REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

ALPHA 245, INC., (formerly ARC WORLDWIDE PHILIPPINES CO., INC.), Petitioner,	**CTA CASE NO. 9225**
	Members:
- versus -	**CASTAÑEDA, JR.**, Chairperson, **CASANOVA**, and **MANAHAN**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: APR 06 2018 4:30 p.m.

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DECISION

CASTAÑEDA, JR., *J.*:

THE CASE

In this Petition for Review, petitioner Alpha 245, Inc. seeks for this Court to reverse and set aside the deficiency Income Tax, Value-Added Tax, Expanded Withholding Tax, Documentary Stamp Tax and Compromise Penalty in the aggregate amount of ₱14,377,094.47 for taxable year 2009, inclusive of interest and surcharges until November 18, 2013.

THE FACTS

Petitioner is a domestic corporation with principal office address at the 25th Floor, Tower 2, The Enterprise Center, Ayala Avenue corner Paseo de Roxas, Makati City.[1]

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 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. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner alleges that sometime in October 2010, the BIR issued Letter of Authority No. LOA-047-2010-00000501 dated October 28, 2010, authorizing Revenue Officer Alwino R. Daga under Group Supervisor Reynaldo Causapin of Revenue District Office No. 47, East Makati, to examine petitioner's books of accounts and other accounting records for internal revenue taxes covering taxable year 2009.[2]

On October 2, 2012, petitioner received a Notice of Informal Conference.[3] On December 10, 2012, petitioner received a Preliminary Notice of Assessment (PAN)[4] issued by the BIR. Then, on January 8, 2013,[5] petitioner received the Formal Assessment Notice (FAN) with attached Details of Discrepancies.

On January 28, 2013,[6] petitioner, through its Finance Controller Ms. Ellen Gonzaga, submitted its Protest Letter dated January 22, 2013. On February 12, 2013, the BIR, through Regional Director Nestor S. Valeroso, issued a letter[7] to petitioner requiring it to submit the necessary supporting documents to its Protest.

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[1] Par. 1, Joint Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI), Docket, Vol. III, p. 778.
[2] Petitioner's Memorandum, Docket, Vol. IV, par. 8, p. 1228.
[3] Exhibit "R-2", BIR Records, p. 149; Par. 3, Joint Stipulation of Facts, JSFI, Docket, Vol. III, p. 778.
[4] Exhibit "R-4", BIR Records, pp. 162-167.
[5] Exhibit "R-5", BIR Records, pp. 175-197.
[6] Exhibits "P-5" and "R-6", BIR Records, pp. 198-199.
[7] Exhibit "R-7". BIR Records, p. 200.

On February 24, 2013, the BIR sent another letter[8] dated February 20, 2013 to petitioner, requesting it to submit all relevant supporting documents within sixty (60) days from filing of the protest. Consequently, on July 8, 2013,[9] the BIR received petitioner's Reply[10] dated April 23, 2013 to the said BIR's letter, which essentially reiterated the issues in its Protest Letter dated January 22, 2013. Petitioner further requested the availability of BIR personnel to examine their documents.

On September 30, 2013,[11] petitioner received the Final Decision on Disputed Assessment (FDDA) issued by Regional Director Nestor S. Valeroso, where it was found that petitioner failed to submit all relevant supporting documents to its protest. Thus, on October 30, 2013,[12] petitioner filed a request for reconsideration before respondent. This time, petitioner submitted the following documents, among others: 2009 and 2010 Audited Financial Statements (AFS) and Annual Income Tax Return (ITR), respectively.

Allegedly, on November 25, 2015,[13] petitioner received a copy of respondent's assailed Decision on its request for reconsideration. Consequently, on December 28, 2015, petitioner filed the instant Petition before this Court. On February 26, 2016, petitioner filed its Supplement [To the Petition for Review dated December 16, 2015].[14]

On February 26, 2016, respondent filed his Answer[15] through registered mail, where he essentially argued that the Court has no jurisdiction over the instant Petition because petitioner is already barred from disputing the correctness of the assessment by reason of its failure to submit the required supporting documents within sixty (60) days from filing of its Protest Letter. On March 14, 2016, petitioner filed its Reply (To the Answer dated February 26, 2016).[16]

On April 11, 2016, petitioner filed its Pre-Trial Brief *Ad Cautelam*,[17] while on June 14, 2016, respondent filed his

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[8] Exhibit "R-9", BIR Records, p. 205.
[9] Exhibit "R-11", BIR Records, p. 208.
[10] Par. 4, Joint Stipulation of Facts, JSFI, Docket, Vol. III, p. 779.
[11] Exhibit "P-8", Docket, Vol. II, pp. 359-363; Exhibit "R-13", BIR Records, pp. 214-218.
[12] Exhibit "P-9", Docket, Vol. II, pp. 365-379.
[13] Par. 4, Nature and Timeliness of the Petition, Petition for Review, Docket, Vol. I, p. 12.
[14] Docket, Vol. I, pp. 224-231.
[15] Docket, Vol. I, pp. 232-241.
[16] Docket, Vol. I, pp. 252-264.
[17] Docket, Vol. II, pp. 583-601.

Respondent's Pre-Trial Brief.[18] On August 24, 2016, the Court issued a Pre-Trial Order.[19]

During the hearing, petitioner presented the following witnesses: (1) Maria Ellen H. Gonzaga[20] – Finance Controller of petitioner; and (2) Emmanuel Y. Mendoza[21] – Court-appointed Independent Certified Public Accountant. Petitioner likewise filed its Offer of Documentary Evidence.[22]

On the other hand, respondent presented the following witnesses: (1) Revenue Officer Alwino R. Daga;[23] and (2) Revenue Officer Kristine R. Ami.[24] Respondent likewise filed his Formal Offer of Evidence.[25]

On May 24, 2017, the Court issued a Resolution[26] requiring the parties to submit their Memoranda, among others. On June 28, 2017, petitioner filed its Memorandum[27] while on July 13, 2017, respondent filed through registered mail his Manifestation and Motion[28] stating that he is adopting his arguments in his Answer dated February 26, 2016, among others, as part of his Memorandum.

Thus, on August 4, 2017,[29] the instant case was deemed submitted for decision. Hence, this Decision.

THE ISSUES

The parties submitted the following Joint Stipulation of Issues:[30] *gr*

[18] Docket, Vol. II, pp. 677-681.
[19] Docket, Vol. III, pp. 795-799.
[20] Exhibit "P-20", Judicial Affidavit of Maria Ellen H. Gonzaga, Docket, Vol. II, pp. 283-313; Exhibit "P-25", Supplemental Affidavit of Maria Ellen H. Gonzaga, Docket, Vol. II, pp. 718-729.
[21] Judicial Affidavit of Emmanuel Y. Mendoza, Docket, Vol. II, pp. 617-625; Exhibit "P-21", Docket, Vol. II, pp. 738-757.
[22] Docket, Vol. III, pp. 804-816.
[23] Judicial Affidavit of Revenue Officer Alwino R. Daga, Docket, Vol. II, pp. 685-690.
[24] Judicial Affidavit of Revenue Officer Kristine R. Ami, Docket, Vol. II, pp. 693-700.
[25] Docket, Vol. IV, pp. 1197-1210.
[26] Docket, Vol. IV, pp. 1220-1221.
[27] Docket, Vol. IV, pp. 1226-1271.
[28] Docket, Vol. IV, pp. 1277-1279.
[29] Docket, Vol. IV, p. 1281.
[30] JSFI, Docket, Vol. III, pp. 779-780.

