REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

APOLLO TECHNOLOGIES, INC., Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE, Respondent.

CTA Case No. 8311

Members:
UY, *Chairperson, and*
FABON-VICTORINO, ***JJ.***

Promulgated:
NOV 20 2013 ; 3:11p.m.

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DECISION

UY, *J.*:

This is a Petition for Review filed by Apollo Technologies, Inc. filed on July 20, 2011, praying for the cancellation and setting aside of the Formal Letter of Demand and Assessment Notice, both dated January 3, 2011, issued by the Commissioner of Internal Revenue for alleged deficiency income tax and withholding tax on compensation covering taxable year 2007 in the aggregate amount of ₱ 515,769.38, inclusive of increments.

THE FACTS

Petitioner Apollo Technologies, Inc. is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office at 1703A East Tower PSE Center, Exchange Road, Ortigas Center, Pasig City. It is primarily engaged in computer software service operations, and is registered with the Bureau of Internal Revenue (BIR) – Revenue District Office (RDO) No. 43 of Revenue Region No. 7, Quezon City, Philippines.[1]

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[1] Par. 1, Stipulation of Facts, Joint Stipulation of Facts and Simplification of Issues (JSFSI), Docket, pp. 66 to 67.

Respondent Commissioner of Internal Revenue, on the other hand, is the Chief of the BIR, the government agency officially responsible for the assessment and collection of all national internal revenue taxes, fees and charges, and the enforcement of all forfeitures, penalties and fines connected with such taxes. She holds office at the 4th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City, Metro Manila.[2]

Sometime in 2008, respondent issued Letter of Authority No. 2008-00009037 dated October 20, 2008, authorizing Revenue Officer Nabill R. Decampong under the supervision of Group Supervisor Alfredo O. Pagdilao, Jr. of RDO No. 43 — Revenue Region No. 7 to examine the books of accounts and other accounting records of petitioner for all internal revenue taxes for the period from January 1, 2007 to December 31, 2007.[3]

On August 19, 2010, the assigned Revenue Officer submitted and issued his Post-Reporting Notice together with Notice of Informal Conference, assessing petitioner for the following alleged deficiency internal revenue taxes for taxable year 2007, in the total amount of ₱ 554,617.93, inclusive of interest, to wit:[4]

TAX TYPE	BASIC	INTEREST	TOTAL
Income tax	₱ 326,055.14	₱ 221,717.49	₱ 547,772.63
Withholding Tax on Compensation	4,199.83	2,645.47	6,845.30
		Total	**₱ 554,617.93**

Eventually, respondent, through Mr. Jonas DP. Amora, Assistant Regional Director and Officer-In-Charge of Revenue Region No. 7 – Quezon City, issued the Formal Letter of Demand (No. 043A-276-07), with Details of Discrepancies, and Assessment Notices, both dated January 3, 2011, assessing petitioner of deficiency income tax and withholding tax on compensation, including interests, in the aggregate amount of ₱ 515,769.38, broken down as follows:[5]

Tax Type	Basic	Interest	Total
Income tax	₱ 326,055.14	₱ 182,948.20	₱ 509,003.34
Withholding Tax on Compensation	4,200.01	2,566.03	6,766.04
		Total	**₱ 515,769.38**

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[2] Par. 2, Stipulation of Facts, JSFSI, Docket, p. 67.
[3] Par. 3, Stipulation of Facts, JSFSI, Docket, p. 67.
[4] Par. 4, Stipulation of Facts, JSFSI, Docket, p. 67.
[5] Exhibits "D" and "E". Exhibits 6 and 7, BIR Records, pp. 376 to 379.

