REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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MITSUBISHI MOTORS PHILS., CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 6385

Members:

ACOSTA, *Chairperson*
BAUTISTA, and
CASANOVA, *JJ.*

Promulgated:
DEC 12 2008; 9:00am

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DECISION

BAUTISTA, *J.*:

Before this Court is a Petition for Review praying for the cancellation and withdrawal of the deficiency income tax assessment issued by respondent against petitioner for taxable year 1997, in the sum of TWO HUNDRED FIFTY NINE MILLION EIGHT HUNDRED ELEVEN THOUSAND TWO HUNDRED EIGHTY-FIVE PESOS AND 50/100 (P259,811,285.50), computed as follows:

Net loss per ITR		P (124,386,956.00)
Add: Audit findings		
Interest expense from loans	P 108,913,892.25	
Interest expense from affiliates	49,519,810.56	
Rent expense-affiliates	56,276,327.00	
Direct Labor-salaries & wages	37,160,143.43	
Rental Expense	16,795,188.87	
Other income	6,646,008.35	
Advertising & sales promotion	138,814,647.00	
Undeclared sales	18,919,837.00	
Royalty	15,050,738.69	448,096,593.15
Net income per audit		**P 323,709,637.15**
Tax due		P 113,298,373.00

Add: Disallowed CWT		49,347,980.76
Total deficiency tax	P	162,646,353.76
Add: 20% Interest (4/16/98 to 4/6/01)		97,164,931.74
Total amount due	**P**	**259,811,285.50**

Petitioner is a corporation duly organized and existing under the laws of the Philippines, with principal office at the MMPC Building, Ortigas Avenue Extension, Cainta, Rizal.[1]

Respondent is the duly appointed Commissioner of Internal Revenue empowered to perform the duties of said office, including, among others, the power to cancel disputed assessments. He holds office at the Bureau of Internal Revenue (BIR) National Office Building, BIR Road, Diliman, Quezon City.[2]

On April 5, 2001, petitioner received a Preliminary Assessment Notice dated March 21, 2001 from the BIR Revenue Region No. 7, Quezon City, covering alleged deficiency income tax for taxable year ended December 31, 1997 in the amount of P259,355,875.51, inclusive of interest, computed as follows:[3]

Deficiency income tax	P162,646,353.76
Add: 20% Interest (4/16/98 to 4/06/01)	96,709,521.95
TOTAL	**P259,355,875.71**

On April 16, 2001, petitioner filed its Reply to the Preliminary Assessment Notice with BIR Revenue Region 7.[4]

On April 20, 2001, petitioner received the Final Assessment Notice dated April 11, 2001 under Demand No. 46101 and Assessment No. 000009, covering deficiency income taxes in the total amount of P259,811,285.50, with the following details:[5]

[1] Par. 1, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 96.
[2] Par. 2, JSFI, Docket, p. 96.
[3] Par. 3, JSFI, Docket, p. 96.
[4] Par. 4, JSFI, Docket, p. 97.
[5] Par. 5, JSFI, Docket, p. 97.

Net Income (loss) per Return		(124,386,956.00)
Add: Audit Findings/Discrepancies		
Interest expense from loans	108,913,892.25	
Interest expense from affiliates	49,519,810.56	
Rent-expense-affiliates	56,276,327.00	
Direct labor, salaries and wages	37,160,143.43	
Rental expense	16,795,188.87	
Other Income	6,646,008.35	
Advertising and promotion	138,814,647.00	
Sales-undeclared	18,919,837.00	
Royalty	15,050,738.69	448,096,593.15
Net income per investigation		323,709,637.15
Income tax due thereon		113,298,373.00
Less: Tax credits		
Paid per return	10,207,915.00	
Creditable withholding tax	88,474,492.00	
Total	98,682,407.00	
Less: Disallowances		
Creditable w/tax - no certificates	49,347,980.76	
Allowable	49,334,426.24	
Less: Applied credit to next year	98,682,407.00	49,347,980.76
Deficiency tax		162,646,353.76
Add: 20% interest		97,164,931.74
Amount still due		**P 259,811,285.50**

The Final Assessment Notice was based on the following grounds:[6]

"10.1. Respondent disallowed **Interest Expense from loans** in the amount of P108,913,892.25 on the ground that the loans from which the interest arose were not indebtedness connected with the taxpayer's trade or business pursuant to the provisions of Section 29(a)(1)(A) of the 1977 National Internal Revenue Code ("Tax Code") (admitted in par. 3A, Special and Affirmative Defenses, Answer).

10.2. **Interest Expense from affiliates** in the amount of P49,519,810.56 was disallowed by the BIR as a deduction from income pursuant to the provisions of Section 30(b)(3) of the Tax Code (admitted in par. 3B, Special and Affirmative Defenses, Answer).

10.3. Respondent disallowed **Rent Expense** charged by Petitioner's affiliates in the amount of P56,276,327.00 as a deduction from income pursuant to the provisions of Section 29(a)(1)(A) of the Tax Code (admitted in par. 3C, Special and Affirmative Defenses, Answer).

[6] Par. 10, JSFI, Docket, pp. 98-99.

10.4. Respondent disallowed **Direct Labor & Salaries and Wages** amounting to P37,160,143.43 as a deduction from income for alleged failure to withhold the required tax due thereon pursuant to the provisions of Section 29(j) of the Tax Code (admitted in par. 3D, Special and Affirmative Defenses, Answer).

10.5. Respondent disallowed **Rental Expense** in the amount P16,795,188.87 as a deduction from income for alleged failure to withhold the tax due on the rent payments pursuant to the provisions of Section 29(j) of the Tax Code (admitted in par. 3F, Special and Affirmative Defenses, Answer).

10.6. Respondent alleges that the discrepancy amounting to P6,646,008.35 between income payment (rental) per alpha list against income payment claimed as expense per financial statements represents **Other Income** pursuant to Section 28 of the Tax Code (admitted in par. 3F, Special and Affirmative Defenses, Answer).

10.7. Respondent disallowed **Advertising and Sales Promotion Expense** amounting to P138,814,647.00 as a deduction from income for alleged failure by Petitioner to withhold the required amount of tax pursuant to the provisions of Section 29(j) of the Tax Code (admitted in par. 3G, Special and Affirmative Defenses, Answer).

10.8. Respondent alleges that there were **undeclared sales** in the amount of P18,919,837.00 pursuant to the provisions of Section 28 of the Tax Code (admitted in par. 3H, Special and Affirmative Defenses, Answer).

10.9. It is alleged by the Respondent that **Royalties Expense** in the amount of P15,050,738.69 should be disallowed as a deduction from income pursuant to the provisions of Section 29(a)(1)(A) of the Tax Code (admitted in par. 3I, Special and Affirmative Defenses, Answer).

10.10. **Creditable withholding taxes** claimed by Petitioner as tax credits in its income tax return in the amount of P49,347,980.76 was disallowed by the BIR due to its alleged failure to support the same pursuant to the provisions of Section 50 of the Tax Code as implemented by Section 6 in relation to Section 10 of Revenue Regulations No. 6-85, as amended (admitted in par. 3J, Special and Affirmative Defenses, Answer)."