"(a) Whether or not petitioner's Protest substantially complied with the requirements prescribed under Section 228 of the National Internal Revenue Code of 1997, Revenue Regulations No. 12-99, as amended, and relevant case law;

(b) Whether or not respondent correctly upheld the Regional Director's Final Decision on Disputed Assessment dated September 30, 2013 imposing on petitioner alleged deficiency income tax, Value-Added Tax, and surcharges for the taxable year 2009;

(c) Whether or not petitioner is liable for the deficiency income tax assessment for taxable year 2009 as stated in respondent's Decision dated November 11, 2015 and in the FDDA;

(d) Whether or not petitioner is liable for the deficiency VAT assessment for taxable year 2009 as stated in the Decision and in the FDDA; and

(e) Whether or not petitioner is liable for the surcharges stated in the Decision and in the FDDA."

To encapsulate, the issues to be resolved by the Court are: (1) Whether petitioner's protest is valid; (2) Whether the subject assessment already became final and executory; and (3) Whether petitioner is liable for deficiency Income Tax, Value-Added Tax (VAT), Expanded Withholding Tax (EWT), Documentary Stamp Tax (DST) and Compromise Penalty.

THE RULING

Petitioner's protest is in the nature of request for reinvestigation

Petitioner asserts that the Protest Letter dated January 22, 2013 complies with the provisions of Revenue Regulations (RR) No. 12-99, as amended, because it contained all the facts, grounds and logical explanations that petitioner deemed necessary to contest the subject assessment. *gr*

Said Protest Letter states:[31]

"Dear Mr. Dumayas,

This is in response to the formal assessment notice of Arc Worldwide Phils. Co. Inc for the year 2009 dated January 3, 2013 which we received last January 7, 2013.

We would like to contest the following assessment:

Schedule 1 – Client issued tax certificate credit per BIR form 2307 based on their payments to us which was based on collections, while income per FS/ITR is based on invoices issued during the year. These two figures are not comparable thus no undeclared income.

Schedule 2 – The rent expense per BIR 1601 E include all types of rent, office space, warehouse, parking including rental of equipments while the rent expense account per fs/itr only pertains to rent of office space and warehouse. The difference are not part of rent expense account grouping per fs/itr thus there are no undeclared income.

Schedule 3 – We will still look into the details of the accounts per FS/ITR and compared the amount per alpha list. We will submit reconciliation report for this assessment.

NOLCO Php 22,688,614 – The company's operation resulted to net loss since 2007 up to 2010. Since for 2009 the company is net loss we did not claim any NOLCO from previous year.

VAT – Alpha 245 is an advertising agency, a service company. Sales per VAT return is based on collections. We contest the undeclared income under schedule 1 & 2. Disposal of computer equipment have no cash involved thus no VAT. Equipments were given to employees so the company just closed the existing net book value of those equipments.

Expanded withholding tax – we have no underpayment of expanded withholding tax. *gr*

[31] Exhibit "P-5", Docket, Vol. II, pp. 351-352.

Documentary Stamp Tax – not all intercompany advances are subject to documentary stamp tax, Alpha 245 have cost sharing agreement with HLB, it is the nature of transactions in "Due to HLB" account. Due to Arc Chicago and LB Hongkong and advances from BPAI are trade transactions thus not subject to DST. Advances from stockholders are not considered loan thus not subject to DST.

Please let us know when are you be available to check the documents related to schedule 2 and 3. Our accounting records are now being handled by our Shared Services Group so we still need to advise them ahead for any schedules/supporting documents that we will pull out from the warehouse were we stored old documents/files.

Yours truly,

(Signed)
Ellen Gonzaga
Finance Controller"

In relation thereto, Section 3.1.4 of RR No. 12-99, as amended, pertinently provides:

3.1.4 ***Disputed Assessment.*** **—** The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof. The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation defined as follows:

(i) **Request for reconsideration** — refers to a plea of re-evaluation of an assessment on the basis of existing records without need of additional evidence. It may involve both a question of fact or of law or both.

(ii) **Request for reinvestigation —** refers to a plea of re-evaluation of an assessment on the basis of newly discovered or additional evidence that a taxpayer intends to present in the reinvestigation. It may also involve a question of fact or of law or both.

> The taxpayer shall state in his protest (i) the nature of protest whether reconsideration or reinvestigation, specifying newly discovered or additional evidence he intends to present if it is a request for reinvestigation, (ii) date of the assessment notice, and (iii) the applicable law, rules and regulations, or jurisprudence on which his protest is based, otherwise, his protest shall be considered void and without force and effect.
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> xxx xxx xxx
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> For requests for reinvestigation, the taxpayer shall submit all relevant supporting 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. The term "relevant supporting documents" refer to those documents necessary to support the legal and factual bases in disputing a tax assessment as determined by the taxpayer. The sixty (60)-day period for the submission of all relevant supporting documents shall not apply to requests for reconsideration. Furthermore, the term "the assessment shall become final" shall mean the taxpayer is barred from disputing the correctness of the issued assessment by introduction of newly discovered or additional evidence, and the FDDA shall consequently be denied.
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> xxx xxx xxx"

Under the above-quoted provisions of RR No. 12-99, as amended, a request for reconsideration refers to a plea of re-evaluation of an assessment on the basis of existing records without need of additional evidence. It may involve both a question of fact or of law or both.

On the other hand, a request for reinvestigation refers to a plea of re-evaluation of an assessment on the basis of newly discovered or additional evidence that a taxpayer intends to present in the reinvestigation. It may also involve a question of fact or of law or both. Additionally, for requests for reinvestigation, it is provided that the taxpayer shall submit all relevant supporting 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.

An evaluation of the afore-cited Protest Letter of petitioner reveals that it is in the nature of a request for reinvestigation, such that it pleas for respondent to re-evaluate the assessment based on the pieces of evidence it would present. While it may be true that the subject Protest Letter was not written in a legalese approach, it does not necessarily affect its validity. It suffices that the Protest Letter raised the factual errors that the BIR may have committed in making the assessment, and the justifications for re-evaluating the assessment.

Considering the foregoing, the Court rules that petitioner's Protest Letter in this case is in the nature of a request for reinvestigation. As such, the same is a valid protest under RR No. 12-99, as amended.

The assessment has not become final

Respondent argues that the Court has no jurisdiction over the instant Petition because petitioner is already barred from disputing the correctness of the assessment.

On the other hand, petitioner asserts that when it filed its protest on January 28, 2013, it no longer attached supporting documents because its arguments were based on documents already available with respondent. Further, these were the same documents that the BIR used in preparing the subject assessment.[32]

The Court agrees with petitioner.