On January 14, 2011, petitioner filed its administrative protest dated January 11, 2011, with supporting documents, on the aforesaid Formal Letter of Demand and Assessment Notices.[6]

On June 21, 2011, petitioner received the Final Decision on Disputed Assessment dated June 10, 2011 of respondent, issued through Hon. Nestor S. Valeroso, Regional Director of Revenue Region No. 7, finally denying the protest of petitioner thereby reiterating the alleged assessment for internal revenue taxes contained in the Formal Letter of Demand and Assessment Notices, and requesting petitioner to pay immediately the aforesaid alleged tax liability or to appeal with this Court, within thirty (30) days from receipt thereof.[7]

On July 11, 2011, without admitting the propriety of the assessment pertaining to withholding tax and for practical reasons, petitioner paid the same amounting to ₱ 6,766.04, including interest until the time of payment.[8] Correspondingly, the assessment pertaining to withholding tax on compensation for taxable year 2007 has been paid in full.[9]

Nevertheless, petitioner opted to appeal the said administrative decision with this Court via the instant Petition for Review on July 20, 2011.

On September 14, 2011, respondent filed her Answer[10] interposing the following defenses, viz:

> "3. The assessment for calendar year 2007 in the total amount of P515,769.38 was issued in accordance with law and regulations. The factual and legal bases of the subject assessment are contained in the Final Assessment Notices and Formal Letters of Demand with Details of Discrepancies and was served within the three-year prescriptive period provided in Section 203 of the Tax Code, as amended.
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> 4. Verification disclosed that there was an undeclared sales in the amount of P931,583.88 which

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[6] Exhibit "F". See also BIR Records, pp. 383 to 384.
[7] Par. 5, Stipulation of Facts, JSFSI, Docket, p. 68.
[8] Par. 6, Stipulation of Facts, JSFSI, Docket, p. 68.
[9] Par. 7, Stipulation of Facts, JSFSI, Docket, p. 68.
[10] Docket, pp. 41 to 43.

was not subjected to income tax, hence, assessed pursuant to Sec. 31 of the 1997 Tax Code, as amended.

5. Verification disclosed that the petitioner failed to remit the full amount of Withholding Tax on Compensation, withheld from their employees, hence, assessed pursuant to Revenue Regulation No. 2-98, as amended.

6. Finally, settled is the rule that the tax assessments by tax examiners are presumed correct and made in good faith (Cagayan Robina Sugar Milling Co. vs. Court of Appeals, 342 SCRA 671). It is the taxpayer and not the Bureau of Internal Revenue who has the duty of proving otherwise. Equally settled is the rule that in the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed. All presumptions are in favor of tax assessments. Dereliction on the part of petitioner to satisfactorily overcome the presumption of regularity and correctness of the assessment will justify the judicial upholding of said assessment notices."

On September 15, 2011, this Court issued a Notice of Pre-Trial Conference,[11] notifying the parties that the case is set for pre-trial conference on September 30, 2011 at 9:00 a.m., and directing the parties and their respective counsels to be present at the pre-trial and to file with the Court their respective Pre-Trial Brief, at least three (3) days before the date of pre-trial.

However, petitioner filed its Pre-Trial Brief on September 26, 2011;[12] while respondent filed her Pre-Trial Brief on October 4, 2011.[13]

On November 14, 2011, the parties submitted their Joint Stipulation of Facts and Simplification of Issues[14] which the Court approved in the Resolution dated December 2, 2011[15]. On the basis thereof, the Court issued the Pre-Trial Order dated January 9, 2012.[16]

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[11] Docket, p. 44.
[12] Docket, pp. 45 to 51.
[13] Docket, pp. 57 to 60.
[14] Docket, pp. 66 to 71.
[15] Docket, p. 242.
[16] Docket, pp. 247 to 252.

During trial, the parties presented their respective evidence in support of their respective claims and contentions. Upon termination thereof, this case was submitted for decision in the Resolution dated January 28, 2013 taking into consideration petitioner's Memorandum[17] and respondent's Memorandum,[18] which were both filed on January 24, 2013.[19]

Hence, this Decision.

THE ISSUES

The parties submitted the following issues[20] for this Court's resolution, to wit:

> "1. Whether or not the deficiency tax assessments issued against petitioner for taxable year 2007 have factual or legal basis.
>
> 2. Whether or not petitioner is liable for deficiency income tax for taxable year 2007 in the amount of Php 509,003.34 plus increments required by law."