On May 11, 2001, petitioner, through its tax counsel, SGV & Co., filed a letter protesting the foregoing Final Assessment Notice with the BIR Revenue Region No.

7, and requesting that the same be cancelled or withdrawn for lack of legal or factual bases.[7]

On May 23, 2001, counsel for petitioner received a letter from BIR Revenue Region No. 7, stating that the case relating to the Final Assessment Notice No. 000009 had been forwarded to the BIR Revenue District Office No. 46, Cainta/Taytay, Rizal for appropriate action.[8]

On July 9 and 10, 2001, within the reglementary sixty (60)-day period provided by law for the submission of all relevant supporting documents, petitioner filed with BIR RDO No. 46 of Cainta/Taytay, Rizal the pertinent documents in support of the protest letter.[9]

As of January 6, 2002 or after the lapse of one hundred eighty (180) days from the date of filing of all relevant supporting documents, respondent had not acted on petitioner's protest letter. In accordance with Section 228 of the Tax Code, petitioner is given an option to file with this Court a Petition for Review within thirty days from the expiration of the aforesaid 180-day period of inaction of respondent. Hence, on February 4, 2002, petitioner filed the instant Petition for Review.

On April 26, 2002, respondent filed his Answer raising several Special and Affirmative Defenses.[10]

Trial proceeded and petitioner submitted its evidence, while respondent was declared to have waived his right to present evidence.[11]

On December 12, 2007, the case was submitted for decision considering petitioner's Memorandum filed on November 5, 2007, *sans* respondent's Memorandum.[12]

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[7] Par. 8, JSFI, Docket, p. 98.
[8] Par. 11, JSFI, Docket, pp. 99-100.
[9] Par. 9, JSFI, Docket, p. 98.
[10] Docket, pp. 55-59.
[11] Resolution dated August 15, 2007, Docket, pp. 827-828.
[12] Docket, p. 905.

The following are the stipulated issues submitted for the Court's resolution:

"1. Whether or not Respondent correctly disallowed the following expenses as deductions from Petitioner's gross income:

Interest expense from loans	P108,913,892.25
Interest expense from affiliates	49,519,810.56
Rent-expense-affiliates	56,276,327.00
Direct labor, salaries and wages	37,160,143.43
Rental expense	16,795,188.87
Advertising and promotion	138,814,647.00
Royalty	15,050,738.69

2. Whether or not there is a discrepancy amounting to P6,646,008.35 between income payment (rental) per alpha list and income payment claimed as expense per financial statements and if so, whether the same represents Other Income of Petitioner.

3. Whether or not Petitioner had undeclared sales of P18,919,837.00.

4. Whether or not Respondent correctly disallowed creditable withholding taxes of P49,347,980.76 claimed by Petitioner as tax credits in its income tax return."

I. Interest Expense from loans

Respondent disallowed Interest Expense from loans in the amount of P108,913,892.25 on the ground that the loans from which the interest arose were not connected with the taxpayer's trade or business, pursuant to Section 29(a)(1)(A) of the National Internal Revenue Code of 1977, as amended. Further, in a Memorandum[13] dated April 28, 2000, respondent's examiners stated:

> "xxx. The taxpayer's main trade or business is to manufacture and sell motor vehicles and not to borrow money and invest it in securities. It borrowed from various banks P1.860 Billion and paid P108,913,892.25 interest. The taxpayer's placement in marketable securities (Treasury Bills) reached P2.245 billion while additional investment to Brillante, an affiliate is P560,569,500.00. Total outlay for investments is P2,805,569,500.00. It earned interest income of P93,080,828.00. If the taxpayer provided reasonable allowance for its business/working capital requirements or did not shell out in investment this large amount of money, it has no need to borrow money and pay interest to its creditors. In fact, if it did not borrow and invest, its cash position will increase by P575,808,097.43. An

[13] BIR Records, p. 665.

expense is necessary when it is useful or helpful to the business. In this case, the incurrence of interest expense is not."

Petitioner argued otherwise. Mr. Arnold B. Almario, petitioner's Senior Manager for Accounting Department, testified that petitioner needed the said loans for working capital purposes.[14] Petitioner's audited financial statements, attached to its Income Tax Return for taxable year 1997, showed the following:[15]

Exh.	Account	1997	1996	Increase(Decrease)
A-3-3	Accounts Payable – trade	P 2,822,648,435.00	P 1,478,101,848.00	P 1,344,546,587.00
A-3-5	Net Sales	10,693,480,817.00	13,613,200,923.00	(2,919,720,106.00)
A-3-6	Receivables – net	834,896,556.00	276,585,116.00	558,311,440.00
A-3-6	Inventories – net	3,847,934,782.00	2,022,627,097.00	1,825,307,685.00

Mr. Almario explained that petitioner only obtained loans when the Asian economic crisis hit the country in 1997 which resulted in the devaluation of the peso against other foreign currencies.[16] This adversely affected petitioner's operations as shown in the decrease of net sales and increase in payables, receivables and inventory. Consequently, it needed more funds to pay for its foreign currency-denominated liabilities in the aggregate amount of P2,549,227,976.00.[17]

Petitioner disagrees with respondent's allegation that petitioner had enough funds in investments to answer for its working capital requirements. Petitioner argues that it only had an average of P450 million investments in 1997, contrary to respondent's allegation of P2.2 billion. The examiners allegedly arrived at the erroneous figure by adding all the debits recorded in the Short-Term Investments account without considering the fact that these represented mere roll-overs of the P450 million investments.[18]

[14] TSN, dated December 9, 2002, pp. 20-25.
[15] Exhibit" A".
[16] Exhibits "X" to "X-3".
[17] Exhibit "A-3-2".
[18] Letter to BIR dated May 10, 2001, from SGV & Co, BIR Records, pp. 1025-1034.

By summing up all debits in petitioner's short-term investments account, respondent concluded that the loan proceeds obtained by petitioner were invested in securities. By doing so, respondent merely relied on assumptions/conjectures without obtaining any evidence corroborating such findings. Hence, this Court cannot uphold respondent's conclusion.

In an assessment case, the Supreme Court upheld this Court's ruling in **Collector of Internal Revenue vs. Benipayo**, which partly states that:[19]

> "xxx. An assessment fixes and determines the tax liability of a taxpayer. As soon as it is served, an obligation arises on the part of the taxpayer concerned to pay the amount assessed and demanded. Hence, assessments should not be based on mere presumptions no matter how reasonable or logical said presumptions may be. x x x
>
> In order to stand the test of judicial scrutiny, the assessment must be based on actual facts. The presumption of correctness of assessment being a mere presumption cannot be made to rest on another presumption xxx."

II. Interest Expense from affiliates

Interest expense from affiliates in the amount of P49,519,810.56 was disallowed by respondent as a deduction from income pursuant to Section 29(b)(2)(ii) in relation to Section 30(b)(3) of the National Internal Revenue Code of 1977, as amended, which provides that no deduction shall be allowed between two corporations more than fifty *per centum* in value of the outstanding stock of each is owned, directly or indirectly, by or for the same individual, if either one of such corporations, with respect to the taxable year of the corporation preceding the date of the sale or exchange was under the law applicable to such taxable year, a personal holding company or a foreign personal holding company.

