

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

EN BANC

**COMMISSIONER OF INTERNAL
REVENUE,**

Petitioner,

**C.T.A. EB No. 460
(C.T.A. CASE No. 6697)**

-versus-

**SAMAR-I ELECTRIC COOPERATIVE,
INC.,**

Respondent.

X-----X

**SAMAR-I ELECTRIC COOPERATIVE,
INC.,**

Petitioner,

**C.T.A. EB No. 462
(C.T.A. CASE No. 6697)**

-versus-

**COMMISSIONER OF INTERNAL
REVENUE,**

Respondent.

Present:

Acosta, *P.J.*
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Palanca-Enriquez,
Fabon-Victorino,
Mindaro-Grulla, and
Cotangco-Manalastas, *JJ.*

Promulgated:

MAR 11 2010

X-----X

DECISION

CASTAÑEDA, JR., *J.* :

For review before this Court are two (2) Petitions for Review filed by dissatisfied parties appealing the May 27, 2008 Decision and the January *pe*

19, 2009 Amended Decision rendered by the First Division¹ of the Court of Tax Appeals (Court in division) in the case entitled "*Samar-I Electric Cooperative, Inc. vs. Commissioner of Internal Revenue*" docketed as C.T.A. Case No. 6697. These petitions were consolidated by the Court *en banc* on February 26, 2009, thus, C.T.A. EB No. 462 was consolidated with C.T.A. EB No. 460, the case bearing the lower docket number.

The Petition for Review docketed as C.T.A. EB No. 460 was filed by the Commissioner of Internal Revenue ("CIR" for brevity/respondent, in the division case) on February 23, 2009. CIR prays that the May 27, 2008 Decision and the January 19, 2009 Amended Decision be reversed and set aside and a new one be rendered, ordering Samar-I Electric Cooperative, Inc. ("SAMELCO-I" for brevity/petitioner, in the division level) to pay the total amount of P440,545.71 as deficiency Income Tax for taxable years 1998 and 1999 and an additional amount of P3,760,225.69 representing withholding tax on compensation on taxable years 1997, 1998, and 1999, plus 25% surcharge for late payments and delinquency 20% annual interest from the date reflected in the FAN until fully paid pursuant to Sections 248 and 249 of the 1997 Tax Code, as amended. CIR further prays for other reliefs just and equitable under the circumstances. *Je*

¹ Penned by Presiding Justice Ernesto D. Acosta and concurred by Associate Justices Lovell R. Bautista and Caesar A. Casanova.

On the other hand, the Petition for Review docketed as C.T.A. EB No. 462 was filed by Samar-I Electric Cooperative, Inc. ("SAMELCO-I" for brevity/petitioner, in the division level) on February 26, 2009. SAMELCO-I prays that portions of the May 27, 2008 Decision and January 19, 2009 Amended Decision which found it liable to pay CIR an aggregate amount of P2,690,850.91 for 1997, 1998, and 1999 deficiency withholding tax, plus 20% delinquency interest computed from September 30, 2002 until fully paid, be set aside and cancelled for being bereft of legal and factual bases.

The dispositive portion of the assailed Decision provides, as follows:

WHEREFORE, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, the 1998 to 1999 deficiency income tax assessment issued against petitioner in the amount of P440,545.71 is hereby **CANCELLED** and **WITHDRAWN**.

On the other hand, petitioner is hereby **ORDERED TO PAY** respondent deficiency Withholding Tax on Compensation for taxable years 1997, 1998, and 1999 in the amount of P2,855,701.59, computed as follows

	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>Total</u>
Deficiency WT	P 522,253.85	P 419,960.06	P 493,081.60	P 1,435,296.41
Add: 25% Surcharge	130,563.46	104,990.24	123,270.40	358,824.10
Interest	488,599.81	308,906.48	264,074.78	1,061,581.07
Total Deficiency WT	<u>P1,141,417.12</u>	<u>P 833,857.68</u>	<u>P 880,426.78</u>	<u>P 2,855,701.59</u>

In addition, petitioner is hereby **ORDERED TO PAY** respondent the twenty percent (20%) delinquency interest on the amount of P2,855,701.59 computed from September 30, 2002 until full payment, pursuant to Section 249(C) of the NIRC of 1997.

SO ORDERED. 

The dispositive portion of the assailed Amended Decision reads, as follows:

WHEREFORE, respondent's *Motion for Partial Reconsideration* is hereby **DENIED** for lack of merit; while petitioner's *Motion for Reconsideration* is hereby **PARTIALLY GRANTED**. Accordingly, the dispositive portion of this Court's *Decision* promulgated on May 27, 2008 is hereby modified as follows:

"WHEREFORE, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, the 1998 to 1999 deficiency income tax assessment issued against petitioner in the amount of P440,545.71 is hereby **CANCELLED** and **WITHDRAWN**.

On the other hand, petitioner is hereby **ORDERED TO PAY** respondent deficiency Withholding Tax on Compensation for taxable years 1997, 1998, and 1999 in the amount of P2,690,850.91, computed as follows:

	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>Total</u>
Deficiency WT	P 522,253.85	P 338,336.88	P 491,523.71	P 1,352,114.44
Add: 25% Surcharge	130,563.46	84,584.22	122,880.93	338,028.61
Interest	<u>488,599.81</u>	<u>248,867.61</u>	<u>263,240.44</u>	<u>1,000,707.86</u>
Total Deficiency WT	<u>P1,141,417.12</u>	<u>P 671,788.71</u>	<u>P 877,645.08</u>	<u>P 2,690,850.91</u>

In addition, petitioner is hereby **ORDERED TO PAY** respondent the twenty percent (20%) delinquency interest on the amount of P2,690,850.91 computed from September 30, 2002 until full payment, pursuant to Section 249(C) of the NIRC of 1997.

