 to 3.25.98)	876.04	25,856.94
	Total tax due	-	P 125,780.52
	Less: Payments		99,923.58
	Total Amount Due		P 25,856.94

WHEREFORE, the Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, the assessments issued by respondent against petitioner covering deficiency withholding VAT on royalties paid to non-resident foreign corporation, deficiency withholding tax on compensation, deficiency expanded withholding tax, and deficiency final withholding tax and increments for late remittance are hereby **UPHELD** and petitioner is hereby **ORDERED TO PAY** the following amounts:

	Basic Tax	25% Surcharge	20% Interest	Total
I. Withholding VAT on royalties paid to NRFC	P114,406.20	P 28,601.55		P 143,007.75
II. Withholding Tax on Compensation	74,863.95	18,715.99		93,579.94
III. Expanded Withholding Tax	9,536.41	2,384.10		11,920.51
IV. Final Withholding Tax				
A. Salaries to Non-resident Alien Not Engaged in Trade or Business	50,501.13	12,625.28		63,126.41
B. Royalties and Interest	38,379.68	9,594.92		47,974.60
Subtotal	P287,687.37	P 71,921.84		P 359,609.21
V. Deficiency Increments for Late Remittance of Withholding Taxes				
A. January		P 27,748.00	P6,385.84	P 34,133.84
B. February		24,980.90	876.04	25,856.94
Subtotal		52,728.90	P7,261.88	P 59,990.78
Total	P287,687.37	P124,650.74	P7,261.88	P 419,599.99

In addition, petitioner is hereby **ORDERED TO PAY** respondent the following:

(a) deficiency interest at the rate of 20% per annum on the basic deficiency withholding VAT on royalties paid to non-resident foreign corporation, withholding tax on compensation, expanded withholding tax, and final withholding tax computed from January 25, 1999 until full payment thereof pursuant to Section 249(B) of the NIRC of 1997;

(b) delinquency interest at the rate of 20% per annum on the total amount due of P359,609.21, representing deficiency withholding VAT on royalties paid to non-resident foreign corporation, withholding tax on

compensation, expanded withholding tax, and final withholding and on the deficiency interest which have accrued as aforesated in (a) computed from April 30, 2004 until full payment thereof pursuant to Section 249(C)(3) of the NIRC of 1997; and

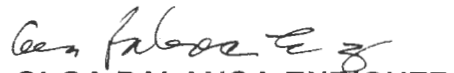
(c) delinquency interest at the rate of 20% per annum on the deficiency increments for late remittance of withholding taxes for January and February 1998 in the amount of P59,990.78, computed from April 30, 2004 until full payment thereof pursuant to Section 249(C)(3) of the NIRC of 1997.

SO ORDERED.


JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

(On Leave)
ERLINDA P. UY
Associate Justice


OLGA PALANCA-ENRIQUEZ
Associate Justice

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.


JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division 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.


ERNESTO D. ACOSTA
Presiding Justice