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[19] G.R. No. L-13656, January 31, 1962.

Petitioner's Senior Manager of the Accounting Department, Mr. Arnold B. Almario, testified that this interest expense refers to its account with Nissho Iwai Corporation, an affiliate in Japan.[20] Petitioner, through its tax counsel SGV & Co., wrote in a letter[21] dated May 10, 2001:

> "We submit that the examiners erred in disallowing MMPC's interest expense on its loans from affiliates because the major stockholders of MMPC are Mitsubishi Motors Corporation (owning 51%) and Nissho Iwai Corporation (owning 49%). Since no **individual** owns more than 50% in value of the outstanding capital of MMPC, then Sec. 29(b)(2)(ii) in relation to Sec. 30(b)(3) of the Tax Code will not apply." *(Emphasis supplied.)*

The Court agrees with petitioner.

Petitioner's General Information Sheet[22] as of April 30, 1997 reflected the names of the following stockholders:

Name	**Citizenship**	**Amount Subscribed & Paid up**	**Percentage of Ownership**
Mitsubishi Motors Corporation	Japanese	P 560,999,700.00	50.99997%
Nissho Iwai Corporation	Japanese	538,999,700.00	48.99997%
Makoto Maeda	Japanese	100.00	0.00001%
Soichi Uemura	Japanese	100.00	0.00001%
Yoshifumi Kawashima	Japanese	100.00	0.00001%
Yoshizumi Kurata	Japanese	200.00	0.00002%
Katsumi Nakura	Japanese	100.00	0.00001%
TOTAL		**P1,100,000,000.00**	100.00000%

From the foregoing, no individual owns more than 50% of petitioner's outstanding capital stock and Nissho Iwai Corporation owns only 48.99997% of petitioner's outstanding capital stock. Moreover, Nissho Iwai Corporation is not a holding company.[23] Evidently, Section 30(b)(3) of the National Internal Revenue Code of 1977, as amended, is not applicable to the present case and the Interest Expense from affiliates in the amount of P49,519,810.56 is a valid deduction from petitioner's gross income.

[20] TSN, February 27, 2003, pp. 16-17.
[21] BIR Records, p. 1031.
[22] Exhibit "I-1".
[23] TSN, February 27, 2003, p. 22.

III. Rent Expense - affiliates

Section 29(a)(1)(A) of the National Internal Revenue Code of 1977, as amended provides:

> "(a) *Expenses.* — (1) *Business expenses.* — (A) *In general.*— All ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including a reasonable allowance for salaries or other compensation for personal services actually rendered; traveling expenses while away from home in the pursuit of a trade, profession or business, **rentals or other payments** required to be made as a condition to the continued use or possession, for the purpose of the trade, profession or business, **of property** to which the taxpayer has not taken or is not taking title **or in which he has no equity**." *(Emphasis supplied)*

Pursuant to the foregoing provisions, respondent disallowed petitioner's rental expense in the amount of P56,276,327.00 paid to Brillante Realty Corporation and Diamante Property Holdings, Inc. The amount is computed as follows:[24]

Affiliated Company	Operating Expenses	Manufacturing Expenses	Total
Brilliante	P 7,172,727.00	P 28,703,600.00	P 35,876,327.00
Diamante	18,360,000.00	2,040,000.00	20,400,000.00
TOTAL	**P 25,532,727.00**	**P 30,743,600.00**	**P 56,276,327.00**

Admittedly, the said corporations are petitioner's affiliates. However, petitioner argued that it dealt with these entities on an arm's length basis, thus, the rent rates were based on existing market prices in 1997.[25] Contracts of lease between petitioner and Brilliante Realty Corporation[26], petitioner and Diamante Property Holdings, Inc.[27] were submitted as proofs.

The law explicitly provides that for rent expense to be deductible from income for tax purposes, the taxpayer should have no equity to the property being rented. Hence, this Court finds the disallowance of petitioner's rent expense paid to its affiliates in order.

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[24] BIR Records, p. 432.
[25] BIR Records, pp. 1030-1031.
[26] Exhibits "J" and "K".
[27] Exhibit "L".

IV. Direct Labor, Salaries and Wages

For petitioner's alleged failure to withhold the corresponding taxes, respondent disallowed petitioner's claimed direct labor, salaries and wages in the amount of P37,160,143.43, computed as follows:[28]

Per Petitioner's books:[29]				
Direct Labor Cost	P	287,791,820.00		
Salaries & wages-Manufacturing Overhead		290,396,339.00		
Salaries & wages-Selling & General		118,632,869.00	P	696,821,028.00
Per alphalist:[30]				
Employees	P	585,670,480.09		
Managers		73,990,404.41		659,660,884.50
Difference			P	**37,160,143.50***

**due to rounding off*

A perusal of petitioner's alphalist disclosed that respondent erroneously added twice the amounts of P52,291,622.46 and P4,945,407.07, representing tax free bonus and tax free monetized vacation leave credits of petitioner's employees, respectively, in arriving at the salaries and wages of employees per alphalist in the amount of P585,670,480.09, as shown below: [31]

Gross earnings	P	528,433,450.56
Tax free bonus (already included in gross earnings)		52,291,622.46
Tax free monetized Vacation Leave credits (already included in gross earnings)		4,945,407.07
Total	**P**	**585,670,480.09**

Thus, as found by the Court-commissioned Independent CPA, Ms. Rosario S. Bernaldo, the difference between the amount of direct labor, salaries and wages per books *vis-a-vis* the amount shown in the alphalist should be P94,397,173.03, instead of P37,160,143.50, to wit:

Per Petitioner's books:				
Direct Labor Cost	P	287,791,820.00		
Salaries & wages-Overhead		290,396,339.00		
Salaries & wages-Selling & General		118,632,869.00	P	696,821,028.00

[28] BIR Records, p. 609.
[29] BIR Records, pp. 434-436.
[30] Exhibit "M-4" to "M-6".
[31] Exhibit "M-6".

Per alphalist:		
Employees	P 528,433,450.56	
Managers	73,990,404.41	602,423,854.97
Difference		P **94,397,173.03**

Based on a reconciliation made by the Independent CPA, the discrepancy of P94,397,173.03 is accounted for as follows:[32]

Per BIR audit		P 696,821,028.00
Add (deduct) reconciling items:		
Non-taxable employee benefits		(42,746,340.01)
Efficiency variance:		
Actual direct labor cost	P 240,308,221.36	
Standard direct labor cost	(287,791,820.57)	(47,483,599.21)
Temporary differences:		
1) Salaries & wages accrued in 1996, paid in 1997	P 4,454,734.25	
2) Salaries & wages accrued in 1997, paid in 1998	(2,179,108.16)	
3) VL/SL accrued in 1996, utilized and/or converted to cash in 1997	37,608,792.37	
4) VL/SL accrued in 1997, utilized and/or converted to cash in 1998	(48,088,224.10)	
5) Incentive bonus accrued in 1996, paid in 1997	9,207,370.80	
Unaccounted difference	(5,170,801.97)	(4,167,236.81)
Per CPA audit		P 602,423,851.97
Per alphalist		602,423,851.97
Difference		-

A. Non-taxable Employee Benefits

The breakdown of non-taxable employee benefits in the sum of P42,746,340.01 is shown in the CPA Report as follows:[33]

Retirement plan contributions	P 17,408,132.37
Employee medical expense	6,596,476.78
SSS Contributions	5,433,060.00
Rice Subsidy	3,329,266.60
Employee summer outing	2,226,922.16
Christmas package	2,089,272.73
Office uniforms	1,853,069.04
Pag-ibig	1,076,533.66
Death benefit	854,696.00
Group life insurance	756,918.43
Employee news media	588,921.51
Medicare contributions	415,192.95
Group and accident insurance	7,479.75
Others	110,398.03
Total	P 42,746,340.01

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[32] Exhibit "AAA", Annex "C.1".
[33] Exhibit" AAA", Annex "C.2".