SO ORDERED."

SO ORDERED.

The Facts

As found by the Court in Division, the following are the facts of this case:

Samar-I Electric Cooperative, Inc. (Petitioner) is an electric cooperative, with principal office at Barangay Carayman, Calbayog City. It was issued a Certificate of Registration by the National Electrification Administration (NEA) on February 27, 1974, pursuant to Presidential Decree (PD) 269. Likewise, it was granted a Certificate of Provisional Registration under Republic Act (RA) 6938, otherwise known as the Cooperative Code of the Philippines on March 16, 1993, by the Cooperative Development Authority (CDA). *jr*

Respondent Commissioner of Internal Revenue is a public officer authorized under the National Internal Revenue Code (NIRC) to examine any taxpayer including *inter alia*, the power to issue tax assessment, evaluate, and decide upon protests relative thereto.

On July 13, 1999 and April 17, 2000, petitioner filed its 1998 and 1999 income tax returns, respectively. Petitioner filed its 1997, 1998, and 1999 Annual Information Return of Income Tax Withheld on Compensation, Expanded and Final Withholding Taxes on February 17, 1998, February 1, 1999, and February 4, 2000, in that order.

On November 13, 2000, respondent issued a duly signed Letter of Authority (LOA) No. 1998 00023803; covering the examination of petitioner's books of account and other accounting records for income and withholding taxes for the period 1997 to 1999. The LOA was received by petitioner on November 14, 2000.

Petitioner cooperated in the audit and investigation conducted by the Special Investigation Division of the BIR by submitting the required documents on December 5, 2000.

On October 19, 2001, respondent sent a Notice for Informal Conference which was received by petitioner in November 2001; indicating the allegedly income and withholding tax liabilities of petitioner for 1997 to 1999. Attached to the letter is a summary of the report, with an explanation of the findings of the investigations.

In response, petitioner sent a letter dated November 26, 2001 to respondent maintaining its indifference to the latter's findings and requesting details of the assessment.

On December 13, 2001, petitioner executed a Waiver of the Defense of Prescription under the Statute of Limitations, good until March 29, 2002.

On February 27, 2002, a letter was sent by petitioner to respondent requesting a detailed computation of the alleged 1997, 1998 and 1999 deficiency withholding tax on compensation.

On February 28, 2002, respondent issued a Preliminary Assessment Notice (PAN). The PAN was received by petitioner on April 9, 2002, which was protested on April 18, 2002. Respondent's Reply dated May 27, 2002, contained the explanation of the legal basis of the issuance of the questioned tax assessments.

However, on July 8, 2002, respondent dismissed petitioner's protest and recommended the issuance of a Final Assessment Notice. *ju*

Consequently, on September 15, 2002, petitioner received a demand letter and assessments notices (Final Assessment Notices) for the alleged 1997, 1998, and 1999 deficiency withholding tax in the amount of P3,760,225.69, as well as deficiency income tax covering the years 1998 to 1999 in the amount of P440,545.71, or in the aggregate amount of P4,200,771.40.

Petitioner filed its protest and Supplemental Protest to the Final Assessment Notices on October 14, 2002 and November 4, 2002, respectively. But on the Final Decision on Disputed Assessment issued on April 10, 2003, petitioner was still held liable for the alleged tax liabilities.

On May 29, 2003, the Petition for Review was filed by SAMELCO-I with the Court in division.

On May 27, 2008, the assailed Decision partially granting SAMELCO-I's petition was promulgated.

Dissatisfied, both parties sought reconsideration of the said decision. CIR filed the "Motion for Partial Reconsideration (Re: Decision dated 27 May 2008" on June 13, 2008. On the other hand, SAMELCO-I's "Motion for Reconsideration" was filed on June 17, 2008.

On January 19, 2009, the Court in division promulgated its Amended Decision which denied CIR's motion and partially granted SAMELCO-I's motion.

Thereafter, CIR and SAMELCO-I filed their "Motion for Extension of Time to File Petition for Review" on February 6, 2009 and February 11, 2009, respectively. Both motions were granted by the Court. *g*

Hence, these petitions for review docketed as C.T.A. EB No. 460 and C.T.A. EB No. 462 were filed on February 23, 2009 and February 26, 2009 by CIR and SAMELCO-I, respectively.

In C.T.A. EB 460, the following issues were raised by CIR:

- I.** WHETHER OR NOT SAMELCO-I IS ENTITLED TO TAX PRIVILEGES ACCORDED TO MEMBERS IN ACCORDANCE WITH REPUBLIC ACT NO. 6938, OR THE COOPERATIVE CODE, OR TO PRIVILEGES OF PRESIDENTIAL DECREE (PD) NO. 269.
- II.** WHETHER OR NOT SAMELCO-I IS LIABLE FOR THE MINIMUM CORPORATE INCOME TAX (MCIT) FOR TAXABLE YEARS 1998 TO 1999.
- III.** WHETHER OR NOT SAMELCO-I IS LIABLE TO PAY THE TOTAL DEFICIENCY EXPANDED WITHHOLDING TAX OF P3,760,225.69 FOR TAXABLE YEARS 1997 TO 1999.