In *Commissioner of Internal Revenue v. First Express Pawnshop Company, Inc.*,[33] the taxpayer submitted its protest where it attached its GIS and Balance Sheets as supporting documents. Petitioner therein asserted that since the taxpayer did not submit any relevant supporting document, the assessment has become final, executory and demandable. Ruling in favor of the taxpayer, the Supreme Court held that:

> "We reject petitioner's view that the assessment has become final and unappealable. It cannot be said

[32] Petitioner's Memorandum, Docket, Vol. IV, p. 1246.
[33] G.R. Nos. 172045-46, June 16, 2009.

> that respondent failed to submit relevant supporting documents that would render the assessment final because when respondent submitted its protest, respondent attached the GIS and Balance Sheet. Further, petitioner cannot insist on the submission of proof of DST payment because such document does not exist as respondent claims that it is not liable to pay, and has not paid, the DST on the deposit on subscription.
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> 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."

In this case, petitioner did not see the necessity of submitting documents in support of its Protest Letter. Thus, following the ruling of the Supreme Court in *First Express*, it cannot be said that petitioner failed to submit relevant supporting documents, which documents were already in the possession of the BIR. Hence, the subject assessment has not yet become final.

Meanwhile, it is noteworthy that aside from the said Audited Financial Statements, Income Tax Returns, BIR Forms, and Monthly Remittance Returns of Creditable Income Taxes Withheld, petitioner presented before this Court other pieces of evidence which were obviously not presented before the administrative level. The question now is, may the Court disregard these pieces of evidence considering that they were merely presented for the first time on appeal?

In *Commissioner of Internal Revenue v. Philippine National Bank*[34] which is a tax refund case, a similar issue was raised by the Commissioner of Internal Revenue where the taxpayer presented the withholding tax certificates only before the CTA, and not when it filed its claim for refund administratively before the BIR.

Ruling in favor of the taxpayer, the Supreme Court observed that: *h*

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[34] G.R. No. 180290, September 29, 2014.

> "Besides, as pointed out by respondent, petitioner did not object to the admissibility of the 622 withholding tax certificates when these were formally offered by respondent before the tax court. Hence, petitioner is deemed to have admitted the validity of these documents. Petitioner's 'failure to object to the offered evidence renders it admissible, and the court cannot, on its own, disregard such evidence.'"[35]

In this case, a perusal of the records shows that respondent failed to raise any objection to the offered evidence by petitioner.[36] Following the observation of the Supreme Court in *Philippine National Bank*, this Court, on its own, cannot disregard such evidence.

Considering the foregoing, the Court shall now proceed to determine the correctness of the deficiency tax assessments.

Per FDDA, respondent assessed petitioner of the following deficiency internal revenue taxes in the aggregate amount of ₱14,377,094.47, including surcharge and interest:[37]

Tax Type	Basic Deficiency	Surcharge & Interest	Total
Income tax	₱ 4,603,454.53	₱ 3,309,442.38	₱ 7,912,896.91
Value-added tax (VAT)	2,648,483.75	3,344,345.64	5,992,829.39
Expanded Withholding Tax (EWT)	85,861.50	65,960.45	151,821.95
Documentary Stamp Tax (DST)	150,403.00	153,143.22	303,546.22
Total	**₱7,488,202.78**	**₱6,872,891.69**	**₱14,361,094.47**
Compromise penalty			16,000.00
TOTAL			**₱14,377,094.47**

At the outset, the compromise penalty of ₱16,000.00 should be cancelled. Pursuant to Revenue Memorandum Order (RMO) No. 01-90, as amended by RMO No. 19-07, compromise penalties are only suggested in settlement of criminal liability, and may not be imposed or exacted on the taxpayer in the event that a taxpayer refuses to pay the same. Such penalties imply mutual agreement between the

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[35] *Id.*, citing *Asian Construction and Development Corporation v. COMFAC Corporation*, 535 Phil. 513, 517–518 (2006) [Per J. Quisumbing, Third Division].

[36] Records Verification, Docket, Vol. IV, p. 1182.

[37] Exhibit "P-8", Docket, Vol. II, pp. 359-363.

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taxpayer and the respondent. Without the taxpayer's consent to the payment of compromise penalties, the same should not be imposed.

Further, it is jointly stipulated that on April 15, 2016 petitioner paid the amounts ₱208,176.61 and ₱396,811.02 for the assessed deficiency EWT and DST, respectively, which include payments for interest, surcharge and compromise penalty, *to wit*:[38]

	EWT	**DST**	**TOTAL**
Basic tax	₱ 85,861.50	₱ 150,403.00	₱ 236,264.50
Interest	107,315.11	188,807.27	296,122.38
Surcharge	-	37,600.75	37,600.75
Compromise	15,000.00	20,000.00	35,000.00
TOTAL	**₱ 208,176.61**	**₱ 396,811.02**	**₱ 604,987.63**

I. Income Tax

The BIR assessed petitioner for deficiency income tax, as follows:[39]

Taxable Income (Loss) per ITR			₱(22,688,614.00)
Add: Adjustments/Disallowance			
Undeclared Income (Schedule 1)		₱ 6,842,789.00	
Undeclared income from unaccounted rent expense (Schedule 2)		468,220.20	
Disallowed Expenses for Non-withholding of tax (Schedule 3)		8,033,839.24	15,344,848.44
Taxable income per investigation			₱ (7,343,765.56)
Add: Net Operating Loss Carry-Over			22,688,614.00
Taxable income as adjusted			₱ 15,344,848.44
Income tax due			₱ 4,603,454.53
Less: Tax credits/payments			
Prior Year's Excess Credit		₱ 5,206,958.00	
Creditable Withholding Tax		847,837.00	
Total		₱ 6,054,795.00	
Less: Minimum Corporate Income Tax	₱ 125,366.00		
Excess Credits Carried Forward to Succeeding Year	5,929,429.00	6,054,795.00	-
Basic Tax Due			**₱ 4,603,454.53**

A. Undeclared income in the amount of ₱6,842,789.00

[38] Exhibits "P-28" and "P-29", Docket, Vol. II, pp. 661-668; Joint Stipulation of Facts and Issues, Joint Stipulation of Facts, Paragraphs 7 and 8, Docket, Vol. III, p. 788.
[39] Exhibit "P-8", Docket, Vol. II, p. 359.