Petitioner presented various documents such as check vouchers, journal vouchers and payroll summaries, which proved payment of the aforesaid benefits in the amount of P42,746,340.01.[34]

Pursuant to Section 28(b)(7)(E) of the National Internal Revenue Code of 1977, as amended, and Section 2(b)(3) of Revenue Regulations No. 12-86, SSS, Medicare and Pag-ibig Contributions are excluded from the computation of gross income and therefore, exempt from the requirement of withholding tax on compensation. Also, petitioner's claimed deduction for group life insurance and group and accident insurance for its employees are not subject to withholding tax in accordance with Section 28(b)(1)(5) of the National Internal Revenue Code of 1977, as amended.

Furthermore, facilities or privileges which are of relatively small value, furnished or offered by an employer to his employees as a means of promoting health, goodwill, contentment, or efficiency of his employees are not considered as compensation subject to withholding as provided under RR No. 12-86 and clarified under Revenue Audit Memorandum Order No. 1-87. Accordingly, the aforementioned employee medical expense, rice subsidy, employee summer outing, Christmas package, office uniforms, death benefit, employee news media and others are not subject to withholding.

Anent petitioner's claimed deduction for retirement plan contributions, Section 28(b)(7) of the National Internal Revenue Code of 1977, as amended provides:

> "(7) *Retirement benefits, pensions, gratuities, etc.* - (A) Retirement benefits received by officials and employees of private firms, whether individuals or corporate, in accordance with a reasonable private benefit plan maintained by the employer: *Provided*, That the retiring official or employee has been in the service

[34] Exhibits "CCC-1" to "CCC-307".

> of the same employer for at least 10 years and is not less than 50 years of age at the time of his retirement: *Provided, further,* That the benefits granted under this subparagraph shall be availed of by an official or employee only once. For purposes of this subsection, the term 'reasonable private benefit plan' means a pension, gratuity, stock bonus or profit-sharing plan maintained by an employer for the benefit of some or all of his officials or employees, where contributions are made by such employer for officials or employees, or both, for the purpose of distributing to such officials and employees the earnings and principal of the fund thus accumulated, and wherein it is provided in said plan that at no time shall any part of the *corpus* or income of the fund be used for, or be diverted to, any purpose other than for the exclusive benefit of the said officials and employees."

Petitioner did not submit documents from which this Court can verify whether the claimed deductions for retirement plan contributions in the amount of P17,408,132.37 fall within the exemption as aforequoted. Consequently, the amount of P17,408,132.37 shall be disallowed as deduction from petitioner's taxable gross income.

B. Efficiency Variance

Also included in the reconciliation is the amount of P47,483,599.21 representing direct labor efficiency variance, computed as follows:

Actual direct labor cost	P 240,308,221.36
Standard direct labor cost	(287,791,820.57)
Efficiency variance	**P (47,483,599.21)**

Absence of documentary proof to support the alleged efficiency variance of P47,483,599.21, the same should be disallowed as deduction from petitioner's gross income.

C. Temporary Differences

Another reconciling item presented by the Independent CPA pertains to temporary differences between petitioner's accrual and payment of salaries/wages and vacation leave/sick leave benefits, which are summarized below:

Accruals in 1996 paid in 1997:		
1) Salaries & wages accrued in 1996, paid in 1997	P 4,454,734.25	
2) VL/SL accrued in 1996, utilized and/or converted to cash in 1997	37,608,792.37	
3) Incentive bonus accrued in 1996, paid in 1997	9,207,370.80	P 51,270,897.42
Accruals in 1997 paid in 1998:		
1) Salaries & wages accrued in 1997, paid in 1998	P (2,179,108.16)	
2) VL/SL accrued in 1997, utilized and/or converted to cash in 1998	(48,088,224.10)	(50,267,332.26)
Total temporary differences		**P 1,003,565.16**

Section 29(j) of the National Internal Revenue Code of 1977, as amended, reads:

> "(j) *Additional requirement for deductibility of certain payments.* — Any amount paid or payable which is otherwise deductible from, or taken into account in computing gross income or for which depreciation or amortization may be allowed under this section, shall be allowed as a deduction only if it is shown that the tax required to be deducted and withheld therefrom has been paid to the Bureau of Internal Revenue in accordance with this section, Section 51 and 74 of this Code."

Clearly, an expense shall be allowed as a deduction from gross income only if it is shown that the tax required to be deducted and withheld therefrom has been paid to the Bureau of Internal Revenue, whether the same is paid or payable. Since the salaries/wages and vacation/sick leave benefits in the amount of P50,267,332.26 was not subjected to withholding tax during the year it was claimed as an expense, the same should be disallowed pursuant to the above-quoted law.

D. Unaccounted Difference

The unaccounted difference in direct labor, salaries and wages of P5,170,801.97 found by the Independent CPA should be disallowed as deduction from petitioner's gross income. However, it should be noted that the Salaries and Wages per Alphalist should be P602,423,854.97 and not P602,423,851.97; and the P3.00 difference thereof should be deducted from the unaccounted amount of P5,170,801.97.

In sum, petitioner failed to prove that it withheld the tax due on the claimed direct labor, salaries and wages in the amount of 120,329,862.81, computed as follows:

Retirement Plan Contributions	P 17,408,132.37
Accruals in 1997 paid in 1998	50,267,332.26
Efficiency difference	47,483,599.21
Unaccounted difference	5,170,798.97
Total	**P 120,329,862.81**

Nevertheless, since the above amount of P120,329,862.81 is higher than the disallowance made by respondent in the amount of P37,160,143.50, the Court is constrained to disallow the lower amount of P37,160,143.50.

V. Rental Expense

Respondent disallowed petitioner's rent expense in the amount of P16,795,188.87 for the latter's alleged failure to withhold the tax due thereon pursuant to Section 29(j) of the National Internal Revenue Code of 1977, as amended. The rental expense of P16,795,188.87 was computed as follows:[35]

Payee	Income Payment		Not Subjected to EWT
	Per FS	Per Alphalist	
A. Luz	P 545,455.00	P 818,181.80	
A. Yu	650,000.00	780,000.00	
AE & E Dev. Corp.	831,875.00	878,460.00	
Blanquita Gonzales	818,526.00	848,842.20	
PI Leasing Corp.	15,470,630.67	-	P 15,470,630.67
Brillante	28,703,600.00	35,879,500.00	
Brillante	7,172,727.00	-	
Century Iron Works	94,585.06	1,444,451.60	
Citimotors	168,800.00	171,690.00	
CTM Mgt. Corp.	1,398,778.00	3,087,000.00	
Daiya Sales	3,823,920.45	3,888,542.80	
Diamante	2,040,000.00	20,400,000.00	
Diamante	18,360,000.00	-	
Dr. Erlinda Germar	570,000.00	600,000.00	
Dr. F. Inocencio	756,000.00	756,000.00	-
Edita Cheng	40,000.00	480,000.00	
Felina Bravo	240,000.00	-	240,000.00
Generations Prop., Inc.	867,273.00	1,426,363.60	

[35] BIR Records, pp. 609-610.