In C.T.A. EB No. 462, the following legal and factual errors were raised by SAMELCO-I:

- I.** THE COURT IN DIVISION GRAVELY ERRED IN HOLDING THAT THE 1997 AND 1998 ASSESSMENTS ON WITHHOLDING TAX ON COMPENSATION (RECEIVED BY SAMELCO-I ON SEPTEMBER 15, 2002), HAVE NOT PRESCRIBED EVEN IF THE WAIVER VALIDLY EXECUTED WAS GOOD ONLY UNTIL MARCH 29, 2002.
- II.** THE COURT IN DIVISION ERRED IN HOLDING THAT CIR CAN VALIDLY ASSESS WITHIN THE TEN (10)-YEAR PRESCRIPTIVE PERIOD EVEN IF THE NOTICE OF INFORMAL CONFERENCE, PAN, FORMAL LETTER OF DEMAND, AND ASSESSMENT NOTICE MENTION NOT A WORD THAT THE BIR IS INVOKING SECTION 222 (a) *jk*

OF THE 1997 TAX CODE [then Sec. 223, NIRC], DUE TO ALLEGED FALSE WITHHOLDING TAX RETURNS FILED BY SALMECO-I AS THE SAME ASSERTIONS WERE MERE AFTERTHOUGHT TO JUSTIFY APPLICATION OF THE 10-YEAR PRESCRIPTIVE PERIOD TO ASSESS.

- III.** THE COURT IN DIVISION FAILED TO CONSIDER THAT CIR MADE NO FINDINGS AS TO SAMELCO-I'S FILING OF A FALSE RETURN AS CLEARLY MANIFESTED BY THE NON-IMPOSITION OF 50% SURCHARGE ON THE 1997, 1998 AND 1999 BASIC WITHHOLDING TAX DEFICIENCY IN THE PAN, DEMAND NOTICE AND EVEN IN THE ASSESSMENT NOTICE OTHER THAN INTEREST CHARGES.
- IV.** THE COURT IN DIVISION ERRED IN NOT HOLDING THAT GIVEN SAMELCO-I'S FILING OF ITS 1997, 1998, AND 1999 WITHHOLDING TAX RETURNS IN GOOD FAITH, AND IN CLOSE CONSULTATION WITH THE BIR PERSONNEL IN CALBAYOG CITY WHERE SAMELCO-I'S PLACE OF BUSINESS IS LOCATED, THE LATTER SHOULD NO LONGER BE IMPOSED THE INCREMENTAL PENALTIES (SURCHARGE AND INTEREST).
- V.** THE COURT IN DIVISION FAILED TO RULE THAT SINCE THERE WAS NO SUBSTANTIAL UNDER REMITTANCE OF 1998 WITHHOLDING TAX AS THE BASIC DEFICIENCY TAX PER AMENDED DECISION IS LESS THAN 30% OF THE COMPUTED TOTAL TAX DUE PER RETURN, SAMELCO-I DID NOT FILE A FALSE RETURN.
- VI.** THE COURT IN DIVISION OVERLOOKED THE FACT THAT FOR TAXABLE YEAR 1999, SAMELCO REMITTED THE AMOUNT OF P844,958.00 AS WITHHOLDING TAX IN COMPENSATION INSTEAD OF P786,702.43 AS INDICATED IN PAGE 8, ANNEX C OF THE CTA (1ST DIVISION) DECISION. *gc*

VII. THE COURT IN DIVISION ERRED IN FAILING TO DECLARE AS VOID BOTH THE FORMAL LETTER OF DEMAND AND ASSESSMENT NOTICE ON WITHHOLDING TAX ON COMPENSATION FOR 1997 TAXABLE YEAR, GIVEN ITS NON-COMPLIANCE WITH SECTION 3.1.4 OF RR 12-99.

On February 26, 2009, the Court *en banc* resolved to consolidate C.T.A. EB No. 462 with C.T.A. EB No. 460, the case bearing the lower docket number.

On March 23, 2009, both parties were ordered to file their Comment within ten (10) days from notice of the resolution and may file a reply within five (5) days from receipt of Comment.

On April 7, 2009, SAMELCO-I filed its Comment. On the same date, CIR filed a "Motion for Extension of Time to File Comment (to Petition for Review)" which was granted by this Court on April 13, 2009. On April 20, 2009, CIR filed his Comment (Re: Petition for Review dated February 25, 2009).

On May 5, 2009, these consolidated cases are deemed submitted for decision.

Hence, this decision. *jr*

Issues

In consolidating these petitions, the issues to be resolved are:

- 1. Whether or not SAMELCO-I is liable to pay Minimum Corporate Income Tax (MCIT) for taxable years 1998 to 1999; and**
- 2. Whether or not SAMELCO-I is liable to pay the 1997 to 1999 deficiency Withholding Tax on Compensation.**

This Court's Ruling

A careful reading of the issues and arguments raised by the parties reveal that these are mere reiterations of what have been considered and passed upon by the Court in division in the assailed Decision and the Amended Decision. Be that as it may, pertinent issues need to be emphasized.

*SAMELCO-I is exempted
in the payment of
Minimum Corporate
Income Tax*

CIR alleges that SAMELCO-I , not being duly registered cooperative, is not entitled to tax privileges accorded to members in accordance with Republic Act No. 6938, or the Cooperative Code, nor it is entitled to the *je*

privileges of Presidential Decree (PD) No. 269. CIR alleges that there is nothing in Republic Act No. 6938 that states in unequivocal term express repeal of EO No. 93, thus, SAMELCO-I is covered by Executive Order No. 93 and the Fiscal Incentive Review Board (FIRB) Resolution No. 024-87. EO 93 dated December 17, 1986 issued by then President Corazon C. Aquino has withdrawn, among others, the tax exemption and privileges granted to both government and private entities. Section 2 of the said EO authorized the Fiscal Incentive Review Board (FIRB), among others, to do the following: "(a) restore tax and/or duty exemptions withdrawn hereunder in whole or in part." Thus, pursuant to Section 2(a) of EO No. 93, FIRB issued Resolution No. 024-87 on July 14, 1987 with a proviso that "xxx the income from electric service operations xxx shall remain taxable xxx."

