REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

TRANSNATIONAL PLANS, INC., *Petitioner,*	**CTA CASE NO. 8291**
- versus-	**Members:**
	Castañeda, *Chairperson* Casanova, and Cotangco-Manalastas, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**Promulgated:** FEB 20 2015 4:30 p.m.

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DECISION

COTANGCO-MANALASTAS, *J.:*

This is a petition for the nullification of the Final Decision on Disputed Assessment dated April 11, 2011 finding Transnational Plans, Inc. liable in the total amount of Thirteen Million Two Hundred Fifty Thousand Six Hundred Fifty-Two and 58/100 Pesos (₱13,250,652.58), inclusive of interest and penalties, allegedly representing its deficiency income tax, value-added tax (VAT), withholding tax on compensation, expanded withholding tax (EWT), and documentary stamp tax (DST) for taxable year 2006.

STATEMENT OF FACTS

Petitioner Transnational Plans, Inc. is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with office address at G/F Floor, Mary Bachrach Building, Port Area, City of Manila.[1] Petitioner is principally engaged in the business as a pre-need company.[2]

Respondent is the Commissioner of the Bureau of Internal Revenue (BIR), duly appointed to exercise the powers and perform the duties of her office including, *inter alia*, the

[1] Par. 1, Facts Stipulated by the Parties, Joint Stipulation of Facts and Issues (JSFI), docket, p. 136.
[2] Exhibit "D".

power to decide disputed assessments, refunds of internal revenue taxes, fees, other charges, and penalties imposed in relation thereto, or other matters arising under the Tax Code. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner received Letter of Authority (LOA) No. 00012283[3] dated September 25, 2007 from the Large Taxpayers Audit and Investigation Division I (LTAID I) of the BIR, authorizing the examination of petitioner's books of accounts and other financial records for all internal revenue taxes for taxable year 2006.

On August 12, 2009 petitioner received from the BIR a Preliminary Assessment Notice[4] (PAN) dated August 3, 2009 indicating that the alleged deficiency taxes of petitioner is ₱20,539.755.71. In response, petitioner filed its protest letter[5] on August 27, 2009 with the BIR.

Thereafter, on October 9, 2009, petitioner received from respondent a Final Assessment Notice (FAN) dated September 24, 2009 bearing a decrease in the purported deficiency taxes in the total amount of ₱17,465,022.74.[6] Petitioner then filed an administrative protest[7] on November 9, 2009.

On April 15, 2011, petitioner received a Final Decision on Disputed Assessment (FDDA) dated April 11, 2011 from respondent.[8] Based on the FDDA, respondent further decreased petitioner's alleged deficiency taxes to the total amount of ₱13,250,652.58. Said amount was broken down in the FDDA as follows:

	Basic	Penalties	Total
Income Tax	1,493,384.57	1,244,468.45	2,737,817.02
VAT	4,030,948.36	3,518,219.84	7,549,168.20
Withholding Tax – Compensation	1,087,446.00	967,380.70	2,054,826.70
Expanded Withholding Tax	162,923.88	157,189.83	320,113.71
DST	293,435.63	270,291.32	563,726.95

[3] Exhibit "C".
[4] Exhibit "JJ".
[5] Exhibit "KK".
[6] Par. 2, Facts Stipulated by the Parties, JSFI, docket, p. 136.
[7] Exhibits "E" and "E-1".
[8] Par. 3, Facts Stipulated by the Parties, JSFI, docket, p. 136: Exhibit "F".

Compromise Penalty			25,000.00
TOTAL			**₱13,250,652.58**

On May 16, 2011, petitioner filed with this Court the instant Petition for Review[9], questioning the assessments made by respondent in the FDDA.

On June 27, 2011, respondent filed her Answer[10] raising the following special and affirmative defenses:

"xxx xxx xxx

7. Petitioner Transnational Plans, Inc. is liable to pay its deficiency income tax, value-added tax, withholding tax on compensation, expanded withholding tax and documentary stamp tax in the total amount of Thirteen Million, Two hundred Fifty Thousand, Six hundred Fifty Two and 58/100 Pesos (₱13,250,652.58).

8. Contrary to petitioner's claim that it was not informed in writing of the facts on which the assessment was based, the formal letter of demand and assessment notices indicated not merely the tax, compromise, and interest due thereon but likewise sufficiently stated the facts, the law, rules and regulations on which assessment is based. Thus, petitioner cannot impugn the validity of assessment on the supposed omission.

9. Petitioner claims that the Final Assessment Notice was formally protested within the reglementary period of 30 days. However, it did not aver the fact of submission of necessary documents in support of its protest. Upon investigation, it was revealed that indeed, petitioner failed to submit necessary documents within 60 days from the filing of protest. This omission is fatal to the administrative claim.

9.1 Section 228 of the NIRC of 1997 is hereunder quoted for ready reference:

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***

[9] Docket, pp. 6-76.
[10] Docket, pp. 86-104.

supporting documents shall have been submitted; otherwise, the assessment shall become final.

9.2 Relative therewith, Revenue Regulations No. 12-99 implementing the provisions of the NIRC governing assessment of National internal Revenue Taxes likewise provides:

Section 3. Due Process Requirement in the Issuance of a Deficiency Tax Assessment.

3.1.5 Disputed Assessment

xxx xxx xxx

The taxpayer shall submit the required documents in support of his protest ***within sixty (60) days from date of filing of his letter of protest, otherwise, the assessment shall become final, executory and demandable.***

9.3 The foregoing was promulgated pursuant to the power of the Commissioner of Internal Revenue to interpret tax laws as enunciated in Section 4 of the NIRC, to wit:

SEC. 4. Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases *- The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.*

9.4 The mandatory character of Section 228 and Revenue Regulations No. 12-99 cannot be gainsaid. The word 'shall' connotes an imperative and mandatory character of a statute. The general rule of requiring adherence to the letter in construing statues applies with particular strictness to tax laws and provisions of a taxing act are not to be extended by implication. **(CIR v. Court of Appeals, 338 Phil. 332, 330 (1997).** To rule otherwise would not just prevent the Commissioner from reconsidering the protested assessment but will practically render nugatory the intention of Congress.

9.5 Consequently, the assessment has become final and executory and deprives this Honorable Court of jurisdiction to try the case.

10. Furthermore, comprehensive study of petitioner's books of accounts and pertinent accounting records disclosed that it is liable to pay the total deficiency income tax assessment.

Comparison made between Bond Placements per Documentary Stamp Tax (DST) Returns (tax base) of ₱62,276,610.00 versus the increase in bond placement per FS of ₱57,356,241.00 showed a difference of ₱4,920,369.00. Applying the Gross Profit rate of 12.7% yielded and *(sic)* a gross profit of ₱624,866.86. Hence, deficiency income tax is hereby assessed pursuant to Section 32 of the NIRC which provides:

xxx xxx xxx

Disallowance of Cost & Expenses amounting to 3,641,823.35 were the result of the reconciliations made between the FS and ITR, and said cost and expenses were not supported by any proof despite repeated requests for the presentation of any document to prove that such costs and expenses were incurred and deductible during the year under re-audit. Hence, were disallowed pursuant to Section 34 (k) of the NIRC, as amended which is hereunder quoted:

xxx xxx xxx

12. It is also liable to pay its value added tax liability. Reconciliation made between Gross Receipts subject to Value Added Tax (VAT) per returns amounting to ₱37,169,711.01 versus Gross Receipts subject to VAT per re-investigation of ₱70,691,857.64 showed a difference of 33,522,146.63. Applying the VAT rate of 12% yielded an Output Tax of 4,022,657.60; hence, the same was assessed pursuant to Sections 106, 108 and 109 of the National Internal Revenue Code, as amended which provides:

xxx xxx xxx

Claimed input taxes for both domestic goods and services aggregating ₱8,290.76 were disallowed pursuant to Sections 110 and 113 (A) and (B) of the NIRC, as amended pertaining to Invoicing and Accounting Requirements for VAT Registered Persons, which is hereunder quoted:

xxx xxx xxx

13. Likewise, it is liable to pay withholding tax on compensation. Claimed salaries and wages aggregating ₱9,816,995.75 is ₱3,398,268.75 higher than the Alpha List submitted amounting to ₱6,418,727.00. Said discrepancy is therefore subjected to deficiency withholding tax to conform to Sections 78, 79 and 80 of the NIRC, as amended which provides:

xxx xxx xxx

14. Verification disclosed that liability for expanded withholding tax should likewise be imposed. Reconciliation made between claimed expenses subject to 1%, 2%, 5% and 10% EWT including domestic purchases of goods and services totaling ₱9,482,367.91 versus the amount subjected to the same rates per Alpha List of ₱2,699,670.60 showed a difference of ₱6,782,697.31; hence, subjected to deficiency EWT to comply with Section 57(B) of the NIRC, as amended, which provides:'

xxx xxx xxx

15. With respect to deficiency documentary stamp tax, Comparison made between the Documentary Stamp Tax paid per return amounting to ₱121,326.42 and the Documentary Stamp Tax due per our re-audit of ₱414,762.05 showed a difference of ₱293,435.63. Deficiency Documentary Stamp Tax was imposed pursuant to Sections 180 and 186 of the NIRC, as amended, which is hereunder quoted:

xxx xxx xxx

16. Compromise penalty was imposed pursuant to RMO 1-90 amounting to ₱25,000.00 due to the following violations: (1.) Failure to file list of regular suppliers (2.) Failure to file alpha list of income payments not subjected to withholding tax. (3.) Failure to file Monthly Alphabetical List of Payees (MAP) (4.) Failure to maintain subsidiary books as required under Sec. 113 and Sec. 233 of the NIRC.

17. It must be stressed that assessments are presumed correct and made in good faith. The taxpayer has the duty of proving otherwise. In the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed. Even an assessment based on estimates is *prima facie* valid and lawful where it does not appear to have been arrived at arbitrarily or capriciously. **(Marcos II vs. Court of Appeals, G.R. No. 120880, June 5, 1997)**

18. The burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the Commissioner of Internal Revenue is wrong but the taxpayer is right. Otherwise the presumption of correctness of tax assessment stands. **(Commissioner of Internal Revenue vs. Hantex Trading Co. Inc., G.R. No. 136975, March 31, 2005)**

19. Petitioner has not pointed out any provision or item in the assessment notice which bears a trace of falsity. The averments were based on conjectures, surmises and speculations. These cannot supply the basis for the charge of impropriety of the assessments made."

A Notice of Pre-Trial Conference[11] was issued by this Court on June 28, 2011, setting the case for pre-trial conference on August 4, 2011. Petitioner filed its Petitioner's Pre-Trial Brief[12] on July 29, 2011; while respondent submitted her Respondent's Pre-Trial Brief[13] on August 1, 2011.

Thereafter, the parties submitted their Joint Stipulation of Facts and Issues[14] on September 5, 2011. After finding everything in order, this Court issued a Resolution[15] dated September 8, 2011, declaring the pre-trial terminated and ordering petitioner to proceed with the initial presentation of its evidence.

On September 8, 2011, petitioner filed a Motion to Refer the Case for Mediation[16] praying that the instant petition be referred to the Philippine Mediation Center of the Court of Tax Appeals (CTA) for quick and speedy disposition. However, during the September 12, 2011 hearing, petitioner's counsel moved for the withdrawal of its motion after this Court informed petitioner that at that point the Court has no existing facilities for mediation.

Petitioner filed a Motion to Suspend Proceedings[17] on October 24, 2011, claiming that since it made an offer of compromise with respondent, petitioner prays that the instant proceeding be suspended to give the parties an opportunity to settle the case amicably.

Meanwhile, on March 23, 2012, petitioner filed a Motion to Refer Evidence to an Independent Certified Public Accountant[18], manifesting its intention to avail the services of Mr. Julito O. Tabalba of J.O. Tabalba & Co. to act as an Independent Certified Public Accountant (ICPA) pursuant to Rule 13 of the Revised Rules of the Court of Tax Appeals. Finding merit therein, this Court granted petitioner's motion during the March 28, 2012 hearing by commissioning Mr. Julito O. Tabalba as the ICPA of the instant case. This Court

[11] Docket, p. 106.
[12] Docket, pp. 107-116.
[13] Docket, pp. 117-121.
[14] Docket, pp. 135-141.
[15] Docket, p. 143.
[16] Docket, pp. 144-147.
[17] Docket, pp. 150-153.
[18] Docket, pp. 223-233.

further ordered Mr. Julito O. Tabalba to submit his ICPA report within forty-five (45) days.

In compliance, the ICPA submitted his report on July 10, 2012.[19]

On March 21, 2013, petitioner filed its Formal Offer of Evidence[20], offering Exhibits "A" to "VVV", inclusive of sub-markings. On April 5, 2013, respondent filed her Comment (On Petitioner's Formal Offer of Evidence)[21] interposing no objection to the admission of petitioner's exhibits, but only as to the manner they were identified in open court and subject to the condition that the same had faithfully complied with the necessity of comparison with the original documents under Section 4 of Rule 12 of the Revised Rules of the Court of Tax Appeals. Accordingly, in the Resolution[22] dated May 10, 2013, this Court admitted most exhibits offered by petitioner save for some exhibits which were denied for petitioner's failure to have said exhibits identified during trial.

Petitioner then filed a Motion for Reconsideration with Motion to Recall Witness (Re: Resolution dated May 10, 2013)[23], begging the indulgence of this Court to allow it to recall its witness, Ms. Marivic M. Anciado, for the sole purpose of identifying the exhibits denied by this Court. In response, respondent filed her Comment (On Petitioner's Motion for Reconsideration with Motion to Recall Witness)[24] on June 17, 2013, opposing petitioner's motion on the ground that nowhere in Ms. Marivic M. Anciado's judicial affidavit did she mention and identify the assailed exhibits; thus, how can she then identify the same when recalled. Petitioner then filed a Reply (To Respondent's Comment dated 14 June 2013)[25] on June 24, 2013 claiming that even though its witness did not mention the exhibits in her judicial affidavit, said exhibits nevertheless form part of her testimony and are embedded with the other documentary exhibits that she identified.

[19] Docket, p. 258.
[20] Docket, pp. 373-397.
[21] Docket, pp. 398-400.
[22] Docket, pp. 402-403.
[23] Docket, pp. 404-407.
[24] Docket, pp. 415-418.
[25] Docket, pp. 420-422.

During the July 17, 2013 hearing,[26] petitioner's witness, Ms. Marivic M. Anciado, was re-called to the witness stand and identified the assailed exhibits. Accordingly, the exhibits initially denied admission by this Court was then reconsidered and admitted as part of petitioner's formal offer of evidence.

On October 4, 2013, respondent filed her Respondent's Formal Offer of Documentary Evidence[27], offering Exhibits "R-1" to "R-16-A", inclusive of sub-markings. In response thereto, petitioner filed its Comment (To Respondent's Formal Offer of Documentary Evidence) on October 21, 2013 opposing the admission of majority of respondent's exhibits for allegedly not having been properly identified. In the November 19, 2013 Resolution[28], this Court admitted all exhibits formally offered by respondent, and ordered both parties to submit their memoranda within thirty (30) days thereafter.

On January 27, 2014, petitioner submitted its Memorandum[29], while respondent submitted her Memorandum[30] on February 14, 2014. With the filing of both parties' respective memoranda, this Court in the February 20, 2014 Resolution considered the instant case submitted for decision.

Shortly thereafter, on March 10, 2014, petitioner filed a Motion for Leave to File and To Admit Attached Reply to Respondent's Memorandum claiming that it need to address a few arguments raised by respondent which it feels as inaccurate.[31] Thus, petitioner prays that this Court admit and consider the reply attached to its motion. In the Resolution dated March 14, 2014, this Court granted the motion which consequently admitted petitioner's reply.[32]

STATEMENT OF ISSUES

The parties submitted the following issues[33] for this Court's resolution:

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[26] Docket, pp. 537-540.
[27] Docket, pp. 565-577.
[28] Docket, pp. 582-583.
[29] Docket, pp. 610-653.
[30] Docket, pp. 729-744.
[31] Docket, pp. 746-749.
[32] Docket, p. 762.
[33] Statement of Issues, JSFI, docket, pp. 136-139.

1. Whether or not petitioner is liable for deficiency income tax for taxable year 2006;

2. Whether or not petitioner is liable to pay deficiency value-added tax for taxable year 2006;

3. Whether or not petitioner is liable to pay deficiency withholding tax-compensation for taxable year 2006;

4. Whether or not petitioner is liable to pay deficiency expanded withholding taxes for taxable year 2006; and

5. Whether or not petitioner is liable to pay deficiency documentary stamp tax for taxable year 2006.

DISCUSSION/RULING

The issues presented before this Court essentially boils down to whether petitioner is liable for deficiency income tax, VAT, withholding tax-compensation, EWT, and DST for taxable year 2006.

Petitioner mainly argues that respondent's assessments are erroneous. As to the alleged deficiency income, it claims that respondent failed to consider petitioner's net loss, including its Net Operating Loss Carry Over (NOLCO) which was never fully utilized to offset petitioner's loss during taxable year 2006 and also the Minimum Corporate Income Tax (MCIT) it paid. Respondent likewise failed to consider the input VAT of ₱375,966.79 in arriving at petitioner's alleged deficiency VAT. She also failed to consider the ten percent (10%) VAT rate imposed on transactions prior to the implementation of the twelve percent (12%) VAT rate on February 1, 2006, and being a pre-need company, its trust fund contributions were equally subjected to VAT in violation of Section 4.108-3(j) of Revenue Regulations (RR) No. 16-2005. As to its alleged deficiency withholding taxes, petitioner insists that respondent erroneously considered other employee benefits as part of their salaries and wages, which include retirement fund contribution, *de minimis* benefits, and seminar and training expenses. Lastly, petitioner claims that there is no unreported revenue amounting to ₱4,920,369.00 for which to base its DST.

On the other hand, respondent avers that the instant Petition for Review is nothing but a mere scrap of paper since Ms. Ma. Veronica S. Lao Guico's authority to sign the Verification and Certification in behalf of petitioner was without authority. The Secretary's Certificate[34] attached to the Petition for Review shows that it was executed and notarized before the meeting of the Board of Directors was actually held. However, should this Court entertain said petition despite its flaw, the petition must still fail since petitioner failed to submit all relevant documents within sixty (60) days from the filing of protest in accordance with Section 228 of the NIRC of 1997, in relation to RR No. 12-99.

Conversely, petitioner replies that respondent's statement is inaccurate and misleading. Petitioner claims that the date of the meeting was just inadvertently typed. Nonetheless, there is a distinction between non-compliance and substantial compliance with the requirements of verification and non-forum shopping. Further, respondent is already estopped from raising as an issue the typographical error in the Secretary's Certificate since she only raised the alleged defect in her Memorandum.

Before proceeding to the crux of the controversy, this Court shall first address the other issues raised by respondent.

With regard to the issue of petitioner's non-compliance with the requirements of verification and certification, this Court finds the same as substantially complied with and is therefore entitled admission. Section 8[35] of Republic Act (R.A.) No. 1125,[36] as amended, provides that the proceedings before this Honorable Court "shall not be governed strictly by technical rules of evidence". However, liberal application of

[34] Exhibit "B".

[35] SECTION 8. *Court of record; seal; proceedings.* - The Court of Tax Appeals shall be a court of record and shall have a seal which shall be judicially noticed. It shall prescribe the form of its writs and other processes. It shall have the power to promulgate rules and regulations for the conduct of the business of the Court, and as may be needful for the uniformity of decisions within its jurisdiction as conferred by law, but such proceedings shall not be governed strictly by technical rules of evidence.