Guaranteed Home	1,240,917.86	1,240,918.00	
Hilltop Subdivisions	975,000.00	1,560,000.00	
House of L & S	189,000.00	-	189,000.00
Huntly Corporation	305,133.00	610,264.80	
L. Enriquez	229,090.00	687,272.60	
Linda Lim	12,000.00	-	12,000.00
M. Mojares	520,000.00	567,272.80	
Madros, Inc.	191,400.00	-	191,400.00
Ozaeta, Constancia	1,484,640.00	1,484,640.00	-
Panorama	108,900.00	-	108,900.00
Pragmatic Dev. & Co.	480,816.00	299,376.00	181,440.00
QCM Realty Corp.	560,000.00	158,181.80	401,818.20
Rowena Nazareth	378,000.00	648,000.00	
R. Ortanez	540,000.00	540,000.00	-
SEB Commercial	2,174,977.28	2,537,905.80	
TOTAL	**P 91,942,044.32**	**P 81,792,863.80**	**P 16,795,188.87**

However, the Independent CPA found a discrepancy between the rent expense per petitioner's financial statements and per alphalist in the amount of P11,583,908.66,[36] as follows:

Rent expense per Books of Accounts/FS	P 91,942,044.86
Rent expense per Alphalist	80,358,136.20
Discrepancy	**P 11,583,908.66**

A scrutiny of the above computation reveals that both the respondent and the Independent CPA arrived at the same amount of rent expense as recorded in petitioner's financial statements, but they differed in the amount of rent expense per alphalist. The difference of P1,434,727.60 (P81,792,863.80 less P80,358,136.20) is accounted for as follows:

Rent expense per alphalist—ICPA computation	**P 80,358,136.20**
Not included in ICPA's computation:	
Century Iron Works	1,444,451.60
Included in ICPA's computation but not in Respondent's:	
Olympia Housing	(9,724.00)
Rent expense per alphalist—Respondent's computation	**P 81,792,863.80**

On the other hand, petitioner's Senior Manager-Treasury Division accounted for the disallowed rental expense of P16,795,188.87 as follows:[37]

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[36] Exhibit "AAA", Annex "B".

1) 1997 Rent expense subjected to withholding tax in 1996				
Exh.	Payee	Rent Expense Recognized in 1997		
BB-1	Felina Bravo	P	240,000.00	
CC-1	House of L & S		189,000.00	
CC-2	Madros, Inc.		191,400.00	
DD-1	Panorama Dev. Corp.		108,900.00	
EE-1	Pragmatic Dev. & Co.		181,440.00	
GG-1	QCM Realty Corp.		454,545.50	P 1,365,285.50
2) 1997 Rent expense not subjected to withholding tax				
	Linda Lim	P	12,000.00	
	BPI Leasing Corp.		7,379,936.23	7,391,936.23
3) Unexpired portion of prepaid rent in 1997				
N-5-2	QCM Realty Corp.			(52,727.28)
4) 1997 Accrual of rent expense subjected to withholding tax in 1998				
FF-1	BPI Leasing Corp.			8,090,694.44
TOTAL				**P 16,795,188.89***

** due to rounding off*

Remittances of the taxes withheld on the foregoing amounts were supported by Monthly Remittance Returns of Income Taxes Withheld (BIR Form 1743W)[38] and Annual Information Return of Income Tax Withheld on Compensation, Expanded and Final Withholding Taxes (BIR Form 1604)[39] with Alphalists; while rental payments were supported by official receipts, payment vouchers, journal vouchers, lease contracts, general ledger, and other documents.[40]

This Court finds the first and third reconciling items in order, but the rest are not. Pursuant to the previously quoted Section 29(j) of the National Internal Revenue Code, as amended, the 1997 rent expense not subjected to withholding tax in the amount of P7,391,936.23 and the 1997 accrual of rent expense subjected to withholding tax in 1998 in the amount of P8,090,694.44, totalling to P15,482,630.67, cannot be deducted from petitioner's taxable gross income because petitioner did not withhold the corresponding taxes at the time they were claimed as expenses.

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[37] Exhibit "AA".
[38] Exhibits "BB", "CC", "DD", "EE", "FF", "GG" and "BBB-397" to "BBB-433".
[39] Exhibit "N".
[40] Exhibits "BBB-1" to "BBB-396".

VI. Other Income

Respondent found that the other income in the amount of P6,646,008.35 corresponds to the discrepancy between income payment (rental) per alpha lists against income payment claimed as expense per Financial Statement. Such discrepancy is considered as income pursuant to Section 28 of the National Internal Revenue Code of 1977, as amended.[41] The alleged undeclared income of P6,646,008.35 was computed as follows:[42]

Payee	Income Payment		Over-Subjected to Withholding
	Per FS	Per Alphalist	
A. Luz	P 545,455.00	P 818,181.80	P (272,726.80)
A. Yu	650,000.00	780,000.00	(130,000.00)
AE & E Dev. Corp.	831,875.00	878,460.00	(46,585.00)
Blanquita Gonzales	818,526.00	848,842.20	(30,316.20)
BPI Leasing Corp.	15,470,630.67	-	
Brillante	28,703,600.00	35,879,500.00	(3,173.00)
Brillante	7,172,727.00	-	
Century Iron Works	94,585.06	1,444,451.60	(1,349,866.54)
Citimotors	168,800.00	171,690.00	(2,890.00)
CTM Mgt. Corp.	1,398,778.00	3,087,000.00	(1,688,222.00)
Daiya Sales	3,823,920.45	3,888,542.80	(64,622.35)
Diamante	2,040,000.00	20,400,000.00	
Diamante	18,360,000.00	-	
Dr. Erlinda Germar	570,000.00	600,000.00	(30,000.00)
Dr. F. Inocencio	756,000.00	756,000.00	-
Edita Cheng	40,000.00	480,000.00	(440,000.00)
Felina Bravo	240,000.00	-	
Generations Prop., Inc.	867,273.00	1,426,363.60	(559,090.60)
Guaranteed Home	1,240,917.86	1,240,918.00	(0.14)
Hilltop Subdivisions	975,000.00	1,560,000.00	(585,000.00)
House of L & S	189,000.00	-	
Huntly Corporation	305,133.00	610,264.80	(305,131.80)
L. Enriquez	229,090.00	687,272.60	(458,182.60)
Linda Lim	12,000.00	-	
M. Mojares	520,000.00	567,272.80	(47,272.80)
Madros, Inc.	191,400.00	-	
Ozaeta, Constancia	1,484,640.00	1,484,640.00	-
Panorama	108,900.00	-	
Pragmatic Dev. & Co.	480,816.00	299,376.00	
QCM Realty Corp.	560,000.00	158,181.80	
Rowena Nazareth	378,000.00	648,000.00	(270,000.00)
R. Ortanez	540,000.00	540,000.00	-
SEB Commercial	2,174,977.28	2,537,905.80	(362,928.52)
TOTAL	**P 91,942,044.32**	**P 81,792,863.80**	**P (6,646,008.35)**

[41] BIR Records, p. 785.
[42] BIR Records, p. 610.