CIR alleges that SAMELCO-I is not one of the enumerated tax-exempt government-owned or controlled-corporations, agencies or instrumentalities in Section 27 (C) of the Tax code, hence, taxable.

CIR submits that SAMELCO-I, as a domestic corporation, is liable to pay income tax under Sections 27 (A) and (E) of the Tax Code. CIR alleges that SAMELCO-I is not one of the entities specifically exempt from the payment of MCIT nor did it show that it applied for the suspension from 

the application of MCIT, hence, the MCIT assessment covering the taxable years 1998 to 1999 should be sustained.

The allegations of CIR are bereft of merit.

It is significant to note that "On March 10, 1990, Republic Act No. 6938, otherwise known as the '*Cooperative Code of the Philippines*' (Cooperative Code) was enacted and on February 4, 1994, the 'Omnibus Rules and Regulations on the Registration of Electric Cooperatives Under Republic Act No. 6938' was approved for the purpose of harmonizing the provisions of the Cooperative Code and PD 269"³. Likewise significant to consider is that "Pursuant to Section 2(a) of EO No. 93, FIRB issued Resolution No. 24-87 on July 14, 1987 **restoring the tax incentives** of electric cooperatives effective July 1, 1987, but their income from electric service operations xxx xxx remained taxable"⁴. Looking at the dates of the effectivity, We can see that the later date is the Cooperative Code. Because there is conflict between the FIRB Resolution and the Cooperative Code, it follows, therefore, that the Cooperative Code prevails. In addition, Resolution 24-87 is a mere resolution issued by a body created under the *gr*

³ Assailed Decision, p. 10.

⁴ *Id.*, p.9.

Office of the President; while the Cooperative Code is a statute enacted by Congress, which is the body empowered to create laws.⁵

Article 127 of the Cooperative Code reads:

ARTICLE 127. Repeals. — Except as expressly provided by this Code, Presidential Decree No. 175 and all other laws, or parts thereof, inconsistent with any provisions of this Code shall be deemed repealed: **Provided, however, That nothing in this Code shall be interpreted to mean the amendment or repeal of any provision of Presidential Decree No. 269:** Provided, further, That the electric cooperatives which qualify as such under this Code shall fall under the coverage thereof. (*Emphasis Supplied*)

A plain reading of the above provision shows that PD 269 is not amended nor repealed by the enactment of the Cooperative Code. Thus, the exemption from paying taxes of electric cooperatives under Section 39 of PD 269 still applies, which reads:

SECTION 39. Assistance to Cooperatives; Exemption from Taxes, Imposts, Duties, Fees; Assistance from the National Power Corporation. — Pursuant to the national policy declared in Section 2, the Congress hereby finds and declares that the following assistance to cooperative is necessary and appropriate:

(a) Provided that it operates in conformity with the purposes and provisions of this Decree, **a cooperative (1) shall be permanently exempt from paying income taxes**, and (2) for a period ending on December 31; of the thirtieth full calendar year after the date of a cooperative's organization or conversion hereunder, or until it shall become completely free of indebtedness incurred by borrowing, whichever event first occurs, shall be exempt from the payment (a) of all National Government, local government and municipal taxes and fees, including franchise, filing, recordation, license or permit fees or taxes and any fees, charges, or costs involved in any court or administrative proceeding in which it may be a party, and (b) of all duties or impostos on foreign goods acquired for its operations, the period of such exemption for a new cooperative formed by consolidation, as provided for in Section 29, to begin from as of the date of the beginning of such period for the constituent consolidating cooperative which was most recently organized 

⁵ *Id.*, pp. 15-16.

or converted under this Decree: Provided, That the Board of Administrators shall, after consultation with the Bureau of Internal Revenue, promulgate rules and regulations for the proper implementation of the tax exemptions provided for in this Decree. (*Emphasis Supplied*)

We, thus, agree with the following findings of the Court in division as follows:

In the case at bar, it is undisputed that petitioner is registered with NEA on February 27, 1974, pursuant to PD 269; and was issued a Certificate of Provisional Registration by the CDA on March 16, 1993. This Court agrees with respondent's position that the provisional registration of petitioner is good only for two years, pursuant to Section 4 of the "*Guidelines on the Provisional Registration of Electric Cooperatives with the CDA*"⁶. Obviously, the provisional registration of petitioner had already expired in 1995. However, the expiration of petitioner's provisional registration with the CDA is irrelevant to the issue on hand since **petitioner remained registered with NEA; thus, governed by the provisions of PD 269. This being the case, Section 39 of PD 269 clearly grants tax exemption to electric cooperatives, such as petitioner, from income tax. The Minimum Corporate Income Tax (MCIT) being an income tax; thus, petitioner is logically exempted from the payment of MCIT.** (*Emphasis Supplied*)

*There is due process
in the issuance of the
assessments*

SAMELCO-I alleges there was no due process because the Preliminary Assessment Notice (PAN), Final Demand Letter, and Assessment notice were silent as to its nature and basis in violation of Section 228⁷ of the Tax Code, in relation to Section 3, par. 3.1.2⁸ and Section 3.1.4⁹ of Revenue Regulations No.12-99¹⁰. *jr*

⁶ adopted on February 26, 1993.
⁷ Protest of Assessment.