Petitioner's arguments:

Petitioner argues that the Formal Letter of Demand and Assessment Notices are void for being bereft of legal and factual bases. Petitioner alleges that perusal of the said Formal Letter of Demand and Assessment Notices would show that the examiner in arriving at the income tax liability simply compared the 2007 value-added tax (VAT) and income tax forms with the 2007 Audited Financial Statements without checking the veracity of said figures and/or information stated therein, despite petitioner's compliance with submission of the records required by the BIR. In addition, respondent's audit investigation was supposedly only based on total figures stated in the Audited Financial Statements and related returns without the benefit of actual audit. Moreover, according to petitioner, had respondent considered the fact of timing difference for income (which follow the accrual basis) and VAT (which follow the cash basis method of accounting), then respondent would readily find the explanation behind the purported discrepancy in the amount of sales

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[17] Docket, pp. 461 to 474.
[18] Docket, pp. 475 to 480.
[19] Resolution dated January 28, 2013, Docket, p. 482.
[20] Issues to be Resolved, JSFSI, Docket, p. 68.

and that petitioner did not fail to declare sales for taxable year 2007 in the amount of ₱ 931,583.88.

Respondent's counter-arguments:

Respondent counter-argues that the assessment for taxable year 2007 was issued in accordance with law and regulations. She contends that the factual and legal bases of the subject assessments are contained in the Formal Letter of Demand and Assessment Notices, with the accompanying Details of Discrepancies. According to respondent, the BIR's findings are based on the results of the conducted verification which disclosed that there was an undeclared sales in the amount of ₱ 931,583.88 that was not subjected to income tax; hence, must be assessed pursuant to Section 31 of the National Internal Revenue Code (NIRC) of 1997, as amended. Respondent further asserts that verification of the records revealed that petitioner failed to remit the full amount of withholding tax on compensation in violation of Revenue Regulations No. 2-98, as amended.

THE COURT'S RULING

The instant Petition for Review is partly meritorious.

The deficiency withholding tax on compensation has already been paid in full.

In the parties' Joint Stipulation of Facts and Simplification of Issues, the following fact, *inter alia*, has been stipulated:

> "7. The assessment pertaining to withholding tax on compensation for taxable year 2007 **has been paid in full**."

Considering that petitioner already fully paid the deficiency withholding tax on compensation on July 11, 2011[21], and no longer challenges said assessment, the same should be cancelled and set aside.

The Court shall now proceed to address and rule on the subject deficiency income tax assessment for taxable year 2007 in the

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[21] Exhibits "G" and "H"; Pars. 6 and 7, Stipulation of Facts, JSFSI, Docket, p. 68.

aggregate amount of ₱ 509,003.34, inclusive of increments.

The deficiency income tax assessment must be upheld.

Respondent's deficiency income tax assessment for taxable year 2007 issued against petitioner is computed as follows:[22]

Taxable income per Income Tax Return		₱ 1,759,265.00
Add: Adjustment per Investigation		
Sales not subjected to tax		931,583.88
Taxable income per Investigation		₱ 2,690,848.88
Income tax due thereon		₱ 941,797.11
Less: Tax credits/Payments		
Tax payments	₱ 475,514.97	
Tax credits	140,227.00	615,741.97
Deficiency income tax		₱ 326,055.14
Add: 20% Interest p.a. (4.16.08 to 12.10.10)		182,948.20
TOTAL AMOUNT DUE		**₱ 509,003.34**

Respondent's examiner found that petitioner's sales is understated by ₱ 931,583.88.[23] This amount is determined as follows:[24]

Sales per VAT Returns	₱ 11,695,172.17
Add: Accounts Receivable, Ending (net of VAT)	5,346,834.82
Less: Accounts Receivable, Beginning (net of VAT)	3,959,924.11
Taxable income	₱ 13,082,082.88
Sales per Income Tax Returns	12,150,499.00
Sales not subjected to tax	**₱ 931,583.88**

Petitioner clarifies that the difference in the computation of taxable income was due to its adoption of accrual basis of accounting. According to petitioner, certain portions of the beginning trade receivables were already recognized as income in the previous taxable year; while certain portions of the ending balance of receivables were not yet recognized as income due to the recognition of deferred service income on accounts billed, but subject to proportionate recognition on a monthly basis within the current taxable year and the succeeding taxable year.