Respondent assessed petitioner for undeclared income in the amount of ₱6,842,789.00, as follows:[40]

Income per 2307 (₱847,837.00/2%)	₱ 42,391,850.00
Less: Income per FS/ITR	35,549,061.00
Undeclared Income	**₱ 6,842,789.00**

In justifying that it has no undeclared income, petitioner asserts that said amount was a mere result of timing difference and the different accounting methods used in reporting revenues in the AFS, ITR and BIR Forms No. 2307. Petitioner explains, as follows:

> "81. As previously mentioned, for accounting purposes and AFS preparation, petitioner uses the accrual method of accounting in recognizing revenues and expenses. Specifically, petitioner recognizes revenues arising from commissions on public presentation dates and when production costs are incurred, while it recognizes revenues arising from service fees when services are rendered. This accounting policy is stated in the 'Revenue Recognition' item in Note 2 of petitioner's 2009 AFS. Petitioner recognizes revenues for accounting purposes upon issuance of sales invoice even prior to collection of the invoiced amounts. Similarly, Alpha follows the same accrual method of accounting in reporting revenues in its ITRs. Thus, the total amount of revenues reported in both petitioner's 2009 AFS and 2009 Annual ITR were based on accrual method of accounting.
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> 82. However, unlike the amount of revenues reported in petitioner's 2009 AFS and 2009 Annual ITR, which were based on the accrual method of accounting, the amount of revenues shown in petitioner's BIR Forms No. 2307 for the same taxable year were *actual* collections by Alpha or payments by petitioner's clients in 2009, which were evidently more than what the 2009 AFS and 2009 Annual ITR covered. Since actual collection of petitioner's revenues normally takes more than a year from the time the revenue was earned or the service was rendered and the corresponding sales invoices were issued, some of the amounts indicated in petitioner's BIR

[40] *Id.*, p. 361.

> Forms No. 2307 for the taxable year 2009 were already reported as revenues in the previous years. Similarly, some of the revenues reported in petitioner's 2009 AFS and in its 2009 Annual ITR were only collected in the succeeding years and reflected in the corresponding BIR Forms No. 2307 for those years. These were clearly shown in petitioner's Schedule of Reconciliation of its Revenues and Collections in 2009."[41]

Petitioner also alleges that not all of the income payments reflected in the BIR Forms No. 2307 are to be considered as petitioner's revenues. Petitioner clarifies:

> "85. In addition to the timing difference as the reason why there was a disparity of ₱6,842,789.00, it appears from petitioner's records that the income payments evidenced by the BIR Forms No. 2307 included not only amounts due to petitioner but also amounts due to third-party suppliers or the so-called third-party "pass-through costs" for the year 2009.
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> 86. As the middleman between clients seeking to advertise and the third-party suppliers, petitioner received lump-sum payments from its clients consisting of the following: (a) payments for petitioner's commission as middleman; and (b) payments to the third-party suppliers, which were mere "pass-through costs" for petitioner since they were immediately remitted to the third-party suppliers upon receipt by petitioner. However, instead of accomplishing a separate BIR Form No. 2307 for each of petitioner and the third-party suppliers, petitioner's clients accomplished only one BIR Form No. 2307 covering the entire lump-sum, inclusive of the payments due to the third-party suppliers, and wrote only petitioner's name in the field 'Payee's Name.'"[42]

In *Commissioner of Internal Revenue v. Isabela Cultural Corporation*,[43] the Supreme Court laid down the guidelines in determining when and how to report income and deductions, in relation to the accrual method of accounting. Thus: *jk*

[41] Petitioner's Memorandum, Docket, Vol. IV, p. 1253.
[42] Petitioner's Memorandum, Docket, Vol. IV, p. 1254.
[43] G.R. No. 172231, February 12, 2007.

"Revenue Audit Memorandum Order No. 1-2000, provides that under the accrual method of accounting, expenses not being claimed as deductions by a taxpayer in the current year when they are incurred cannot be claimed as deduction from income for the succeeding year. Thus, a taxpayer who is authorized to deduct certain expenses and other allowable deductions for the current year but failed to do so cannot deduct the same for the next year.

The accrual method relies upon the taxpayer's right to receive amounts or its obligation to pay them, in opposition to actual receipt or payment, which characterizes the cash method of accounting. Amounts of income accrue where the right to receive them become fixed, where there is created an enforceable liability. Similarly, liabilities are accrued when fixed and determinable in amount, without regard to indeterminacy merely of time of payment.

For a taxpayer using the accrual method, the determinative question is, when do the facts present themselves in such a manner that the taxpayer must recognize income or expense? The accrual of income and expense is permitted when the all-events test has been met. This test requires: (1) fixing of a right to income or liability to pay; and (2) the availability of the reasonable accurate determination of such income or liability.

The all-events test requires the right to income or liability be fixed, and the amount of such income or liability be determined with reasonable accuracy. However, the test does not demand that the amount of income or liability be known absolutely, only that a taxpayer has at his disposal the information necessary to compute the amount with reasonable accuracy. The all-events test is satisfied where computation remains uncertain, if its basis is unchangeable; the test is satisfied where a computation may be unknown, but is not as much as unknowable, within the taxable year. **The amount of liability does not have to be determined exactly; it must be determined with 'reasonable accuracy.' Accordingly, the term 'reasonable accuracy' implies something less than an exact or completely accurate amount.**

> **The propriety of an accrual must be judged by the facts that a taxpayer knew, or could reasonably be expected to have known, at the closing of its books for the taxable year.** Accrual method of accounting presents largely a question of fact; such that the taxpayer bears the burden of proof of establishing the accrual of an item of income or deduction."*(Citations omitted)*

In the above-quoted case, the Supreme Court explained that the all-events test requires that the right to income or liability should be fixed, and the amount thereof should be determinable with reasonable accuracy.

Here, a perusal of the records shows that petitioner failed to present sufficient evidence to satisfy the first condition of the all-events test, *i.e.*, the right to income or liability should be fixed. Petitioner should be able to substantiate its revenue for the year 2009 with relevant pieces of evidence. However, the Independent CPA[44] (ICPA) commissioned by the Court reported the following:[45]

Income supported by invoices dated within CY 2009	Annex A-1 (P-23-1 to P-23-120)	₱ 14,406,786.84
Income without supporting invoices	Annex A-2	21,142,274.16
Total income reported in the Audited Financial Statements for CY 2009		**₱35,549,061.00**

Further, petitioner should be able to account for the income receipts made in the same year with official receipts issued. As declared in its ITR, petitioner received income payments of ₱42,391,850.00 (total creditable taxes withheld of ₱847,837.00 divided by 2%).[46] Again, it failed to present all supporting documents, as found by the ICPA. Thus:[47]

Collections in 2009 with invoices dated within 2009	Annex B-1 (P-24-10 to P-24-66)	₱ 4,881,580.29
Collections in 2009 with invoices dated within 2008 and 2007	Annex B (P-24-1 to P-24-35)	2,874,433.76
Collections in 2009 without supporting invoices	Annex B (P-24-67 to P-24-69)	4,575,289.43
Total collections supported by ORs dated within CY 2009		**₱12,331,303.48**

[44] Emmanuel Y. Mendoza of Mendoza Querido & Co.
[45] Exhibit "P-22", p. 8.
[46] Exhibit "P-11", Lines 30C and 30D, Docket, Vol. II, p. 416.
[47] See Note 41.