[36] An Act Creating the Court of Tax Appeals.

procedural rules is allowed only when two requisites are present: (1) there is a plausible explanation for the non-compliance, and (2) the outright dismissal would defeat the administration of justice.[37] In the instant case, petitioner sufficiently complied with the above-mentioned requisites. Its counsels explained the reason for the inadvertence in the Secretary's Certificate. To further deny due course of the instant case, especially when it is already submitted for decision, will certainly defeat the administration of justice. As correctly pointed out by petitioner in the case of *Swedish Match Philippines, Inc. vs. The Treasurer of the City of Manila*[38], the Supreme Court held that:

> "**A distinction between noncompliance and substantial compliance with the requirements of a certificate of non-forum shopping and verification as provided in the Rules of Court must be made.** In this case, it is undisputed that the Petition filed with the RTC was accompanied by a Verification and Certification of Non-Forum Shopping signed by Ms. Beleno, although without proof of authority from the board. However, this Court finds that the belated submission of the Secretary's Certificate constitutes substantial compliance with Sections 4 and 5, Rule 7 of the 1997 Revised Rules on Civil Procedure.
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> A perusal of the Secretary's Certificate signed by petitioner's Corporate Secretary Rafael Khan and submitted to the RTC shows that not only did the corporation authorize Ms. Beleno to execute the required Verifications and/or Certifications of Non-Forum Shopping, but it likewise ratified her act of filing the Petition with the RTC. xxx
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> xxx xxx xxx
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> Clearly, this is not an ordinary case of belated submission of proof of authority from the board of directors. Petitioner-corporation ratified the authority of Ms. Beleno to represent it in the Petition filed before the RTC, particularly in Civil Case No. 03-108163, and consequently to sign the verification and certification of non-forum shopping on behalf of the corporation. This fact confirms and affirms her authority and gives this Court all the more reason to uphold that authority." *(Emphasis supplied)*

Anent the issue that petitioner failed to submit all relevant documents within sixty (60) days from the filing of protest in accordance with Section 228 of the National Internal

[37] *Marcelino Domingo vs. Court of Appeals, et al.*, G.R. No. 169122, February 2, 2010.
[38] G.R. No. 181277, July 3, 2013.

Revenue Code (NIRC) of 1997, in relation to RR No. 12-99, this Court has consistently held that the term "complete documents" should be understood to refer to those documents that are necessary to support the application for refund or tax credit certificate, as determined by the taxpayer. The BIR examiner can require the taxpayer to submit additional documents but the examiner cannot demand what type of supporting documents should be submitted. Otherwise, the taxpayer will be at the mercy of the examiner, who may require the production of documents that the taxpayer cannot submit. Moreover, it is basic that respondent ought to know the tax records of all taxpayers.[39]

The Supreme Court in the case of *Commissioner of Internal Revenue vs. First Express Pawnshop Company, Inc.*[40], answered the issue of what are relevant documents needed to be submitted to the Bureau of Internal Revenue, in the following manner:

> "The term 'relevant supporting documents' should be understood as those documents necessary to support the legal basis in disputing a tax assessment as determined by the taxpayer. **The BIR can only inform the taxpayer to submit additional documents. The BIR cannot demand what type of supporting documents should be submitted.** Otherwise, a taxpayer will be at the mercy of the BIR, which may require the production of documents that a taxpayer cannot submit." *(Emphasis supplied)*

This Court will now address the merit of the claim. Section 203 of the NIRC of 1997, as amended, mandates that respondent should make an assessment for deficiency taxes within three (3) years from the last day prescribed by law to file the tax return or the actual date of filing of such return, whichever comes later. Any assessment notice issued beyond this three-year prescriptive period shall not be valid save in certain cases, to wit:

> "SEC. 203. *Period of Limitation Upon Assessment and Collection.* - Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after

[39] *Diageo Philippines, Inc. vs. Commissioner of Internal Revenue*, CTA Case Nos. 7846 and 7865, January 16, 2012, citing *BPI-Family Savings Bank, Inc. vs. Court of Appeals, et al.*, G.R. No. 122480, April 12, , 2000 and *Commissioner of Internal Revenue vs. Ironcon Builders and Development Corporation*, G.R. No. 180042, February 8, 2010.

[40] G.R. Nos. 172045-46, June 16, 2009.

> the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided,* That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day."

However, since the matter of prescription was never raised as an issue in the instant case, this Court shall now go into the merits of the case.

DEFICIENCY INCOME TAX - ₱2,737,817.02

In respondent's FDDA[41], she computed the alleged deficiency income tax for taxable year 2006, as follows:

Taxable income per return		₱(16,308,626.00)
Add: Adjustment		
Unreported income (unaccounted source of funds)	₱4,920,369.00	
Taxable income – gross profit (.127)		624,886.86
Disallowed cost & expenses		
Discounts	₱3,611,850.00	
Non-deductible interest expense	29,973.35	3,641,823.35
Taxable income per re-audit		₱ 4,266,710.21
Income tax due (35%)		₱ 1,493,348.57
Add: Interest (20% per annum)	₱1,219,468.45	
Compromise penalty	25,000.00	1,244,468.45
Total Deficiency Income Tax		**₱ 2,737,817.02**

The determination of whether or not the assessment is correct shall depend on the propriety of the income imputed as well as the cost/expense deductions disallowed by respondent, namely:

a. Unreported income	₱4,920,369.00
b. Discounts	3,611,850.00
c. Interest expense	29,973.35

[41] Exhibit "F", p. 1.

Each shall be discussed accordingly for the proper disposition of the income tax assessment.

a. Unreported Income – ₱4,920,369.00

Respondent charged petitioner of an alleged undeclared income in the amount of ₱4,920,369.00 based on the following finding:[42]

> 1. Comparison made between Bond Placements per Documentary Stamp Tax (DST) Returns (tax base) of P62,276,610.00 versus the increase in bond placement per FS of P57,356,241.00 showed a difference of P4,920,369.00. Applying the Gross Profit Rate of 12.7% yielded and [*sic*] a gross profit of ₱624,886.86. Hence, deficiency income tax is hereby assessed pursuant to Section 32 of the National Internal Revenue Code (NIRC).

Examination of petitioner's Notes to Financial Statements[43] for the years ended December 31, 2006 and 2005, particularly, Note 12, disclosed that petitioner has trust funds which are being administered by three (3) local banks under trust agreements for the fulfillment of petitioner's obligations under the pre-need pension and education plan agreements. In compliance with the rules and regulations of the Securities and Exchange Commission (SEC) and in accordance with the terms of the trust agreements, no withdrawal shall be made from the trust funds except to: (a) pay all costs, expenses and charges incurred in connection with the administration, preservation, maintenance and protection of the trust fund or any part thereof needed for the payment of benefits; (b) settle, compromise or abandon all claims and demands in favor of or against the trust fund, with the prior written consent of petitioner; and *engage in investing activities.*

The amount of ₱57,356,241.00[44] increase in Financial Assets at Fair Value through Profit or Loss (FVPL) represents additional investments in government securities, shares of stocks and unrealized market gain on valuation acquired by

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[42] Exhibit "F", Annex A, p. 1.

[43] Exhibit "H", Notes to Financial Statements, Note 12, p. 20.

[44] Exhibit "H", Notes to Financial Statements, Note 12, p. 20 (the difference between ₱348,104,977.00 and ₱290,748,736.00).

the trustee banks for the trust funds.[45] These Financial Assets at FVPL formed part of the trust funds' Assets on Investments managed independently by the trustee banks for the benefits of the plan holders. The transactions relating to the trust funds' investments are being recorded in a separate book, the trust being an entity with separate and distinct legal personality. As such, taxes relating to the trust funds' assets are being paid by the trustee bank out of the trust funds.[46]

On the other hand, the amount of ₱62,276,610.00 tax base reflected in petitioner's DST returns[47] pertains to bonds and loan agreements entered into by petitioner for which it paid DST.

Considering that the trustee banks were the ones responsible for the ₱57,356,241.00 increase in Financial Assets at FVPL of the trust funds' investments, it was erroneous for respondent to compare the said amount with the ₱62,276,610.00 value of the bonds and loan agreements entered into by petitioner itself and, thereafter, conclude the difference between the two amounts as petitioner's unaccounted source of income. Moreover, the composition of the two amounts differs; the amount of ₱57,356,241.00 pertains to government securities, shares of stocks and unrealized market gain on valuation whereas the amount of ₱62,276,610.00 refers to bonds and loan agreements.

While axiomatic is the fact that all presumptions are in favor of the correctness of tax assessments, the assessment itself should not only be based on mere presumptions, no matter how logical the presumption might be. It has consistently been held that in order to stand the test of judicial scrutiny, the assessment must be based on actual facts.[48] For lack of factual basis, the deficiency income tax assessment corresponding to the alleged ₱4,920,369.00 unaccounted source of income should be cancelled.

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[45] Exhibit "H", Notes to Financial Statements, p. 9.
[46] Exhibit "GGG 13-6", Article Ten; Exhibit "GGG13-7", Article Eleven; Exhibit "GGG 13-4", Article Six, 6.2.10.
[47] Exhibits "Y" to "II" and BIR Records, pp. 126-127.
[48] *Collector of Internal Revenue vs. Benipayo*, G.R. No. L-13656, January 31, 1962.

b. Disallowed Cost and Expenses - ₱3,641,823.35

Disallowance of cost and expenses in the total amount of ₱3,641,823.35, consisting of discounts and interests in the respective amounts of ₱3,611,850.00 and ₱29,973.35, was the result of the reconciliations made by respondent's examiner between petitioner's Financial Statements (FS) and Income Tax Return (ITR). Respondent claims that said cost and expenses were not supported by any documentary proof, despite repeated requests, to prove that such costs and expenses were incurred and deductible during the year under re-audit. Consequently, these were disallowed pursuant to Section 34(K) of the NIRC of 1997, as amended.[49]

Corollary, on the disallowed discounts of ₱3,611,850.00, petitioner explained that discounts are recorded and presented in the books as direct costs. While premium collections are recorded and presented in the books as gross of discounts for internal monitoring. Petitioner also claims that these discounts constitute income and actual receipts, which should be allowed as deduction for income tax purposes since under Section 27 of the NIRC of 1997, as amended, the term "gross income" means gross receipts less sales returns, allowances and discounts.[50]

Perusal of petitioner's Statements of Income and Notes to Financial Statements, specifically Note 15[51], for the years ended December 31, 2006 and 2005 discloses that the account "Discounts" in the amount of ₱3,611,850.00 is one of the items reported under "Other Direct Costs and Expenses". The Court-commissioned ICPA, Mr. Julito Tabalba, on his examination of the VAT official receipts (ORs), found that discounts granted by petitioner amounted to ₱2,108,043.86.[52] However, verification thereof in the summary schedules shows a lower amount by ₱3,380.40, as computed below:

[49] Exhibit "F", Annex A, p. 1.
[50] BIR Records, p. 618.
[51] Exhibit "H".
[52] Exhibit "PPP", p. 14.

Month	Exhibit	Discount		Difference
		Per Summary Schedule	Per ICPA	
January	"ZZ-1" to "ZZ-9", LLL-7	₱ 50,630.00	₱ 50,858.75	₱ (228.75)
February	"ZZ-10" to "ZZ-18"	138,868.48	138,868.48	-
March	"ZZ-19" to "ZZ-26"	187,554.89	187,554.89	-
April	"ZZ-27" to "ZZ-34"	102,035.90	102,035.90	-
May	"ZZ-35" to "ZZ-46", LLL-11 to LLL-12	215,025.81	215,025.81	-
June	"ZZ-47" to "ZZ-51", LLL-16 to LLL-19	220,529.21	220,529.21	-
July	"ZZ-52" to "ZZ-58"	171,438.70	171,438.70	-
August	"ZZ-59" to "ZZ-67"	210,418.85	210,418.85	-
September	"ZZ-68" to "ZZ-75"	323,370.81	326,413.86	(3,043.05)
October	"ZZ-76" to "ZZ-83"	205,541.02	205,541.02	-
November	"ZZ-84" to "ZZ-90", LLL-23 to LLL-24, LLL-26	101,617.35	101,617.35	-
December	"ZZ-91" to "ZZ-99"	177,632.44	177,741.04	(108.60)
Total		**₱ 2,104,663.46**	**₱ 2,108,043.86**	**₱ (3,380.40)**

In addition, scrutiny of the ORs submitted by petitioner reveals that out of the ₱2,104,663.46 sales discounts per schedules, the amount of ₱1,722,711.52 shall be disallowed due to the following reasons:

Exhibit No.	Date	Customer	O.R. No.	Discount
1. No discount was indicated in the O.R.				
SS 39	4-Jan-06	MMI Pension	45339	₱ 4,519.56
SS 46	16-Jan-06	Banico, E.	45346	394.80
SS 47	16-Jan-06	Castro, R.	45347	117.00
SS 182	12-Jan-06	Francisco, Geronimo	45482	114.69
SS 525	17-Jan-06	Yap, M.	45825	289.80
SS 557	5-Jan-06	Alamat Crew	45857	781.40
SS 568	11-Jan-06	CASSC	45868	896.60
SS 570	11-Jan-06	METI	45870	123.30
SS 574	11-Jan-06	D. ASSET	45874	192.45
SS 576	11-Jan-06	Cadenza Employee	45876	43.80
SS 577	11-Jan-06	DAKILA	45877	298.10
SS 578	11-Jan-06	Exito Employee	45878	108.60
SS 579	11-Jan-06	BONITA	45879	78.00
SS 580	11-Jan-06	TRANS M	45880	78.00
SS 661	26-Jan-06	Tambolero, M.	45961	234.00
SS 701	18-Jan-06	LAWIN	46001	64.10
SS 704	18-Jan-06	MAUNLAD	46004	144.90
SS 705	18-Jan-06	NEOMARINE	46005	449.60
SS 709	18-Jan-06	AMEX	46009	370.80
SS 734	24-Jan-06	SMI	46034	6,391.95
SS 737	24-Jan-06	SMI	46037	457.50
SS 738	24-Jan-06	IPSI	46038	228.75
SS 739	24-Jan-06	TCL	46039	783.00

SS 744	24-Jan-06	VISION AIR	46044	1,189.50
SS 803	25-Jan-06	TAC	46103	810.00
SS 808	27-Jan-06	ASIANA	46108	274.40
SS 855	31-Jan-06	Jennifer Humandy	46155	381.50
SS 1636	27-Jan-06	Villacorta, R.	46936	83.00
SS 816	1-Feb-06	ASIANA PHILS.	46116	274.40
SS 824	4-Feb-06	TMDC	46124	530.60
SS 1011	16-Feb-06	TAC	46311	810.00
SS 1032	20-Feb-06	NEO MARINE	46322	449.60
SS 669	1-Feb-06	Pramis, A.	45969	117.00
SS 670	2-Feb-06	Duhina, J.	45970	140.00
SS 678	2-Feb-06	TMDC	45978	228.75
SS 679	2-Feb-06	NETI	45979	305.00
SS 690	20-Feb-06	Yap, M.	45990	289.80
SS692	20-Feb-06	Lopez, C.	45992	128.00
SS817	1-Feb-06	ASIANA	46117	2,595.98
SS823	4-Feb-06	JRDC	46123	228.75
SS838	13-Feb-06	TESI	46138	1,297.20
SS839	13-Feb-06	TESI	46139	686.25
SS843	13-Feb-06	D. WONDER	46143	1,110.00
SS845	13-Feb-06	HOKOKU	46145	6,538.50
SS846	13-Feb-06	DONG JIN	46146	1,751.40
SS871	3-Feb-06	YAS BROKERAGE	46171	76.25
SS898	16-Feb-06	Carimpong, C.	46198	825.00
SS1012	16-Feb-06	NFJSC - CEBU	46312	131.60
SS1013	16-Feb-06	NFJSC	46313	1,658.75
SS1014	16-Feb-06	NFJSC - CEBU	46314	131.60
SS1015	16-Feb-06	NFJSC	46315	1,619.75
SS1017	17-Feb-06	EPERFORMAX	46317	391.40
SS1018	20-Feb-06	MATATAG	46318	144.90
SS1019	20-Feb-06	VROON	46319	3,014.80
SS1021	20-Feb-06	ALAMAT	46321	1,550.00
SS1024	20-Feb-06	EXITO	46324	731.20
SS1026	20-Feb-06	LAWIN	46326	1,170.00
SS1027	20-Feb-06	HNGKNGFLEET	46327	312.00
SS1031	20-Feb-06	CADENZA	46331	3,061.70
SS1033	20-Feb-06	BONITA	46333	78.00
SS1035	20-Feb-06	PRSPRDD	46335	538.30
SS1036	20-Feb-06	D. ASSET	46336	192.45
SS1038	20-Feb-06	EXITO	46338	108.60
SS1039	20-Feb-06	METI	46339	413.10
SS1040	20-Feb-06	TLSC	46340	1,952.65
SS1041	20-Feb-06	DOLPHIN MGT	46341	662.00
SS1042	20-Feb-06	TDGI	46342	1,051.00
SS1043	20-Feb-06	KAPALARAN	46343	107.90
SS1152	20-Feb-06	KMTC	46452	118.95
SS1157	21-Feb-06	CASSC	46457	576.80
SS1159	22-Feb-06	Go, A.	46459	309.40
SS1162	22-Feb-06	IPSI	46462	1,247.85
SS1167	28-Feb-06	ADTOURS	46476	5,788.40
SS1458	16-Mar-06	NFJSC	46758	838.75

SS2702	4-Jul-06	KMTC	48002	158.60
SS872	3-Feb-06	YUSEN	46172-4	305.00
SS 872	3-Feb-06	YAS BROKERAGE	46172-5	305.00
SS1007	13-Feb-06	TRANS M	46307-2	3,551.80
SS1032	20-Feb-06	DAKILA	46332-2	128.20
SS1155	21-Feb-06	NYKSIN	46455-3	38,998.70
SS1155	21-Feb-06	JCL	46455-4	969.00
SS1155	21-Feb-06	ICMA	46455-5	1,210.70
SS1155	21-Feb-06	HACHIUMA	46455-6	14,394.55
SS1155	21-Feb-06	HOKOKU	46455-7	772.60
SS1155	21-Feb-06	NYKLINE	46455-8	1,659.80
TT743	7-Mar-06	TLSC	893	6,859.45
SS697	3-Mar-06	TLI	45997	1,213.05
SS1034	20-Feb-06	LAWIN	46334	399.69
SS1040	20-Feb-06	TLI	46340	1,833.85
SS1043	20-Feb-06	KAPALARAN	46343	107.90
SS1129	1-Mar-06	Esteban, M.	46429	78.00
SS1138	3-Mar-06	PIZZATEK	46438	131.40
SS1161	1-Mar-06	SMI	46461	7,561.65
SS1181	1-Mar-06	D. MAGIC	46481	2,008.50
SS1186	2-Mar-06	CASSC	46486	836.60
SS1197	3-Mar-06	TMDC	46497	551.60
SS1199	3-Mar-06	TDGI	46499	535.60
SS1200	3-Mar-06	TDGI	46500	2,369.00
SS1235	24-Mar-06	Raneses, Pacita	46535	7,800.00
SS1252	7-Mar-06	NETI	46552	1,247.85
SS1256	7-Mar-06	TMDC	46556	943.20
SS 1259	7-Mar-06	MMI	46559	6,362.90
SS1260	9-Mar-06	VISION AIR	46560	87.60
SS1266	9-Mar-06	ASIANA	46566	274.40
SS1269	13-Mar-06	NLPH	46569	5,188.85
SS1272	9-Mar-06	EXITO	46572	108.60
SS1272	9-Mar-06	EXITO	46572	108.60
SS1274	9-Mar-06	LAWIN	46574	64.10
SS1276	9-Mar-06	NEOMARINE	46576	513.70
SS1277	9-Mar-06	CADENZA	46577	43.80
SS1278	9-Mar-06	CADENZA	46578	165.60
SS1280	10-Mar-06	KAPALARAN	46580	107.90
SS1282	10-Mar-06	MANDARA	46582	800.00
SS 1283	10-Mar-06	DYNAMIC ASSET	46583	192.45
SS1284	10-Mar-06	DOLSHIP	46584	396.50
SS1287	10-Mar-06	DALEX	46587	972.40
SS1292	10-Mar-06	MAUNLAD	46592	87.60
SS1293	14-Mar-06	TAC	46593	686.25
SS1295	14-Mar-06	DONG JIN	46595	2,217.00
SS1297	15-Mar-06	FETRAN	46597	1,465.70
SS1298	15-Mar-06	TRANS M	46598	4,731.80
SS1299	15-Mar-06	HOKOKU	46599	4,713.80
SS1303	9-Mar-06	MMS	46603	198.40
SS1304	24-Mar-06	MMI	46604	305.00
SS1305	24-Mar-06	MMI	46605	846.00