CIR argues that the assessments were issued in accordance with Section 228 of the Tax Code as well as Revenue Regulations No. 12-99 and 12-85¹¹. CIR likewise avers that the PAN and the Final Assessment Notice (FAN) clearly indicated the specific provisions of the law which were made the bases for the issuance of the questioned assessments.

The Court in division correctly discussed in the assailed decision that due process was observed in the issuance of the assessments. We reiterate pertinent portion the assailed Decision as follows:

A meticulous review of the records reveals that respondent complied with the requirement of due process as mandated by Section 228 of the NIRC of 1997. During the preliminary stage of the assessment, petitioner was already informed on how the deficiency taxes, being assessed against it, were arrived at. On October 19, 2001, prior to the conduct of an informal conference, respondent sent to petitioner a copy of his audit findings and investigations. Also, it was admitted by petitioner that the *Summary Report of Investigation of Income Tax, and Summary Report of Withholding Tax on compensation of petitioner for taxable years 1997-1999*¹² were attached to the Notice of Informal Conference issued by respondent to petitioner. On the same date that the PAN was issued, respondent per petitioner's request sent to the latter a letter showing the details of the computation.¹³ Moreover, the PAN contained Details of Discrepancies where the law and the revenue regulation violated by petitioner are stated. The said Details are herein quoted as follows:

"DETAILS OF DISCREPANCIES

-
- ⁸ Preliminary Assessment Notice (PAN).
⁹ Formal Letter of Demand and Assessment Notice.
¹⁰ SUBJECT : Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty.
¹¹ SUBJECT: Procedure governing administrative protests of assessments of the Bureau of Internal Revenue.
¹² Exhibits "6" and "7."
¹³ Exhibit "16."

1. Deficiency income taxes for 1998 and 1999 respectively result from non-payment of the minimum corporate income tax (MCIT) imposed pursuant to Section 27(E) of the 1997 Tax Reform Act.
2. Deficiency Withholding Taxes on Compensation for 1997-1999 are the total withholding taxes on compensation of all employees of SAMELCO I resulting from failure of employer to withhold taxes on the taxable 13th month pay and other benefits in excess of P30,000 threshold pursuant to Revenue Regulation 2-98."

With respect to the FAN, while it failed to lay down the specific provisions of the NIRC of 1997 or other internal revenue laws violated or as bases for the assessments; nevertheless, by indicating the kinds of tax to which petitioner is liable, such was already a sufficient compliance with the requirements of Section 228 of the NIRC of 1997.

Further, the phrase "**in writing**" in Section 228 does not merely refer to written words. "Writings" consist of letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation.¹⁴ Indubitably, figures are also "writings" and if the figures itself are competent to enlighten the taxpayer of the basis of the assessment, then there is no reason why a FAN containing only mere figures should not be considered as adequate compliance with the law.

*1997 and 1998 Assessments
on deficiency withholding tax
on compensation have not
prescribed*

In its petition, SAMELCO-I argues that the 1997 and 1998 deficiency withholding tax assessments have prescribed. SAMELCO-I avers that it was undisputed that it filed its 1997 and 1998 Annual Information Return of Income Tax Withheld on Compensation, Expanded and Final Withholding *fr*

¹⁴ Black's Law Dictionary 6th ed. page 1609.

Taxes on February 17, 1998 and February 1, 1999, respectively, and that the demand letter and assessment notices (Final Assessment Notices) for the alleged 1997, 1998 and 1999 deficiency withholding tax were on September 15, 2002. It submits that the assessment notices should have been issued within the timeframe as agreed upon in the Waiver or until March 29, 2002, following Section 222 (b) of the Tax Code.

On the other hand, CIR argues that the 1997 and 1998 Assessments on withholding tax on compensation were issued within the prescriptive period allowed by law (ten [10] years from date of discovery). CIR alleges that his witness was able to prove that the figures reflected in the withholding tax returns filed by SAMELCO-I were false.

We agree with CIR that the ten-year prescriptive period applies in this case because there is falsity. It is noteworthy to mention that during the trial, the witness for the CIR testified that SAMELCO-I did not file an accurate return¹⁵, as follows:

ATTY. FRANZIA:

Q: Did the petitioner file an accurate Return?

MS. RAPATAN:

A: No.

ATTY. FRANZIA:

Q: Can you please explain?

MS. RAPATAN:

A: Because I based the computation of my
deficiency withholding taxes on declared *gr*

¹⁵ TSN, June 8, 2006, pp.33-34.

taxable income per alpha list submitted then, I have extracted a data from the Alpha List, particularly that of the Manager and other officials, only their basic salary and their overtime pay were declared but the other benefits were not actually subjected to withholding tax. So, the deficiency withholding taxes from the taxes on the taxable 13th month pay and other benefits in excess of the P12,000.00 for 1997 and for the taxable years 1998 and 1999, in excess of the P30,000.00. I also noticed that the per diem of the Manager was not included in the withholding tax computation of SAMELCO I.

ATTY. FRANZIA:

Nothing further, your Honors.

JUSTICE BAUTISTA:

Any re-cross?

ATTY. NAPUTO:

No, re-cross, your Honors.