Petitioner explained that the discrepancy is due to the timing difference between petitioner's recognition of rent expense in its books and the withholding of the corresponding taxes:

> "Similar to Item 5 above, we reiterate that rent expense is recognized for financial statement purposes at the time it is incurred while withholding of taxes on these income payments is made at the time of payments. Since the rent was prepaid, the withholding was made prior to the time the expenses were recognized in the financial statements."[43]

Upon verification, some of the rental payments listed in the alphalist[44] were indeed pre-payments as evidenced by petitioner's check vouchers with attached supporting documents, such as rent contracts and statements of account from the lessors, to wit:

Exhibit	Lessor	Contract Period
BBB-232 to 238	A. Luz	Coverage of the 1-year period not specified but advance rental was paid in June 1997
BBB-156 to 158	A. Yu	March 1, 1997 to February 28, 1998
BBB-50 to 51	Blanquita Gonzales	May 7, 1997 to May 6, 1998
BBB-68 to 72	CTM Mgt. Corp.	December 7, 1997 to December 6, 1998
BBB-73 to 76		October 14, 1997 to October 13, 1998
BBB-79 to 81		May 5, 1997 to May 6, 1998
BBB-165 to 170	Dr. Erlinda Germar	June 29, 1997 to June 28, 1998
BBB-159 to 164	Edita Cheng	December 1, 1997 to November 30, 1998
BBB-271 to 273	Generations Prop., Inc.	March 9, 1997 to March 8, 1998
BBB-279 to 287		October 1, 1997 to September 30, 1998
BBB-198 to 203	Huntly Corporation	June 28, 1997 to June 27, 1998
BBB-61 to 66	L. Enriquez	September 7, 1997 to September 6, 1998
BBB-52 to 54	M. Mojares	February 10, 1997 to February 10, 1998

However, payments made in taxable year 1997 to the following lessors were not supported:

Lessor	Discrepancy between Alphalist and Financial Statements
AE & E Dev. Corp.	P 46,585.00
Century Iron Works	1,349,866.54
Citimotors	2,890.00
Daiya Sales	64,622.35
Hilltop Subdivisions	585,000.00
Rowena Nazareth	270,000.00

[43] BIR Records, p. 1028.
[44] Exhibit "N".

SEB Commercial		362,928.52
TOTAL	P	**2,681,892.41**

Hence, respondent's assessment treating the amount of P2,681,892.41 as other income is correct.

VII. Advertising and sales promotion

Petitioner's advertising expense in the amount of P138,814,647.00 was disallowed by respondent for failure to withhold the required tax therefrom, pursuant to Section 29(j) of the National Internal Revenue Code of 1977, as amended. It was computed as follows:[45]

Advertising expense per FS	P	255,054,847.00
Per Alphalist		116,240,200.00
Difference	P	**138,814,647.00**

Based on the verification made by the Independent CPA, the following reconciliation schedule could be made:[46]

Advertising expense per FS				P	255,054,847.00
Add (Deduct):					
(a)	Lodged in various accounts:				
	Suppliers	P	(63,01,6798.84)		
	Brokers		(4,008.00)		
	Others		(6,874,108.12)	P	(69,894,914.96)
(b)	Advertising expense not subject to withholding tax	P	(62,474,730.94)		
(c)	1997 accrued exp paid in & subjected to WT in 1998		(78,918,074.64)		
(d)	1996 accrued exp paid in & subjected to WT in 1997		45,406,818.61		
(e)	Reimbursement of advertising exp from various dealers		33,515,658.51		
(f)	Income from sale of excess advertising materials		2,933,408.21		
(g)	Various adjustments		550,070.79		(58,986,849.46)
(h)	Disallowances:				
	1997 expenses not subjected to WT	P	(2,409,365.37)		
	WT on advertising exp not remitted		(2,856,744.69)		
	Unverified expenses		(4,666,772.52)		(9,932,882.58)
Advertising expense per Alphalist				P	**116,240,200.00**

The Independent CPA found that the advertising expenses under item (a) in the amount of P69,894,914.96 were recorded in various accounts in the alphalist,

[45] BIR Records, p. 613.
[46] Annex "D" of Exhibit "AAA".

and "the amounts are correctly lodged to the said accounts because these advertising expenses are in the form of supplies, brokerage and others".[47]

As to items (e) and (f) pertaining to reimbursement of advertising expenses from various dealers and income from sale of excess advertising materials in the respective amounts of P33,515,658.51 and P2,933,408.21, the Independent CPA stated that:

> "We observed that some of (Petitioner's) advertising expenses were billed to various dealers in the form of reimbursements. The amount reimbursed were subsequently offset against advertising and promotions expense, hence, the advertising and promotions expense per alphalist was lower than the actual expense claimed in the income tax return.
>
> Income from sale of excess advertising materials were also credited against advertising and promotions expense."[48]

This Court agrees with the Independent CPA's findings.

As to items (c) and (d) representing timing differences due to petitioner's adoption of accrual bases of accounting, this Court finds that the 1997 accrued expenses paid and subjected to withholding tax in 1998 in the amount of P78,918,074.64 should be disallowed as deduction from petitioner's gross income pursuant to Section 29(j) of the National Internal Revenue Code of 1977, as amended.

Regarding item (b) representing advertising expense not subject to withholding tax in the amount of P62,474,730.94, the Independent CPA noted:

> "Based on our examination, there were advertising expenses that were not subjected to tax because by their nature they cannot be subjected to tax. These include sponsorships, reimbursements and liquidations (gasoline, toll, parking, out-of-pocket expenses), ad souvenirs, warranty claims and supplies for motor shows, among others."[49]

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[47] Exhibit "AAA", p. 8.
[48] *Ibid.*
[49] Exhibit "AAA", p. 8.

After careful examination of the schedule detailing the amount of P62,474,730.94 [50] and petitioner's supporting documents, the amount of P20,556,262.32 [51] pertaining to service cheques and adjustments should be disallowed as deduction from petitioner's gross income, because petitioner did not submit documents other than journal vouchers by which this Court could verify the nature thereof.

The remaining amount of P41,918,468.92 is a valid deduction from petitioner's gross income as it represents sponsorships, reimbursements and liquidations (gasoline, toll, parking, out-of-pocket expenses), ad souvenirs, warranty claims and supplies for motor shows and others which do not fall in any of the enumerated transactions subject to withholding tax under Revenue Regulations No. 6-85, as amended.

As to item (g) representing various adjustments in the amount of P550,070.79, the same shall not be considered for lack of supporting documents.