SS1367	16-Mar-06	Yap, M.	46667	217.35
SS1373	17-Mar-06	Pramis, A.	46673	117.00
SS1381	23-Mar-06	Albacete, J.	46681	394.80
SS1403	20-Mar-06	Sanglay, R.	46703	171.00
SS1409	20-Mar-06	Batulan, R.	46709	164.00
SS1453	16-Mar-06	CASSC	46753	1,070.60
SS1457	16-Mar-06	NFJSC	46757	848.75
SS1461	16-Mar-06	NESC	46761	231.30
SS1479	22-Mar-06	CADENZA	46779	1,529.40
SS1481	23-Mar-06	EXITO	46781	287.60
SS1482	23-Mar-06	Vroon-ideal	46782	2,096.20
SS1483	23-Mar-06	LAWIN	46783	399.00
SS1485	23-Mar-06	HKG FLT	46785	312.00
SS1487	23-Mar-06	PRSPRDD	46787	710.60
SS1489	23-Mar-06	D. WONDER	46789	1,347.00
SS1491	23-Mar-06	ALAMAT	46791	1,398.00
SS 1493	23-Mar-06	Vroon-ideal	46793	2,096.20
SS1494	29-Mar-06	NYKSMI	46794	7,085.15
SS1495	29-Mar-06	IPSI	46795	261.30
SS1497	23-Mar-06	D. Magic	46797	1,951.50
SS1498	29-Mar-06	NETI	46798	1,641.65
SS1499	30-Mar-06	ADTOURS	46799	5,891.60
SS696	3-Mar-06	Fit	45996-1	43.80
SS696	3-Mar-06	TWFI	45996-2	51.70
SS696	3-Mar-06	TLI	45996-3	1,213.05
SS 1124	6-Mar-06	YUSEN STAFF	46424-1	1,359.30
SS1124	6-Mar-06	YUSEN MGMT	46424-2	683.30
SS1457	16-Mar-06	NFJSC – CEBU	46757-1	131.60
SS1463	17-Mar-06	COSMIC	46763-1	166.00
SS1463	17-Mar-06	NYK SIN	46763-3	34,806.30
SS1463	17-Mar-06	JCL	46763-4	1,295.00
SS1463	17-Mar-06	ICMA	46763-5	7,080.40
SS1463	17-Mar-06	HACHIUMA	46763-6	14,867.65
SS1463	17-Mar-06	HOKOKU	46763-7	772.60
SS1463	17-Mar-06	NYKLINE	46763-8	2,284.00
SS1463	17-Mar-06	TMM	46763-9	6,267.20
SS1315	26-Apr-06	MMS	46615	198.40
SS1565	3-Apr-06	YAS BROKERAGE	46865	228.75
SS1566	3-Apr-06	Yusen	46866	1,220.00
SS1572	3-Apr-06	NCT	46872	637.90
SS1574	3-Apr-06	NCT	46874	637.90
SS1575	3-Apr-06	NCT	46875	533.75
SS1584	4-Apr-06	VISION AIR	46884	538.30
SS1585	3-Apr-06	YAS BROKERAGE	46885	991.50
SS1586	5-Apr-06	TCL	46886	783.00
SS1592	6-Apr-06	TLSC	46892	634.40
SS 1594	6-Apr-06	TLI	46894	1,213.05
SS1595	5-Apr-06	FIT	46895	43.80
SS1597	5-Apr-06	TWFI	46897	51.70
SS1599	6-Apr-06	TESI	46899	946.20
SS1600	5-Apr-06	Martinez, Renvi	46900	3,903.90

SS1633	19-Apr-06	Yap, M.	46933	217.35
SS1682	25-Apr-06	TMDC	46982	551.60
SS1684	25-Apr-06	TMDC	46984	305.00
SS1701	6-Apr-06	TESI	47001	3,736.25
SS1702	6-Apr-06	MMI	47002	4,428.20
SS1710	6-Apr-06	LAWIN CREW	47010	803.90
SS1712	6-Apr-06	ALAMAT	47012	1,085.40
SS1715	6-Apr-06	NEO MARINE	47015	904.00
SS1716	6-Apr-06	MATATAG	47016	144.90
SS1717	6-Apr-06	EXITO CREW	47017	209.60
SS1718	6-Apr-06	CADENZA	47018	1,529.40
SS1719	6-Apr-06	D. Asset	47019	192.45
SS1720	6-Apr-06	Meti	47020	413.10
SS1721	6-Apr-06	Cadenza Emp	47021	121.80
SS1722	6-Apr-06	Exito Emp	47022	108.60
SS1724	6-Apr-06	KAPALARAN	47024	107.90
SS1725	6-Apr-06	LAWIN	47025	64.10
SS1729	6-Apr-06	NEOMARINE	47029	513.70
SS1730	7-Apr-06	PIZZATEK	47030	109.50
SS1734	10-Apr-06	SMI	47034	838.75
SS1735	10-Apr-06	NCT	47035	533.75
SS1740	12-Apr-06	DOLPHIN	47040	237.90
SS1741	12-Apr-06	DOLPHIN MGMT	47041	662.00
SS1742	12-Apr-06	Dongjin	47042	2,537.70
SS1743	12-Apr-06	Hokoku	47043	4,713.40
SS1748	18-Apr-06	TDGI	47048	700.00
SS1749	18-Apr-06	ILSI	47049	20.60
SS1751	18-Apr-06	FETRAN	47051	539.50
SS 1752	18-Apr-06	TRANS M	47052	821.90
SS1754	18-Apr-06	ASIANA	47054	274.40
SS1755	19-Apr-06	KMTC	47055	118.95
SS1757	20-Apr-06	NLPH	47057	4,364.50
SS1758	20-Apr-06	NLPH	47058	4,364.50
SS1759	20-Apr-06	TESI	47059	946.20
SS1776	27-Apr-06	TDGI	47076	391.40
SS1779	27-Apr-06	D. Magic	47079	2,087.70
SS1780	27-Apr-06	YAS BROKERAGE	47080	991.50
SS1784	28-Apr-06	Alvior, B.	47084	4,935.00
SS1785	28-Apr-06	Mendoza, R.	47085	788.40
SS1789	28-Apr-06	TRANS M	47089	78.00
SS1793	28-Apr-06	SMI	47093	4,662.60
SS1795	28-Apr-06	IPSI	47095	392.90
SS1799	28-Apr-06	NETI	47099	994.50
SS1858	27-Apr-06	MMI Crew	47158	4,503.90
SS1760	24-Apr-06	COSMIC	47060-1	466.00
SS1760	24-Apr-06	CSPLDT	47060-2	625.40
SS1760	24-Apr-06	JCL	47060-4	815.00
SS1760	24-Apr-06	ICMA	47060-5	6,712.00
SS1760	24-Apr-06	HACHIUMA	47060-6	4,086.90
SS1760	24-Apr-06	HOKOKU	47060-7	772.60
SS1760	24-Apr-06	NYKLINE	47060-8	1,703.20

SS1760	24-Apr-06	TMM CREW	47060-9	2,581.30
SS1763			47063-1	1,358.30
SS1763			47063-2	683.30
SS1764	24-Apr-06	YUSEN STAFF	47064-1	1,359.30
SS 1764	24-Apr-06	YUSEN MGMT	47064-2	686.30
SS1325	10-May-06	MMI employees	46625	4,519.56
SS1859	2-May-06	EPERFORMAX	47159	391.40
SS1870	4-May-06	Matawaran, R.	47170	175.20
SS1871	4-May-06	Flores, E.	47171	175.20
SS1874	5-May-06	TESI	47174	2,247.50
SS 1875	5-May-06	TESI	47175	762.50
SS1878	8-May-06	CASSC	47178	1,070.60
SS1879	8-May-06	CASSC	47179	226.20
SS1882	8-May-06	ADTOURS	47182	4,342.20
SS1883	8-May-06	ADTOURS	47183	5,417.80
SS1886	8-May-06	TDGI	47186	2,142.40
SS1889	9-May-06	TMDC	47189	551.60
SS1894	9-May-06	DALEX	47194	184.00
SS1896	9-May-06	DOLPHIN MGMT	47196	662.00
SS1899	9-May-06	Transnational Resources, Inc	47199	87.60
SS1900	9-May-06	Neomarine Emp	47200	513.70
SS1920	16-May-06	Yap, M.	47220	217.35
SS2052	9-May-06	LAWIN	47352	64.10
SS2054	9-May-06	KAPALARAN	47354	107.90
SS2056	9-May-06	EXITO	47356	108.60
SS2057	9-May-06	CADENZA	47357	121.80
SS2058	9-May-06	D. ASSET	47358	192.45
SS2059	9-May-06	Aguirre, Roberto	47359	530.40
SS2060	9-May-06	METI	47360	268.20
SS2062	9-May-06	Aguirre, Roberto	47362	1,383.00
SS2063	9-May-06	Virtusio, Domingo	47363	109.50
SS2067	11-May-06	Dong Jin Crew	47367	3,132.10
SS2068	11-May-06	HOKOKU	47368	2,397.50
SS 2072	15-May-06	D. WONDER	47372	678.80
SS2074	15-May-06	Fetran	47374	5,171.50
SS2075	15-May-06	TRANS M	47375	781.90
SS2082	16-May-06	TDC	47382	686.25
SS2100	18-May-06	IPSI	47400	144.30
SS2103	24-May-06	MMI EMP	47403	846.00
SS2104	24-May-06	MMI	47404	243.00
SS2107	24-May-06	MMI	47407	6,350.70
SS2152	18-May-06	NETI	47452	706.50
SS2153		NYKFIL	47453	4,782.45
SS2165	22-May-06	YAS BROKERAGE	47465	765.90
SS2167	22-May-06	YUSEN	47467	915.00
SS2172	22-May-06	NFJSC	47472	3,355.00
SS 2174	22-May-06	NESC	47474	667.50
SS2175	22-May-06	NFJSC	47475	1,658.75
SS2176	22-May-06	NFJSC	47476	131.60
SS2182	22-May-06	NFJSC-MANILA	47482-2	131.60
SS2186	22-May-06	TLI	47486	79.30

SS2187	22-May-06	TLI	47487	1,213.05
SS2189	22-May-06	TLI	47489	118.95
SS2194	22-May-06	TLI	47494	1,213.05
SS2196	22-May-06	VISION AIR	47496	280.00
SS2197	23-May-06	ASIANA	47497	185.40
SS2198	23-May-06	ASIANA	47498	1,998.20
SS2202	24-May-06	NCT	47502	637.90
SS2207	24-May-06	NLPH	47507	4,696.50
SS2211	25-May-06	VISION AIR	47511	304.90
SS2219	25-May-06	Dolphin-Dodongo, B.	47519	2,377.60
SS2221	25-May-06	VROON	47521	731.60
SS2224	26-May-06	DALEX	47524	382.00
SS2226	26-May-06	KAGITINGAN	47526	1,974.00
SS2227	26-May-06	Maunlad Crew	47527	156.00
SS2228	26-May-06	EXITO	47528	209.60
SS2229	26-May-06	ASIANA	47529	274.40
SS2230	26-May-06	CADENZA	47530	1,973.40
SS2233	26-May-06	NEOMARINE	47533	2,257.00
SS2234	26-May-06	PROSPERIDAD	47534	355.90
SS2237	26-May-06	IDEAL	47537	829.80
SS2239	26-May-06	ALAMAT	47539	304.00
SS2242	29-May-06	TCL	47542	783.00
SS2247	30-May-06	TMDC	47547	228.75
SS2260	30-May-06	LAWIN	47560	1,830.40
SS2262	31-May-06	SMI	47562	1,601.25
SS2095	18-May-06	TDGI	47395-1	262.00
SS2095	18-May-06	NYKFIL	47396-1	594.10
SS2155	22-May-06	AMBULO YUSEN	47455-7	772.60
SS2155	22-May-06	COSMIC	47455-1	166.00
SS2155	22-May-06	NYKSIN	47455-3	28,668.60
SS2155	22-May-06	JCL	47455-4	903.00
SS2155	22-May-06	ICMA	47455-5	7,220.20
SS2155	22-May-06	NYKLINE	47455-8	2,469.20
SS2155	22-May-06	TMM	47455-9	4,202.00
SS2169	22-May-06	YUSEN STAFF	47469-1	1,446.90
SS2169	22-May-06	YUSEN MGMT	47469-2	683.30
SS2182	22-May-06	NFJSC	47482-1	1,658.75
SS2182	22-May-06	NFJSC-CEBU	47482-2	131.60
SS2284	7-Jun-06	Lao Guico, Ma. Veronica	47584	1,052.80
SS2343	15-Jun-06	Siin, Marlon	47643	103.40
SS2345	16-Jun-06	Yap, Margie	47645	217.35
SS2451	13-Jun-06	VROON	47751	731.60
SS2452	13-Jun-06	PROSPERIDAD	47752	355.90
SS2455	13-Jun-06	LAWIN	47755	803.90
SS2457	13-Jun-06	IDEAL	47757	829.80
SS2459	14-Jun-06	EXITO	47759	822.80
SS2460	14-Jun-06	ALAMAT	47760	304.00
SS2461	14-Jun-06	CADENZA	47761	2,832.60
SS2463	14-Jun-06	CADENZA	47763	121.80
SS2464	14-Jun-06	EXITO	47764	108.60
SS2467	14-Jun-06	LAWIN	47767	64.10

SS2471	14-Jun-06	D. ASSET	47771	192.45
SS2472	14-Jun-06	DOLPHIN MGMT	47772	530.40
SS2473	14-Jun-06	D. Magic	47773	1,577.50
SS2474	14-Jun-06	D. WONDER	47774	678.80
SS 2475	14-Jun-06	VISION AIR	47775	304.90
SS2476	15-Jun-06	NETI	47776	968.70
SS2477	15-Jun-06	IPSI	47777	144.30
SS2478	15-Jun-06	NYK SMI	47778	4,437.30
SS2479	16-Jun-06	NESC	47779	667.50
SS2483	16-Jun-06	NEOMARINE	47783	449.60
SS2486	16-Jun-06	DONGJIN	47786	641.40
SS2487	16-Jun-06	HOKOKU	47787	8,562.60
SS 2488	16-Jun-06	RET PLAN	47788	84,329.50
SS2489	16-Jun-06	TRANS M	47789	1,143.90
SS2490	16-Jun-06	FETRAN	47790	1,636.70
SS2500	20-Jun-06	ASIANA	47800	274.40
SS2514	29-Jun-06	Operana, E.	47814	460.00
SS2515	29-Jun-06	Operana, E.	47815	525.00
SS2518	30-Jun-06	YUSEN	47818	2,058.75
SS2551	20-Jun-06	ASIANA	47851	123.60
SS2557	21-Jun-06	PIZZATEK	47857	109.50
SS2558	21-Jun-06	D. WONDER	47858	1,344.90
SS2559	21-Jun-06	D. Magic	47859	796.50
SS2566	23-Jun-06	TCL	47866	783.00
SS2573	29-Jun-06	DALEX	47873	382.00
SS2576	28-Jun-06	CASSC	47876	1,503.80
SS2576	28-Jun-06	CASSC	47876	1,070.60
SS2580	28-Jun-06	SMI	47880	11,971.25
SS2581	28-Jun-06	IPSI	47881	1,448.75
SS2585	29-Jun-06	MMI PENSION	47885	4,519.56
SS2586	30-Jun-06	MMI	47886	228.75
SS2587	30-Jun-06	PIZZATEK	47887	109.50
SS2588	30-Jun-06	NLPH	47888	4,123.50
SS2657	30-Jun-06	Elmer Paredes	47957	1.05
SS2326	5-Jun-06	ADTOURS	47626-1	5,643.30
SS2344	30-Jun-06	YUSEN MGMT	47644-3	815.30
SS2482	16-Jun-06	NFJSC	47782-1	848.75
SS2482	16-Jun-06	NFJSC-CEBU	47782-2	131.60
SS2127	26-Jul-06	MMS	47427	198.40
SS2130	31-Jul-06	TMDC	47430	551.60
SS2134	26-Jul-06	TMDC	47434	4,346.25
SS2135	27-Jul-06	MMI	47435	3,923.90
SS2137	26-Jul-06	MMI	47437	1,316.00
SS2548	31-Jul-06	MAUNLAD	47848	87.60
SS2591	14-Jul-06	NETI	47891	1,982.50
SS2593	16-Jul-06	CASSC	47893	1,172.15
SS2594	17-Jul-06	NLPH	47894	2,058.75
SS2599	16-Jul-06	TDGI	47899	638.60
SS2659	16-Jul-06	Volfango, Edna	47959	166.00
SS2661	16-Jul-06	Volfango, Edna	47961	157.50
SS2702	16-Jul-06	Figueras, Kerwin	48002	158.60

SS2705	16-Jul-06	Jimenez, Theresa	48005	771.00
SS2774	31-Jul-06	Yusen	48074	27,297.50
SS2775	31-Jul-06	Yusen	48075	76.25
SS2776	31-Jul-06	YAS BROKERAGE	48076	10,675.00
SS2780	31-Jul-06	Carpio, Judy	48080	87.60
SS2796	31-Jul-06	ADTOURS	48096	251.85
SS2797	31-Jul-06	ADTOURS	48097	1,009.40
SS2853	26-Jul-06	KMTC	48153	39.65
SS2854	26-Jul-06	KMTC	48154	1427.4
SS2856	26-Jul-06	TAC	48156	228.70
SS2857	26-Jul-06	TAC	48157	1,448.70
SS2858	26-Jul-06	JRDC	48158	228.75
SS2859	26-Jul-06	KAMRAZ	48159	228.75
SS2860	26-Jul-06	TDC	48160	838.75
SS2861	31-Jul-06	DOLPHIN MGT	48161	530.40
SS2862	25-Jul-06	KYOKKO	48162	1,467.10
SS2864	31-Jul-06	FETRAN	48164	1,459.10
SS2865	29-Jul-06	TRANS M	48165	2,787.00
SS2866	31-Jul-06	NETI	48166	1,282.10
SS2867	31-Jul-06	KAPALARAN	48167	107.90
SS2868	31-Jul-06	LAWIN EMP	48168	64.10
SS2875	31-Jul-06	NEOMARINE	48175	449.60
SS2876	31-Jul-06	PROSPERIDAD	48176	43.80
SS2877	31-Jul-06	DOLPHIN-TRI	48177	43.80
SS2878	31-Jul-06	CADENZA	48178	121.80
SS2879	31-Jul-06	DAC	48179	192.45
SS2880	31-Jul-06	EXITO EMP	48180	108.60
SS2883	26-Jul-06	NLPH	48183	4,429.30
SS2885	31-Jul-06	NYK-SMI	48185	4,487.60
SS2886	31-Jul-06	IPSI	48186	144.30
SS2887	31-Jul-06	TCL	48187	1,258.00
SS2888	26-Jul-06	TDGI	48188	700.00
SS2889	31-Jul-06	KPD IPC fr. JRD	48189	18,328.90
SS2893	26-Jul-06	MMI	48193	846.00
SS2894	26-Jul-06	MMI EMP	48194	243.00
SS2900	26-Jul-06	EXITO	48200	822.80
SS2952	26-Jul-06	PROSPERIDAD	48252	7,131.90
SS2955	26-Jul-06	MATATAG	48255	250.00
SS2958	31-Jul-06	TESI	48258	2,116.10
SS2960	29-Jul-06	CADENZA	48260	1,710.20
SS2962	29-Jul-06	ALAMAT	48262	304.00
SS2967	31-Jul-06	KMTC	48267	118.95
SS2973	31-Jul-06	Operana, Edgar	48273	460.00
SS2977	31-Jul-06	IDEAL	48277	829.80
SS2701	16-Jul-06	TWFI	48001-2	51.70
SS2701	16-Jul-06	FIT	48001-3	43.80
SS2863	31-Jul-06	D. WONDER	48163-1	616.80
SS2866	31-Jul-06	NETI ADD'L	48166-1	87.60
SS2897	26-Jul-06	COSMIC	48197-1	166.00
SS2897	26-Jul-06	CSPLDT	48197-2	1,620.70
SS2897	26-Jul-06	JCL	48197-4	1,479.00