The discussion of the Court in division as to the application of the ten-year prescriptive period is enlightening, as follows:

However, this Court is mindful of the exceptions to the three-year prescriptive period which are found in Section 223(A) of the NIRC of 1977 and Section 222(a) of the NIRC of 1997. A perusal of said Sections would show that false return is one of the circumstances for the applicability of the ten-year prescriptive period. Pertinent portions thereof read:

"NIRC of 1977

SEC. 223. Exceptions as to period of limitation of assessment and collection of taxes.-(A) In the case of

a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time **within ten years after the discovery of the falsity**, fraud or omission: Provided, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof." (*Emphasis supplied*) *je*

"NIRC of 1997

**SEC. 222. Exceptions as to Period of Limitation
of Assessment and Collection of Taxes. –**

- (a) In the case of a **false** or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time **within ten (10) years after the discovery of the falsity**, fraud or omission: Provided, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof." (*Emphasis supplied*)

In interpreting the above Sections, the Supreme Court in the case of **Aznar vs. Court of Tax Appeals and Collector of Internal Revenue**¹⁶, expounded that:

"xxx. We believe that the proper and reasonable interpretation of said provision should be that in the three different cases of (1) false return, (2) fraudulent return with intent to evade tax, (3) failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within ten years after the discovery of the (1) falsity, (2) fraud, (3) omission. Our stand that the law should be interpreted to mean a separation of the three different situations of false return, fraudulent return with intent to evade tax, and failure to file a return is strengthened immeasurably by the last portion of the provision which segregates the situations into three different classes, namely 'falsity', 'fraud' and 'omission'. That there is a difference between '**false return**' and 'fraudulent return' cannot be denied. While the first merely implies **deviation from the truth, whether intentional or not**, the second implies intentional or deceitful entry with intent to evade the taxes due.

The ordinary period of prescription of 5 years (now 3 years) within which to assess tax liabilities under Sec. 331 (now Sec. 203) of the NIRC should be applicable to normal circumstances, but whenever the government is placed at a disadvantage so as to prevent its lawful agents from proper

¹⁶ G.R. No. L-20569, August 23, 1974.

assessment of tax liabilities due to false returns, fraudulent return intended to evade payment of tax or failure to file returns, the period of ten years provided for in Sec. 332 (a) NIRC, from the time of the discovery of the falsity, fraud or omission even seems to be inadequate and should be the one enforced." (*Emphasis supplied*)

Apparently from the above pronouncement, intent to evade is immaterial in case of filing of false returns. As long as there is some deviation from the truth, whether it is due to mistake, ignorance or carelessness; falsity arises.

In the case at bar, the basis of the finding of falsity is the substantial underdeclaration of withholding taxes in the amount of **P2,855,701.59¹⁷**.

While petitioner may have filed its returns in good faith, nonetheless, petitioner's returns failed to reflect the correct amount of tax. There is a deviation from the truth and it follows that the ten-year prescriptive period applies. The allegation of "**good faith**" is an irrelevant mechanism to escape the applicability of the ten-year prescriptive period.

As to 1997 and 1999 taxable years, it is undisputed that there is substantial under remittance of the withholding tax returns on compensation. Clearly, there is falsity in the returns pertaining to those taxable years. What is being questioned by SAMELCO-I is the 1998 withholding tax return as the deficiency is way below the 30% ceiling as provided in Section 248 (B) and in Section 4.2.1 of RR 12-99. In effect, SAMELCO-I alleges no falsity as to the 1998 withholding tax return.

We disagree. 

¹⁷ P2,690,850.91 in the Amended Decision.

It is noteworthy to mention that the Court in division followed the definition of false return in the case of *Aznar*¹⁸ and ruled that there is deviation from the truth which makes it a false return. In addition, the 30% threshold on substantial underdeclaration under Section 248(B) of the Tax Code is but a mere *prima facie* presumption of the filing of a false or fraudulent return.¹⁹

As to the amount of the deficiency withholding taxes, We reiterate pertinent portions of the assailed Decision, as follows:

For the alleged deficiency in withholding taxes on compensation for taxable year 1997, relevant is Section 3 of Revenue Regulations No. 2-95, which excludes from the computation of gross compensation income the 13th month pay and other benefits, to wit:

"SECTION 3. *Benefits Exempted from Income Tax.* -

For purposes of determining the taxable compensation income, the following benefits shall be excluded from the gross compensation income, *viz*:

- (a) 13th month pay equivalent to the mandatory one (1) month basic salary of officials and employees of the Government (whether national or local), including government-owned and -controlled corporations, and of private offices received after the 12th month pay beginning CY 1994; and
- (b) Other benefits, such as, Christmas bonus given by private offices to their officials and employees, productivity incentive bonus, loyalty award, gifts in cash or in kind and other benefits of similar nature actually received by officials and employees of both Government and private offices in the amount not exceeding Twelve Thousand Pesos (P12,000.00) for one (1) calendar year. xxx" *Je*

¹⁸ *Supra*, Note 16.

¹⁹ *Holiday Inns (Phils.), Inc. vs. Commissioner of Internal Revenue*, C.A.-G.R. SP No.78828, September 9, 2004.

The above revenue regulation defines "other benefits" as "all benefits other than the 13th month pay, such as, the annual Christmas bonus given by private offices, 14th month pay, mid-year productivity incentive bonus, gifts in cash or in kind and other similar benefits received by an official or employee for one calendar year in amount not exceeding Twelve Thousand Pesos (P12,000.00) as maximum limit."²⁰ In other words, the non-taxable "other benefits" should not exceed P12,000.00 and when added to the 13th month pay, the total amount of tax-exempt benefit shall not exceed Thirty Thousand Pesos (P30,000.00).