Lastly, this Court agrees with disallowances recommended by the Independent CPA in the amount of P9,932,882.58 under item (h).

Ergo, respondent's disallowance of petitioner's claimed deduction for advertising and sales promotion should be upheld but only to the amount of **P108,857,148.75**, computed as follows:

Advertising expense per FS		P 255,054,847.00
Lodged in various accounts:		
Suppliers	P(63,01,6798.84)	
Brokers	(4,008.00)	
Others	(6,874,108.12)	(69,894,914.96)
Advertising expense not subjected to withholding tax	P(62,474,730.94)	
Less: Amount without supporting documents	20,556,262.32	(41,918,468.62)
1996 accrued exp paid in & subjected to WT in 1997		45,406,818.61
Reimbursement of advertising exp from various dealers		33,515,658.51
Income from sale of excess advertising materials		2,933,408.21
Total		P 225,097,348.75

[50] Annex "D.2" of Exhibit "AAA".
[51] Annex "1" of this Decision.

Advertising expense per Alphalist	116,240,200.00
Difference	**P 108,857,148.75**

VII. Undeclared Sales

Respondent imputed against petitioner undeclared sales amounting to P18,919,837.00, computed as follows:[52]

	L300	Strada	KZ Adventure	Total
Beginning Inventory (Unit)	59	23	-	82
Add: Production	6,529	765	13	7,307
Less: Ending Inventory	(82)	(55)	-	(137)
Unit sales per audit	6,506	733	13	7,252
Less: Sales per Production report/Sales register	6,504	710	-	7,214
Unaccounted difference	**2**	**23**	**13**	**38**
Unit cost	P 252,917.00	P 530,713.00	P 477,508.00	
Total unaccounted sales	**P 505,834.00**	**P 12,206,399.00**	**P 6,207,604.00**	**P 18,919,837.00**

The Independent CPA accounted for the difference in unit sales[53], as follows:

Undeclared sales per BIR		**38**
Add/(Deduct) Adjustments:		
Imported in 1996 (not included in 1997 Production Report but included in 1997 Sales Analysis and Sales Register)	23	
Error in description of motor vehicle model	2	
KZ Adventure		
Capitalized as Pool Car	10	
Export Sales	3	38
Undeclared sales per Audit		**-**

A. L300

Respondent's examiner found a shortage of 2 units L300 Chassis Cab Model[54] and an overage of 2 units of L300 Van Model on petitioner's reported sales.[55]

The Independent CPA confirmed the examiner's findings and explained that the discrepancy was due to the error in the classification of model when the sale

[52] Exhibit "JJ"; BIR Records, p. 575.
[53] Exhibit "AAA", Annex "E".
[54] Exhibit "KK-1".
[55] Exhibit "KK-2"; BIR Records, p. 588.

transaction was recorded. Instead of recording the sale for L300 Chassis Cab Model, petitioner recorded it as if it was a sale of the L300 Van Model.[56]

However, in assessing petitioner of deficiency income tax, respondent merely considered the shortage of 2 units L300 Chassis Cab Model and ignored the overage of 2 units L300 Van Model.

A scrutiny of the documents[57] showed that the computation of the overage[58] is correct but the computation for the shortage should have been as follows:

	EXAMINER'S COMPUTATION			SHOULD BE		
Code/Vehicle Model	L39P5-L300 CAB PS	L39S5-L300 CAB STD	TOTAL	L39P5-L300 CAB PS	L39S5-L300 CAB STD	TOTAL
Beg. Inventory	13	46	59	13	46	59
Add: Production	6,469	60	6,529	6,469	60	6,529
Less: End. Inventory	0	(82)	(82)	(82)	0	(82)
Unit sales per audit	6,482	24	6,506	6,400	106	6,506
Sales per Production report/Sales register	6,398	106	6,504	6,398	106	6,504
Unaccounted difference	**(84)**	**82**	**(2)**	**(2)**	**0**	**(2)**

Inasmuch as the L300 Van model costs more than the L300 Cab model, if the shortage in the reported sales for the L300 Cab model is offset with the overage in the reported sales for the L300 Van model, petitioner has no deficiency tax liability and respondent's assessment on this item should be cancelled.

B. Strada

Petitioner alleged that the 23 units Strada were imported from Japan as completely built-up units (CBU) in the year 1996 and, as such, they did not appear in the production report but were included in the inventory checklist and sales for the year 1997.

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[56] Exhibit "AAA", p. 9.
[57] Exhibit "MM"; BIR Records, pp. 483-484 and 491-493.
[58] BIR Records, p. 588.

Verification showed that the said units were indeed imported from Japan[59] and formed part of petitioner's beginning inventory[60] and reported sales for the year 1997.[61] The discrepancy found by respondent's examiners was a mere result of their erroneous computation of the number of units sold for the year 1997. Since the 23 units of Strada were not locally manufactured by petitioner, it was erroneous on the part of respondent to base its computation for the total number of units sold solely on petitioner's production report for the year 1997.

C. Adventure

As reported by the Independent CPA, the 13 unit discrepancy was accounted for as follows: 10 units were capitalized as pool cars and 3 units were exported to Mitsubishi Japan for testing. It is represented that these units were used for prototyping and production trial runs. Petitioner presented vehicle invoices[62] and journal voucher[63] to prove the transfer of 10 units to its fixed assets account, and export invoices[64] and journal vouchers[65] to prove the exportation of 3 units to Japan; and that they were recorded as export sales.

Evaluation of the Schedule of Assigned/Pool/Other Company Cars for the year 1997[66] showed that the 10 KZ vehicles were among the pooled cars. However, petitioner did not submit a schedule of its export sales for the year 1997 for the Court to ascertain and verify that the 3 units KZ Adventure were indeed among those exported vehicles.

Thus, respondent's assessment on undeclared sales insofar as the 3 units of KZ Adventure in the amount of P1,432,524.00 is correct, and is computed as follows:

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[59] Exhibits "EEE-755" to "EEE-773".
[60] Exhibit "EEE-798"; BIR Records, p. 483-484.
[61] Exhibits "EEE-719" to "EEE-732"; Exhibits "EEE-733" to "EEE-754"; Exhibit "LL-3".
[62] Exhibits "NN" to "NN-10".
[63] Exhibit "OO".
[64] Exhibits "PP" to "PP-3-2".
[65] Exhibits "QQ" and "RR".
[66] BIR Records, pp. 562-563.

