

## THIRD DIVISION

**[ G.R. No. 139674, March 06, 2002 ]**

**NICHIMEN CORPORATION (MANILA BRANCH), PETITIONER, VS. THE  
HON. COURT OF APPEALS, THE HON. COURT OF TAX APPEALS AND  
THE HONORABLE COMMISSIONER OF INTERNAL REVENUE,  
RESPONDENTS.**

### D E C I S I O N

**VITUG, J.:**

Petitioner appeals from the decision of the Court of Appeals, dated 13 August 1999, in CA-G.R. SP No. 42100 which has affirmed the 12<sup>th</sup> September 1996 decision of the Court of Tax Appeals in CTA Case No. 4667 ordering petitioner to pay a deficiency percentage tax for the fiscal year ended 31 March 1987, inclusive of surcharge and interest incident to delinquency, in the amount of P767,531.10.

Petitioner Nichimen Corporation is a resident foreign corporation, organized and existing under the laws of Japan, authorized to do business in the Philippines. It maintains a Manila branch in dealing with its Philippine customers.

On 19 January 1990, petitioner received from the Commissioner of Internal Revenue a demand letter with an accompanying notice assessing it for deficiency income tax, fixed tax, expanded withholding tax, and percentage tax in the aggregate amount of P1,092,459.94, inclusive of increments, for the fiscal year ended 31 March 1987. The assessments were computed thusly:

"FY-3-31-87 Deficiency Income Tax

Net Income per return	P2,209,455.00
Add: Unallowable Deductions:	
Depreciation	20,500.00
Cost of Calculator, beds, & Facsimile Xerox	<u>24,711.00</u> <u>45,211.00</u>
Net Income per Investigation	<u>2,254,666.00</u>
Income Tax Due Thereon	779,133.00
Less: Tax Due per Return	<u>763,309.00</u>
Deficiency Income Tax	15,824.00
Add: 25% Surcharge	3,956.00
20% Int. p/a fr.	
7-15-87 to 1-30-90	9,725.03
Compromise Penalty	<u>4,500.00</u>
TOTAL AMOUNT DUE AND COLLECTIBLE	P34,005.03

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"FY-3-31-87 Deficiency Fixed Tax (As Importer/Exporter).

Basic Tax	P 400.00
Add: 25% Surcharge	100.00
20% Int. p/a fr.	
5-1-86 to 1-30-90	375.00
Compromise Penalty	<u>100.00</u>
TOTAL AMOUNT DUE AND COLLECTIBLE	P 975.00
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"FY-3-31-87 Deficiency Expanded Withholding Tax

Professional Fee	P 10,600.43
Contractor	<u>103.00</u>
Sub-total	10,703.43
Add: 25% Surcharge	2,675.86
20% Int. p/a fr.	
5-1-87 to 1-30-90	7,358.61
Compromise Penalty	<u>4,500.00</u>
TOTAL AMOUNT DUE AND COLLECTIBLE	P 25,237.90
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"FY-3-31-87 Deficiency Withholding Tax on Compensation

Basic Tax Due	P
	132,495.94
Add: 25% Surcharge	33,123.99
20% Int. p/a fr.	
5-1-87 to 1-30-90	91,090.97
Compromise Penalty	<u>8,000.00</u>
TOTAL AMOUNT DUE AND COLLECTIBLE	P264,710.91
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"FY-3-31-87 Deficiency Percentage Tax

	1st Qtr.	2nd Qtr.	3rd Qtr.	4th Qtr	Total
Basic Tax Due	P53,382.80	P81,456.21	P116,590.27	P128,289.63	
Less:					
Payment per					

Return	<u>611.26</u>	<u>1,594.48</u>	<u>627.05</u>	<u>1,247.39</u>	
Deficiency Tax	52,771.54	79,861.73	115,963.22	127,042.24	P375,638.73
Add: 25% Surcharge	13,192.88	19,965.43	28,990.81	31,760.56	93,909.68
20% Int. p/a					
up to 1-30-90	<u>46,541.20</u>	<u>65,441.69</u>	<u>87,776.91</u>	<u>88,222.89</u>	<u>287,982.69</u>
Total	P112,505.62	P165,268.85	P232,730.94	P247,025.69	757,531.10
Add: Compromise					<u>10,000.00</u>
TOTAL AMOUNT DUE AND COLLECTIBLE					P767,531.10 <sup>[1]</sup>

Petitioner, through its external auditors Sycip, Gorres Velayo & Co. (SGV & Co.), protested the foregoing assessment in its letter of 06 February 1990. Respondent Commissioner, on 07 October 1991, withdrew the assessment for fixed tax but sustained the other assessments.<sup>[2]</sup> On 07 November 1991, petitioner finally agreed to pay in full its deficiency income tax, expanded withholding tax, and withholding tax on compensation. The payment was shown per Central Bank Confirmation Receipt No. B24068532 in the total amount of P313,953.84; viz:

"Deficiency income tax	P 34,005.03
"Expanded withholding tax	25,237.90
"Withholding tax	<u>254,710.91</u>
	P313,953.84 <sup>[3]</sup>

Petitioner, however, continued to oppose the assessment for deficiency percentage tax amounting to P767,531.10.

On 06 November 1991, it filed with the Court of Tax Appeals a petition for review, alleging materially that the subject assessment was devoid of legal basis. It submitted:

"The assessment for deficiency percentage tax (broker's tax) is based on respondents allegations that the compensation received by petitioner from its Head Office for soliciting orders from Philippine customers should be subject to broker's tax. We most respectfully disagree with this position.

"It should be noted that petitioner's (Nichimen - Manila Branch) act in looking for local buyers is merely liaising for its Head Office. The Head Office then allocates certain amounts to the petitioner (Branch) to cover its operating requirements for the liaising activities it does. The amount allocated to the Branch is considered income attributable to the Branch; this is reported to the Central Bank and converted into Philippine pesos and reported as the Branch's income in its income tax return.

"Under the circumstances, the petitioner (Branch Office) cannot be considered receiving income subject to broker's tax from its own Head Office, in the same manner that a person cannot be considered receiving taxable income from itself.

"The liaising activities of the Branch is performed for its own Head Office. Hence, it is not an activity that is rendered for another person, but for itself