Petitioner submitted a Schedule of Reconciliation of Revenues and Collections for CY 2009. Examination of the said schedule shows that it simply broke down the sales as reported in the financial statements/ITR. It also listed petitioner's receipts for the year 2009 and showed the distribution of the same to its third party cost, sales, zero-rated sales, non-VAT/exempt sales and output tax, as follows:[48]

Total receipts		₱ 47,083,035.36
Distributed as follows:		
Third party cost	₱ 19,436,847.51	
Sales	22,612,966.75	
Zero-rated	2,358,280.80	
Non-VAT/Exempt	35,371.45	
Output tax	2,713,556.01	47,157,022.52
Unaccounted receipts		**₱ 73,987.16**

It is clear from the foregoing that petitioner was not able to account for and substantiate all of its receipts. More importantly, the discrepancy found by respondent amounting to ₱6,842,789.00 was not fully accounted for.

In other words, based on the evidence submitted by petitioner, the Court cannot determine the point when the right to income of petitioner was fixed. Consequently, the Court cannot ascertain how much should be reported as its sales and subjected to income tax. While petitioner asserts that it usually takes more than a year before it is actually paid for services rendered and that some of the corresponding revenues of the collected payments for the taxable year 2009 were already reported in the previous years, the evidence presented is insufficient to prove this claim.

Thus, the Court is constrained to cite the hornbook doctrine that mere allegation is not evidence and is not equivalent to proof.[49] Considering that petitioner failed to present sufficient evidence on this matter, the subject assessment is upheld.

B. Undeclared income in the amount of ₱468,220.20 based on petitioner's rent expense

[48] Exhibit "P-13", Docket, Vol. II, pp. 443-465.
[49] *ECE Realty and Development, Inc. v. Rachel G. Mandap*, G.R. No. 196182, September 1, 2014.

Respondent assessed petitioner for undeclared income in the amount of ₱468,220.20 based on petitioner's rent expense, as follows:[50]

Rent expense per returns (1601 E)	₱ 5,327,812.20
Less: Rent expense per books/FS	4,859,592.00
Undeclared Income	**₱ 468,220.20**

Petitioner asserts that the difference in rent expense in its BIR Form No. 1601-E and in its 2009 AFS and Annual ITR did not constitute income. Even if respondent's imputation of taxable income due to undeclared expenses were to be accepted, the imputed income of ₱468,220.20 would be offset by recording the equivalent amount as expense.

The Court agrees with petitioner.

It must be emphasized that for income tax purposes, a taxpayer is allowed to claim deductions from its gross income to compute its taxable income subject to income tax.[51] What is prohibited by the income tax law is to claim a deduction beyond the amount authorized therein.[52] Bearing that in mind, it goes without saying that petitioner can exercise its discretion whether it will declare a lesser amount of deductions or none at all.

Furthermore, it is worthy to note that the imputation of alleged undeclared income is based on a mere presumption that since there are undeclared expenses, there are corresponding undeclared sources of income. Even if these alleged unaccounted expenses are to be treated as undeclared income, the same will be offset by recording the equivalent payments as expenses. As such, no taxable income will result from the said transactions.

While it is axiomatic that all presumptions are in favor of the correctness of tax assessments, the assessment itself should not be based on presumptions no matter how logical the presumption might be. In order to stand the test of judicial scrutiny, the assessment must be based on actual facts.[53]

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[50] Exhibit "P-8", Docket, Vol. II, p. 361.
[51] Section 34, NIRC of 1997, as amended.
[52] *Commissioner of Internal Revenue v. Phoenix Assurance Co. Ltd.*, G.R. No. L-19727, May 20, 1965.
[53] *Collector of Internal Revenue v. Benipayo*, G.R. No. L-13656, January 31, 1962.

For lack of factual basis, the deficiency income tax assessment pertaining to the alleged undeclared income from petitioner's rent expenses of ₱468,220.20 is cancelled.

C. Disallowed Expenses for Non-withholding of tax in the amount of ₱8,033,839.24

Respondent assessed petitioner of deficiency income tax arising from the following disallowed expenses due to non-withholding:[54]

Income Payments	Per FS/ITR	Per Alphalist	Discrepancy
Payments of goods			
Printing, materials & supplies	₱ 9,000,672.00		
Repairs and maintenance - materials	98,449.50		
Office supplies	228,495.00		
Subtotal	₱ 9,327,616.50	₱ 1,333,228.00	₱ 7,994,388.50
Others	102,014.73	62,563.99	39,450.74
TOTAL	**₱9,429,631.23**	**₱1,395,791.99**	**₱8,033,839.24**

Petitioner argued that the legal basis for the foregoing assessment was erroneous and that the tax rates used to compute the deficiency EWT were wrong. Further, it contended that it is not officially included in the list of top 20,000 corporations in 2009.[55]

However, petitioner did not submit evidence to support its allegations. Further, it even paid the BIR the amount of ₱208,176.61 to settle its deficiency EWT assessment in the amount of ₱151,821.95 on April 15, 2016. Said amount already covered interest and compromise penalty, broken down as follows: [56]

Basic tax	₱ 85,861.50
Interest	107,315.11
Compromise	15,000.00
TOTAL	**₱ 208,176.61**

Petitioner avers that in view of the said payment, the disallowed expenses due to non-withholding of tax should now be

[54] Exhibit "P-8", Docket, Vol. II, p. 361.
[55] Petition for Review, Docket, Vol. I, pp. 20-22.
[56] Exhibit "P-28", Docket, Vol. II, pp. 661-664.

allowed and the related deficiency income tax assessment should be cancelled.[57]

It should be noted that Section 2.58.5 of Revenue Regulations No. 2-98, amended by Revenue Regulations No. 14-2002 dated September 9, 2002, provides:

> "SECTION 2.58.5. *Requirement for Deductibility.* –
>
> xxx xxx xxx
>
> **A deduction will also be allowed in the following cases where no withholding of tax was made**:
>
> (A) The payee reported the income <u>and pays the tax due thereon</u> and the **withholding agent/taxpayer pays** the tax, including the interest incident to the failure to withhold the tax, and surcharges, if applicable, **at the time of the audit investigation <u>or reinvestigation/reconsideration</u>**.
>
> (B) The recipient/payee failed to report the income on the due date thereof, but the **withholding agent/taxpayer pays** the tax, including the interest incident to the failure to withhold the tax and surcharges, if applicable, **at the time of the audit/investigation or <u>reinvestigation/reconsideration</u>**;
>
> (C) The **withholding agent erroneously underwithheld the tax but pays the difference** between the correct amount and the amount of tax withheld, including the interest, incident to such error, and surcharges, if applicable, **at the time of the audit/ investigation or <u>reinvestigation/reconsideration</u>**." *(Emphasis supplied)*

Pursuant to the foregoing revenue regulations, it is clear that a deduction is allowed even when no tax was withheld only when the corresponding deficiency withholding taxes were paid <u>at the time of the audit investigation or reinvestigation/reconsideration</u>. *gr*

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[57] Petitioner's Memorandum, Docket, Vol. IV, pp. 1257-1258.

In the instant case, petitioner received the Final Decision on Disputed Assessment (FDDA) on September 30, 2013.[58] On October 30, 2013, it filed a request for reconsideration with the CIR.[59]The CIR issued his decision on November 11, 2015, which was received by petitioner on November 25, 2015.[60] Thus, petitioner's payment on April 15, 2016 cannot be considered as paid at the time of the audit investigation or reinvestigation/reconsideration.