	KZ Adventure
Unaccounted difference	3
Unit cost	P 477,508.00
Total unaccounted sales	**P 1,432,524.00**

IX. Royalty

Respondent disallowed petitioner's royalty expense of P15,050,738.69, pursuant to the provision of Section 29(a)(1)(A) of the National Internal Revenue Code of 1977, as amended. Moreover, respondent's examiner stated:

> "Royalty expense amounting to P15,050,738.69 is based on technical service or engineering service agreements entered into between Mitsubishi Motors Corp. (Japan) and/or Nisho Iwai Corp. and PAMCOR. Therefore the provisions of the agreement do not bind the taxpayer because they have assumed a different legal personality when they changed their name to MMPC. Although they claim that they have filed a change of name with the SEC, it is not sufficient to put them in the status of a licensee as to shoulder expenses relative to royalty as contemplated in the service agreements because the governing law insofar as the agreement is concerned is Japanese Law. The SEC therefore, even if it does, cannot legally say that PAMCOR and MMPC refer to one and the same entity by virtue of that change of name which taxpayer has allegedly filed because it is devoid of any power to interpret a private contract."[67]

Petitioner argued that the payment of royalty fees is an ordinary and necessary expense for the reasons that it is for the know-how or technology in the manufacture of vehicles and for petitioner to be able to sell the vehicles under the brand name Mitsubishi (a trademark owned by MMCJ). Without the payment of the royalties, petitioner will not be allowed to use the technology provided by MMCJ and will not be allowed to use the trademark "Mitsubishi".[68]

In order to prove the foregoing, petitioner submitted the License and Technical Assistance Agreement between Philippine Automotive Manufacturing Corporation (PAMC) and Mitsubishi Motors Corporation (MMC)[69], and the Certificates of Registration Nos. 1848-A and 1849-A from the Bureau of Patents, Trademarks and

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[67] BIR Records, p. 664.
[68] Letter to BIR dated May 10, 2001, p. 9; BIR Records, p. 1026.
[69] Exhibit "V".

Technology Transfer for the renewal of manufacturing and patent and technology assistance agreement[70] and for the renewal of trademark license[71], respectively, between Mitsubishi Motors Philippines Corporation (MMPC) and Mitsubishi Motors Corporation (MMC) dated March 22, 1995. It also presented the Certificate of Filing of Amended Articles of Incorporation[72], showing the change of name from Philippine Automotive Manufacturing Corporation (PAMC) to Mitsubishi Motors Philippines Corporation (MMPC) effective July 15, 1996.

In the case of **Republic Planters Bank vs. Court of Appeals**[73], the High Tribunal declared that:

> "The corporation, upon such change in its name, is in no sense a new corporation, nor the successor of the original corporation. It is the same corporation with a different name, and its character is in no respect changed.
>
> A change in the corporate name does not make a new corporation, and whether effected by special act or under a general law, has no effect on the identity of the corporation, or on its property, rights, or *liabilities.*
>
> The corporation continues, as before, responsible in its new name for all debts or other liabilities which it had previously contracted or incurred.
>
> As a general rule, officers or directors under the old corporate name bear no personal liability for acts done or contracts entered into by officers of the corporation, if duly authorized. Inasmuch as such officers acted on their capacity as agent of the old corporation and the change of name meant only the continuation of the old juridical entity, the corporation bearing the same name is still bound by the acts of its agents if authorized by the Board. xxx"

Thus, the provision in Section 29(a)(1)(A) of the Tax Code of 1977 does not apply and respondent's disallowance of the royalty expense is without legal basis.

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[70] Exhibit "S".
[71] Exhibit "U".
[72] Exhibit "P".
[73] G.R. No. 93073, December 21, 1992.

X. Disallowed Creditable Withholding Tax

Creditable withholding taxes amounting to P49,347,980.76 were disallowed by respondent for petitioner's failure to substantiate the same. Petitioner countered that it presented Certificates of Creditable Tax Withheld at Source [BIR Form 2307 (formerly Form 1743-750)] to respondent's examiners during the audit and sent copies to Revenue District No. 46.[74]

Section "E" of petitioner's Annual Income Tax Return[75] for taxable year 1997 showed total creditable taxes withheld for the said year in the amount of P88,474,492.00. Petitioner's Summary of Income Tax Withheld for the year 1997[76] showed however a total amount of only P88,465,452.66. The difference of P9,039.34 should be disallowed for it represents unsubstantiated Creditable Withholding Tax (CWT). Further evaluation of the certificates of creditable tax withheld[77] revealed that the following should also be disallowed for the reasons herein stated:

Exh.	Payor	Period Covered	Income Payment	Tax Withheld
1.) Outside the period of claim				
HH-43	Mindanao Integrated Comm. Ent.	May 1996	P 6,876,850.63	P 63,090.37
	Subtotal		**P 6,876,850.63**	**P 63,090.37**
2.) No certificate of withholding				
	Citimotors, Inc.	December	P 18,918,400.00	P 189,184.00
	Diamond Motors Corp.-San Juan	Oct. to Dec.	935,909.00	9,359.09
	Diez Corporation	October	2,489,444.20	113,156.55
	Five Star Enterprises, Inc.	Oct. to Dec.	21,781,419.00	217,814.19
	Matsushita Electric Phils. Corp.	Oct. to Dec.	2,666,960.00	26,669.60
	Subtotal		**P 46,792,132.20**	**P 556,183.43**
	TOTAL		**P 53,668,982.83**	**P 619,273.80**

Accordingly, the total disallowed creditable taxes withheld is P628,313.14, computed as follows:

[74] Exhibit "O".
[75] Exhibit "A".
[76] Exhibit "HH".
[77] Exhibits "HH-1" to "HH-72".

Unsubstantiated amount	P	9,039.34
Additional disallowance		619,273.80
TOTAL	**P**	**628,313.14**

To summarize, the following should be disallowed as deductible expenses and a deficiency income tax should be assessed thereon:

Rent expense-affiliates	P	56,276,327.00
Direct labor-salaries & wages		37,160,143.43
Rental Expense		15,482,630.67
Other income		2,681,892.41
Advertising & sales promotion		108,857,148.75
Undeclared sales		1,432,524.00
TOTAL	**P**	**221,890,666.26**

WHEREFORE, the Petition for Review is hereby **PARTIALLY GRANTED.** Accordingly, petitioner is hereby **ORDERED TO PAY** deficiency income tax for taxable year 1997 in the amount of **SIXTY-FOUR MILLION ONE HUNDRED FORTY-THREE THOUSAND SIX HUNDRED EIGHTY-TWO PESOS AND 72/100 (P64,143,682.72)**, inclusive of 25% surcharge and 20% deficiency interest, computed as follows:

Net loss per ITR			(P 124,386,956.00)
Add:	Audit Findings		
	Rent expense-affiliates	P 56,276,327.00	
	Direct labor-salaries & wages	37,160,143.43	
	Rental Expense	15,482,630.67	
	Other income	2,681,892.41	
	Advertising & sales promotion	108,857,148.75	
	Undeclared sales	1,432,524.00	221,890,666.26
Net income per audit			**P 97,503,710.26**
Tax due (35%)			P 34,126,298.59
Less:	Tax Credits/Payments		
	Paid per return	P 10,207,915.00	
	Creditable withholding taxes	88,474,492.00	
	Total	P 98,682,407.00	
	Less: Disalllowed Creditable W/taxes	628,313.14	
	Allowable	P 98,054,093.86	
	Less: Applied as credit to next year	98,682,407.00	(628,313.14)
Total deficiency tax			P 34,754,611.73
Add:	25% Surcharge		8,688,652.93
	20% Interest (4/16/98 to 4/06/01)		20,700,418.06
Total amount due			**P 64,143,682.72**

In addition, petitioner is hereby **ORDERED TO PAY** a twenty percent (20%) delinquency interest computed from May 11, 2001 until full payment thereof pursuant to Section 249(c)(3) of the same Code.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Justice
Chairperson, First Division