SS2897	26-Jul-06	HACHIUMA	48197-6	12,375.30
SS2897	26-Jul-06	HOKOKU	48197-7	250.00
SS2897	26-Jul-06	NYKLINE	48197-8	1,406.10
SS2897	26-Jul-06	TMM	48197-9	5,942.50
SS2918	16-Aug-06	Edmon Vitacion	48218	816.00
SS2981	14-Aug-06	ASIANA	48281	1,812.80
SS2982	14-Aug-06	ASIANA	48282	123.60
SS2987	14-Aug-06	NFJSC	48287	381.25
SS2990	14-Aug-06	NESC	48290	15,173.75
SS2991	14-Aug-06	NCT	48291	19,977.50
SS2992	14-Aug-06	NCT	48292	1,421.30
SS2993	14-Aug-06	NESC	48293	667.50
SS2994	14-Aug-06	NYK-FJSC	48294	848.75
SS2996	14-Aug-06	TDGI	48296	61.80
SS2997	14-Aug-06	TDG ASIA	48297	610.00
SS3000	14-Aug-06	TLI	48300	118.95
SS3067	16-Aug-06	YAS BROKERAGE	48367	657.30
SS3096	31-Aug-06	PIZZATEK	48396	87.60
SS3101	14-Aug-06	TLI	48401	793.00
SS3110	24-Aug-06	VROON	48410	2,515.20
SS3111	25-Aug-06	D. Magic	48411	1,207.50
SS3119	31-Aug-06	TCL	48419	658.00
SS3123	16-Aug-06	CASSC	48423	649.85
SS3124	31-Aug-06	TRANSM	48424	78.00
SS3125	16-Aug-06	TRANSM	48425	78.00
SS3141	25-Aug-06	DALEX	48441	382.00
SS3144	25-Aug-06	CADENZA	48444	2,082.20
SS3146	25-Aug-06	D. WONDER	48446	699.80
SS3148	25-Aug-06	D. Magic	48448	1,023.60
SS3149	25-Aug-06	PROSPERIDAD	48449	355.90
SS3160	31-Aug-06	San Jose, Bienvenido	48460	1,316.00
SS3163	31-Aug-06	MMI	48463	3,796.90
SS3165	31-Aug-06	TMDC	48465	551.60
SS3351	25-Aug-06	MATATAG	48651	250.00
SS3353	28-Aug-06	LAWIN	48653	803.90
SS3354	28-Aug-06	EXITO	48654	822.80
SS3355	28-Aug-06	IDEAL	48655	829.80
SS3358	28-Aug-06	VROON	48658	3,881.80
SS3359	28-Aug-06	KYOKKO	48659	1,467.10
SS3360	28-Aug-06	HOKOKU	48660	7,674.90
SS3361	28-Aug-06	TRANSM	48661	1,111.00
SS3362	28-Aug-06	FETRAN	48662	4,540.10
SS3363	28-Aug-06	TDGI	48663	700.00
SS3364	28-Aug-06	TESI	48664	2,247.50
SS3365	28-Aug-06	TCL	48665	3,431.25
SS3366	28-Aug-06	TCL	48666	915.00
SS3371	31-Aug-06	DOLPHIN KAPALARAN	48671	107.90
SS3372	31-Aug-06	PROSPERIDAD	48672	43.80
SS3373	31-Aug-06	NEO MARINE	48673	449.60
SS3375	31-Aug-06	DOLPHIN EXITO	48675	108.60
SS3376	31-Aug-06	DOLPHIN CADENZA	48676	121.80

SS3377	31-Aug-06	LAWIN	48677	64.10
SS3378	31-Aug-06	DOLPHIN MGT	48678	4,402.60
SS3379	31-Aug-06	DOLPHIN MGT	48679	1,205.40
SS3380	31-Aug-06	TLSC	48680	4,956.25
SS3381	31-Aug-06	TLI	48681	674.05
SS3382	31-Aug-06	TLI	48682	594.75
SS3388	31-Aug-06	Operana, Edgar	48688	525.00
SS3390	31-Aug-06	TLSC	48690	1,336.50
SS3391	31-Aug-06	NCT	48691	1,214.70
SS3392	31-Aug-06	NYKFJSC	48692	991.25
SS3396	31-Aug-06	NESC	48696	2,897.50
SS3397	31-Aug-06	NESC	48697	635.50
SS3409	31-Aug-06	YUSEN	48709	305.00
SS3410	31-Aug-06	YAS BROKERAGE	48710	915.00
SS2994	31-Aug-06	NYK-FJSCCEBU	48294-1	131.60
SS3069	31-Aug-06	YUSEN STAFF	48369-1	1,626.90
SS3069	31-Aug-06	YUSEN MGMT	48369-3	815.30
SS3070	31-Aug-06	YUSEN MGMT	48370-1	891.30
SS3102	31-Aug-06	TDGI	48402-1	262.00
SS3111	31-Aug-06	D. Magic	48411-2	289.80
SS3367	31-Aug-06	COSMIC	48667-1	166.00
SS3367	31-Aug-06	CSPLDT	48667-2	1,620.70
SS3367	31-Aug-06	NYK-SIN	48667-3	27,409.70
SS3367	31-Aug-06	JCL	48667-4	657.00
SS3367	31-Aug-06	ICMA	48667-5	6,348.70
SS3367	31-Aug-06	HACHIUMA	48667-6	9,809.00
SS3367	31-Aug-06	HOKOKU	48667-7	2,590.00
SS3367	31-Aug-06	NYK LINE	48667-8	1,929.90
SS3367	31-Aug-06	TMM	48667-9	6,685.50
SS3385	31-Aug-06	TLSC-TWFI	48685-2	51.70
SS3395	31-Aug-06	NYKFSJC CEBU	48695-2	131.60
SS2741	28-Sep-06	AHRI	48041	305.00
SS3168	28-Sep-06	Safranca, Sonny	48468	305.00
SS3169	28-Sep-06	MMI	48469	2,363.70
SS3170	30-Sep-06	TMDC MML	48470	686.25
SS3447	15-Sep-06	Talamor, Ronnie	48747	394.80
SS3451	13-Sep-06	VISION AIR	48751	87.60
SS3452	29-Sep-06	ASIANA	48752	32.80
SS3453	29-Sep-06	ASIANA	48753	32.80
SS3455	18-Sep-06	ARHI	48755	305.00
SS3456	18-Sep-06	ARHI	48756	76.25
SS3457	28-Sep-06	Homer Del Ayre	48757	394.80
SS3461	28-Sep-06	TLSC	48761	991.25
SS3462	30-Sep-06	TLSC	48762	1,336.50
SS3463	30-Sep-06	FIT	48763	43.80
SS3464	28-Sep-06	MLG TPP	48764	1,052.80
SS3465	28-Sep-06	Sobremonte, Rogelio	48765	658.00
SS3466	28-Sep-06	Sobremonte, Rogelio	48766	131.60
SS3469	28-Sep-06	TDG	48769	84,329.50
SS3472		PROSPERIDAD	48772	1,066.00
SS3473	28-Sep-06	DOLPHIN MML	48773	555.10

SS3474	30-Sep-06	TESI	48774	1,783.10
SS3476	30-Sep-06	TDGI	48776	721.00
SS3477	30-Sep-06	TDGI	48777	123.60
SS3479	30-Sep-06	CADENZA CRED	48779	7,412.20
SS3483	30-Sep-06	CASSC EMP	48783	649.85
SS3485		CASSC EMP	48785	741.60
SS3486	28-Sep-06	DOLPHIN DYNAMIC	48786	192.45
SS3487	30-Sep-06	DOLSHIP METI	48787	242.70
SS3491	30-Sep-06	EXITO CREW	48791	822.80
SS3493	27-Sep-06	MAUNLAD CREW	48793	131.40
SS3494	30-Sep-06	MATATAG	48794	250.00
SS3499		EXITO EMP	48799	108.60
SS3505	28-Sep-06	TDG	48805	84,329.50
SS3510	29-Sep-06	MMS	48810	198.40
SS3511	13-Sep-06	VISION AIR	48811	87.60
SS3516	29-Sep-06	KYOKKO	48816	2,431.10
SS3517	29-Sep-06	HOKOKU	48817	10,764.10
SS3518	29-Sep-06	TRANS M	48818	1,392.00
SS3519	29-Sep-06	FETRAN	48819	1,459.10
SS3530	29-Sep-06	NYK SIN CREW	48830	1,525.00
SS3539	8-Sep-06	FETRAN	48839	2.55
SS3542	8-Sep-06	LAWIN CREW	48842	10.24
SS3543	13-Sep-06	VISION AIR	48843	280.00
SS3544	29-Sep-06	NEO MARINE	48844	88.00
SS3547	29-Sep-06	NLPH	48847	4,526.90
SS3548	29-Sep-06	NLPH	48848	3,637.20
SS3563	30-Sep-06	YUSEN MGMT	48863	1,005.20
SS 3582	30-Sep-06	Bustamante, Lorna	48882	43.80
SS3619		TMDC	48919	943.20
SS3654	27-Sep-06	METI	48954	242.70
SS3655	27-Sep-06	NEO MARINE	48955	318.00
SS3656	30-Sep-06	DOLSHIP TRI	48956	43.80
SS3660	30-Sep-06	IDEAL	48960	330.00
SS3664		NLPH	48964	915.00
SS 3665		IPSI	48965	1,872.65
SS3666		NETI	48966	228.75
SS3667	28-Sep-06	SMI MML	48967	457.50
SS3668		NYK FIL	48968	76.25
SS3936	30-Sep-06	FIT MANILA	49236	43.80
SS2155		CSPLDT	47455-2	493.80
SS3463	30-Sep-06	TWFI	48763-1	51.70
SS3468	28-Sep-06	NYK SIN CREW	48768-3A	31,095.00
SS3468	28-Sep-06	JCL CREW	48768-4	657.00
SS3468	28-Sep-06	ICMA CREW	48768-5	5,116.50
SS3468	28-Sep-06	HACHIUMA	48768-6	11,260.32
SS3468	28-Sep-06	HOKOKU	48768-7	640.00
SS3468	28-Sep-06	NYK LINE	48768-8	3,589.00
SS3468	28-Sep-06	YUSEN STAFF	48863-1	1,406.90
SS3175	24-Oct-06	MMI	48475	4,519.56
SS3176	24-Oct-06	MMI	48476	1,290.00

SS3179	9-Oct-06	TMDC	48479	395.60
SS3183	12-Oct-06	MMI	48484	1,290.00
SS3184	12-Oct-06	MMI	48485	4,519.56
SS3187	30-Oct-06	MMI	48487	1,316.00
SS3189	24-Oct-06	MMI CREW	48489	4,744.80
SS3190	24-Oct-06	MMI CREW	48490	3,312.30
SS3676	24-Oct-06	TAC	48976	99.00
SS3680	25-Oct-06	LIMOU	48980	20.60
SS3682	5-Oct-06	ALAMAT SHIPPING	48982	192.45
SS3688	16-Oct-06	NESC	48988	635.50
SS3693	26-Oct-06	TDGI	48993	84,329.50
SS3694	25-Oct-06	YAS BROKERAGE	48994	657.30
SS3697	24-Oct-06	YUSEN STAFF	48997	1,323.90
SS3698	24-Oct-06	YUSEN MGMT	48998	1,005.20
SS3699	16-Oct-06	ASIANA	48999	142.80
SS3799	31-Oct-06	Adkison, Arlene	49099	6,480.00
SS3808	24-Oct-06	TAC MML	49108	228.75
SS3809	18-Oct-06	Transnational Corp.	49109	305.00
SS3814	20-Oct-06	Pizzatek and Food Corp.	49114	87.60
SS3818	20-Oct-06	Pizzatek and Food Corp.	49118	87.60
SS3901	19-Oct-06	ASIANA	49201	123.60
SS3902	19-Oct-06	ASIANA	49202	309.00
SS3904	20-Oct-06	TESI	49204	228.75
SS3905	25-Oct-06	TESI	49205	1,739.30
SS3911	23-Oct-06	Dolphin-Dalex	49211	382.00
SS3912	23-Oct-06	AETI	49212	741.60
SS3913	25-Oct-06	AETI MML	49213	206.00
SS3914	25-Oct-06	TCL	49214	1,375.00
SS3925	23-Oct-06	KYOKKO	49225	1,383.10
SS3927	25-Oct-06	TRANSM CREW	49227	3,562.50
SS3928	25-Oct-06	FETRAN	49228	738.60
SS3931	27-Oct-06	Sobremonte, Rogelio	49231	131.60
SS3936	23-Oct-06	TLSC-FIT	49236	43.80
SS3937	23-Oct-06	TLSC-TWFI	49237	51.70
SS3938	25-Oct-06	TLSC	49238	1,336.50
SS3940	23-Oct-06	HOKOKU-DOLPHIN	49240	14,523.60
SS 3944	26-Oct-06	NCT	49244	1,214.70
SS3945	26-Oct-06	NCT EMP	49245	1,284.70
SS3946	26-Oct-06	TDGI	49246	516.00
SS3949	30-Oct-06	VROON	49249	1,415.80
SS3950	30-Oct-06	NEO MARINE CREW	49250	88.00
SS3952	30-Oct-06	MAUNLAD-IKARIA	49252	131.40
SS3956	30-Oct-06	LAWIN CREW	49256	1,395.10
SS3957	30-Oct-06	HARMONY CREW	49257	2,895.00
SS3959	30-Oct-06	EXITO CREW	49259	822.80
SS3962	26-Oct-06	DOLPHIN SHIP MGT	49262	1,209.00
SS3965	27-Oct-06	LACANDALO, PILARDO	49265	198.25
SS3970	30-Oct-06	TCL	49270	762.50
SS3975	30-Oct-06	CADENZA CREW	49275	908.00
SS3690	24-Oct-06	NYK FJSC CEBU	48990-2	3,275.10
SS3967	30-Oct-06	CS PLDT	49267-1	1,240.30

SS3967	30-Oct-06	JCL	49267-4	481.00
SS3967	30-Oct-06	ICMA	49267-5	4,262.30
SS3967	30-Oct-06	HOKOKU	49267-7	250.00
SS3199	28-Nov-06	MMI EMP	48499	1,290.00
SS3200	28-Nov-06	MMI MML	48500	610.00
SS3747	25-Nov-06	Araquil, Roselyn	49047	1,680.00
SS3993	28-Nov-06	KMTC	49293	277.55
SS3999	28-Nov-06	NYK FIL SMI	49299	3,712.60
SS4063	28-Nov-06	YAS MML	49363	457.50
SS4064	28-Nov-06	YAS BROKERAGE	49364	657.30
SS4065	25-Nov-06	Tiu, Nestorio	49365	266.50
SS4107	30-Nov-06	San Jose, Bienvenido	49407	1,316.00
SS4114	30-Nov-06	MMI EMP	49414	243.00
SS4255	28-Nov-06	DOLPHIN MGT	49555	321.60
SS4256	28-Nov-06	TAC	49556	810.00
SS 4258	28-Nov-06	TDG ASIA MML	49558	76.25
SS4260	28-Nov-06	TDGI MML	49560	1,936.40
SS4261	28-Nov-06	TDGI	49561	368.00
SS4262	28-Nov-06	TRI	49562	43.80
SS4263	29-Nov-06	NEO MARINE EMP	49563	318.00
SS4264	28-Nov-06	DOLSHIP METI	49564	188.70
SS4265	28-Nov-06	NYK-FIL IPSI	49565	275.70
SS4266	28-Nov-06	IPSI MML	49566	305.00
SS4268	28-Nov-06	NYK-FIL SMI	49568	3,243.00
SS4270	28-Nov-06	NYK-FIL NETI	49570	1,282.10
SS4275	29-Nov-06	TDGI	49575	700.00
SS4277	29-Nov-06	FETRAN	49577	5,262.20
SS4278	29-Nov-06	TRANS M CREW	49578	2,278.70
SS4279	29-Nov-06	KYOKKO	49579	1,062.40
SS4281	29-Nov-06	HOKOKU DOLSHIP	49581	3,503.50
SS4284	29-Nov-06	ASIANA	49584	142.80
SS4287	28-Nov-06	VISION AIR	49587	87.60
SS4288	28-Nov-06	VISION AIR	49588	87.60
SS4289	30-Nov-06	TCL	49589	775.00
SS4292	30-Nov-06	NTMA	49592	144.90
SS4299	29-Nov-06	DISNEY MAGIC	49599	1,977.60
SS4300	29-Nov-06	D. WONDER	49600	2,727.20
SS4302"	29-Nov-06	DOLPHIN MGT	49602	321.60
SS4303	29-Nov-06	ASIANA	49603	123.60
SS4304	29-Nov-06	VISION AIR	49604	277.55
SS4306	29-Nov-06	TRI	49606	43.80
SS4308	29-Nov-06	PROSPERIDAD	49608	43.80
SS4308	29-Nov-06	PROSPERIDAD	49608	87.60
SS4309	29-Nov-06	PROSPERIDAD	49609	1,209.00
SS4310	29-Nov-06	NEO MARINE CREW	49610	88.00
SS4311	29-Nov-06	NEO MARINE CREW	49611	318.00
SS4316	29-Nov-06	DAC	49616	192.45
SS4317	29-Nov-06	KAPALARAN	49617	107.90
SS4321	30-Nov-06	Justo, Norito	49621	987.00
SS4324	30-Nov-06	NLPH	49624	4,003.80
SS4325	30-Nov-06	LAWIN EMP	49625	6,410.00