As testified upon by petitioner's Accounting Manager, Jennylyn

[22] Exhibit "6", BIR Records, p. 378.
[23] Exhibit "5", BIR Records, p. 357.
[24] Exhibit "6" (Details of Discrepancies), BIR Records, p. 376.

Ojano-Sabado, petitioner used and maintained two separate liability accounts: (1) the *Deferred Service Income* account, and (2) the *Customer's Deposit* account. According to said witness, said accounts could account and justify any discrepancy. She further attested that the *Deferred Service Income* account summarizes the billings or statement of accounts made during the year but has not necessarily been collected or earned in the said year, and it is recorded as receivables at the time of billing; while the *Customer's Deposit* account represents advance payments from the customer or client, which may or may not be considered as income in the year it was collected but might possibly be recorded as receipts subject to VAT in the period of collection which necessitates adjustment.[25]

Nonetheless, the Court commissioned Ofelia C. Flores as Independent Certified Public Accountant (ICPA) to verify and examine petitioner's accounting records and supporting documents related to the instant case. In her Amended ICPA Report, Flores observed that upon billing, petitioner debits *Accounts Receivable* and credits *Deferred Service Income* and *Deferred Output VAT*. When the income is realized, *Deferred Service Income* is debited and *Service Income* is credited.[26]

The said ICPA found that for the year 2007, petitioner realized service income amounting to ₱ 12,123,223.51, broken down as follows:[27]

Exhibit	Month	JV No.	Service Income
AA	January	07-01-12	₱ 776,389.06
BB	February	07-02-11	795,483.93
CC	March	07-03-11	954,018.03
DD	April	07-04-10	967,748.48
EE	May	07-05-10	906,070.04
FF	June	07-06-10	970,349.82
GG	July	07-07-12	886,095.35
HH	August	07-08-10	691,341.77
II	September	07-09-09	1,568,080.49
JJ	October	07-10-10	632,905.00
KK	November	07-11-09	1,253,637.80
LL	December	07-12-11	1,721,103.74
TOTAL			**₱ 12,123,223.51**

It is further noted by the said ICPA that the reported income of ₱ 12,150,499.00 (rounded off) of petitioner, as stated in its audited

[25] Exhibit "N" at p. 4 (A11 to A13).
[26] Exhibit "QQQ", at p. 4.
[27] Exhibit "QQQ", at p. 5.

Financial Statements for taxable year 2007,[28] consists of said service income and rental income,[29] viz:

Service income	₱ 12,123,223.51
Rental income[30]	27,275.00
Total taxable income	**₱ 12,150,498.51**

This reported total income is supported by petitioner's summary of sales per invoices issued for taxable years 2006 and 2007,[31] as summarized below:

2006	Service Income	Income for 2006	Income for 2007	Income for 2008
January	₱ 174,772.73	₱ 174,772.73	₱ -	
February	233,775.00	233,775.00		
March	276,050.00	276,050.00		
April	225,275.00	225,275.00		
May	242,275.00	242,275.00		
June	1,195,718.41	1,195,718.41		
July	2,116,984.64	2,069,984.64	47,000.00	
August	1,142,306.43	557,306.43	585,000.00	
September	259,777.14	187,277.14	72,500.00	
October	827,458.57	543,458.57	284,000.00	
November	1,993,792.39	1,993,792.39		
December	1,433,985.36	1,208,485.36	225,500.00	
TOTAL	**₱ 10,122,170.67**	**₱ 8,908,170.67**	**₱ 1,214,000.00**	
2007				
January	₱ 1,668,664.06		₱ 1,668,664.06	
February	647,983.93		647,983.93	
March	1,098,228.03		1,098,228.03	
April	816,038.48		816,038.48	
May	863,070.04		827,570.04	₱ 35,500.00
June	785,849.82		744,849.82	41,000.00
July	646,095.35		594,095.35	52,000.00
August	429,841.77		379,841.77	50,000.00
September	1,429,580.49		1,345,580.49	84,000.00
October	894,905.00		470,405.00	424,500.00
November	1,749,637.80		1,022,637.80	727,000.00
December	2,062,103.74		1,320,603.74	741,500.00
TOTAL	**₱ 13,091,998.51***		**₱ 10,936,498.51***	**₱ 2,155,500.00**
		Total Service Income for 2007	**₱ 12,150,498.51**	