Without payment of the subject withholding taxes at the time prescribed by the rules and regulations, the Court finds no basis to cancel the disallowance of the corresponding expenses.

D. Net Operating Loss Carry-Over (NOLCO) in the amount of ₱22,688,614.00, Minimum Corporate Income Tax (MCIT) in the amount of ₱125,366.00, and Excess Credits Carried Forward to Succeeding Year in the amount of ₱5,929,429.00

As a result of respondent's investigation, petitioner's operation showed taxable income instead of net operating loss as claimed in petitioner's 2009 Annual ITR. Respondent added back petitioner's net operating loss of ₱22,688,614.00 under the presumption that the tax benefit of this amount has already been forwarded to succeeding periods as provided for under Section 34(D)(3) of the NIRC of 1997, as amended.

For the same reason, respondent likewise disallowed petitioner's Minimum Corporate Income Tax (MCIT) and the excess creditable withholding taxes at the end of taxable year 2009.

The Court finds respondent's argument untenable.

Respondent failed to present the factual basis of the claim that the 2009 net loss was carried over and applied by petitioner as NOLCO and deducted from the gross income of the succeeding taxable periods and that the MCIT and excess credits were carried

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[58] Exhibit "P-8", Docket, Vol. II, pp. 359-363.
[59] Exhibit "P-9", Docket, Vol. II, pp. 365-379.
[60] Exhibit "P-1", Docket, Vol. II, pp. 315-325.

over and credited by petitioner against its regular corporate income tax.

Moreover, the application of the said NOLCO, MCIT and excess credits in the subsequent taxable periods is beyond the scope of the present assessment. The same can only be the subject of assessment on the taxable year when they are claimed as deductions.

On the other hand, petitioner submitted its annual income tax returns for the years 2010, 2011 and 2012,[61] which showed that petitioner suffered net operating losses for each of the taxable period following the year 2009. In 2011, it applied NOLCO from the year 2008 in the amount of ₱6,859,010.00,[62] but as shown in the ITR for the year 2012, the net operating loss from the year 2009 in the amount of ₱22,688,614.00 remained unapplied and has expired.[63]

The ICPA likewise reached the same findings.[64]

Thus, adding the net loss back to the taxable income per investigation and the disallowance of petitioner's MCIT and excess tax credits, are erroneous.

In sum, the Court finds it appropriate to cancel the deficiency income tax assessment for the taxable year 2009 in the amount of ₱4,603,454.53 for lack of basis, considering that the computation of petitioner's taxable income per investigation results to a net loss of ₱7,811,985.76, as shown below:

Taxable Income (Loss) per ITR		₱ (22,688,614.00)
Add: Adjustments/Disallowance		
Undeclared Income	₱ 6,842,789.00	
Undeclared income from unaccounted rent expense	-	
Disallowed Expenses for Non-withholding of tax	8,033,839.24	14,876,628.24
Taxable income per investigation		**₱(7,811,985.76)**

II. Value-added Tax (VAT) *gr*

[61] Exhibits "P-17", "P-26" and "P-27". Docket, Vol. II, pp. 539-540, Vol. III, pp. 1168-1179.
[62] Exhibit "P-26-c", Docket, Vol. III, p. 1171.
[63] Exhibit "P-27-d", Schedule 1A, Docket, Vol. III, p. 1176.
[64] Exhibit "P-22", pp. 9-10.

Respondent computed the alleged deficiency VAT, as follows:[65]

Vatable Receipts per return	₱ 22,612,967.17
Add: Receipts not subjected to VAT (Schedule 4)	22,754,941.81
Sales/Receipts subject to VAT	₱ 45,367,908.98
Output Tax	₱ 5,444,149.08
Less: Input tax during the year	1,451,946.99
VAT Payable	₱ 3,992,202.09
Less: Payments per ITS	1,343,718.34
Basic tax due	**₱2,648,483.75**

From the foregoing, the deficiency arose mainly from the alleged receipts not subjected to VAT, as follows:[66]

Receipts per ITR		₱ 35,549,061.00
Add: Accounts Receivable, beg. (net of VAT)		9,373,778.57
Total		₱ 44,922,839.57
Less: Accounts Receivable, end. (net of VAT)		8,348,976.79
Receipts per investigation		₱ 36,573,862.78
Add: Total Undeclared Income (Schedule 1 & 2)	₱ 8,252,162.20	
Disposal of Property and Equipment	541,884.00	8,794,046.20
Total Receipts subject to VAT		₱ 45,367,908.98
Less: Receipts per VAT returns		22,612,967.17
Receipts not subjected to VAT		**₱22,754,941.81**

Petitioner broke down the alleged receipts not subjected to VAT that included the following items:[67]

Receipts per investigation:		
Excess of receipts per ITR over receipts per VAT returns	₱12,936,093.83	
Movement in Accounts Receivable, Beginning versus Accounts Receivable, Ending	1,024,801.78	₱ 13,960,895.61
Add: Total Undeclared Income (Schedule 1 & 2)	₱ 8,252,162.20	
Disposal of Property and Equipment	541,884.00	8,794,046.20
Total receipts not subjected to VAT		**₱22,754,941.81**

gr

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[65] Exhibit "P-8", Docket, Vol. II, p. 360.
[66] *Id.*, p. 362.
[67] Petition for Review, Docket, Vol. I, pp. 25-26; Petitioner's Memorandum, Docket, Vol. IV, pp. 1264-1265.

A. Excess of receipts per ITR over receipts per VAT returns and Movement in Trade Accounts Receivable account in the total amount of ₱13,960,895.61

Petitioner again attributes the said discrepancy to the difference of accounting method used in its financial statements and ITR on one hand and its VAT returns on the other. Petitioner likewise claims that the computation of total receipts for the year 2009 by taking into account the beginning and ending balances of its trade account receivables is erroneous. Petitioner allegedly uses a separate intercompany receivable account for revenues collectible from its affiliates.[68] Further, its trade receivables account allegedly includes revenues pertaining to third-party suppliers, which do not form part of its revenues.[69]

However, aside from the testimony of its Finance Controller Ms. Ma. Ellen H. Gonzaga, petitioner failed to present evidence to support the foregoing allegations.

On the other hand, the ICPA noted:[70]

> "Based on the above calculation of the BIR, we traced the amounts presented as income per ITR to the Petitioner's CY 2009 ITR ***(Exhibit P-11)*** and the Trade Accounts Receivable, beginning and Trade Accounts Receivable, ending net of VAT to the CY 2009 Audited Financial Statements ***(under notes to the financial statement, Note 4, Exhibit P-10)***. <u>The amounts presented in Table 15 are correct, thus, the resulting amount of receipts per investigation of ₱36,573,862.78 is likewise correct."</u> *(Underscoring supplied)*

Thus, the Court is constrained to uphold respondent's findings based on the presumption in favor of the correctness of tax assessments. *fr*

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[68] Exhibit "P-20", Docket, Vol. II, pp. 294-296.
[69] Exhibit "P-25", Docket, Vol. II, p. 718.
[70] Exhibit "P-22", p. 11.