SS4326	30-Nov-06	DYNAMIC ASSET	49626	108.60
SS4326	30-Nov-06	EXITO EMP	49626	108.60
SS4330	30-Nov-06	HARMONY	49630	2,895.00
SS4331	30-Nov-06	EXITO CREW	49631	613.20
SS4332	30-Nov-06	CADENZA CREW	49632	6,570.40
SS4333	30-Nov-06	ALAMAT CREW	49633	2,195.00
SS4062	29-Nov-06	YUSEN STAFF	49362-1	1,323.90
SS4296	29-Nov-06	COSMIC	49596-1	468.90
SS4296	29-Nov-06	MARINE ENG'R/ CS VEGA	49596-2	2,239.75
SS4296	29-Nov-06	JCL	49596-4	1,179.00
SS4296	29-Nov-06	ICMA CREW	49596-5	4,119.50
SS4296	29-Nov-06	HOKOKU NYK	49596-7	1,983.60
SS2751	29-Dec-06	ADTOURS	48095	2,722.40
SS4070	29-Dec-06	Leyva, Leeberti	49370	262.80
SS4113	29-Dec-06	MMI RET	49413	4,519.56
SS4126	29-Dec-06	MMI RET	49426	4,519.56
SS4127	29-Dec-06	MMI EMP	49427	2,199.00
SS4345	30-Dec-06	PIZZATEK	49645	87.60
SS4346	30-Dec-06	DOMINOS PIZZATEK	49646	87.60
SS4348	30-Dec-06	NLPH	49648	4,164.60
SS4350	30-Dec-06	TCL	49650	775.00
SS4370	30-Dec-06	YUSEN MML	49670	1,143.75
SS4374	30-Dec-06	Enotori, Florencio	49674	150.00
SS4391	30-Dec-06	YAS BROKERAGE	49691	563.70
SS4401	30-Dec-06	TCL MML	49701	762.50
SS4408	30-Dec-06	NYK-FJSC CEBU	49708	131.60
SS4411	30-Dec-06	NESC MML	49711	1,830.00
SS 4412	30-Dec-06	NESC	49712	635.50
SS4413	30-Dec-06	IPSI MML	49713	762.50
SS4414	30-Dec-06	NETI MML	49714	305.00
SS 4415	30-Dec-06	SMI MML	49715	1,753.75
SS4417	29-Dec-06	TMDC	49717	785.60
SS4419	29-Dec-06	TMDC MML	49719	228.75
SS4422	30-Dec-06	CASSC EMP	49722	649.85
SS4423	30-Dec-06	TESI	49723	1,783.10
SS4424	30-Dec-06	TESI	49724	1,783.10
SS4425	30-Dec-06	LAWIN CREW	49725	2,421.60
SS4427	30-Dec-06	VROON CREW	49727	255.40
SS4432	30-Dec-06	CASSC	49732	591.35
SS4433	30-Dec-06	CASSC MML	49733	576.80
SS4504	30-Dec-06	TLI MML	49804	118.95
SS4505	30-Dec-06	TLSC MML	49805	396.50
SS4506	30-Dec-06	DOLPHIN MML	49806	39.65
SS4508	30-Dec-06	EXITO CREW	49808	613.20
SS4509	30-Dec-06	HARMONY CREW	49809	391.60
SS4512	30-Dec-06	MATATAG CREW	49812	250.00
SS4516	30-Dec-06	ALAMAT	49816	550.00
SS4517	30-Dec-06	LAWIN CREW	49817	1,395.10
SS4519	30-Dec-06	DOLSHIP	49819	118.95
SS4520	30-Dec-06	DOLSHIP HOKOKU	49820	2,408.00
SS4521	30-Dec-06	KYOKKO	49821	2,026.40

SS4522	30-Dec-06	TUMI	49822	816.00
SS4523	30-Dec-06	TRANSM	49823	1,301.50
SS4524	30-Dec-06	FETRAN	49824	7,626.00
SS4525	30-Dec-06	VROON CREW	49825	255.40
SS4526	30-Dec-06	D. WONDER	49826	1,181.20
SS4529	30-Dec-06	NETI	49829	991.25
SS4530	30-Dec-06	IPSI	49830	457.50
SS4533	30-Dec-06	NTMA	49833	579.60
SS4537	30-Dec-06	DISNEY MAGIC	49837	2,801.27
SS4538	30-Dec-06	TRI	49838	43.80
SS4540	29-Dec-06	NEO MARINE EMP	49840	318.00
SS4542	29-Dec-06	LAWIN EMP	49842	64.10
SS4543	29-Dec-06	KAPALARAN EMP	49843	107.90
SS 4545	29-Dec-06	EXITO EMP	49845	108.60
SS4546	29-Dec-06	CADENZA EMP	49846	121.80
SS4547	29-Dec-06	METI	49847	97.80
SS4548	29-Dec-06	DAC	49848	192.45
SS4551	29-Dec-06	NEO MARINE CREW	49851	88.00
SS4555	30-Dec-06	LAWIN CREW	49855	1,395.10
SS4558	30-Dec-06	EXITO CREW	49858	613.20
SS4562	30-Dec-06	VROON CREW	49862	483.40
SS4563	30-Dec-06	KYOKKO CREW	49863	2,511.20
SS4564	30-Dec-06	HOKOKU DOLSHIP	49864	1,548.00
SS4565	29-Dec-06	HOKOKU DOLSHIP	49865	73.80
SS4567	30-Dec-06	TRANSM CREW	49867	5,176.40
SS4568	30-Dec-06	FETRAN CREW	49868	1,676.80
SS4569	30-Dec-06	JRDC	49869	228.75
SS4580	30-Dec-06	VISION AIR	49880	280.00
SS4583	30-Dec-06	TMDC	49883	280.00
SS4585	30-Dec-06	NESC	49885	588.60
SS4586	30-Dec-06	NYKFJSC	49886	228.75
SS4590	30-Dec-06	NYKFJSC MML	49890	228.75
SS4591	30-Dec-06	NYKFJSC	49891	915.15
SS4593	29-Dec-06	VISION AIR	49893	280.00
SS4594	29-Dec-06	TDGI	49894	700.00
SS4599	29-Dec-06	AITI MML	49899	288.40
SS4600	29-Dec-06	TDGI	49900	123.60
SS4431	30-Dec-06	TAC	49731-1	99.00
SS4431	30-Dec-06	MARINE ENG'R/ CS VEGA	49731-2	1,240.30
SS4431	30-Dec-06	NYK SIN CREW	49731-3	28,289.40
SS4431	30-Dec-06	JCL	49731-4	1,179.00
SS4431	30-Dec-06	ICMA	49731-5	4,394.00
SS4431	30-Dec-06	HACHIUMA	49731-6	11,551.50
SS4431	30-Dec-06	HOKOKU	49731-7	667.60
SS4431	30-Dec-06	NYK LINE	49731-8	3,156.30
SS4431	30-Dec-06	TMM CREW	49731-9	6,531.50
SS4561	29-Dec-06	COSMIC	49861-1	468.90
SS4561	29-Dec-06	MARINE ENG'R	49861-2	2,039.80
SS4561	29-Dec-06	JCL	49861-4	1,263.00
SS4561	29-Dec-06	ICMA CREW	49861-5	5,499.30
SS4561	29-Dec-06	HACHIUMA	49861-6	4,607.20

SS4561	29-Dec-06	HOKOKU NYK	49861-7	3,717.60
SS4561	29-Dec-06	NYK LINE	49861-8	1,814.20
SS4561	29-Dec-06	TMM CREW	49861-9	7,219.40
SS4638	30-Dec-06	NYKFJSC CEBU	49888-1	131.60
SS4641	30-Dec-06	NYKFJSC CEBU	49891-1	131.60
2. Missing O.R.				
-	20-Jan-06	YAS Brokerage	45835	765.90
-	27-Feb-06	Trans M	46467	78.00
-	20-Feb-06	Mapalad, L.	46199	262.80
-	1-Mar-06	Lacandalo, P.	46420	1,665.00
-	21-Mar-06	TRANS M	46765	78.00
-	14-Jun-06	KAPALARAN	47766	107.90
-	28-Jun-06	Figueras, Kerwin Adam	47870	263.20
-	23-Jun-06	COSMIC	47868-1	949.20
-	23-Jun-06	CSPLDT	47868-2	1,151.80
-	23-Jun-06	NYK SIN	47868-3	27,520.30
-	23-Jun-06	ICMA	47868-5	6,511.60
-	23-Jun-06	HOKOKU	47868-7	772.60
-	23-Jun-06	NYKLINE	47868-8	1,752.60
-	23-Jun-06	TMM	47868-9	3,903.70
-	31-Jul-06	Bertolano, E.	47996	653.00
-	31-Aug-06	Navarro, Geraldine	48559	586.50
-	30-Sep-06	TCL	48798	775.00
-	29-Dec-06	PROSPERIDAD EMP	49839	43.80
-	29-Dec-06	TDGI MML	49901	988.80
-	29-Dec-06	NCT	49902	934.70
-	23-Feb-06	TRANS M		78.00
3. Not dated within the subject taxable year				
SS 923	23-Feb-05	Romo, F.	46223	552.20
4. Cancelled O.R.				
SS2771	31-Jul-06	YAS Brokerage	48072	765.90
Total				**₱ 1,722,711.52**

Thus, out of the claimed discounts of ₱3,611,850.00, petitioner was only able to substantiate the amount of ₱381,951.94 (₱2,104,663.46 less ₱1,722,711.52).

That having been settled, this Court shall now determine whether the discounts granted by petitioner in the amount of ₱381,951.94 for taxable year 2006 are deductible against its taxable gross income. As such, Section 27(A) of the NIRC of 1997, as amended, provides that:

> "SEC. 27. *Rates of Income Tax on Domestic Corporations.* –
>
> (A) *In General.* – xxx.

> For purposes of this Section, the term '**gross income**' derived from business shall be equivalent to gross sales less sales returns, discounts and allowances and cost of goods sold. **'Cost of goods sold'** shall include all business expenses directly incurred to produce the merchandise to bring them to their present location and use.
>
> For a trading or merchandising concern, '**cost of goods sold'** shall include the invoice cost of the goods sold, plus import duties, freight in transporting the goods to the place where the goods are actually sold, including insurance while the goods are in transit.
>
> For a manufacturing concern, '**cost of goods manufactured and sold'** shall include all costs of production of finished goods, such as raw materials used, direct labor and manufacturing overhead, freight cost, insurance premiums and other costs incurred to bring the raw materials to the factory or warehouse.
>
> **In the case of taxpayers engaged in the sale of service, 'gross income' means gross receipts less sales returns, allowances and discounts."** *(Emphasis supplied)*

Clearly, for income tax purposes, discounts are treated as reductions of gross receipts of taxpayers engaged in the sale of services.

Petitioner avers that it presented the discounts as part of its "Other Direct Costs and Expenses" because its premium collections were presented as gross of the said discounts. However, this Court is of the opinion that such treatment has the same effect as presenting the sales net of discounts under Section 27 and would not affect the income tax due of the taxpayer for as long as the discounts claimed as deductible cost/expense was also presented as part of the taxpayer's gross sales/revenues. In the instant case, it was shown that petitioner claimed the amount of ₱3,611,850.00 representing discounts as deduction from its gross income, however, petitioner failed to establish that such amount formed part of its declared premium collections for the year 2006 in the amount of ₱104,642,335.00[53]. Hence, the entire claimed discounts of ₱3,611,850.00 (including the amount of ₱381,951.94 substantiated by ORs) shall be disallowed.

[53] Exhibit "G", line 15C.

On non-deductible interest expense in the amount of ₱29,973.35, perusal of the records reveals that respondent based her assessment on petitioner's Schedule of Interest and Bank Charges[54] which reflected the following:

Date	Ref. No.	Particulars	Amount
19-Jan-06	539068	Elmer Agbanglo - int earned	₱ 2,000.00
23-Jan-06	539118	Marylene De Castro	666.67
24-Jan-06	539128	Melvin Uy	500.00
3-Apr-06	539473	Abelardo Untalasco	2,000.00
18-Apr-06	539536	Apolinar Gagan	333.33
12-Jul-06	666483	Eric Rodrigo	1,000.00
18-Jul-06	666519	Belen Bano	3,000.00
18-Jul-06	666527	Belen Palaganas	700.00
27-Jul-06	666580	Vito Baguion	438.76
31-Jul-06	48189	Karla P. Delgado	1,499.07
18-Aug-06	666686	Ronel Dela Cruz	725.00
1-Sep-06	666722	Deogracias Mina	416.67
7-Sep-06	666784	CDDR – PCF	208.33
4-Oct-06	666920	Rogelio Sancho	875.00
5-Oct-06	666932	Marites P. Manuel	25.09
17-Oct-06	666975	Mariano Reyes	166.67
31-Oct-06	667031	Alma Sacasas	729.17
20-Nov-06	667132	Victorio Catabay	1,166.67
28-Nov-06	667217	Ferdinand Matel	1,750.00
14-Dec-06	728969	Analyn Bernando	875.00
29-Dec-06	jv#12-38/1	rec interest & bank charges	280.00
30-Dec-06	jv#12-07/3	rec service charge Jan 06	200.00
30-Dec-06	jv#12-08/3	rec service charge Feb 06	200.00
30-Dec-06	jv#12-09/3	rec service charge Mar 06	200.00
30-Dec-06	jv#12-10/3	rec service charge Apr 06	400.00
30-Dec-06	jv#12-11/3	rec service charge May 06	400.00
30-Dec-06	jv#12-12/3	rec service charge Jun 06	400.00
30-Dec-06	jv#12-13/3	rec service charge Jul 06	400.00
30-Dec-06	jv#12-14/3	rec service charge Aug 06	400.00
30-Dec-06	jv#12-15/3	rec service charge Sep 06	400.00
30-Dec-06	jv#12-16/3	rec service charge Oct 06	200.00
30-Dec-06	jv#12-17/6	rec service charge MC	100.00
30-Dec-06	jv#12-17/7	rev bank charge 2005	(1,510.00)
30-Dec-06	jv#12-17/8	rev bank charge 1-10	(2,000.00)
30-Dec-06	jv#12-35/4	Rec OR#49270	5.00
31-Dec-06	jv#12-19/4	Bank charges	66.47
31-Dec-06	jv#12-20/1	Bank charges DM#06-003	33.00
31-Dec-06	jv#12-21/3	Bank charges checkbook	3,300.00
31-Dec-06	jv#12-23/10	OR#46637	0.16
31-Dec-06	jv#12-24	Under / over deposits	12.32
31-Dec-06	jv#12-25/8	MC Application	50.00

[54] BIR Records, pp. 462-463.

31-Dec-06	jv#12-27/7	OR#198	(50.00)
31-Dec-06	jv#12-28/8	OR#49229/270	4.05
31-Dec-06	jv#12-29/7	Bank charges BC sec/TDC	100.00
31-Dec-06	jv#12-29/8	Bank charges	0.40
31-Dec-06	jv#12-30/01	OR#48667 NYK SMI	(102.48)
31-Dec-06	jv#12-30/08	Bank charges BC Sep 06	4,950.00
31-Dec-06	jv#12-32/20	ch#666768	32.53
31-Dec-06	jv#12-39/14	Bank charges HSBC$	784.00
31-Dec-06	jv#12-40/04	Bank charges Nov 06	70.00
31-Dec-06	jv#12-40/06	Bank charges Jan/Feb 06	550.00
31-Dec-06	jv#12-47/15	Interest & Bank charges	500.00
31-Dec-06	jv#12-47/16	Rcls interest & bank charges	583.33
31-Dec-06	jv#12-47/17	Rcls interest & bank charges	800.00
31-Dec-06	jv#12-54	2006 AJE Accruals	(860.86)
Total			**₱29,973.35**

Moreover, it must be noted that the total disallowed interest expense can be traced in petitioner's 2006 Trial Balance – Profit and Loss under Interest and Bank Charges account.[55] Considering that petitioner failed to substantiate the ₱29,973.35 interest and bank charges, respondent's disallowance of the same shall be upheld pursuant to Section 34(A)(1)(b) of the NIRC of 1997, as amended, which states:

> "(b) *Substantiation Requirements.* – No deduction from gross income shall be allowed under Subsection (A) hereof unless the taxpayer shall substantiate with sufficient evidence, such as official receipts or other adequate records: (i) the amount of the expense being deducted, and (ii) the direct connection or relation of the expense being deducted to the development, management, operation and/or conduct of the trade, business or profession of the taxpayer."

c. Respondent's FDDA did not consider the net loss amounting to ₱16,308,626.00

In arriving at the deficiency income tax for taxable year 2006, respondent did not consider petitioner's net loss amounting to ₱16,308,626.00[56]. While the FDDA reflected the 2006 net loss of ₱16,308,626.00, a simple review of the mathematical computation of the alleged deficiency income tax stated in the FDDA would reveal that the ₱16,308,626.00 net loss was not considered. Obviously, the 2006 net loss of

[55] BIR Records, pp. 421 and 423.
[56] Exhibit "G", box 21B.

petitioner amounting to ₱16,308,626.00 will easily offset the disallowed items, and petitioner will still suffer a net loss of ₱12,666,802.65, as computed below. Thus, the deficiency income tax assessment for taxable year 2006 shall be cancelled.

Taxable income per return		₱(16,308,626.00)
Add: Disallowances		
Discounts	₱3,611,850.00	
Non-deductible interest expense	29,973.35	3,641,823.35
Taxable Income per Court's Verification		**₱(12,666,802.65)**

DEFICIENCY VALUE-ADDED TAX - ₱7,549,168.20

Respondent's reconciliation of petitioner's gross receipts subject to VAT and per the examiner's investigation showed a difference of ₱33,522,146.63. She computed the deficiency VAT in the amount of ₱7,549,168.20 as follows:[57]

Collection of premiums per VAT O.R.s		₱67,446,873.36
Less: VAT component (12%)		7,226,450.72
Taxable sales per re-audit		60,220,422.64
Add: Other income	₱5,551,066.00	
Unreported revenue	4,920,369.00	10,471,435.00
Total receipt subject to VAT per re-audit		70,691,857.64
Gross receipt subject to VAT per return		37,169,711.01
Difference		33,522,146.63
Output tax (12%)		4,022,657.60
Disallowed input tax		8,290.76
Deficiency VAT		4,030,948.36
Add: Interest (20% per annum)	3,493,219.84	
Compromise penalty	25,000.00	3,518,219.84
Total Deficiency Value Added Tax		**₱ 7,549,168.20**

Petitioner maintained that, in arriving at the alleged deficiency VAT assessment, respondent subjected the trust fund contributions to VAT, notwithstanding that under existing regulations applicable in taxable year 2006, the gross receipts of pre-need companies is net of the actual trust fund contribution. As such, VAT is imposed only on the premiums collected.

[57] Exhibit "F", Annex A, pp. 1-2.

RR No. 16-05, which took effect on November 1, 2005, defines a pre-need company and provides the basis for the computation of its VATable gross receipts as follows:

> "SECTION 4.108-3. *Definitions and Specific Rules on Selected Services.* –
>
> xxx xxx xxx
>
> (j) *Pre-need Companies* are corporations registered with the Securities and Exchange Commission and authorized/licensed to sell or offer for sale pre-need plans, whether a single plan or multi-plan. They are engaged in business as seller of services providing services to plan holders by managing the funds provided by them and making payments at the time of need or maturity of the contract.
>
> As service providers, the compensation for their services is the premiums or payments received from the plan holders.
>
> xxx xxx xxx
>
> SECTION 4.108-4. *Definition of Gross Receipts.* – 'Gross receipts' refers to the total amount of money or its equivalent representing the contract price, compensation, service fee, rental or royalty, including the amount charged for materials supplied with the services and deposits applied as payments for services rendered and advance payments actually or constructively received during the taxable period for the services performed or to be performed for another person, excluding VAT."

Based above, the taxable base for pre-need companies for VAT purposes should be the entire receipts (including amounts collected for the trust fund contributions of planholders) without any deduction except VAT.