Guided by the above rule, this Court once again thoroughly examined the evidence and record of the case and it appears that petitioner had deficiency withholding taxes amounting to P522,253.85.²¹

On the other hand, for taxable years 1998 and 1999, Revenue Regulations (RR) Nos. 2-98 and 3-98, provides that:

"REVENUE REGULATIONS NO. 02-98

Sec. 2.78.1 Withholding of Income Tax on Compensation Income.-

XXX

XXX

XXX

(3) Facilities and privileges of a relatively small value.
- Ordinarily, facilities and privileges (such as entertainment, medical services, or so called 'courtesy' discounts on purchases), furnished or offered by an employer to his employees generally, are **not considered as compensation subject to withholding if such facilities or privileges are of relatively small value and are offered or furnished by the employer merely as a means of promoting the health, goodwill, contentment, or efficiency of his employees.**

Where compensation is paid in property other than money, the employer shall make necessary arrangements to ensure that the amount of the tax required to be withheld is available for payment to the Commissioner.

XXX

XXX

XXX

(B) Exemptions from withholding tax on compensation – The following income payments are exempted from the requirement of withholding tax on compensation: *gl*

²⁰ Section 2(e) RR No. 2-95.
²¹ Annex "A" of the assailed Decision.

XXX

XXX

XXX

(11) Thirteenth (13th) month pay and other benefits. –

- (a) Thirteenth (13th) month pay equivalent to the mandatory one (1) month basic salary of officials and employees of the government (whether national or local), including government-owned or controlled corporations, and or private offices received after the twelfth (12th) month pay; and
- (b) Other benefits such as Christmas bonus, productivity incentive bonus, loyalty award, gifts in cash or in kind and other benefits of similar nature actually received by officials and employees of both government and private offices.

The above stated exclusions (a) and (b) shall cover benefits paid or accrued during the year provided that the total amount shall not exceed thirty thousand pesos (P30,000.00) which may be increased through rules and regulations issued by the Secretary of Finance, upon recommendation of the Commissioner, after considering, among others, the effect on the same of the inflation rate at the end of the taxable year.

XXX

XXX

XXX"

"REVENUE REGULATIONS No. 3-98

SEC. 2.33. SPECIAL TREATMENT OF FRINGE BENEFITS

XXX

XXX

XXX

(C) *Fringe Benefits Not Subject to Fringe Benefits Tax* - In general, the fringe benefits tax shall not be imposed on the following fringe benefits:

XXX

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XXX

The term 'DE MINIMIS' benefits which are exempt from the fringe benefit tax shall, in general, be limited to *je*

facilities or privileges furnished or offered by an employer to his employees that are of relatively small value and are offered or furnished by the employer merely as a means of promoting the health, goodwill, contentment, or efficiency of his employees such as the following:

- 1) Monetized unused vacation leave credits of employees not exceeding ten (10) days during the year;
- 2) Medical cash allowance to dependents of employees not exceeding P750 per semester or P125 per month;
- 3) Rice subsidy of P350 per month granted by an employer to his employees;
- 4) Uniforms given to employees by the employer;
- 5) Medical benefits given to the employees by the employer;
- 6) Laundry allowance of P150 per month;
- 7) Employees achievement awards, e.g., for length of service or safety achievement, which must be in the form of a tangible personal property other than cash or gift certificate, with an annual monetary value not exceeding one-half (1/2) month of the basic salary of the employee receiving the award under an established written plan which does not discriminate in favor of highly paid employees;
- 8) Christmas and major anniversary celebrations for employees and their guests;
- 9) Company picnics and sports tournaments in the Philippines and are participated exclusively by employees; and
- 10) Flowers, fruits, books, or similar items given to employees under special circumstances, e.g., on account of illness, marriage, birth of a baby, etc."

Pursuant to RR No. 2-98, facilities of relatively small value or the so called "De Minimis" benefits are not included in computing the 

compensation subject to withholding tax. Moreso, 13th month pay and other benefits are not subject to withholding tax provided they do not exceed P30,000.00. It follows that any benefits granted to employees beyond the P30,000.00 threshold shall be subject to withholding tax.

On the other hand, RR No. 3-98 provides for the acceptable ceiling for *De Minimis*. Hence, applying it to the case at bar, only the (a) monetized unused vacation leave credits not exceeding 10 days; (b) rice subsidy not exceeding P4,200; (c) medical and dental allowances; and (d) uniform allowance during the year, being facilities or privileges categorized as *De Minimis* benefits, shall not be included in the computation of the P30,000.00 threshold for the determination of the items of income that are to be subjected to withholding tax on compensation.

An examination of the records of the case would show that petitioner neglected its duty to withhold correct taxes from its employees for taxable years 1998 and 1999 on the taxable 13th month pay and other benefits in excess of the P30,000.00 threshold. For years 1998 and 1999, a deficiency withholding taxes on compensation in the amount of P419,960.96 and P493,081.60, respectively are found.²²

After comparing the definition of *de minimis* benefits under RR 3-98 and facilities and privileges of relatively small value under RR 2-98, We agree with the finding of the Court in division that these provisions are similar, pertinent portion of the said Amended Decision provides:

This Court is not barred from espousing the definition of *de minimis* benefits embodied under RR 3-98 to that of the "(f)acilities and privileges of a relatively small value" referred to under RR 2-98. This is so because of the following reasons:

1. RR 3-98 did not state that the definition therein of *de minimis* benefits shall be used exclusively for such revenue regulation;
2. RR 3-98 did not qualify the type of employees covered by such definition or characterization. It merely refers to them as "to (the employer's) employees". Thus, where the law does not distinguish, neither do we distinguish²³; *Je*

²² Annexes "B" and "C" of the assailed Decision.