B. Total undeclared income in the amount of ₱8,252,162.20

The Details of Discrepancies accompanying respondent's FDDA stated that the foregoing undeclared income refers to the findings in the income tax assessment, thus:[71]

Schedule 1	
Income per 2307 (₱847,837.00/2%)	₱ 42,391,850.00
Less: Income per FS/ITR	35,549,061.00
Undeclared Income	**₱ 6,842,789.00**
Schedule 2	
Rent expense per returns (1601 E)	₱ 5,327,812.20
Less: Rent expense per books/FS	4,859,592.00
Undeclared Income	**₱ 468,220.20**

It is clear from the foregoing that the total undeclared income based on the schedules per details of discrepancies amount to ₱7,311,009.20 (₱6,842,789.00 plus ₱468,220.20), and not to ₱8,252,162.20.

As previously discussed, the undeclared income from unaccounted rent expense should be cancelled for lack of factual basis.

Likewise, for insufficiency of evidence submitted to the Court, the undeclared income of ₱6,842,789.00 should be upheld.

C. Disposal of Property and Equipment in the amount of ₱541,884.00

Petitioner argues that the amount taken from its audited financial statements as proceeds from disposal of property and equipment is erroneous. Ms. Gonzaga, petitioner's finance controller stated:[72]

"Q134: On page 5 of the CIR's Decision and in Schedule 4 of the FAN, the BIR stated that the amount of the

[71] Exhibit "P-8", Docket, Vol. II, p. 361.
[72] Exhibit "P-20", Docket, Vol. II, p. 310.

proceeds from the disposal of petitioner's property and equipment was ₱541,884.00. Do you agree with that?

A134: No. That amount was based on Note 6 of petitioner's 2009 AFS, which pertains to the book value of the computer equipment disposed of during the year. The correct amount of the sale proceeds is only ₱11,290.00 as stated in the Statement of Cash Flows on page 7 of the 2009 AFS. The amount of ₱541,884.00 is a gross overstatement of the actual sale proceeds received by petitioner."

Scrutiny of the 2009 audited financial statements of petitioner, particularly the Statement of Cash Flow, reveals that the proceeds from sale of property and equipment amount to ₱11,290.00.[73] Moreover, Note 6 of the Notes to Financial Statements shows the following:[74]

6. Property and Equipment

As of December 31, 2009:

	Computer Equipment	Office Fixtures and Equipment	Leasehold Improvements	Total
Cost				
Beginning balances	₱ 4,154,365	₱ 875,603	₱ 2,373,741	₱ 7,403,709
Additions	-	4,469	-	4,469
Disposals	(541,884)	-	-	(541,884)
Ending balances	3,612,481	880,072	2,373,741	6,866,294
Accumulated Depreciation and Amortization				
Beginning balances	₱ 3,223,097	₱ 684,855	₱ 1,045,234	₱ 4,953,186
Depreciation and amortization	637,995	120,907	1,053,532	1,812,434
Disposals	(493,365)	-	-	(493,365)
Ending balances	3,367,727	805,762	2,098,766	6,272,255
Net Book Values	**₱ 244,754**	**₱ 74,310**	**₱ 274,975**	**₱ 594,039**

From the foregoing, it is clear that the amount of ₱541,884.00 represents the cost of computer equipment disposals for the year 2009. Taking into consideration the related accumulated

[73] Exhibit "P-10", Docket, Vol. III, p. 825.
[74] *Id.*, pp.840-841.

depreciation, the remaining book value of the disposed asset would be ₱48,519.00 (₱541,884.00 less ₱493,365.00). However, for VAT purposes, petitioner is correct in stating that only the proceeds of ₱11,290.00 should be subject to tax.

In fine, petitioner's adjusted receipts which are not subjected to VAT amount to ₱20,814,974.61, computed as follows:

Receipts per ITR		₱ 35,549,061.00
Add: Accounts Receivable, beg. (net of VAT)		9,373,778.57
Total		₱ 44,922,839.57
Less: Accounts Receivable, end. (net of VAT)		8,348,976.79
Receipts per investigation		₱ 36,573,862.78
Add: Undeclared Income (Schedule 1)	₱ 6,842,789.00	
Proceeds from Disposal of Property and Equipment	11,290.00	6,854,079.00
Total Receipts subject to VAT		₱ 43,427,941.78
Less: Receipts per VAT returns		22,612,967.17
Receipts not subjected to VAT		**₱20,814,974.61**

Consequently, petitioner is liable for deficiency VAT in the amount of ₱2,415,687.68, as follows:

Vatable Receipts per return	₱ 22,612,967.17
Add: Receipts not subjected to VAT	20,814,974.61
Sales/Receipts subject to VAT	₱ 43,427,941.78
Output Tax	₱ 5,211,353.01
Less: Input tax during the year	1,451,946.99
VAT Payable	₱ 3,759,406.02
Less: Payments	1,343,718.34
Basic tax due	**₱2,415,687.68**

It is worthy to note that respondent imposed a 50% surcharge on the basic deficiency VAT due pursuant to Section 248(B) of the NIRC of 1997, as amended, which provides:

"SEC. 248. *Civil Penalties.—*

(A) xxx xxx xxx

(B) **In case of willful neglect to file the return within the period prescribed by this Code or by rules and regulations, or in case a false or fraudulent return is willfully made, the penalty to** ℊ𝓇

> **be imposed shall be fifty percent (50%) of the tax or of the deficiency tax**, in case any payment has been made on the basis of such return before the discovery of the falsity or fraud: *Provided*, That **a substantial underdeclaration of taxable sales, receipts or income, or a substantial overstatement of deductions**, as determined by the Commissioner pursuant to the rules and regulations to be promulgated by the Secretary of Finance, **shall constitute *prima facie* evidence of a false or fraudulent return**: *Provided, further,* That **failure to report sales, receipts or income in an amount exceeding thirty percent (30%) of that declared per return, and a claim of deductions in an amount exceeding thirty percent (30%) of actual deductions, shall render the taxpayer liable for substantial underdeclaration of sales, receipts or income or for overstatement of deductions, as mentioned herein**." *(Emphasis supplied.)*

Petitioner counters that it duly filed its Quarterly VAT Returns for the four quarters of the taxable year 2009.[75] It claims that it believed in good faith that it correctly reported its sales, receipts, income and deductions in its 2009 VAT Returns.[76]

Nevertheless, the Court takes into consideration the findings of respondent's examiner, specifically of receipts not subjected to VAT in the amount of ₱20,814,974.61. Comparing the same to the amount declared as sales/receipts for the year 2009 in the amount of ₱22,612,967.17, the Court finds that petitioner is liable for substantial underdeclaration of sales, receipts or income as contemplated in the Tax Code, *to wit:*

Receipts not subjected to VAT per audit	₱20,814,974.61
Divided by: Vatable receipts per returns	₱22,612,967.17
Percentage of underdeclaration	**92.05%**

Hence, the imposition of 50% surcharge is in order.