Even though the foregoing provisions were amended under RR No. 04-07, which became effective on April 7, 2007, the trust fund contributions remained VATable, to wit:

> "SECTION 11. *Gross Receipts.* – Sec. 4.108-4 of RR No. 16-2005 is hereby amended to read as follows:
>
> 'SEC. 4.108-4. *Definition of Gross Receipts.* – *'Gross receipts'* refers to the total amount of money or its equivalent representing the contract price, compensation, service fee,

> rental or royalty, including the amount charged for materials supplied with the services and deposits applied as payments for services rendered and advance payments actually or constructively received during the taxable period for the services performed or to be performed for another person, excluding the VAT, ***except those amounts earmarked for payment to unrelated third (3rd) party*** *or received as reimbursement for advance payment on behalf of another which do not redound to the benefit of the payor.*
>
> *A payment is a payment to a third (3rd) party if the same is made to settle an obligation of another person, e.g., customer or client, to the said third party, which obligation is evidenced by the sales invoice/official receipt issued by said third party to the obligor/debtor (e.g., customer or client of the payor of the obligation).*
>
> *An advance payment is an advance payment on behalf of another if the same is paid to a third (3rd) party for a present or future obligation of said another party which obligation is evidenced by a sales invoice/official receipt issued by the obligee/creditor to the obligor/debtor (i.e., the aforementioned 'another party') for the sale of goods or services by the former to the latter.*
>
> ***For this purpose 'unrelated party' shall not include*** *taxpayer's employees, partners, affiliates (parent, subsidiary and other related companies), relatives by consanguinity or affinity within the fourth (4th) civil degree, and* ***trust fund where the taxpayer is the trustor,*** *trustee or beneficiary, even if covered by an agreement to the contrary." (Emphasis supplied)*

On November 12, 2007, the BIR issued Revenue Memorandum Circular (RMC) No. 74-07 emphasizing that:

> "It is hereby clarified that **the taxable base of Pre-need Companies for VAT purposes shall be the gross receipts without any deduction**. Such contribution is similar or equated to the recorded 'Reserve' in the case of insurance companies, whether life or non-life. Reserve is not deductible, for purposes of determining the taxable gross direct premium/writing for non-life insurance companies as well as life insurance companies. The said tax treatments have already been clarified and reiterated under Revenue Regulations (RR) No. 16-2005, as amended."

However, in BIR Ruling No. DA-027-06[58] dated January 31, 2006, then Commissioner of Internal Revenue, Jose Mario

[58] Exhibit "NNN-2".

Bunag, clarified to the Philippine Federation of Pre-Need Companies, Inc., to which petitioner is a member, **that the gross receipts of a pre-need company should be net of actual trust fund contributions for VAT purposes**.

Since petitioner relied in good faith on BIR Ruling No. DA-027-06, the amounts it collected from planholders which were set aside for trust fund contributions shall be excluded from petitioner's VATable gross receipts, following the rationalization of the Supreme Court *En Banc* in the consolidated case of *Commissioner of Internal Revenue vs. San Roque Power Corporation, Taganito Mining Corporation vs. Commissioner of Internal Revenue, and Philex Mining Corporation vs. Commissioner of Internal Revenue*[59], where it was held that under Section 246 of the Tax Code, taxpayers may rely upon a rule or ruling issued by the Commissioner from the time the rule or ruling is issued up to its reversal by the Commissioner or the Supreme Court.

Be that as it may, petitioner has to comply with the invoicing requirements as provided under Section 113 of the NIRC of 1997, as amended, thus:

> "SEC. 113. *Invoicing and Accounting Requirements for VAT-Registered Persons.* –
>
> xxx xxx xxx
>
> (B) *Information Contained in the VAT Invoice or VAT Official Receipt.* – The following information shall be indicated in the VAT invoice or VAT official receipt:
>
> xxx xxx xxx
>
> (d) If the sale involves goods, properties or services **some of which are subject to and some of which are VAT zero-rated or VAT-exempt**, the invoice or **receipt shall clearly indicate the breakdown of the sale price between its taxable, exempt and zero-rated components**, and the calculation of the value-added tax on each portion of the sale shall be shown on the invoice or receipt: *Provided,* That the seller may issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale." *(Emphasis supplied)*

[59] G.R. Nos. 187485, 196113, and 197156, February 12, 2013.

In the instant case, the trust fund contributions which were separately indicated in petitioner's VAT official receipts as "NONVAT (Trust Fund)" only amounted to ₱635,213.90, detailed as follows:

Exhibit	Date	O.R. No.	Client	Trust Fund
SS 2302	31-May-06	47602	Habulan, J-Feb06	₱ 855.40
SS 2319	31-May-06	47619	Mercado, Marina	2,566.20
SS 2320	31-May-06	47620	Pareja, Josephine	854.10
SS 2264	1-Jun-06	47564	Escalante, Anselmo	1,138.80
SS 2265	1-Jun-06	47565	Escalante, Anselmo	5,070.00
SS 2323	2-Jun-06	47623	Escalante, Anselmo	1,014.00
SS 2324	2-Jun-06	47624	Escalante, Anselmo	284.70
SS 2351	5-Jun-06	47651	Bautista, Allan	8,554.00
SS 2352	5-Jun-06	47652	Paje, Juanito	1,710.80
SS 2276	6-Jun-06	47576	Corpuz, Nora	14,976.00
SS 2327	6-Jun-06	47627	De Jesus, Christopher	569.40
SS 2330	6-Jun-06	47630	Bermudez, Ruben	23,951.20
SS 2353	6-Jun-06	47653	Dizon, Richard	3,421.60
SS 2354	6-Jun-06	47654	Dahilig, Jasus	3,658.20
SS 2356	6-Jun-06	47656	47656 Alejandro, P - Nov05-May 06	1,992.90
SS 2332	7-Jun-06	47632	Esteban, Marcelo	1,014.00
SS 2333	7-Jun-06	47633	Ofalsa, Rhodora	812.50
SS 2334	7-Jun-06	47634	Ofalsa, Rhodora	812.50
SS 2363	8-Jun-06	47663	47663 Galvan,T - Feb06-Jun07	5,304.00
SS 2335	9-Jun-06	47635	Galleta, Rex	5,154.50
SS 2364	9-Jun-06	47664	47664 Monoso, L - May-Jul06	1,751.10
SS 2365	9-Jun-06	47665	47665 Olaya, O - May 06	1,015.95
SS 2366	9-Jun-06	47666	47666 Luberiano, E - May-Jun06	2,031.90
SS 2368	9-Jun-06	47668	47668 Pendon, J -Mar-Nov06	2,546.70
SS 2369	9-Jun-06	47669	47669 Navarro, J -Jun-Aug06	2,566.20
SS 2371	13-Jun-06	47671	47671 Ponce, E -May-Jun06	1,014.00
SS 2336	14-Jun-06	47636	Diesmos, Tessa	855.40
SS 2338	14-Jun-06	47638	Villeno, Elena	854.10
SS 2339	15-Jun-06	47639	Divina Pelobello	284.70
SS 2340	15-Jun-06	47640	Acuna, Grace	569.40
SS 2346	16-Jun-06	47646	Grace Beriso	284.70
SS 2347	16-Jun-06	47647	Lopez, Charisse	416.65
SS 2348	16-Jun-06	47648	Ellen Flores	421.85
SS 2349	16-Jun-06	47649	Mata, Mirasol	1,184.95
SS 2380	16-Jun-06	47680	Villafranca, I - IPC	5,923.45
SS 2381	19-Jun-06	47681	Albuera, M -Mar -Apr 06	1,710.80
SS 2496	19-Jun-06	47796	Delos Reyes, C - May06	389.35
SS 2350	20-Jun-06	47650	Abuso, Al Tiu	5,001.75
SS 2554	20-Jun-06	47854	Evangelista, L - Aug 06	1,144.00
SS 2503	21-Jun-06	47803	Fermin, M - Oct-Dec05	1,716.00
SS 2504	21-Jun-06	47804	Fermin, M - Oct-Dec05	1,930.50
SS 2391	22-Jun-06	47691	Anora, R - Jun-Jul06	2,031.90
SS 2393	23-Jun-06	47693	Del Ayre, H +Feb 06	2,566.20

SS 2506	23-Jun-06	47806	Sangdaan, J -TEP	4,784.00
SS 2508	26-Jun-06	47808	Balgos, R - Jun06-May07	18,154.50
SS 2394	27-Jun-06	47694	Romero, J - Aug-Dec08	854.10
SS 2396	27-Jun-06	47696	Romulo Verastigan	1,200.00
SS 2397	27-Jun-06	47697	Loyola, R - Apr-Jul06	2,028.00
SS 2510	27-Jun-06	47810	Bisares, M - Jun06	426.40
SS 2511	27-Jun-06	47811	Bernard, B - May06	1,423.50
SS 2512	27-Jun-06	47812	Carpio, J - Jun06	569.40
SS 2400	28-Jun-06	47700	De Leon, J - Dec 05-Jan06	1,710.80
SS 2653	28-Jun-06	47953	Gubaton, M - Jun06	4,063.15
SS 2654	28-Jun-06	47954	Gubaton,M - Jun06	4,485.00
SS 2516	29-Jun-06	47816	Estrada, J - Jun06	284.30
SS 2583	29-Jun-06	47883	Suniga, Domarie	1,556.10
SS 2517	30-Jun-06	47817	Bernardita Cayabyab 5-6,06	683.80
SS 2525	30-Jun-06	47825	Josephine Pareja Mar06	854.10
SS 2526	30-Jun-06	47826	Ronaldo Serrano Jun06	806.00
SS 2527	30-Jun-06	47827	Myleen Salvador	778.05
SS 2655	30-Jun-06	47955	Emilio Johnson Jan06	812.50
SS 2658	30-Jun-06	47958	Mason Alacre Jan06	643.50
			2nd Quarter	**₱168,043.55**
SS 2532	3-Jul-06	47832	Macaspac, Concepcion	₱ 284.70
SS 2533	3-Jul-06	47833	Escalante, Anselmo	1,014.00
SS 2534	3-Jul-06	47834	Escalante, Anselmo	284.70
SS 2596	3-Jul-06	47896	Sison,Wilfredo	507.00
SS 2659	3-Jul-06	47959	Edna Volfango	1,079.00
SS 2661	3-Jul-06	47961	Volfango, Edna	1,023.75
SS 2662	3-Jul-06	47962	Basco, Marianita	3,421.60
SS 2663	4-Jul-06	47963	Javellonar, Armando	7,215.00
SS 2664	4-Jul-06	47964	Anthony Picazo	507.00
SS 2666	4-Jul-06	47966	Percival Artuz	8,580.00
SS 2704	4-Jul-06	48004	Figueras, Kerwin Adam	3,421.60
SS 2536	5-Jul-06	47836	Mendoza, Reginald	3,416.40
SS 2537	5-Jul-06	47837	Grace Mapalad	854.10
SS 2667	5-Jul-06	47967	Real, Regimar	20,529.60
SS 2668	5-Jul-06	47968	David, Margie	1,820.00
SS 2669	5-Jul-06	47969	Villaluz, Rowell	1,946.10
SS 2673	6-Jul-06	47973	Randy Solitario	539.50
SS 2674	7-Jul-06	47974	Madridano, Joel	4,204.80
SS 2675	7-Jul-06	47975	Romualdo H. Vallejo	1,015.95
SS 2676	7-Jul-06	47976	Ronnie Morales	643.50
SS 2538	10-Jul-06	47838	Ang, Michelleynne	848.90
SS 2679	10-Jul-06	47979	Romil Camarines	5,132.40
SS 2680	10-Jul-06	47980	Ligtas, Frederick	2,566.20
SS 2682	10-Jul-06	47982	Geomar Magdadaro	1,820.00
SS 2539	11-Jul-06	47839	Divina Pelobello	284.70
SS 2540	12-Jul-06	47840	Jotojot, Alvin	1,708.20
SS 2684	12-Jul-06	47984	Casupanan, Jose	3,421.60
SS 2541	14-Jul-06	47841	Antonio Ilao	1,883.70
SS 2546	17-Jul-06	47846	Grace Mapalad	854.10

SS 2547	17-Jul-06	47847	Diesmos, Tessa	855.40
SS 2548	17-Jul-06	47848	Choy, Louella	569.40
SS 2752	17-Jul-06	48052	Grace Beriso	284.70
SS 2756	18-Jul-06	48056	Matawara, Rea	569.40
SS 2757	18-Jul-06	48057	Ofalsa, Rhodora	609.70
SS 2758	20-Jul-06	48058	Manalang, Noel	10,627.50
SS 2760	21-Jul-06	48060	Prado, Sheryl	806.00
SS 2761	21-Jul-06	48061	Carlos Noriega	1,423.50
SS 2762	21-Jul-06	48062	Bisares, Marieta	426.40
SS 2763	21-Jul-06	48063	Bernabe, Bernard	1,423.50
SS 2764	21-Jul-06	48064	Shernan Balilo	4,732.00
SS 2765	25-Jul-06	48065	Fermin,Miriam	643.50
SS 2766	25-Jul-06	48066	Fermin,Miriam	572.00
SS 2767	25-Jul-06	48067	Anonuevo, Ma. Cecilia	1,138.80
SS 2898	25-Jul-06	48198	Ilaga, Adoracion	4,988.10
SS 2768	26-Jul-06	48068	Estrada, Jusmon	284.70
SS 2778	27-Jul-06	48078	Rabanal, Jesusa	1,625.00
SS 2779	28-Jul-06	48079	Ellen Flores	416.65
SS 2780	28-Jul-06	48080	Carpio, Judy Ann	569.40
SS 2781	31-Jul-06	48081	Carmela Dadural	569.40
SS 2784	31-Jul-06	48084	Serrano, Ronaldo	806.00
SS 2786	31-Jul-06	48086	Acuna, Grace	569.40
SS 2788	31-Jul-06	48088	Alegarbez, Roberto	25,057.50
SS 2792	31-Jul-06	48092	Carlo G. Cantanero	3,341.00
SS 2051	4-Aug-06	48351	Leyva, Leeberti	1,138.80
SS 2052	4-Aug-06	48352	Escalante, Anselmo	284.70
SS 2053	4-Aug-06	48353	Escalante, Anselmo	1,014.00
SS 2054	7-Aug-06	48354	Emmanuel Bertolano	2,562.30
SS 2055	7-Aug-06	48355	Emmanuel Bertolano	4,244.50
SS 2056	8-Aug-06	48356	De Jesus, Christopher	569.40
SS 3103	8-Aug-06	48403	Lao Guico, Ma. Veronica	6,843.20
SS 3107	8-Aug-06	48407	Rowena De Leon	569.40
SS 2057	9-Aug-06	48357	Florencio Enotorio	6,592.95
SS 3115	9-Aug-06	48415	Sison, Wilfredo	507.00
SS 2060	10-Aug-06	48360	Cainta, Romulo	3,395.60
SS 2071	11-Aug-06	48371	Pareja, Josephine Sussana	854.10
SS 3117	11-Aug-06	48417	Casugbu, Linaflor	10,270.00
SS 3120	14-Aug-06	48420	Rectin, Janet	447.20
SS 3126	14-Aug-06	48426	Suniga, Domarie	855.40
SS 3127	14-Aug-06	48427	Suniga, Domarie	3,591.00
SS 2072	15-Aug-06	48372	Grace Mapalad	854.10
SS 2073	15-Aug-06	48373	Diesmos, Tessa	855.40
SS 2074	15-Aug-06	48374	Choy, Louella	569.40
SS 2075	15-Aug-06	48375	Divina Pelobello	284.70
SS 2076	15-Aug-06	48376	Grace Acuna	569.40
SS 2081	16-Aug-06	48381	Ellen Flores	416.65
SS 2083	16-Aug-06	48383	Lopez, Charisse	833.30
SS 2084	16-Aug-06	48384	Grace Beriso	284.70
SS 2085	16-Aug-06	48385	Garcia, Ma. Regina	1,138.80
SS 2088	17-Aug-06	48388	Fermin, Miriam	572.00

SS 2089	17-Aug-06	48389	Fermin, Miriam	643.50
SS 2090	17-Aug-06	48390	Abellon, Maria Noelane	4,015.05
SS 2092	18-Aug-06	48392	Bernabe, Bernard	1,423.50
SS 2093	18-Aug-06	48393	Bisares, Marieta	426.40
SS 2095	18-Aug-06	48395	Macaspac, Concepcion	142.35
SS 2097	23-Aug-06	48397	Noly Canonoy	3,558.75
SS 3401	25-Aug-06	48701	Noel Manalang	13,435.50
SS 3402	28-Aug-06	48702	Escaran, Wilfredo	484.90
SS 3403	29-Aug-06	48703	Villeno, Elena	569.40
SS 3404	29-Aug-06	48704	Carpio, Judy Ann	569.40
SS 3406	30-Aug-06	48706	Estrada, Jusmon	284.70
SS 3219	31-Aug-06	48519	Salloman, Jerryben	1,365.00
SS 3223	31-Aug-06	48523	Tamayo, Manuelito	855.40
SS 3388	31-Aug-06	48688	Operana, Edgar	3,412.50
SS 3407	31-Aug-06	48707	Escalante, Anselmo	284.70
SS 3408	31-Aug-06	48708	Escalante, Anselmo	1,014.00
SS 3415	31-Aug-06	48715	Matawara, Rea	569.40
SS 3417	31-Aug-06	48717	Carimpong, Cynthia	3,217.50
SS 3418	31-Aug-06	48718	Serrano, Ronaldo	806.00
SS 3419	31-Aug-06	48719	Ofalsa, Rhodora	609.70
SS 3421	31-Aug-06	48721	Pareja, Josephine Sussana	854.10
SS 3423	31-Aug-06	48723	Rabanal, Jesusa	2,437.50
SS 3424	31-Aug-06	48724	Brucelo, Mylene	1,992.90
SS 3899	5-Sep-06	48699	Sison,Wilfredo	507.00
SS 3428	5-Sep-06	48728	Esteban, Marcelo	1,014.00
SS 3429	5-Sep-06	48729	Cayabyab, Bernardita	683.80
SS 3430	5-Sep-06	48730	Myleen Salvador	778.05
SS 3433	6-Sep-06	48733	Dinglasan, Lea Carmen	2,886.00
SS 3501	6-Sep-06	48801	Bondoc, Nino Anthony	1,828.45
SS 3434	8-Sep-06	48734	Florencio Enotorio	1,883.70
SS 3239	12-Sep-06	48539	Javellonar, Armando	7,215.00
SS 3440	15-Sep-06	48740	Divina Pelobello	284.70
SS 3450	18-Sep-06	48750	Grace Beriso	284.70
SS 3556	19-Sep-06	48856	Mata, Mirasol	1,184.95
SS 3557	19-Sep-06	48857	Ellen Flores	416.65
SS 3558	19-Sep-06	48858	Bisares, Marieta	426.40
SS 3559	20-Sep-06	48859	Ligutom, Ma. Carr	3,471.00
SS 3560	22-Sep-06	48860	Fermin, Miriam	572.00
SS 3561	22-Sep-06	48861	Fermin, Miriam	643.50
SS 3568	22-Sep-06	48868	Leyva, Leeberti	1,708.20
SS 3569	26-Sep-06	48869	Mendoza, Reginald	1,708.20
SS 3570	27-Sep-06	48870	Carpio, Judy Ann	569.40
SS 3571	27-Sep-06	48871	Genova, Renato	855.40
SS 3572	27-Sep-06	48872	Diesmos, Tessa	855.40
SS 3573	29-Sep-06	48873	Frederick Navales	29,802.50
SS 3575	30-Sep-06	48875	Serrano, Ronaldo	806.00
SS 3576	30-Sep-06	48876	Pareja, Josephine Sussana	854.10
SS 3577	30-Sep-06	48877	Anselmo Escalante	1,014.00
SS 3578	30-Sep-06	48878	Anselmo Escalante	284.70
SS 3581	30-Sep-06	48881	Acuna, Grace	569.40