²³ *Colgate-Palmolive Phils., Inc. vs. Gimenez, et al.*, G.R. No. L-14787, January 28, 1961.

3. The provisions in question may be deemed *in pari materia*.²⁴ Thus, the rule of statutory construction dictates that they should be construed together;²⁵
4. There is no substantial distinction between "facilities (and/or) privileges furnished and offered by an employer that are of relatively small value as a means of promoting the health, goodwill, contentment, or efficiency" enjoyed by the managerial or supervisory employees, and that of the rank and file. To make one would be violative of the equal protection clause of the 1987 Constitution;
5. It is emphatically the province and duty of the judicial department to say what the law is.²⁶ The fact that RR 2-98 did not provide a "ceiling" gives this Court much leeway in determining what constitutes "facilities or privileges (which) are ... (of) relatively small value".

"Xxx the withholding tax deficiency for 1999 and 1998 shall be reduced by P1,557.89 and P81,623.18, respectively,"²⁷ when the Court in Division found SAMELCO-I's Motion for Reconsideration partly meritorious based on Sections 2.79(A) of RR 2-98 and 79(A) of the NIRC of 1997. These provisions provide that there is no duty to withhold tax when the total compensation of an individual does not exceed the statutory minimum wage, or five thousand pesos (P5,000.00) per month, whichever is higher.

As regards taxable year 1999, the amount of P786,702.43 (page 8, Annex C, assailed Decision of the First Division) was considered as the *Je*

²⁴ Statutes are said to be *in pari materia* when they relate to the same person or thing, or to the same class of persons or things, or have the same purpose or object (*City of Naga, et al. vs. Agna, et al.*, G.R. No. L-36049, May 31, 1976).

²⁵ *City of Naga, et al. vs. Agna, et al., supra*.

²⁶ *San Miguel Corporation vs. Avelino, et al.*, G.R. No. L-39699, March 14, 1979.

²⁷ Amended Decision of this case, p.7.

the remitted amount per alpha list which shows the details of the benefits given to the employees.

The argument of SAMELCO-I that there is good faith in the computation of taxes withheld and withholding tax returns because as testified by its witness, it allegedly followed the advice made by the BIR Officer assigned in Calbayog City (the same place where the SAMELCO-I's principal office is based), who was consulted on the matter does not merit.

The settled rule is that good faith and honest belief that one is not subject to tax on the basis of previous interpretation of government agencies tasked to implement the tax law, are sufficient justification to delete the imposition of surcharges and interest.²⁸

In this case, good faith is not based on the previous interpretation of government agencies tasked to implement the law but rather on the alleged advice of a BIR officer. Thus, surcharge and interest are properly imposed on the assessment.

As to the allegation of SAMELCO-I that CIR made no factual findings that the returns were false or fraudulent for if it were so, a 50% surcharge would have been imposed on top of the basic tax deficiency in the *re*

²⁸ *Michel J. Lhuillier Pawnshops, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 166786, Resolution dated September 11, 2006 citing the case of *Connel Bros. Co. Phil. Vs. Collector of Internal Revenue*, 119 Phil. 40, 46, (1963).

committed mistakes in making entries in the returns and in the assessment, respectively, under the inventory method of determining tax liability, it would be unfair to treat the mistakes of the petitioner as tainted with fraud and those of the respondent as made in good faith.

We conclude that the 50% surcharge as fraud penalty authorized under Section 72 of the Tax Code should not be imposed. (*Emphasis Supplied*)

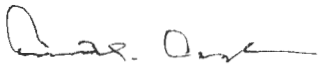
Based on the foregoing discussions, We find no reversible error to disturb the Assailed Decision and the Amended Decision of the Court in division.

WHEREFORE, premises considered, We deny the petitions for lack of merit. Accordingly, We **AFFIRM** the May 27, 2008 Decision and the January 19, 2009 Amended Decision promulgated by the First Division of this Court.

SO ORDERED.


JUANITO C. CASTANEDA, JR.
Associate Justice

WE CONCUR:


ERNESTO D. ACOSTA
Presiding Justice


LOVELL R. BAUTISTA
Associate Justice

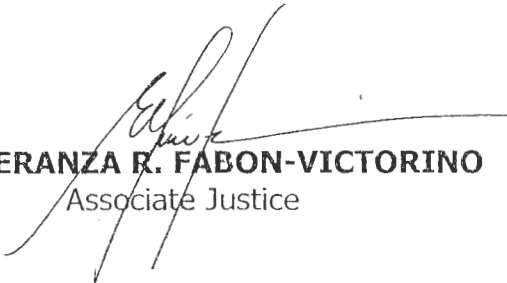

ERLINDA P. UY
Associate Justice



CAESAR A. CASANOVA
Associate Justice



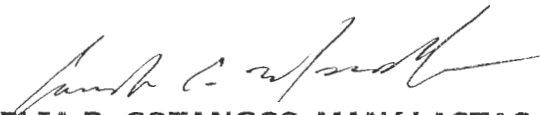
OLGA PALANCA-ENRIQUEZ
Associate Justice



ESPERANZA R. FABON-VICTORINO
Associate Justice



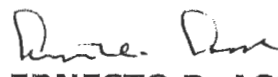
CIELITO N. MINDARO-GRULLA
Associate Justice



AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.



ERNESTO D. ACOSTA
Presiding Justice