**including rental income of ₱ 27,275.00*

On the other hand, when customers pay in advance, petitioner debits *Cash* and credits a liability account called *Customers' Deposit.* Similar to the deferred service income, customers' deposit is also

[28] Exhibit "YY".
[29] Exhibit "QQQ", at p. 5.
[30] Exhibit "WW".
[31] Exhibits "L" and "M".

subject to monthly realization as service income once petitioner bills its customers and issues a sales invoice.[32]

For taxable year 2007, the ICPA found that petitioner recorded total receipts and reported the same in its VAT returns in the amount of ₱ 11,695,588.73,[33] broken down as follows:[34]

Collection of outstanding Accounts Receivable	₱ 11,557,508.94
Customers' deposit[35]	138,079.79
Total cash receipts	**₱ 11,695,588.73**

The collection of outstanding accounts receivable is supported by petitioner's official receipts issued for taxable year 2007 amounting to ₱ 11,247,018.29[36] and by journal voucher for the additional cash receipts not reflected in the receipts book in the amount of ₱ 310,450.00.[37]

After establishing that petitioner declared in its income tax and VAT returns the correct amount of sales/income, the ICPA noted that the difference found by respondent's examiner represents petitioner's unearned service income for taxable year 2007 and accounted for the difference as follows:[38]

Period	**Total Billings for 2007**	**2007 Realization of Income (Earned Services)**	**Unearned Billings**	**Supporting Exhibits**
2006 billings realized as income		₱ 1,220,500.00	(₱ 1,220,500.00)	
January	₱ 1,641,389.06	1,641,389.06	-	
February	647,983.93	647,983.93	-	
March	1,098,228.03	1,098,228.03	-	
April	816,038.48	816,038.48	-	
May	863,070.04	827,070.04	36,000.00	MM-1 toMM-72
June	785,849.82	743,849.82	42,000.00	NN-1 to NN-41
July	646,095.35	594,095.35	52,000.00	OO-1 to OO-37
August	429,841.77	379,841.77	50,000.00	PP-1 to PP-25
September	1,429,580.49	1,345,580.49	84,000.00	QQ-1 to QQ-43
October	894,905.00	470,405.00	424,500.00	RR-1 to RR-130
November	1,749,637.80	1,018,137.80	731,500.00	SS-1 to SS-183
December	2,062,103.74	1,320,103.74	742,000.00	TT-1 to TT-149
TOTAL	**₱ 13,064,723.51**	**₱ 12,123,223.51**	**₱ 941,500.00**	

[32] Exhibit "QQQ", p. 5.
[33] Exhibits "O" to "Z".
[34] Exhibit "QQQ", p. 6.
[35] Annex "A", Exhibit "QQQ".
[36] Exhibits "EEE-1" to "PPP-72".
[37] Exhibit "DDD".
[38] Exhibit "QQQ", p. 7.

The amount of ₱ 941,500.00 represents billings in the year 2007 but is yet to be realized as service income in the succeeding year (2008). The same amount can be arrived at when petitioner's income for the year 2007 per sales invoices issued in the year 2006 is deducted from its income for the year 2008 per sales invoices issued in the year 2007, as shown below:

Income for 2008 per sales invoices issued in 2007[39]	₱ 2,155,500.00
Less: Income for 2007 per sales invoices issued in 2006[40]	1,214,000.00
Unrealized portion of 2007 billings	**₱ 941,500.00**

The Court-commissioned ICPA confirms that the difference amounting to ₱ 931,583.88 is part of the unrealized portion of taxable year 2007 billings. However, as noted by the same ICPA, the ending balance of *Deferred Service Income* as of December 31, 2007 in petitioner's Audited Financial Statements amounted to ₱ 1,941,500.00. According to the ICPA, based on the records, the difference of ₱ 1,000,000.00 was the result of various adjustments made during taxable year 2007 supported by journal vouchers,[41] summarized as follows:

EXHIBIT	DEFERRED SERVICE INCOME
ZZ	₱ 58,595.00
AAA	(78,775.00)
BBB	202,500.00
CCC	346,000.00
TOTAL	**₱ 528,320.00**

An examination of the journal vouchers shows that these were actually entries made to adjust the *Customers' Deposit* account, which affected the *Deferred Service Income* account. However, aside from the journal vouchers, petitioner failed to submit supporting documents to support the foregoing adjustments. Thus, the Court cannot ascertain whether they are indeed proper adjustments to the *Deferred Service Income* account. Hence, the *Deferred Service Income* balance as found by the ICPA in the amount of ₱ 941,500.00 shall be used in the computation of petitioner's undeclared sales and the computation deficiency income tax.

[39] Exhibit "M".
[40] Exhibit "L".
[41] Exhibit "QQQ", p. 8.

It is noteworthy that respondent's examiner basically compared petitioner's sales per VAT returns and adjusted the same with petitioner's receivables for the year with its sales per ITR. As judicially admitted, petitioner is *"primarily engaged in computer service operations"*, [42] thus, a service company, and as such, reports sales in its Annual ITR on accrual basis, as its chosen method of accounting,[43] but reports sales in its VAT returns on cash basis, pursuant to Section 108(A) of the NIRC of 1997, as amended by Republic Act No. 9337[44]. Logically, comparison of sales per VAT returns and per ITR will result in a discrepancy on account of the timing difference.

However, it must be pointed out that including the balances of petitioner's *Accounts Receivable* in the computation of sales to be compared to the sales declared per ITR is not enough to eliminate the timing difference due to the adoption of accrual method of accounting. Respondent's examiner failed to consider the *Deferred Service Income* account balances and *Customers' Deposit* account balances when petitioner's sales per VAT returns were compared with sales per ITR. Since the *Deferred Service Income account* is credited when an account receivable is recognized and debited upon realization of service income, the *Accounts Receivable* account includes all of the unrealized as well as the realized service income during the year. To compute the correct amount of sales as reported in the ITR, therefore, the balances of the *Deferred Service Income* account should likewise be considered.

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[42] Par. 1, Stipulation of Facts, JSFSI, Docket, pp. 66 to 67.

[43] *Cf*: Section 43 of the NIRC of 1997 provides:

"SEC. 43. *General Rule.*— **The taxable income shall be computed upon the basis of the taxpayer's annual accounting period (fiscal year or calendar year, as the case may be) <u>in accordance with the method of accounting regularly employed in keeping the books of such taxpayer</u>**; but if no such method of accounting has been so employed, or if the method employed does not clearly reflect the income, the computation shall be made in accordance with such method as in the opinion of the Commissioner clearly reflects the income. If the taxpayer's annual accounting period is other than a fiscal year, as defined in Section 22(Q), or if the taxpayer has no annual accounting period, or does not keep books, or if the taxpayer is an individual, the taxable income shall be computed on the basis of the calendar year." *(Emphasis and underscoring supplied)*

[44] "SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.*—

(A) *Rate and Base of Tax.* — There shall be levied, assessed and collected, a value-added tax equivalent to ten percent (10%) of <u>gross receipts</u> derived from the sale or exchange of services, including the use or lease of properties: xxx

xxx xxx xxx

The term **'gross receipts'** means 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 and advanced payments <u>actually or constructive received</u> during the taxable quarter for the services performed or to be performed for another person, excluding value-added tax." *(Underscoring supplied)*

Similarly, the customers' deposits are advance payments and are subject to output VAT upon receipt but subject to income tax only when earned. At the end of the taxable period, a portion of the customers' deposits remained unearned; thus, not included in petitioner's sales per ITR. To be able to reasonably compare the VAT returns with the ITR, customers' deposits should have been considered as well.

Considering the balances of the foregoing accounts, respondent's computation should be adjusted as follows:

EXHIBITS	PARTICULARS	AMOUNT
"O" to "Z"	Sales per VAT Returns	₱ 11,695,588.73
"J"	*Add:* Accounts Receivable, Ending	5,346,834.76
"I"	*Less:* Accounts Receivable, Beginning	(3,959,924.54)
	Subtotal	₱ 13,082,498.95
"UU"	*Add:* Deferred Service Income, Beginning	435,680.00
	Less: Deferred Service Income, Ending	(941,500.00)
	Subtotal	₱ 12,576,678.95
"YY" (Note 8)	*Add:* Customers' Deposit, Beginning	1,185,027.00
	Less: Customers' Deposit, Ending	(542,084.00)
	Adjusted sales per VAT returns	₱ 13,219,621.95
"XX"	*Less:* Sales per ITR	12,150,499.00
	Undeclared sales	**₱ 1,069,122.95**

Since the undeclared sales computed above exceeded the amount of ₱ 931,583.88, as determined by respondent's examiner, the Court shall uphold the subject deficiency income tax assessment.

As a logical outgrowth of the presumption in favor of the validity of assessments, when such assessments are assailed, the burden of proof is upon the complaining party. It is incumbent upon the property owner clearly to show that the assessment was erroneous, in order to relieve himself from it.[45]

To recapitulate, petitioner's basic deficiency income tax liability amounts to ₱ 326,055.14, computed as follows:

[45] 51 Am. Jur. 620-621; *Interprovincial Autobus Co., Inc. vs. Collector of Internal Revenue*, 98 Phil. 290, 52 Off. Gaz. [2] 791; *Collector of Internal Revenue vs. Bohol Land Transportation Co.*, G.R. Nos. L-13099 and L-13462, 29 April 1960; *Commissioner of Internal Revenue vs. Construction Resources of Asia, et al.*, G.R. No. L-68230, 25 November 1986.

Taxable income per ITR		₱ 1,759,265.00
Add: Adjustment per Investigation		
Sales not subjected to tax		931,583.88
Taxable income per Investigation		₱ 2,690,848.88
Income tax due thereon (35%)		₱ 941,797.11
Less: Tax credits/Payments		
Tax payments	₱ 475,514.97	
Tax credits	140,227.00	615,741.97
Basic deficiency income tax		**₱ 326,055.14**

WHEREFORE, all the foregoing considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, the assessment for deficiency withholding tax on compensation for taxable year 2007 issued against petitioner is hereby **CANCELLED** and **SET ASIDE**.

However, petitioner is hereby **ORDERED TO PAY** respondent the basic deficiency income tax for taxable year 2007 in the amount of **THREE HUNDRED TWENTY-SIX THOUSAND FIFTY-FIVE PESOS AND FOURTEEN CENTAVOS (₱ 326,055.14)** and the twenty-five percent (25%) surcharge in the amount of **EIGHTY-ONE THOUSAND FIVE HUNDRED THIRTEEN PESOS AND SEVENTY-NINE CENTAVOS (₱ 81,513.79)** imposed under Section 248(A)(3) of the NIRC of 1997 or in the total amount of **FOUR HUNDRED SEVEN THOUSAND FIVE HUNDRED SIXTY-EIGHT PESOS AND NINETY-THREE CENTAVOS (₱ 407,568.93)**, computed as follows:

Deficiency Income Tax	₱ 326,055.14
Add: 25% Surcharge	81,513.79
TOTAL	**₱ 407,568.93**

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

(a) Deficiency interest at the rate of twenty percent (20%) *per annum* on the deficiency income tax computed from April 15, 2008 until full payment thereof pursuant to Section 249(B) of the NIRC of 1997; and

(b) Delinquency interest at the rate of 20% *per annum* on the total amount of ₱ 407,568.93 and on the deficiency interest which have accrued as afore-stated in (a) computed from February 3, 2011 until full payment thereof, pursuant to Section 249(C) of the NIRC of 1997, as amended.

SO ORDERED.

ERLINDA P. UY
Associate Justice

I CONCUR:

ESPERANZA R. FABON-VICTORINO
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.

ERLINDA P. UY
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13 of Article VIII 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 Special First Division.

ROMAN G. DEL ROSARIO
Presiding Justice