SS 3582	30-Sep-06	48882	Bustamante, Lorena	284.70
			3rd Quarter	**₱300,219.10**
SS 3583	3-Oct-06	48883	De Leon, Janice	₱ 855.40
SS 3584	3-Oct-06	48884	Habulan, Jesus	4,277.00
SS 3585	3-Oct-06	48885	Remigio Talaga	2,334.80
SS 3586	3-Oct-06	48886	Rotairo, Rujen	569.40
SS 3587	4-Oct-06	48887	Cafe, Anthony	2,545.40
SS 3588	5-Oct-06	48888	Ang, Michelleynne	848.90
SS 3589	5-Oct-06	48889	Gasacao, Reynaldo	7,410.00
SS 3592	6-Oct-06	48892	De Jesus, Christopher	569.40
SS 3593	6-Oct-06	48893	Rectin, Janet	894.40
SS 3594	10-Oct-06	48894	Jotojot, Alvin	1,281.15
SS 3595	11-Oct-06	48895	Codera, Dello	1,883.70
SS 3596	13-Oct-06	48896	Lopez, Charisse	833.30
SS 3597	13-Oct-06	48897	Ofalsa,Rhodora	1,219.40
SS 3598	16-Oct-06	48898	Diesmos, Tessa	855.40
SS 3599	16-Oct-06	48899	Grace Mapalad	854.10
SS 3600	16-Oct-06	48900	Clarizza Mendoza	1,638.00
SS 3801	16-Oct-06	49101	Divina Pelobello	284.70
SS 3802	16-Oct-06	49102	Ellen Flores	416.65
SS 3804	16-Oct-06	49104	Choy, Louella	569.40
SS 3805	16-Oct-06	49105	Bondoc, Nino Anthony	1,828.45
SS 3806	16-Oct-06	49106	Del Ayre, Homer	2,566.20
SS 3811	20-Oct-06	49111	Grace Beriso	284.70
SS 3812	20-Oct-06	49112	Genova, Renato	855.40
SS 3813	20-Oct-06	49113	Bisares, Marieta	426.40
SS 3815	20-Oct-06	49115	Carmela Dadural	569.40
SS 3816	21-Oct-06	49116	Manliclic, Melvinne	1,716.00
SS 3819	25-Oct-06	49119	Estrada, Jusmon	569.40
SS 3820	25-Oct-06	49120	Rotairo, Rujen	569.40
SS 3821	30-Oct-06	49121	Operana, Edgar	2,990.00
SS 3822	30-Oct-06	49122	Operana, Edgar	3,412.50
SS 3823	30-Oct-06	49123	Remigio Talaga	1,117.40
SS 3824	30-Oct-06	49124	Grace Mapalad	854.10
SS 3827	31-Oct-06	49127	Noel Manalang	10,744.50
SS 3828	31-Oct-06	49128	Manalang, Noel	8,482.50
SS 3831	31-Oct-06	49131	Acuna, Grace	569.40
SS 3835	2-Nov-06	49135	Isles, Erwin Dell	4,329.00
SS 3843	3-Nov-06	49143	Fermin, Miriam	572.00
SS 3844	3-Nov-06	49144	Fermin, Miriam	643.50
SS 3845	3-Nov-06	49145	Escalante, Anselmo	569.40
SS 3846	3-Nov-06	49146	Escalante, Anselmo	2,028.00
SS 3847	7-Nov-06	49147	Joel Madridano	1,708.20
SS 3848	7-Nov-06	49148	Mendoza, Reginald	1,708.20
SS 3849	7-Nov-06	49149	Rotairo, Rujen	569.40
SS 4054	8-Nov-06	49354	Dinglasan, Lea Carmen	2,886.00
SS 4059	10-Nov-06	49359	De Leon, Janice	855.40
SS 4066	14-Nov-06	49366	Florencio Enotorio	1,883.70
SS 4071	15-Nov-06	49371	Divina Pelobello	284.70

SS 4073	16-Nov-06	49373	Grace Beriso	284.70
SS 4074	16-Nov-06	49374	Mata, Mirasol	1,184.95
SS 4075	16-Nov-06	49375	Ellen Florez	833.30
SS 4076	17-Nov-06	49376	Lilibeth Mendoza	24,017.50
SS 4077	17-Nov-06	49377	Choy, Louella	569.40
SS 4078	17-Nov-06	49378	Diesmos, Tessa	855.40
SS 4079	17-Nov-06	49379	Sobremonte, Rogelio	855.40
SS 4083	21-Nov-06	49383	Bisares, Marieta	426.40
SS 4085	21-Nov-06	49385	Bernabe, Bernard	4,270.50
SS 4089	23-Nov-06	49389	Cayabyab, Bernardita	683.80
SS 4092	28-Nov-06	49392	Carpio, Judy Ann	1,138.80
SS 4094	29-Nov-06	49394	Remigio Talaga	1,167.40
SS 4095	29-Nov-06	49395	Estrada, Jusmon	284.70
SS 4096	29-Nov-06	49396	Operana, Edgar	3,412.50
SS 4099	30-Nov-06	49399	Elmer	5,960.50
SS 4351	30-Nov-06	49651	Acuna, Grace	569.40
SS 4354	4-Dec-06	49654	Fermin, Miriam	572.00
SS 4356	4-Dec-06	49656	Fermin, Miriam	643.50
SS 4357	4-Dec-06	49657	Lopez, Charisse	833.30
SS 4360	5-Dec-06	49660	Ligutom, Ma. Carr	3,471.00
SS 4365	8-Dec-06	49665	Escalante, Anselmo	2,028.00
SS 4366	8-Dec-06	49666	Escalante, Anselmo	569.40
SS 4367	8-Dec-06	49667	Ofalsa, Rhodora	609.70
SS 4368	8-Dec-06	49668	Matawara, Rea	284.70
SS 4374	13-Dec-06	49674	Florencio Enotorio	1,883.70
SS 4379	15-Dec-06	49679	Divina Pelobello	284.70
SS 4380	15-Dec-06	49680	Bustamante, Lorena	284.70
SS 4381	15-Dec-06	49681	Bustamante, Lorena	389.35
SS 4383	15-Dec-06	49683	Acuna, Grace	569.40
SS 4385	18-Dec-06	49685	Sobremonte, Rogelio	855.40
SS 4386	18-Dec-06	49686	Del Ayre, Homer	2,566.20
SS 4387	18-Dec-06	49687	Diesmos, Tessa	855.40
SS 4388	18-Dec-06	49688	Choy, Louella	569.40
SS 4389	18-Dec-06	49689	Mata, Grace	9,750.00
SS 4393	20-Dec-06	49693	Bisares, Marieta	426.40
SS 4394	22-Dec-06	49694	Grace Beriso	284.70
SS 4396	29-Dec-06	49696	Operana, Edgar	2,990.00
SS 4397	29-Dec-06	49697	Operana, Edgar	3,412.50
SS 4398	29-Dec-06	49698	Carmela Dadural	569.40
			4th Quarter	**₱166,951.25**
		Total - Year 2006		**₱635,213.90**

As reflected in its trial balance[60] and audited FS[61] for taxable year 2006, petitioner's total premium collections for

[60] BIR Records, p. 421.
[61] Exhibit "H", Notes to Financial Statements, Note 19, p. 25.

the year 2006 amounted to ₱104,642,335.00, broken down as follows:[62]

Taxable	Premium Collections		
Period	**Peso**	**Dollar**	**Total**
Jan-06	₱ 7,630,733.44	₱ 1,125,964.04	₱ 8,756,697.48
	₱ 7,630,733.44	**₱ 1,125,964.04**	**₱ 8,756,697.48**
Feb-06	₱ 6,812,701.57	₱ 1,237,564.93	₱ 8,050,266.50
Mar-06	8,162,398.68	1,171,237.30	9,333,635.98
	₱ 14,975,100.25	**₱ 2,408,802.23**	**₱ 17,383,902.48**
1st Quarter	**₱ 22,605,833.69**	**₱ 3,534,766.27**	**₱ 6,140,599.96**
Apr-06	₱ 9,446,025.65	₱ 1,156,455.66	₱ 10,602,481.31
May-06	8,962,285.08	1,055,770.89	10,018,055.97
Jun-06	8,136,697.15	1,300,562.20	9,437,259.35
2nd Quarter	**₱ 26,545,007.88**	**₱ 3,512,788.75**	**₱ 30,057,796.63**
Jul-06	₱ 6,935,632.85	₱ 1,110,035.88	₱ 8,045,668.73
Aug-06	7,181,752.03	1,042,952.76	8,224,704.79
Sept-06	6,699,835.93	1,160,788.68	7,860,624.61
3rd Quarter	**₱ 20,817,220.81**	**₱ 3,313,777.32**	**₱ 24,130,998.13**
Oct-06	₱ 6,788,351.75	₱ 975,611.98	₱ 7,763,963.73
Nov-06	6,705,482.74	992,622.11	7,698,104.85
Dec-06	7,876,569.05	974,302.52	8,850,871.57
4th Quarter	**₱ 21,370,403.54**	**₱ 2,942,536.61**	**₱ 24,312,940.15**
Total	**₱ 91,338,465.92**	**₱ 13,303,868.95**	**₱ 104,642,334.87**

However, the above-computed premium collections of ₱104,642,334.87 shall be further reduced by the amount of ₱635,213.90 representing trust fund contributions. Therefore, only the remaining amount of ₱104,007,120.97 shall be subjected to VAT.

Petitioner likewise asserts that its main clients are seamen or seafarers who receive compensation for services rendered abroad as members of the complement of vessels engaged exclusively in international trade. These seamen are considered overseas contract workers for all intents and purposes and classified as non-residents of the Philippines following the provision of Section 23(C) of the NIRC of 1997, as amended. Since petitioner's services rendered to the seamen

[62] BIR Records, p. 490.

are services rendered to non-residents and paid for in acceptable foreign currency, the premium payments and the trust fund contributions coming from the seamen should not attract 12% VAT since the services are zero-rated services under the provisions of Section 108(B)(2) of the NIRC of 1997, as amended. Unfortunately, however, petitioner failed to adduce evidence in support of its assertion.

Respondent also disallowed the input tax of ₱8,290.76[63]. Records disclose that the assessed amount of ₱5,551,066.00[64] Other Income is composed of the surcharges on lapsed plans, processing fees, other income and commission income reflected in petitioner's trial balance and audited FS[65] for taxable year 2006, detailed as follows:

Taxable Month	Surcharge on Lapsed Plans	Processing Fee	Other Income	Commission Income	Total
January	₱ 272,345.87	₱ 19,113.47	₱ 113,226.70	₱ 55,363.77	₱ 460,049.81
Subtotal	**₱ 272,345.87**	**₱ 19,113.47**	**₱ 113,226.70**	**₱ 55,363.77**	**₱ 460,049.81**
February	₱ 248,904.04	₱ 35,057.61	₱ 01,023.66	₱ 2,392.62	₱ 387,377.93
March	297,184.39	56,804.82	97,378.81	29,414.84	480,782.86
	₱ 546,088.43	**₱ 91,862.43**	**₱ 198,402.47**	**₱ 31,807.46**	**₱ 868,160.79**
1st Qtr	**₱ 818,434.30**	**₱ 110,975.90**	**₱ 311,629.17**	**₱ 87,171.23**	**₱ 1,328,210.60**
April	₱ 310,200.61	₱ 33,210.94	₱ 119,262.88	₱ 35,053.71	₱ 497,728.14
May	326,222.46	28,850.00	83,147.69	22,268.79	460,488.94
June	286,584.51	27,865.13	103,817.65	41,154.62	459,421.91
2nd Qtr	**₱ 923,007.58**	**₱ 89,926.07**	**₱ 306,228.22**	**₱ 98,477.12**	**₱ 1,417,638.99**
July	₱ 341,298.44	₱ 24,903.49	₱ 208,979.70	₱ 23,573.13	₱ 598,754.76
August	312,139.28	28,201.54	121,562.00	28,726.01	490,628.83
September	274,596.84	26,650.00	133,784.69	69,414.81	504,446.34
3rd Qtr	**₱ 928,034.56**	**₱ 79,755.03**	**₱ 464,326.39**	**₱ 121,713.95**	**₱ 1,593,829.93**
October	₱ 277,833.62	₱ 32,751.86	₱ 132,739.34	₱ 1,056.20	₱ 444,381.02
November	236,512.24	44,670.00	127,521.71	41,816.36	450,520.31
December	240,198.14	30,901.15	32,746.48	12,639.39	316,485.16
4th Qtr	**₱ 754,544.00**	**₱ 108,323.01**	**₱ 293,007.53**	**₱ 55,511.95**	**₱ 1,211,386.49**
Total	**₱ 3,424,020.44**	**₱ 388,980.01**	**₱ 1,375,191.31**	**₱ 362,874.25**	**₱5,551,066.01**

[63] BIR Records, p. 475.
[64] BIR Records, pp. 421-425.
[65] Exhibit "H", Statements of Income, forming part of the ₱6,555,710.00 Interest and other income; BIR Records, p. 421.

Again, for petitioner's failure to refute respondent's findings, the disallowed input tax of ₱8,290.76 shall be upheld and the aforesaid income shall form part of petitioner's taxable gross receipts for the year 2006 pursuant to Section 105 in relation to Section 108(A) of the NIRC of 1997, as amended.

In fine, petitioner is liable to pay basic deficiency VAT in the amount of ₱8,577,964.13, computed as follows:

	Jan	Feb - Mar	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	Total
	(In Philippine Pesos)						
Collection of premiums	8,756,697.48	17,383,902.48	26,140,599.96	30,057,796.63	24,130,998.13	24,312,940.15	104,642,334.87
Less:							
Trust Fund Contributions properly supported by VAT ORs	-	-	-	168,043.55	300,219.10	166,951.25	635,213.90
Net Premium Collections	8,756,697.48	17,383,902.48	26,140,599.96	29,889,753.08	23,830,779.03	24,145,988.90	104,007,120.97
Add:							
Surcharges on Lapsed Plans	272,345.87	546,088.43	818,434.30	923,007.58	928,034.56	754,544.00	3,424,020.44
Processing Fees	19,113.47	91,862.43	110,975.90	89,926.07	79,755.03	108,323.01	388,980.01
Other income	113,226.70	198,402.47	311,629.17	306,228.22	464,326.39	293,007.53	1,375,191.31
Commission income	55,363.77	31,807.46	87,171.23	98,477.12	121,713.95	55,511.95	362,874.25
Total receipts subject to VAT	9,216,747.29	18,252,063.27	27,468,810.56	31,307,392.07	25,424,608.96	25,357,375.39	109,558,186.98
Tax Rate	10%	12%[66]		12%	12%	12%	
Output tax	921,674.73	2,190,247.59	3,111,922.32	3,756,887.05	3,050,953.08	3,042,885.05	12,962,647.49
Add: Disallowed input tax			1,323.00	3,167.61	1,867.89	1,932.26	8,290.76
Less: Input tax			124,244.61	72,492.16	66,176.73	113,053.30	375,966.80
VAT due			2,989,000.71	3,687,562.50	2,986,644.24	2,931,764.01	12,594,971.46
Less: VAT paid			961,544.36	1,215,193.24	988,474.86	851,794.86	4,017,007.32
Basic deficiency VAT			**2,027,456.35**	**2,472,369.26**	**1,998,169.38**	**2,079,969.15**	**8,577,964.14**

[66] Effective February 1, 2006, the VAT rate was increased from 10% to 12% pursuant to Revenue Memorandum Circular No. 07-06.

**DEFICIENCY WITHHOLDING TAX
ON COMPENSATION - ₱2,054,826.70**

Respondent computed the alleged deficiency withholding tax on compensation as follows:[67]

Salaries and wages	₱6,418,727.24	
Provision for quarterly allowance	3,338,758.51	
Per diems	59,510.00	₱9,816,995.75
Compensation per alpha list		6,418,727.00
Difference		3,398,268.75
Deficiency withholding tax on compensation (32%)		1,087,446.00
Add: Interest (20% per annum)		942,380.70
Compromise penalty		25,000.00
Deficiency withholding tax on compensation		**₱2,054,826.70**

In arriving at the above computation, respondent simply compared the amount stated in the alphalist amounting to ₱6,418,727.00 and the alleged claimed salaries and wages aggregating to ₱9,816,995.75.

As stated by respondent in the FDDA, the salaries and wages reflected under Note 16 of the 2006 Audited Financial Statements amounting to ₱6,418,728.00[68] is equal to the amount reflected in the alphalist[69], thus:

No. of employees	Non-Taxable		Taxable	Total
	13th Month	SSS & Others	Compensation	
15	₱420,000.00	₱135,475.80	₱5,549,599.62	₱6,105,075.42
2	10,000.00	4,712.70	90,537.30	105,250.00
2	38,107.83	8,700.00	161,594.00	208,401.83
Total	₱468,107.83	₱148,888.50	₱5,801,730.92	6,418,727.25
Per FS				6,418,728.00
Rounding-off difference				₱ (0.75)

In effect, these assessments are provision for quarterly allowance in the amount of ₱3,338,758.51[70] and per diems in the amount of ₱59,510.00.

[67] Exhibit "JJ", p. 2; Exhibit "F", p. 2.
[68] Exhibit "H", Notes to Financial Statements, p. 22.
[69] BIR Records, pp. 260-262 and 477.
[70] BIR Records, pp. 421-425.

As to the provision for quarterly allowance, petitioner alleged that these are actual disbursements paid to employees. Petitioner insists that for internal purposes, the account title "provision" is used but, at year-end, these provisions are reversed, thereby only actual or cash disbursements remain.[71] Included in this account are *de minimis* and other benefits of relatively small value, reimbursements of related company costs and other expenses not subject to income tax on compensation.[72]

With regard to the per diems in the aggregate amount of ₱233,510.00[73], petitioner avers that this represents payments to members of the board of directors/non-employees in the amount of ₱174,100.00, and to employees in the amount of ₱59,410.00.[74]

However, petitioner failed to present sufficient evidence to explain the actual nature of the aforesaid amounts. Thus, in the absence of proof that the provision for quarterly allowance of ₱3,338,758.51 and per diems of ₱59,510.00 paid to petitioner's employees are not subject to withholding tax on compensation, petitioner shall be held liable for the corresponding deficiency withholding tax on compensation for taxable year 2006.

Nonetheless, the tax rate to be used shall be the effective rate computed based on the total withholding tax on compensation paid divided by the total amount of net taxable compensation during the taxable year 2006, as shown below:

Reference (BIR Records)	No. of Employees	Gross Taxable Compensation Income	Personal Exemption	Net Taxable Compensation Income	Tax Due	Effective Tax Rate
		(a)	(b)	(c) = (a) – (b)	(d)	(e) = (d) ÷ (c)
Page 262	15	₱ 5,549,599.62	₱ 531,000.00	₱5,018,599.62	₱1,207,915.64	
Page 261	2	90,537.30	72,000.00	18,537.30	2,649.97	
Page 260	2	292,713.12	65,000.00	227,713.12	34,724.53	
		₱ 5,932,850.04	**₱ 668,000.00**	**₱5,264,850.04**	**₱1,245,290.14**	**24%**

[71] Exhibit "KK", p. 13.
[72] Exhibit "E", p. 14.
[73] BIR Records, pp. 421-425.
[74] Exhibit "KK", p. 13.