III. EWT

[75] Exhibits "P-19" to "P-19-r", Docket, Vol. III, pp. 941-978.
[76] Petitioner's Memorandum, Paragraph 140, Docket, Vol. IV, p. 1269.

Respondent assessed petitioner of deficiency EWT amounting to ₱85,861.50, computed as follows:

Income Payments	Per FS/ITR	Per Alphalist	Discrepancy	Tax Rate	Tax Due
Payments of goods					
Printing, materials & supplies	₱ 9,000,672.00				
Repairs and maintenance - materials	98,449.50				
Office supplies	228,495.00				
Subtotal	₱ 9,327,616.50	₱ 1,333,228.00	₱ 7,994,388.50	1%	₱ 79,943.89
Others	102,014.73	62,563.99	39,450.74	15%	5,917.61
TOTAL	**₱9,429,631.23**	**₱1,395,791.99**	**₱8,033,839.24**		**₱85,861.50**

Petitioner averred that the said assessment was erroneous because the legal basis cited for the assessment which is Section 2.57.2(C) of RR. 2-98, as amended, pertains to withholding tax for rentals, while the tax rates used to compute the deficiency EWT are 1% and 15%, which is not 5% withholding tax for rentals.[77]

Further, it claims that it was not among those notified by respondent as one of the top 20,000 corporations in 2009. Hence, it was not required to withhold 1% tax on its purchases from local suppliers of goods.[78]

However, as previously discussed, it paid the deficiency EWT found by respondent per FDDA on April 15, 2016.[79] In view thereof, the deficiency EWT assessment must be cancelled.

IV. DST

Respondent assessed petitioner for deficiency DST, as follows:

Advances from stockholders	₱ 587,430.00
Advances from BPAI	4,810,000.00
Due to HLBI	13,067,200.00
Due to Arc Worldwide Chicago	11,549,850.00
Due to LB Hongkong Agency	66,200.00
Total Intercompany Advances	₱ 30,080,680.00
Multiplied by: DST rate	₱ 1.00/₱200.00
Basic Tax Due	**₱ 150,403.00**

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[77] Petition for Review, Paragraphs 35 and 36, Docket, Vol. I, p. 20.
[78] *Id.*, pp. 20-22.
[79] Exhibit "P-28", Docket, Vol. II, pp. 661-664.

Meanwhile, on April 15, 2016, petitioner already paid its deficiency DST in the amount of ₱396,811.02[80] which includes surcharge, interest and compromise penalty.

At any rate, the Court shall determine whether the imposition of deficiency DST is proper.

Section 173 of the National Internal Revenue Code (NIRC) of 1997, as amended, provides:

> "**SEC. 173. Stamp Taxes Upon Documents, Loan Agreements, Instruments and Papers.** - Upon documents, instruments, loan agreements and papers, and upon acceptances, assignments, sales and transfers of the obligation, right or property incident thereto, there shall be levied, collected and paid for, and in respect of the transaction so had or accomplished, the corresponding documentary stamp taxes prescribed in the following Sections of this Title, by the person making, signing, issuing, accepting, or transferring the same wherever the document is made, signed, issued, accepted or transferred when the obligation or right arises from Philippine sources or the property is situated in the Philippines, and the same time such act is done or transaction had: *Provided*, That whenever one party to the taxable document enjoys exemption from the tax herein imposed, the other party who is not exempt shall be the one directly liable for the tax."

Petitioner asserts that the aforesaid items are not debt instruments under Section 179 of the NIRC of 1997, as amended. As such, they are not subject to DST.

The Court disagrees with petitioner.

In *Antam Pawnshop Corporation v. Commissioner of Internal Revenue*,[81] the Supreme Court explained the nature of DST, as follows: ℊ𝓃

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[80] Exhibit "P-29", Docket, Vol. II, pp. 665-668.
[81] G.R. No. 167962, September 19, 2008.

"In general, documentary stamp taxes are levied on the exercise by persons of certain privileges conferred by law for the creation, revision, or termination of specific legal relationships through the execution of specific instruments. Examples of such privileges, the exercise of which, as effected through the issuance of particular documents, are subject to the payment of documentary stamp taxes are leases of lands, mortgages, pledges, and trusts and conveyances of real property."[82]

In the consolidated cases of *Commissioner of Internal Revenue v. Filinvest Development Corporation* and *Commissioner of Internal Revenue v. Filinvest Development Corporation*,[83] the Supreme Court ruled that instructional letters, as well as journal and cash vouchers evidencing advances to affiliates, are considered as loan agreements. As such, DST may properly be imposed.

Guided by the foregoing rulings, petitioner's inter-company advances are considered as loan agreements subject to DST. Hence, the Court finds that the imposition of DST on petitioner's intercompany advances is proper.

However, considering that petitioner already paid for the said deficiency DST plus interest, surcharge and compromise penalty,[84] the assessment for the same must be cancelled.

In sum, the Court finds petitioner liable for basic deficiency value-added tax in the amount of ₱2,415,687.68 as previously computed.

WHEREFORE, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, the deficiency income tax, expanded withholding tax (EWT) and documentary stamp tax (DST) assessments are **CANCELLED**. However, petitioner is liable to pay for deficiency VAT for the taxable year 2009 in the aggregate amount of ₱10,470,069.30, inclusive of 50% surcharge imposed under Section 248(B) of the NIRC of 1997, as amended, and deficiency and delinquency interest imposed under Section 249(B) and (C) of the

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[82] Id., citing *Philippine Home Assurance Corporation v. Court of Appeals*, G.R. No. 119446, January 21, 1999.
[83] G.R. Nos. 163653 & 167689, July 19, 2011.
[84] See Note 80.

NIRC of 1997, as amended, until December 31, 2017, computed as follows:

Basic tax due	₱ 2,415,687.68
Surcharge (50%)	1,207,843.84
Subtotal	₱ 3,623,531.53
Deficiency Interest - 1/25/2010[85] to 12/31/2017	
(₱2,415,687.68 x 20% x 7.94 yrs)	3,834,656.01
Subtotal	₱ 7,458,187.54
Delinquency Interest – 12/25/2015[86] to 12/31/2017	
(₱7,458,187.54 x 20% x 2.02 yrs)	3,011,881.76
TOTAL	**₱10,470,069.30**

In addition, petitioner is liable to pay delinquency interest at the rate of 12%, which is double the legal interest rate for loans or forbearance of any money, on the total unpaid amount including basic deficiency value-added tax, surcharge, deficiency and delinquency interest as computed above in the aggregate amount of ₱7,458,187.54, computed from January 1, 2018[87] until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended by Republic Act No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN).

SO ORDERED.

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

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

[85] Section 4.114-1(A), Revenue Regulations No. 16-05.
[86] Exhibit "P-1", Docket, Vol. II, p. 325.
[87] Section 87, Republic Act No. 10963 (TRAIN Law).

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.
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.

ROMAN G. DEL ROSARIO
Presiding Justice