In sum, petitioner is liable to pay basic deficiency withholding tax on compensation for the year 2006 in the amount of ₱803,789.33, computed as follows:

Provision for quarterly allowance	₱3,338,758.51
Per diems	59,510.00
Total compensation subject to withholding tax	₱3,398,268.51
Effective tax rate	**24%**
Basic deficiency withholding tax on compensation	**₱ 803,789.33**

DEFICIENCY EXPANDED WITHHOLDING TAX – ₱320,113.71

The table below shows respondent's computation of the deficiency expanded withholding tax assessment:[75]

Total professional fees	₱1,638,489.13	
Professional fees per alpha list	1,314,207.00	
Professional fees not subjected to EWT	324,282.13	
Tax due (10%)		₱ 32,428.21
Rentals per FS/ITR	718,805.05	
Rentals per alpha list	545,838.00	
Rentals not subjected to EWT	172,967.05	
Tax due (5%)		8,648.35
Purchases of services per FS/ITR	6,738,907.76	
Purchases per alpha list	839,625.00	
Purchases of services not subjected to EWT	5,899,282.76	
Tax due (2%)		117,985.66
Purchases of goods/merchandise per FS/ITR	386,165.97	
Purchases of goods per alpha list	-	
Purchases of goods not subjected to EWT	386,165.97	
Tax due (1%)		3,861.66
Deficiency tax		162,923.88
Add: Interest (20% per annum)	141,189.83	
Compromise penalty	16,000.00	157,189.83
Total deficiency withholding tax - expanded		**₱ 320,113.71**

[75] Exhibit "F", p. 2.

1. Professional Fees – ₱324,282.13

Respondent found that petitioner had income payments for professional fees in the amount of ₱324,282.13 which were not subjected to EWT, as detailed below:

Per BIR		
Professional and consultation fees	₱239,000.13	
Administrative and management fees	545,455.00	
Commissions	887,004.00	
Less: SGV and Co. professional fees portion	32,970.00	₱1,638,489.13
Per Alphalist		
Professional talent fee (WC010)	₱239,000.00	
Fees of director (WI090)	174,100.00	
Gross commission, etc. (WC140)	897,207.00	
Others	3,900.00	1,314,207.00
Professional fees not subjected to EWT		**₱ 324,282.13**

It appears from the foregoing table that the professional fees allegedly not subjected to EWT in the amount of ₱324,282.13 originated from the "Administrative and management fees". According to petitioner, the account listed as "Administrative and management expenses" is composed of reimbursements of expenses for corporate events, quality management, and other costs and expenses, which were charged by Transnational Diversified Corporation (TDC) and Transnational Diversified Group, Inc. (TDGI) at cost. Petitioner argued that since TDC and TDGI collects at cost and without gain or profit, these pure reimbursements of costs transactions do not partake the nature of an income payment, hence not subject to EWT. Again, this Court cannot sufficiently verify petitioner's claim since it failed to submit evidence in support of its claim.

In addition, the portion of the "Administrative and management fees" was offset by the "Fees of director" in the amount of ₱174,100.00 and "Others" in the amount of ₱3,900.00. These two items clearly do not fall within the classification of "Administrative and management fees" as defined above. Hence, it is but proper to exclude the "Fees of director" and "Others" in the offsetting.

Petitioner further insists that the revenue examiner erroneously categorized "Commissions/Service fees", payments of which were made to Dolphin Ship Management, Inc., Multinational Maritime, Inc. and NYK Fil Ship Management, Inc., as "Professional fees", and that the corresponding taxes were properly withheld and remitted using the 10% withholding tax rate. Assuming *arguendo*, that the "Commission" was offset against the corresponding income payment per alphalist, such offsetting was more favorable to petitioner by ₱10,203.00.

Also, in arriving at the total "Professional fees" subject to EWT, respondent deducted the SGV and Co.'s professional fees portion. Conversely, petitioner insisted in its protest letter[76] that the proper composition of "Professional fees" includes, among others, that of the SGV and Co., to wit:

Actuarial Advisors, Inc.	₱ 239,000.00
Transnational E-Business Solutions, Inc.; SGV and Co.	497,882.99
Security and janitorial expenses (Sniper Security Agency)	351,793.03
Total professional fees per ITR	**₱1,088,676.03**

Perusal of the records reveals that among the aforementioned three (3) items, only the professional fees of Actuarial Advisors, Inc. in the amount of ₱239,000.00 was included by respondent in her assessment.[77] Thus, she already disregarded the professional fees pertaining to Transnational E-Business Solutions, Inc. (TESI), SGV and Co., and Sniper Security Agency. Hence, it is improper for respondent to deduct the professional fees pertaining to SGV and Co. when, in the first place, it has never been part of subject professional fees.

Accordingly, petitioner is found liable for basic deficiency EWT on professional fees in the amount of ₱54,545.50, computed as follows:

Administrative and management fees	₱545,455.00
Tax rate	10%
Basic deficiency EWT on professional fees (10%)	**₱ 54,545.50**

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[76] Docket, p. 462.
[77] BIR Records, p. 511.

2. Rentals – ₱172,966.45

Petitioner accounted the discrepancy of ₱172,966.45[78], as follows:

TESI Network Support	₱ 40,000.00
TESI Network Support - Accrual	30,000.00
Payments to U-Bix for rentals of photocopier	13,480.74
Other various accruals of miscellaneous expenses	89,485.71
Total	**₱172,966.45**

TESI was registered with the Board of Investments (BOI) under Certificate of Registration No. 2001-092[79] dated June 28, 2001, and was entitled to income tax holiday (ITH) incentive from June 28, 2001 to June 27, 2007 or for a total period of 6 years.[80] In accordance with the provision of Section 39(a)(1) of Executive Order No. 226, income payments received by TESI, in connection with its registered activity, are exempt from the payment of said withholding tax.

On payments to U-Bix Corporation for rentals of photocopying machines, petitioner asserts that these were already subjected to the 2% EWT rate in the amount of ₱269.61. However, this Court finds that although there were payments relating to U-Bix Corporation reflected in the alphalist[81], it cannot be traced therefrom the alleged EWT payment of ₱269.61. Petitioner pointed out that other various accruals of miscellaneous expenses do not pertain to any specific vendor, some of which are casual or non-regular suppliers of TPI. Nonetheless, petitioner failed to show that these were casual or non-regular suppliers exempt from EWT.

Accordingly, petitioner is liable for basic deficiency EWT on rentals in the amount of ₱5,148.32, as computed below:

Payments to U-Bix for rentals of photocopier	₱13,480.74	
Other various accruals of miscellaneous expenses	89,485.71	₱102,966.45
Basic deficiency EWT on rental (5%)		**₱ 5,148.32**

[78] BIR Records, p. 502.
[79] BIR Records, p. 553; Exhibit "UU".
[80] BIR Records, p. 554; Exhibit "VV".
[81] BIR Records, p. 207, lines 46 and 47.

3. Purchases of services - ₱5,899,282.76, and Purchases of goods - ₱386,165.97

In its protest letters[82] to the Preliminary Assessment Notice dated August 27, 2009 and Formal Letter of Demand dated November 5, 2009, petitioner requested respondent for the details of the purchases of services per FS/ITR in the amount of ₱6,738,907.76 and purchases of goods/merchandise per FS/ITR in the amount of ₱386,165.97. However, respondent has not provided the factual basis and details of these discrepancies on which petitioner is being assessed of deficiency withholding tax.

As mentioned earlier, Section 228 of NIRC of 1997, as amended, provides that the taxpayer must be informed in writing of the law and the facts upon which a tax assessment is based; otherwise, the assessment is void. This is in consonance with the due process requirement of the 1997 Philippine Constitution, which provides that "No person shall be deprived of his property without due process of law." The taxpayer needs to know the nature of the examiner's findings in order to be able to properly contest the same and submit supporting documents.

In the FDDA[83], Formal Letter of Demand and Final Assessment Notices[84], and Preliminary Assessment Notice[85] sent by respondent to petitioner and particularly in the attached "Details of Discrepancies", there was no indication whatsoever as to how respondent's examiner arrived at the amounts of ₱6,738,907.76 and ₱386,165.97 allegedly representing petitioner's purchases of services and goods/merchandise per FS/ITR, respectively. Petitioner cannot be expected to be able to determine and thereafter refute the examiner's findings without the disclosure of the details of the basis of the assessment. Accordingly, the deficiency EWT assessments on these items are invalid and illegal for respondent's failure to inform petitioner in writing of the facts on which the said assessment was based.

[82] Exhibits "KK", p. 18 and "E", p. 19.
[83] Exhibit "F".
[84] Exhibit "R-12", BIR Records, pp. 628-638.
[85] Exhibit "JJ".

In sum, petitioner is liable to pay basic deficiency EWT in the total amount of ₱59,693.82, as computed below:

Basic deficiency EWT on:	
Professional fees	₱54,545.50
Rental	5,148.32
Total	**₱59,693.82**

DEFICIENCY DOCUMENTARY STAMP TAX – ₱563,726.95

In the FDDA, respondent computed the alleged deficiency DST for the year 2006 as follows:

DST on Premiums – Pre-Need Plans		
Premiums collected	₱103,378,870.77	
DST due (0.20/200)	103,378.87	
DST paid per return	59,109.63	₱ 44,269.37
DST on Bonds and Loan Agreements		
DST base	62,276,610.00	
DST due (1/200)	311,383.05	
DST paid per return	62,216.79	249,166.26
Basic Deficiency DST		293,435.63
Add: Interest (20% per annum)		254,291.32
Compromise Penalty		16,000.00
Total Deficiency		**₱ 563,726.95**

**a. DST on Premiums –
Pre-Need Plans – ₱44,269.37**

Petitioner contends that portion of the premium collections being assessed pertains to plans issued prior to March 20, 2004 and were already subjected to DST based on the plan amounts. According to Section 186 of the NIRC of 1997 (prior to R.A. No. 9243), the DST on pre-need plans issued prior to March 20, 2004 shall be fifty centavos (₱0.50) on each five hundred pesos (₱500.00) of the value or amount of the plan. Pursuant to the amendment introduced by R.A. No. 9243, as implemented by Section 8 of R.R. No. 13-2004, the DST on all premium collections for pre-need plans issued on or after March 20, 2004 shall be twenty centavos (₱0.20) on each two hundred pesos (₱200.00), or fractional part thereof, of the premium or contribution collected. Premium collections applicable to pre-need plans issued by petitioner prior to March 20, 2004, the DST of which having been collected earlier based on plan amounts, need no longer be subjected again to stamp tax rate of 0.20/200. Thus, premiums collected amounting only to ₱57,899,090.00 was subjected to DST in the amount of ₱57,901.13, as shown below:

Taxable Month (2006)	**Tax Base[86]**	**Tax Paid[87]**
January	₱ 4,017,000.00	₱ 4,017.00
February	3,911,000.00	3,911.00
March	6,571,280.00	6,571.50
April	7,045,700.00	7,046.00
May	7,011,340.00	7,011.50
June	3,814,900.00	3,815.00
July	3,702,130.00	3,702.13
August	4,767,580.00	4,768.00
September	4,049,780.00	4,050.00
October	4,098,950.00	4,099.00
November	4,727,110.00	4,727.50
December	4,182,320.00	4,182.50
Total	**₱ 57,899,090.00**	**₱ 57,901.13**

On the other hand, respondent's verification disclosed total premium collections of ₱103,378,870.77[88] for the period January to December 2006, as summarized below:

Month	**Peso Pension**	**Peso Education**	**Dollar Pension**	**Total Collection**
January	₱ 5,458,308.96	₱ 2,172,425.00	₱ 1,125,918.19	₱ 8,756,652.15
February	4,568,720.05	2,243,982.00	1,218,517.60	8,031,219.65
March	3,897,251.00	4,265,148.00	1,171,342.46	9,333,741.46
April	7,476,049.00	1,969,978.00	1,165,472.43	10,611,499.43
May	6,573,521.97	2,388,764.00	1,055,807.08	10,018,093.05
June	6,233,360.00	1,903,337.00	1,300,440.05	9,437,137.05
July	4,557,117.00	2,378,517.00	1,110,107.40	8,045,741.40
August	5,041,196.00	2,140,557.00	1,042,962.80	8,224,715.80
September	4,645,437.00	2,107,019.00	1,160,803.26	7,913,259.26
October	4,641,670.00	2,146,681.00	975,582.13	7,763,933.13
November	4,620,221.00	2,085,262.00	992,631.40	7,698,114.40
December	4,712,149.00	1,762,170.00	1,070,444.99	7,544,763.99
				₱ 103,378,870.77

However, as earlier stated, petitioner's premium collections for the year 2006 as reflected in its trial balance and audited FS for the year 2006 amounted to ₱104,642,335.00. Hence, this amount shall be the reference in determining petitioner's DST liability.

[86] BIR Records, pp. 62-106 and 108-111.
[87] *Ibid.*
[88] BIR Records, pp. 376-387 and 474.

After thorough study of the records, petitioner failed to prove that, of the total premium collections of ₱104,642,335.00, the amount of ₱46,743,245.00 (₱104,642,335.00 less ₱57,899,090.00) was related to plans issued prior to March 20, 2004 and was already previously subjected to DST at the rate of 0.50/500. Mere allegation without adducing documentary evidence is not enough. This renders the assessment valid and correct. Consequently, petitioner is liable to pay basic deficiency DST on premiums in the amount of ₱46,741.21, computed as follows:

Total premium collections subject to DST	₱ 104,642,335.00
Tax rate	₱.20/₱200
DST due on premiums (pre-need plans)	₱ 104,642.34
Less: DST paid per return	57,901.13
Basic deficiency DST on premiums – pre-need plans	**₱ 46,741.21**

b. Deficiency DST on Bonds and Loan Agreements – ₱249,166.26

Petitioner alleged that the tax base of ₱62,276,610.00 reflected in its monthly DST returns should be corrected as ₱12,545,224.97 only. Petitioner's accountant then in-charge erroneously arrived at the tax base for DST on loans. Instead of using the tax rate of ₱1/₱200, the rate of ₱0.30/₱200 was used in electronically filed returns.

To support its claim, petitioner presented the following summary:[89]

Month	Erroneous Tax Base	Should Be Tax Base	DST Paid per Return	Exhibit
January	₱ 4,200,260.00	₱ 840,056.18	₱ 4,200.26	"Y"
February	4,085,250.00	974,417.95	4,085.25	"Z"
March	6,518,120.00	1,303,770.82	6,518.12	"AA"
April	4,596,050.00	919,213.68	4,596.05	"BB"
May	4,209,670.00	841,933.06	4,209.67	"CC"
June	6,225,710.00	1,252,066.00	6,225.71	"DD"
July	6,261,720.00	1,252,342.67	6,261.72	"EE"
August	4,774,120.00	935,034.30	4,774.12	"FF"
September	5,875,130.00	1,175,023.56	5,900.00	BIR Records, pp. 126-127
October	6,788,690.00	1,357,739.16	6,788.69	"GG"

[89] Exhibit "KK", Annex "A"; BIR Records, p. 489; Exhibits "Y" to "II".

November	4,559,570.00	898,870.78	4,559.57	"HH"
December	4,182,320.00	794,756.81	5,238.00	"II"
Total	**₱62,276,610.00**	**₱12,545,224.97**	**₱ 63,357.16**	

Unfortunately, the above summary and the related DST returns are insufficient to establish petitioner's assertion that the ₱63,357.16 DST it had paid pertains to loan agreements worth ₱12,545,224.97. Petitioner should have presented such loan agreements in order for this Court to ascertain the veracity of its claim.

As already held in various cases, assessments are *prima facie* presumed correct and made in good faith. The burden of proof to rebut the presumption of correctness in the assessment is on the taxpayer. Petitioner herein failed on that task. Thus, respondent's findings shall be upheld. Petitioner is liable to pay basic deficiency DST on bonds and loan agreements in the amount of ₱248,025.89, as computed below:

Bonds and loans subject to tax	₱62,276,610.00
Tax rate	₱1/₱200
DST due	311,383.05
Less: DST paid per return	63,357.16
Basic deficiency DST on bonds and loan agreements	**₱ 248,025.89**

In fine, petitioner is liable for basic deficiency DST for taxable year 2006 in the total amount of ₱294,767.10, as computed below:

Basic deficiency DST on:	
Premiums (pre-need plans)	₱ 46,741.21
Bonds and loan agreements	248,025.89
Total	**₱ 294,767.10**

COMPROMISE PENALTIES – ₱132,000.00

The compromise penalties of ₱132,000.00, as broken down below, are found to be without legal basis:

Tax Type	**Compromise Penalty**
Income tax	₱ 25,000.00

Value added tax	25,000.00
Withholding tax – compensation	25,000.00
Expanded withholding tax	16,000.00
Documentary stamp tax	16,000.00
Penalty for failure to file list of regular supplier, alpha list of income payments not subjected to withholding tax, Monthly Alphabetical List of Payees (MAP) and failure to maintain subsidiary books as required under Sections 113 and 233 of the NIRC	25,000.00
Total	**₱132,000.00**

A compromise penalty cannot be imposed since no compromise agreement was reached between the parties. The imposition of the same without the conformity of the taxpayer is illegal and unauthorized.[90] Revenue Memorandum Order No. 1-90 expressly provides that "compromise penalties are only amounts suggested in settlement of criminal liability, and may not therefore be imposed or exacted on the taxpayer in the event that a taxpayer refuses to pay the suggested compromise penalty". Since petitioner did not pay the compromise penalties imposed by respondent, it did not agree to settle the same. As a consequence, the compromise penalties of ₱132,000.00 shall be cancelled.

WHEREFORE, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. The assessments covering taxable year 2006 for deficiency income tax in the amount of ₱2,737,817.02 and compromise penalties in the amount of ₱132,000.00 shall be **CANCELLED AND WITHDRAWN**. However, the assessments for deficiency VAT, withholding tax on compensation, EWT and DST for the same taxable year shall be **UPHELD WITH MODIFICATIONS**.

Accordingly, petitioner is **ORDERED TO PAY** respondent the amount of ₱12,170,268.00, inclusive of the twenty-five percent (25%) surcharge imposed under Section 248(A)(3) of the NIRC of 1997, computed as follows:

Tax Type	Basic Tax	25% Surcharge	Total
Value added tax	₱8,577,964.14	₱2,144,491.04	₱10,722,455.18
Withholding tax on compensation	803,789.33	200,947.33	1,004,736.66

[90] *Commissioner of Internal Revenue vs. Lianga Bay Logging Co., Inc. and the Court of Tax Appeals*, G.R. No. L-35266, January 21, 1991.

Expanded withholding tax	59,693.82	14,923.46	74,617.28
Documentary stamp tax	294,767.10	73,691.78	368,458.88
Total	**₱9,736,214.39**	**₱2,434,053.61**	**₱12,170,268.00**

(a) Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency VAT, withholding tax on compensation, EWT and DST computed from the dates indicated below until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended;

Tax Type	**Basic Tax**	**Deficiency Interest Computed from**
Value-added tax		
1st Quarter	₱2,027,456.35	25-Apr-06
2nd Quarter	2,472,369.26	25-Jul-06
3rd Quarter	1,998,169.38	25-Oct-06
4th Quarter	2,079,969.15	25-Jan-07
	8,577,964.14	
Withholding tax on compensation	803,789.33	15-Jan-07
Expanded withholding tax	59,693.82	15-Jan-07
Documentary stamp tax	294,767.10	05-Jan-07

(b) Delinquency interest at the rate of 20% per annum on the total amount of ₱12,170,268.00 and on the 20% deficiency interest which have accrued as afore-stated in (a), computed from April 15, 2011 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

WE CONCUR:

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

CAESAR A. CASANOVA
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.
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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice