REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

First Division

TITANIUM CORPORATION,
Petitioner,

CTA CASE NO. 9515

Members:

- versus -

DEL ROSARIO, *P.J., Chairperson,*
FABON-VICTORINO, *and*
MANAHAN, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
OCT 02 2019 : 1:49pm

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DECISION

DEL ROSARIO, P.J.:

This is a Petition for Review filed on January 11, 2017 by petitioner Titanium Corporation praying that the Court: (a) cancels for lack of merit the following: (i) Final Decision on Disputed Assessment dated December 7, 2016; (ii) Amended Assessment Notices covering taxable year 2008 for Income Tax (Assessment No. IT-LA7267-08-16-1226), Value Added Tax (Assessment No. VT-LA7267-08-16-1226), and Expanded Withholding Tax (Assessment No. WE-LA7267-08-16-1226), all dated December 7, 2016, in the total amount of ₱28,290,307.88; and, (iii) Original Assessment Notices covering taxable year 2008 for Income Tax (Assessment No. IT-LA7267-08-12-0165), Value Added Tax (Assessment No. VT-LA7267-08-12-0165), and Expanded Withholding Tax (Assessment No. WE-LA7267-08-12-0165), all dated January 11, 2012; and, (b) issues an order restraining respondent from further initiating collection proceedings to the prejudice of the petitioner.

THE PARTIES

Petitioner 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 #733 Wood St., Malibay, Pasay City and duly registered with the Bureau of Internal Revenue – Revenue District Office No. 51 of Pasay City under Revenue Region No. 8, Makati City, Philippines.[1]

Respondent Commissioner of Internal Revenue is the Chief of the Bureau of Internal Revenue, 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. Respondent may be served with summons, notices and other legal processes at the 4th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City, Metro Manila.[2]

THE FACTS

On August 12, 2009, petitioner received the Letter of Authority (LOA) dated August 4, 2009 with No. 2008 00007267 authorizing Revenue Officer K. Jumawan under the supervision of Group Supervisor C. Dela Cruz of Revenue District Office No. 51 – Revenue Region No. 8 to examine/audit petitioner's internal revenue taxes for the period from January 1, 2008 to December 31, 2008.[3]

Respondent CIR subsequently issued an Assessment Notice-Formal Assessment Notice[4] (FAN) and Assessment Notices for Income Tax (Assessment No. IT-LA7267-08-12-0165), Value Added Tax (VAT) (Assessment No. VT-LA7267-08-12-0165), and Expanded Withholding Tax (EWT) (Assessment No. WE-LA7267-08-12-0165),[5] all dated January 11, 2012, covering taxable year 2008, which were received by petitioner on January 16, 2012,[6] reiterating the alleged deficiency internal revenue taxes contained in the Preliminary Assessment Notice (PAN) dated December 9, 2011, as follows:

Tax Type	Basic	Surcharge	Interest	Total
Income tax	₱ 8,446,418.40		₱ 4,813,301.44	₱ 13,259,719.84
Value added tax	4,297,842.54		2,637,580.08	6,935,422.62
Expanded w/ tax	309,384.11		176,306.55	485,690.67
TOTAL	₱ 13,053,645.05		₱ 7,627,188.08	₱ 20,680,833.13

[1] Par. 1, Joint Stipulation of Facts and Simplification of Issues, CTA Docket, Vol. I, pp. 250-251.
[2] Par. 2, Joint Stipulation of Facts and Simplification of Issues, CTA Docket, Vol. I, p. 251.
[3] Par. 3, Joint Stipulation of Facts and Simplification of Issues, CTA Docket, Vol. I, p. 251.
[4] Par. 4, Joint Stipulation of Facts and Simplification of Issues, CTA Docket, Vol. I, p. 251.
[5] Par. 5, Joint Stipulation of Facts and Simplification of Issues, CTA Docket, Vol. I, p. 251.
[6] Par. 6, Joint Stipulation of Facts and Simplification of Issues, CTA Docket, Vol. I, p. 252.

On January 31, 2012, petitioner filed an administrative protest dated January 25, 2012 together with supporting documents on the Assessment Notice dated January 11, 2012 issued by respondent.[7]

On December 7, 2016, respondent issued a Final Decision on Disputed Assessment (FDDA) involving petitioner's administrative protest and reiterating his assessment for Income Tax, VAT, and EWT covering taxable year 2008.[8] On the same date, respondent issued an Amended Assessment Notices covering taxable year 2008 for Income Tax (Assessment No. IT-LA7267-08-16-1226), VAT (Assessment No. VT-LA7267-08-16-1226), and EWT (Assessment No. WE-LA7267-08-16-1226), and FDDA for petitioner covering taxable year 2008.[9] Petitioner received the aforementioned documents on December 13, 2016.[10]

With the simultaneous issuance of the aforesaid FDDA and Amended Assessment Notices, respondent notified and directed petitioner to either settle the same or to appeal with the Court of Tax Appeals (CTA) within thirty (30) days from receipt (December 13, 2016) or until January 12, 2017.[11]

On January 11, 2017, petitioner filed the present Petition for Review.[12]

On March 6, 2017, respondent filed his Answer[13] with the following special and affirmative defenses: (i) the right of the Bureau of Internal Revenue (BIR) to issue the subject FAN dated January 11, 2012 has not yet prescribed; (ii) the right of the BIR to assess petitioner of its deficiency taxes for taxable year 2008 was suspended pursuant to Section 223 of the National Internal Revenue Code (NIRC) of 1997, as amended, since the request for reinvestigation of the assessment filed by the taxpayer was evidently granted and actual reinvestigation was conducted by the BIR, which eventually resulted in the issuance of the Amended Assessment Notices dated December 7, 2016; (iii) the issuance by respondent of the assailed FDDA dated December 7, 2016 and Amended Assessment Notices for Income tax, VAT, and EWT all dated December 7, 2016 does not support the theory and allegations of petitioner that the BIR's right to

[7] Par. 7, Joint Stipulation of Facts and Simplification of Issues, CTA Docket, Vol. I, p. 252.
[8] Par. 8, Joint Stipulation of Facts and Simplification of Issues, CTA Docket, Vol. I, p. 252.
[9] Par. 9, Joint Stipulation of Facts and Simplification of Issues, CTA Docket, Vol. I, p. 252.
[10] Par. 10, Joint Stipulation of Facts and Simplification of Issues, CTA Docket, Vol. I, p. 252.
[11] Par. 11, Joint Stipulation of Facts and Simplification of Issues, CTA Docket, Vol. I, p. 253.
[12] CTA Docket, Vol. I, pp. 10-28.
[13] CTA Docket, Vol. I, pp. 89-100.

assess/collect deficiency Income tax, VAT, and EWT for taxable year 2008 has already prescribed; (iv) instead of filing a petition for review with the CTA within 30 days after the expiration of the 180-day period, petitioner opted to await the final decision of respondent; (v) respondent complied with the due process requirement mandated under Section 228 of the NIRC of 1997, as amended, and as implemented by Revenue Regulations (RR) No. 12-99, as amended; (vi) petitioner was duly appraised by respondent of the factual and legal basis on how and why respondent has arrived of a deficiency income tax, VAT, and EWT assessments for taxable year 2008, through the issuance of the Details of Discrepancies attached to the Assessment Notice; and, (vii) while petitioner's protest letter to the FAN is in the nature of a request for reinvestigation.

On April 20, 2017, respondent filed his Pre-Trial Brief[14]; while petitioner filed its Pre-Trial Brief[15] on April 21, 2017.

The Pre-Trial Conference was held on June 22, 2017.[16] The parties filed their Joint Stipulation of Facts and Simplification of Issues[17] on July 7, 2017, and the same was approved in the Pre-Trial Order[18] dated July 17, 2017; the Court also terminated the Pre-Trial in the same Order.[19]

During trial, petitioner presented testimonial and documentary evidence. Petitioner's formally offered exhibits, as contained in its Formal Offer of Evidence[20] were admitted in the Resolution dated October 20, 2017.[21] Respondent also presented testimonial and documentary evidence. Respondent's formally offered exhibits, as contained in his Formal Offer of Evidence[22] were admitted in the Resolution[23] dated July 10, 2018.

On August 30, 2018, respondent filed a Manifestation and Motion[24] that he is adopting all his factual and legal arguments contained in the Special and Affirmative Defenses of his Answer dated March 3, 2017.

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[14] CTA Docket, Vol. I, pp. 104-109.
[15] CTA Docket, Vol. I, pp. 110-120.
[16] CTA Docket, Vol. I, pp. 229 & 230.
[17] CTA Docket, Vol. I, pp. 250-255.
[18] CTA Docket, Vol. I, pp. 260-263.
[19] Id.
[20] CTA Docket, Vol. I, pp. 305-341.
[21] CTA Docket, Vol. II, pp. 426-429.
[22] CTA Docket, Vol. II, pp. 487-498.
[23] CTA Docket, Vol. II, pp. 528-529.
[24] CTA Docket, Vol. II, pp. 566-568.

Considering the filing of petitioner's Memorandum[25] on August 31, 2018 and respondent's Manifestation on August 30, 2018, the case was submitted for decision on October 8, 2018.[26]

ISSUE[27]

The parties agree that the issues for resolution are the following:

(1) Whether or not the BIR's right to assess petitioner for internal revenue taxes covering taxable year 2008 has prescribed.

(2) Whether or not the BIR's right to collect petitioner for any deficiency in internal revenue taxes covering taxable year 2008 has prescribed.

(3) Whether or not BIR's right to assess and/or collect the deficiency Income Tax, VAT and EWT covering taxable year 2008 was suspended.

(4) Whether or not the Amended Assessment Notices for Income Tax, VAT and EWT, all covering taxable year 2008 were issued beyond the three (3) year period allowed by law.

(5) Whether or not petitioner was deprived of the due process of law.

(6) Whether or not petitioner is liable for alleged deficiency Income Tax, VAT and EWT, all for taxable year 2008.

THE COURT'S RULING

The Court has jurisdiction over the Petition for Review

It is undisputed that on December 13, 2016, petitioner received the FDDA with Amended Assessment Notices, all dated December 7, 2016.[28] Pursuant to Rule 8, Section 3 (a) of the Revised Rules of the

[25] CTA Docket, Vol. II, pp. 536-565.
[26] CTA Docket, Vol. II, p. 573.
[27] CTA Docket, Vol. I, pp. 253-254.
[28] Par. 10, Joint Stipulation of Facts and Simplification of Issues, CTA Docket, Vol. I, p. 252.

Court of Tax Appeals (RRCTA), petitioner had thirty (30) days from December 13, 2016 or until January 12, 2017 to file its appeal with the Court. Thus, the Petition for Review filed on January 11, 2017 was timely filed.[29]

Prescription of BIR's right to assess petitioner of EWT, VAT and Income Tax for taxable year 2008

Petitioner claims that the three (3)-year prescriptive period for respondent to assess petitioner for the following had already lapsed at the time of the issuance of the FAN on January 11, 2012: (i) deficiency EWT covering the months of January to December 2008; and, (ii) deficiency VAT covering the 1st, 2nd, and 3rd quarters of taxable year 2008. Moreover, petitioner asserts that the issuance of the Amended Assessments for income tax, VAT and EWT by the respondent totally abandoned or rescinded the original Assessment Notice, and such issuance more than seven (7) years or way more than the period allowed by law rendered the assessments for income tax, VAT and EWT prescribed.[30]

Respondent counter-argues that the right to issue the subject FAN dated January 11, 2012 has not yet prescribed and that such was suspended since petitioner's request for reinvestigation of the assessment was evidently granted and actual reinvestigation was conducted by the BIR which eventually resulted in the issuance of the Amended Assessment Notices dated December 7, 2016.[31]

Section 203 of the National Internal Revenue Code (NIRC) of 1997, as amended, states:

> "**Section 203.** *Period of Limitation Upon Assessment and Collection.* - Except as provided in Section 222, **internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return**, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: Provided, **That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed.** For purposes of this Section, a return filed before

[29] CTA Docket, Vol. I, pp. 10-28.
[30] Petitioner's Memorandum, CTA Docket, Vol. II, pp. 540-548.
[31] Answer, CTA Docket, Vol. I, pp. 90-99.

> the last day prescribed by law for the filing thereof shall be considered as filed on such last day." (*Boldfacing supplied*)

Based on the aforecited provision, it is vital for respondent to issue an assessment notice to the taxpayer within the three (3)-year period, reckoned from the last day prescribed by law for the filing of the return, or from the filing of the return, in case the return is filed after the prescribed period. An assessment issued beyond the prescriptive period mandated by law renders the CIR's power to assess nugatory.

The right to assess petitioner for deficiency EWT for the period January to October of taxable year 2008 has already prescribed; the assessment for deficiency EWT for the months of November and December 2008 was made within the three (3)-year period

Section 2.58 of RR No. 2-98, as amended by RR No. 17-03 provides for the period upon which the return of withholding taxes should be filed, *viz.*:

> "**Sec. 2.58. RETURNS AND PAYMENT OF TAXES WITHHELD AT SOURCE.**
>
> ***(A) Monthly return and payment of taxes withheld at source. –***
>
> (1) xxx xxx xxx
>
> (2) ***WHEN TO FILE –***
>
> (a) For both large and non-large taxpayers, the withholding tax return, whether creditable or final (including final withholding taxes on interest from any currency bank deposit and yield or any other monetary benefit from deposit substitutes and from trust funds and similar arrangements) shall be filed and payments should be made, **within ten (10) days after the end of each month, except for taxes withheld for the month of December of each year, which shall be filed on or before January 15 of the following year;** xxx" (*Boldfacing supplied*)

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In the present case, the relevant dates for the filing of EWT Returns, the actual date of filing, and the last day for the BIR to assess are illustrated below:

Period	**Due Date of Filing Return**	**Actual Date of Filing of Return**	**Last Day of Assessment by BIR**
January 2008	February 10, 2008	February 15, 2008[32]	February 15, 2011
February 2008	March 10, 2008	March 13, 2008[33]	March 13, 2011
March 2008	April 10, 2008	April 13, 2008[34]	April 13, 2011
April 2008	May 10, 2008	May 14, 2008[35]	May 14, 2011
May 2008	June 10, 2008	June 10, 2008[36]	June 10, 2011
June 2008	July 10, 2008	July 15, 2008[37]	July 15, 2011
July 2008	August 10, 2008	September 13, 2008[38]	September 13, 2011
August 2008	September 10, 2008	September 13, 2008[39]	September 13, 2011
September 2008	October 10, 2008	October 13, 2008[40]	October 13, 2011
October 2008	November 10, 2008	November 12, 2008[41]	November 12, 2011
November 2008	December 10, 2008	January 14, 2009[42]	January 14, 2012
December 2008	January 15, 2009	May 21, 2009[43]	May 21, 2012

The FAN with the attached Assessment Notice for Expanded Withholding Tax (Assessment No. WE-LA7267-08-12-0165) was issued by respondent on January 11, 2012.[44]

In *Barcelon, Roxas Securities, Inc. (now known as UBP Securities) vs. Commissioner of Internal Revenue,*[45] the Supreme Court emphasized that the determination of whether an assessment was made within the prescriptive period is when it was released,

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[32] Exhibit "P-12-AD-ICPA", Electronic Copy of Exhibits in CD Form duly marked as Exhibit "P-31-ICPA".
[33] Exhibit "P-12-AF-ICPA", Electronic Copy of Exhibits in CD Form duly marked as Exhibit "P-31-ICPA".
[34] Exhibit "P-12-AH-ICPA", Electronic Copy of Exhibits in CD Form duly marked as Exhibit "P-31-ICPA".
[35] Exhibit "P-12-AJ-ICPA", Electronic Copy of Exhibits in CD Form duly marked as Exhibit "P-31-ICPA".
[36] Exhibits "P-12-A-ICPA", Electronic Copy of Exhibits in CD Form duly marked as Exhibit "P-31-ICPA".
[37] Exhibits "P-12-C-ICPA", Electronic Copy of Exhibits in CD Form duly marked as Exhibit "P-31-ICPA".
[38] Petitioner filed an Amended Return, Exhibit "P-12-AR-ICPA", Electronic Copy of Exhibits in CD Form duly marked as Exhibit "P-31-ICPA".
[39] Exhibit "P-12-I-ICPA", Electronic Copy of Exhibits in CD Form duly marked as Exhibit "P-31-ICPA".
[40] Exhibit "P-12-K-ICPA", Electronic Copy of Exhibits in CD Form duly marked as Exhibit "P-31-ICPA".
[41] Exhibit "P-12-O-ICPA", Electronic Copy of Exhibits in CD Form duly marked as Exhibit "P-31-ICPA".
[42] Petitioner filed an Amended Return, Exhibit "P-12-BE-ICPA", Electronic Copy of Exhibits in CD Form duly marked as Exhibit "P-31-ICPA".
[43] Petitioner filed an Amended Return, Exhibit "P-12-BJ-ICPA", Electronic Copy of Exhibits in CD Form duly marked as Exhibit "P-31-ICPA".
[44] Based on the Records of the case, a perusal thereof shows that there are two EWT Returns that were filed by petitioner: (i) Pasay City Branch; and, (ii) Caloocan City Branch.
[45] G. R. No. 157064, August 7, 2006 *citing Collector of Internal Revenue vs. Bautista*, 105 Phil. 1326, 1327 (1959).

mailed or sent by the CIR to the taxpayer. The relevant portion of the case reads:

> "xxx **an assessment is made within the prescriptive period if notice to this effect is released, mailed or sent by the CIR to the taxpayer within said period. Receipt thereof by the taxpayer within the prescriptive period is not necessary.** At this point, it should be clarified that the rule does not dispense with the requirement that the taxpayer should actually receive, even beyond the prescriptive period, the assessment notice which was timely released, mailed and sent."

In the case at bar, the parties jointly stipulated that respondent issued the FAN on January 11, 2012, and the same was received by petitioner on January 16, 2012.[46]

As illustrated on the above table of relevant dates, the deficiency EWT assessment covering the period January to October 2008 was issued beyond the three (3)-year prescriptive period. The deficiency EWT assessment for the period of November and December 2008, however, was issued within the prescribed period reckoned from the filing by petitioner of its Amended Returns on January 14, 2009 for the month of November 2008 and on May 21, 2009 for the month of December 2008. Hence, respondent had until January 14, 2012 and May 21, 2012, respectively, within which to assess petitioner for the deficiency EWT covering the months of November and December 2008. Considering that the FAN was issued on January 11, 2012, the assessment for deficiency EWT for the months of November and December 2008 was made within the three (3)-year period prescribed under Section 203 of the NIRC of 1997, as amended.

The deficiency VAT Assessment for the 1st, 2nd, 3rd and 4th quarters of the taxable period 2008 was issued within the three (3)-year prescriptive period.

Section 114 of the NIRC of 1997, as amended, provides for the period upon which a taxpayer liable for VAT must file its return, *viz*:

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[46] *Supra* Notes 4, 5 and 6.

> "**Section 114.** *Return and Payment of Value-Added Tax.* –
>
> (A) *In General.* - Every person liable to pay the value-added tax imposed under this Title shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer: Provided, however, That VAT-registered persons shall pay the value-added tax on a monthly basis.
>
> xxx xxx xxx"

The illustration below refers to the pertinent dates reflecting the date of filing of petitioner's VAT Returns for the taxable year 2008 juxtaposed to the last day the BIR may assess petitioner for deficiency VAT:

Period covered	**Due Date of Filing**	**Date of Actual Filing**	**Last Day of Assessment for BIR**	**Date of Issuance of Assessment No. VT-LA7267-08-12-0165**
1st Quarter of 2008	April 25, 2008	April 21, 2009[47]	April 21, 2012	January 11, 2012
2nd Quarter of 2008	July 25, 2008	April 21, 2009[48]	April 21, 2012	
3rd Quarter of 2008	October 25, 2008	April 21, 2009[49]	April 21, 2012	
4th Quarter of 2008	January 25, 2008	May 24, 2009[50]	May 24, 2012	

As shown on the table, the FAN and Assessment No. VT-LA7267-08-12-0165, both issued on January 11, 2012, assessing petitioner for deficiency VAT for the taxable year 2008 was issued within the three (3)-year prescriptive period provided under Section 203 of the NIRC of 1997, as amended.

The income tax assessment was issued within the three (3)-year prescriptive period.

Section 77(B) of the NIRC of 1997, as amended, provides the period upon which a corporation must file its annual income tax return (ITR), to wit:

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[47] Petitioner filed an Amended Return, Exhibit "P-18-A-ICPA", Electronic Copy of Exhibits in CD Form duly marked as Exhibit "P-31-ICPA".
[48] Petitioner filed an Amended Return, Exhibit "P-18-E-ICPA", Electronic Copy of Exhibits in CD Form duly marked as Exhibit "P-31-ICPA".
[49] Petitioner filed an Amended Return, Exhibit "P-18-K-ICPA", Electronic Copy of Exhibits in CD Form duly marked as Exhibit "P-31-ICPA".
[50] Petitioner filed an Amended Return, Exhibit "P-18-M-ICPA", Electronic Copy of Exhibits in CD Form duly marked as Exhibit "P-31-ICPA".

> "**Section 77.** *Place and Time of Filing and Payment of Quarterly Corporate Income Tax.* –
>
> xxx xxx xxx
>
> (B) *Time of Filing the Income Tax Return.* - The corporate quarterly declaration shall be filed within sixty (60) days following the close of each of the first three (3) quarters of the taxable year. **The final adjustment return shall be filed on or before the fifteenth (15th) day of April**, or on or before the fifteenth (15th) day of the fourth (4th) month following the close of the fiscal year, as the case may be." (*Boldfacing supplied*)

In this case, petitioner filed its annual ITR on April 15, 2009.[51] Pursuant to Section 203, respondent had until April 15, 2012 within which to assess petitioner. As already established, respondent issued and mailed the FAN on January 11, 2012. Hence, respondent's issuance of deficiency income tax assessment against petitioner is within the period prescribed by law.

CIR's power to collect has not yet prescribed.

Anent petitioner's arguments that the BIR's power to collect from petitioner of any deficiency in internal revenue taxes covering taxable year 2008 has prescribed, the Court finds the same unmeritorious.

Section 203 of the NIRC of 1997, as amended, provides the reckoning date by which the CIR's power to collect commences, *viz.:*

> "Section 203. *Period of Limitation Upon Assessment and Collection.* - Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and **no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period**: Provided, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day."

[51] Exhibit "R-1", BIR Records, pp. 1-4.

Pursuant to the aforequoted Section, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period. In cases where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed.

In *Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc.*,[52] the Supreme Court clarified that when the BIR issues the assessment within the three (3)-year period, it has another three (3) years, counted from the date the assessment notice had been released, mailed or sent to the taxpayer, within which to collect the tax due by distraint, levy or court proceeding, *viz.*:

> "Xxx, petitioner has three (3) years from the date of actual filing of the tax return to assess a national internal revenue tax or to commence court proceedings for the collection thereof without an assessment. However, **when it validly issues an assessment within the three (3)-year period, it has another three (3) years within which to collect the tax due by distraint, levy, or court proceeding**. The assessment of the tax is deemed made and the three (3)-year period for collection of the assessed tax begins to run on the date the assessment notice had been released, mailed or sent to the taxpayer." (Boldfacing supplied)

In the present case, the CIR has three (3) years from issuance of assessment on January 11, 2012 to collect the deficiency EWT for November and December of taxable year 2008, deficiency VAT for the four quarters of taxable year 2008, and deficiency income tax assessment for the taxable year 2008. At first glance, the CIR's power to collect petitioner's deficiency taxes seems to have prescribed since it filed his Answer only on March 16, 2017.[53] The records of the case, however, reveal otherwise.

Section 223 of the NIRC of 1997, as amended, clearly provides that when a taxpayer requests for a reinvestigation, the running of the period to assess and/or to collect is tolled, *viz.*:

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[52] G.R. No. 197515, July 2, 2014; See also Footnote 67 in *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation / Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue*, G.R. Nos. 197945, 2014119 and 2014120, July 9, 2018.

[53] *Bank of the Philippine Islands vs. Commissioner of Internal Revenue*, G.R. No. 139736 October 17, 2005 states "A judicial action for the collection of a tax may be initiated by the filing of a complaint with the proper regular trial court; or where the assessment is appealed to the CTA, by filing an answer to the taxpayer's petition for review wherein payment of the tax is prayed for. (*Philippine National Oil Company v. Court of Appeals,* G.R. No. 109976, 26 April 2005; *Fernandez Hermanos, Inc. v. Commissioner of Internal Revenue*, G.R. No. L-21551, 30 September 1969, 29 SCRA 552; *Palanca, et al. v. Commissioner of Internal Revenue, Ibid.*)".

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"**Section 223.** *Suspension of Running of Statute of Limitations.* - The running of the Statute of Limitations provided in Sections 203 and 222 on the making of assessment and the beginning of distraint or levy a proceeding in court for collection, in respect of any deficiency, shall be suspended for the period during which the Commissioner is prohibited from making the assessment or beginning distraint or levy or a proceeding in court and for sixty (60) days thereafter; when the taxpayer requests for a reinvestigation which is granted by the Commissioner; when the taxpayer cannot be located in the address given by him in the return filed upon which a tax is being assessed or collected: Provided, that, if the taxpayer informs the Commissioner of any change in address, the running of the Statute of Limitations will not be suspended; when the warrant of distraint or levy is duly served upon the taxpayer, his authorized representative, or a member of his household with sufficient discretion, and no property could be located; and when the taxpayer is out of the Philippines."

To distinguish a request for reinvestigation from a request for reconsideration, the case of *Bank of the Philippine Islands vs. Commissioner of Internal Revenue*[54] is instructive, to wit:

"This Court gives credence to the argument of petitioner BPI that there is a distinction between a request for reconsideration and a request for reinvestigation. Revenue Regulations (RR) No. 12-85, issued on 27 November 1985 by the Secretary of Finance, upon the recommendation of the BIR Commissioner, governs the procedure for protesting an assessment and distinguishes between the two types of protest, as follows –

PROTEST TO ASSESSMENT

SEC. 6. *Protest.* The taxpayer may protest administratively an assessment by filing a written request for reconsideration or reinvestigation. . .

. . .

For the purpose of the protest herein –

(a) *Request for reconsideration.* – refers to a plea for a 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.

(b) *Request for reinvestigation.* – refers to a plea for 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 law or both.

With the issuance of RR No. 12-85 on 27 November 1985 providing the above-quoted distinctions between a request for reconsideration and a request for reinvestigation, the two types of protest can no longer be used interchangeably and their differences so lightly brushed aside. It bears to emphasize that under Section 224 of the Tax Code of 1977, as amended, the running of the prescriptive period for collection of taxes can only be suspended by a ***request for reinvestigation***, not a request for reconsideration. Undoubtedly, a reinvestigation, which entails the reception and evaluation of additional evidence, will take more time than a

[54] *Supra* Note 43.

> reconsideration of a tax assessment, which will be limited to the evidence already at hand; this justifies why the former can suspend the running of the statute of limitations on collection of the assessed tax, while the latter cannot."

The Court finds that the Letter Protest dated January 25, 2012[55] of the petitioner is a request for reinvestigation considering that it was accompanied by supporting documents. The submission of petitioner's supporting documents is corroborated by the admission of the parties in their Joint Stipulation of Facts and Simplification of Issues.[56]

Respondent, on this score, also treated the Letter-Protest as a request for reinvestigation as evidenced by the Letter dated March 26, 2012[57] that it sent to petitioner, which reads:

> "Sir/Madam:
>
> Please be informed that the docket of the case under Letter of Authority No. 00007267 dated August 4, 2009, was forwarded to Revenue Officer Narissa B. Ty under Group Supervisor Consolacion O. Cariaga with the instruction **to pursue the re-investigation of your internal revenue tax liabilities for calendar year 2008 pursuant to Memorandum of Assignment No. RR8-051-PRO-03-012-000960 date March 20, 2012.**
>
> Relative thereto, it is understood that all relevant documents and records are available for presentation within the period as stated in the Regional Director's letter dated March 15, 2012 so that proper re-evaluation of the case can be made by abovementioned revenue officers.
>
> Thank you for giving this matter your preferential attention.
>
> Very truly yours,
>
> **CORAZON M. MONTES**
> OIC-Revenue District Officer"

This was further corroborated by Revenue Officer Narissa B. Ty in her Judicial Affidavit[58] that the BIR informed petitioner that it will conduct a reinvestigation, *viz.*:

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[55] Exhibit "P-9", CTA Docket, Vol. I, pp. 380-395, and Exhibit "R-12", BIR Records, pp. 573-588.
[56] *Supra* Note 7.
[57] Exhibit "R-15-a", and "R-15-b", BIR Records, p. 604-B.
[58] Exhibit "R-25", CTA Docket, p. 437.

"26: Q: Going back Ms. Witness, how did the BIR informed (sic) petitioner about your authority to conduct such a reinvestigation?

A. The respondent CIR issued a BIR Letter dated March 26, 2012, duly informing petitioner about my authority to conduct such a reinvestigation of its Letter Protest dated 25 January 2012 against the subject BIR Formal Assessment Notice (Part I and II) dated 11 January 2012, as well as, the BIR Letter dated March 15, 2012 of the BIR Regional Director, RR8-Makati, requesting petitioner to submit relevant documents in support of its Letter Protest dated 25 January 2012 within 60 days from filing thereof. xxx"

Furthermore, a comparison of the FAN and the Amended FDDA reveals that respondent actually conducted a reinvestigation of petitioner's tax liabilities which resulted in the amendment of the deficiency tax assessments:

FAN		**FDDA with Amended Assessment Notices**	
Tax Type	Basic Tax Due	Tax Type	Basic Tax Due
Income Tax	₱ 8,446,418.40	Income Tax	₱ 6,706,166.54
VAT	₱ 4,297,842.54	VAT	₱ 4,082,514.70
EWT	₱ 309,384.11	EWT	₱ 228,008.33
Compromise Penalty	₱ 13,000.00	Compromise Penalty	₱ 13,000.00

Apparently, during reinvestigation, respondent took into consideration petitioner's Letter Protest and the additional documents it submitted in support thereof; thus, the resulting decrease in the basic income tax, EWT, and VAT assessments as shown in the FDDA and Amended Assessment Notices.

Indubitably, with the BIR's reinvestigation of petitioner's tax liabilities based on the latter's Letter Protest, the running of the statute of limitation to collect the assessed deficiency EWT for the period of November and December 2008, deficiency VAT for the four quarters of 2008, and deficiency income tax was suspended from March 26, 2012, the date of the issuance of respondent's letter informing petitioner of the reinvestigation of its tax liabilities, to December 13, 2016, the date petitioner received the FDDA with Amended Assessment Notices, all dated December 7, 2016. As a result, the three (3)-year period to collect the deficiency assessments was extended until December 8, 2017.[59]

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Petitioner received the FAN and Assessment Notices dated January 11, 2012	January 16, 2012	
Petitioner requested for reinvestigation	January 21, 2012	
Respondent granted petitioner's request for reinvestigation	March 26, 2012	Period to collect is suspended
Petitioner received FDDA and Amended Notices dated December 7, 2016	December 13, 2016	
Deadline of extended 3-year period to collect (365*3 less 70 days)	December 08, 2017	

As respondent filed his Answer on March 16, 2017, [60] respondent's judicial action for the collection of petitioner's deficiency income tax, VAT and EWT (for the months of November and December), covering the year 2008, was not time-barred.

The Issuance of an Amended Assessment Notice did not abandon the Original FAN

Petitioner contends that the issuance of the Amended Assessment Notices for deficiency income tax, VAT, and EWT abandoned or rescinded the original FAN issued on January 11, 2012; and such issuance of more than seven (7) years allowed by law rendered the assessment for VAT, EWT, and income tax prescribed. Petitioner further contends that the said Amended Assessment Notices abrogated the amount and the details of the assessment with the issuance of new assigned assessment numbers. In short, petitioner posits that the issuance of the Amended Assessment Notices is an entirely new assessment for taxable year 2008.

The Court finds petitioner's contention untenable.

The Court notes that petitioner failed to specifically indicate what details were not included in the original FAN that were included in the FDDA and the Amended Assessment Notices. Allegations are not evidence, and without evidence, bare allegations do not prove facts.[61] Verily, upon scrutiny of FDDA with Amended Assessment Notices and comparing the same to the FAN, there is no modification or additional items that were not already contained in the original FAN.

As to the abrogated amount, the Court finds that the increase in the amount in the Amended Assessment Notices is due to the interest and not the basic tax due. Truth to tell, a comparison of the FAN and the FDDA with the Amended Assessment Notices reveal

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[60] *Bank of the Philippine Islands vs. Commissioner of Internal Revenue*, G.R. No. 139736 October 17, 2005 states "A judicial action for the collection of a tax may be initiated by the filing of a complaint with the proper regular trial court; or where the assessment is appealed to the CTA, by filing an answer to the taxpayer's petition for review wherein payment of the tax is prayed for. (*Philippine National Oil Company v. Court of Appeals,* G.R. No. 109976, 26 April 2005; *Fernandez Hermanos, Inc. v. Commissioner of Internal Revenue*, G.R. No. L-21551, 30 September 1969, 29 SCRA 552; *Palanca, et al. v. Commissioner of Internal Revenue, Ibid.*)".
[61] *Sabellina vs. Buray et al.*, G.R. No. 187727, September 2, 2015.

that respondent considered petitioner's protest and reduced petitioner's basic tax liabilities.

Stated differently, the FDDA with Amended Notices constitute respondent's decision on petitioner's request for reinvestigation. The FDDA and Amended Notices could not be regarded as new assessments since there was no change on the basis of the original income tax, VAT and EWT assessments issued against petitioner.

The FAN contains factual and legal basis.

Anent the fifth and sixth issues, petitioner contends that it was deprived of the due process of law, and that it is not liable for the deficiency VAT, EWT and income tax assessments for lack of legal and factual basis.

After due consideration of petitioner's argument, the Court finds the same without basis.

Contrary to petitioner's allegations, records reveal that respondent provided factual and legal bases for the assessment of VAT, EWT and income tax against petitioner as shown in the Details of Discrepancies [62] attached to the FAN. Since the assessment contains factual and legal basis, there is no violation of petitioner's right to due process.

Indeed, all presumptions are in favor of the correctness of tax assessments[63] and it is incumbent upon the taxpayer to prove the contrary.[64]

Having disposed of the legal issues, the Court shall now discuss the validity of the assessment by looking into the propriety of each item.

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[62] Exhibit "P-8", CTA Docket, Vol. I, pp. 377-378; Exhibits "R-9-b" & "R-9-c", CTA Docket, Vol. II, pp. 446-447.
[63] *Sy Po vs. Court of Tax Appeals*, G.R. No. 81446 August 18, 1988.
[64] *Commissioner of Internal Revenue vs. Tuason*, G.R. No. 85749, May 15, 1989.

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I. Deficiency Income Tax for Taxable Year 2008

Respondent assessed petitioner the amount of ₱17,105,317.94 composed of ₱6,706,166.54 basic deficiency income tax and ₱10,399,151.40 interest, computed as follows:[65]

Taxable income (loss) per ITR				₱ (12,265,079.48)
Add:	Unaccounted expenses (Schedule 1)		₱1,102,290.16	
	Disallowed expenses due to non-withholding (Schedule 2)		18,131,582.90	19,233,873.06
Total				₱ 6,968,793.58
Add:	NOLCO			12,265,079.48
Adjusted Taxable Income				₱ 19,233,873.06
Income Tax Due				6,731,855.57
Less:	Tax credits/payments	-		
	Prior year's excess credits other than MCIT	-		
	Creditable tax withheld	-		
	Payments made	₱ 368,934.66	368,934.66	
	Less: Excess MCIT over NCIT	368,934.66		
	Excess amount carried forward to the succeeding period	-	368,934.66	-
Basic Deficiency Tax				₱ 6,731,855.57
Less:	Basic deficiency tax paid - 02/20/12			25,689.03
Basic deficiency tax still due				₱ 6,706,166.54
Add:	Interest (04/16/09 to 1/13/17)			10,399,151.40
TOTAL AMOUNT DUE				₱ 17,105,317.94

The computation by respondent of the deficiency income tax hinges on the following items of assessment:

Item	Amount
Unaccounted Expenses	₱ 1,102,290.16
Disallowed Expenses due to Non-withholding	18,131,582.90
Net Operating Loss Carry-Over	12,265,079.48
Excess of MCIT over NCIT	368,934.66

A. *Unaccounted Expenses—₱1,102,290.16*

Verification made by respondent disclosed that expenses amounting to ₱1,102,290.16 were not explained nor accounted in petitioner's financial statements. Such amount represented the

[65] Final Decision on Disputed Assessment, Exhibit "P-10", Docket, pp. 396-400.

difference between the expense items found in petitioner's financial statements (FS) or income tax return (ITR) *vis-à-vis* its Alphalist, as follows:[66]

Expenses/Income Payments	Per FS/ITR	Per Alphalist/1601E	Unaccounted Expenses
Salaries and wages	₱ 24,542,996.33	₱ 25,611,402.48	₱ 1,068,406.15
Rent	49,196.40	83,080.41	33,884.01
Total	₱ 24,592,192.73	₱ 25,694,482.89	₱ 1,102,290.16

Respondent imputed an undeclared source of income for ₱1,102,290.16 on the assumption that since there are undeclared expenses incurred by petitioner, there were undeclared sources of income to pay the same.

While it is a settled rule that all presumptions are in favor of correctness of tax assessments, tax assessments should not be based on mere presumptions no matter how reasonable or logical said presumptions may be, and in order to stand the test of judicial scrutiny, such assessments must be based on actual facts.[67] Here, there is no factual basis to support the assessment that the alleged unaccounted expenses arising from the excess payments found in petitioner's Alphalist as compared to its FS/ITR, would translate to undeclared income on the part of petitioner. As stated in the Details of Discrepancies[68] attached to the FDDA,[69] the assessment is based merely on the inference that undeclared expenses reflect undeclared sources of income.

For income to be taxable, the following requisites must exist: (a) there must be gain; (b) the gain must be realized or received; and, (c) the gain must not be excluded by law or treaty from taxation.[70] These requisites were not met in this case as respondent was not able to show that there was any gain actually or constructively realized or received by petitioner. Moreover, any claim of undeclared income is offset by the corresponding expense payment. Respondent merely presumed that there was a gain on the part of petitioner as a result of unaccounted expenses.

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[66] Details of Discrepancies, Exhibit "P-8", Docket, pp. 377-378.
[67] *Commissioner of Internal Revenue vs. Island Garment Manufacturing Corp.*, G.R. No. L-46644, September 11, 1967.
[68] Exhibit "P-8", Docket, pp. 398-399.
[69] Exhibit "P-10", Docket, pp. 396-397.
[70] *Chamber of Real Estate and Builders Association, Inc. vs. Romulo*, G.R. No. 160756, March 9, 2010.

Thus, based on the foregoing, the Unaccounted Expenses item in the amount of ₱1,102,290.16 is cancelled.

B. *Disallowed Expenses due to Non-withholding— ₱18,131,582.90*

Respondent's verification disclosed that petitioner failed to withhold and remit EWT on certain expenses paid by petitioner; hence, said expenses were disallowed in accordance with Section 34 (K) of the NIRC of 1997, as amended. The amount of disallowance was computed as follows:[71]

Expense/Income Payments	Per FS/ITR	Per Alphalist/ 1601E	Difference	Rate	EWT Due
Purchase of Goods:					
Direct Materials	₱9,656,874.30				
Repairs and Maintenance	142,441.52				
Direct Charges-Others	13,358,265.60				
Office Supplies	268,606.43				
Subtotal	₱23,426,187.85	₱5,303,718.61	₱18,122,469.24	1%	₱181,224.69
Professional Fees	879,395.47	768,609.89	110,785.58	15%	16,617.84
Management and Consultants	1,968,000.00	1,848,000.00	120,000.00	15%	18,000.00
Purchase of Services/Contractors					
Outside Services	11,695,585.20				
Security Services	803,590.83				
Advertising	1,452,728.00				
Research & Development	359,036.78				
Insurance	121,597.59				
Representation & Entertainment	266,100.54				
Transportation	236,625.68				
Communication, Light & Water	1,948,693.48				
Miscellaneous Expense	4,485,613.94				
Subtotal	₱21,369,572.04	16,692,493.03	4,677,079.01	2%	93,541.58
Total	₱47,643,155.36	₱24,612,821.53	₱23,030,333.83		₱309,384.11
Less: Total income payments attributable to the deficiency EWT paid on 02/20/12			4,898,750.93		81,375.78
Disallowed Expenses due to Non-Withholding			₱18,131,582.90		₱228,008.33

[71] Details of Discrepancies, Exhibit "P-8", Docket, p. 377.

1. Purchase of Goods—₱18,122,469.24

Items of expenses found in the FS/ITR such as Direct Materials, Repairs and Maintenance, Direct Charges-Others, and Office Supplies totaling ₱23,426,187.85 were compared to amounts in petitioner's Alphalist corresponding to expense items that were subjected to 1% EWT representing income payments made by the top 10,000 private corporations to suppliers of goods in the amount of ₱5,303,718.61. The discrepancy of ₱18,122,469.24 was considered by respondent as an invalid deduction for failure to withhold the 1% EWT corresponding to ₱181,224.69.

Review of petitioner's Alphalist in BIR Form 1601E shows the following:

Month	Payments Made by Top 10,000 Corporations (EC158)		Exhibit
	Income Payment	EWT	
January	₱ 875,267.14	₱ 8,752.67	P-13-A-ICPA to P-13-B-ICPA P-13-Y-ICPA to P-13-Z-ICPA
February	775,922.06	7,759.22	P-13-C-ICPA to P-13-D-ICPA P-13-Y-ICPA to P-13-Z-ICPA
March	673,454.24	6,734.54	P-13-E-ICPA to P-13-F-ICPA P-13-AC-ICPA to P-13-AD-ICPA
April	733,105.31	7,331.05	P-13-G-ICPA to P-13-J-ICPA P-13-AE-ICPA to P-13-AG-ICPA
May	822,429.05	8,224.29	P-13-K-ICPA to P-13-L-ICPA P-13-AH-ICPA
June	695,768.35	6,957.68	P-13-M-ICPA to P-13-N-ICPA P-13-AI-ICPA
July	423,446.00	4,234.46	P-13-O-ICPA to P-13-P-ICPA P-13-AJ-ICPA
August	351,504.00	3,515.04	P-13-Q-ICPA to P-13-R-ICPA P-13-AK-ICPA
September	504,889.00	5,048.89	P-13-S-ICPA to P-13-T-ICPA P-13-AL-ICPA
October	324,269.00	3,242.69	P-13-U-ICPA to P-13-V-ICPA P-13-AM-ICPA
November	198,484.00	1,984.84	P-13-W-ICPA P-13-AN-ICPA
December	93,458.00	934.58	P-13-X-ICPA P-13-AO-ICPA
Total	₱ 6,471,996.15	₱ 64,719.96	

Comparison of the amount presented in the Alphalist *vis-à-vis* petitioner's FS[72] and ITR for 2008[73] yielded the following result:

Item	Per FS/ITR	Per Alphalist/1601E	Difference
Direct Materials	₱ 9,453,248.25		
Repairs & Maintenance	142,441.52		

[72] Exhibits "P-4-A-ICPA" to "P-4-AQ-ICPA".
[73] Exhibits "P-6-A-ICPA" to "P-6-G-ICPA".

Direct Charges-Others	15,980,322.32		
Office Supplies	272,232.93		
Total	₱ 25,848,245.02	₱ 6,471,996.15	₱ 19,376,248.87

a. Direct Materials—₱9,453,248.25

The examination made by Mr. Michael L. Aguirre, the Court-commissioned Independent Certified Public Accountant (ICPA), produced the following results with respect to this item of assessment:[74]

Particulars	Amount	Exhibits
Subjected to 1% withholding tax	₱ 481,649.24	P-13-A-ICPA to P-13-AO-ICPA
Subjected to 2% withholding tax	595,287.77	P-13-A-ICPA to P-13-AO-ICPA
Payments to EWT-exempt entity	91,042.12	P-25-A-ICPA to P-25-H-ICPA P-26.1-A-ICPA to P-26.1-L-ICPA
Payments for taxes and licenses	3,280,533.63	P-26.6-A-ICPA to P-26.6-AD.2-ICPA
Adjustments for consumption of supplies inventory	4,678,148.91	P-28-A.1-ICPA to P-28-CM.2-ICPA
Payments to regular suppliers	36,571.93	
Payments from petty cash fund	51,257.15	P-26.1-M-ICPA to P-26.1-IF-ICPA
Payments from petty cash supported only by reprinted AP Batch Listing-Invoice	238,757.25	P-26.1-IG-ICPA to P-26.1-KF-ICPA
Total	₱ 9,453,248.00	

According to the ICPA, the income payments of ₱481,649.24 and ₱595,287.77 were traced to the Alphalist of petitioner, which were properly subjected to withholding of taxes at the rate of 1% and 2%, respectively. The Courts notes, however, that the Alphalist alone only proves that petitioner withheld taxes in 2008, and the Court cannot ascertain whether the amounts included therein were recorded as part of Direct Materials expense. Petitioner failed to adduce evidence that would show that the amounts found therein were included in Direct Materials as part of its cost of sales/services.

The ICPA likewise found that petitioner made income payments in the amount of ₱91,042.12 to Market Place Christian Church Multi-Purpose Cooperative, which petitioner claims is an entity exempt from paying income tax. As proof of the entity's tax-exempt status, petitioner submitted the said entity's Certificate of Registration with the Cooperative Development Authority (CDA),[75] Certificate of Tax

[74] ICPA Report, Exhibit "P-16", pp. 12-13.
[75] Exhibit "P-25-A-ICPA".

Exemption,[76] CDA Certificate of Operation,[77] and BIR Ruling on Tax Exemption.[78]

Under Articles 61 and 62 of Republic Act (RA) No. 6938 or the Cooperative Code of the Philippines, duly registered cooperatives not transacting business with non-members, and certain cooperatives transacting business with both members and non-members are exempt from the payment of any government taxes and fees imposed under the Internal Revenue Laws and other tax laws. These provisions are implemented by RR No. 20-2001 dated November 12, 2001.

The Certificate of Tax Exemption issued under Section 7 of RR No. 20-2001 is the best evidence to show that a duly registered cooperative complied with the requirements to be tax exempt under the Cooperative Code. The Certificate of Tax Exemption granted to Market Place Christian Church Multi-Purpose Cooperative shows that it was only issued on February 21, 2013, hence, not covering the taxable period under assessment in this case. The BIR Ruling on Tax Exemption of Market Place Christian Church, which was issued on November 26, 2007, however, ruled that the "cooperative has complied with the conditions *sine qua non* provided under Revenue Regulations No. 20-2001 dated November 12, 2001, which is the Regulations Implementing Articles 61 and 62 of R.A. 6938, and that its accumulated reserves and undivided net savings do not exceed the threshold of P10 Million, this Office hereby grants this Certificate of Tax Exemption to Market Place Christian Church Multi-Purpose Cooperative[.]" With this BIR Ruling, which covered the period under assessment, the said Cooperative is exempt from the payment of income tax, and withholding of income payments to it is not required.

To establish that business expenses are deductible for income tax purposes, such must pass the substantiation requirements under Section 34 (A) (1) (b) of the NIRC of 1997, which reads as follows:

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

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[76] Exhibit "P-25-B-ICPA" and "P-25-C-ICPA".
[77] Exhibit "P-25-D-ICPA".
[78] Exhibit "P-25-E-ICPA" to "P-25-H-ICPA",

In the present case, petitioner submitted as evidence the Official Receipts issued by Market Place Christian Church Multi-Purpose Cooperative[79] as evidence of its income payments to said Cooperative, as follows:

OR No.	Date	Exhibit	Income Payment
1967	2/14/2008	P-26.1-A	₱ 110,365.46
2076	3/12/2008	P-26.1-B	104,685.93
2110	3/19/2008	P-26.1-C	102,969.12
2111	3/19/2008	P-26.1-D	95,026.36
2145	3/28/2008	P-26.1-E	84,445.06
2216	4/18/2008	P-26.1-F	84,542.51
2313	5/13/2008	P-26.1-G	91,623.97
2358	5/23/2008	P-26.1-H	82,994.41
2361	5/23/2008	P-26.1-I	91,407.78
2478	6/23/2008	P-26.1-J	91,686.37
2506	6/27/2008	P-26.1-K	94,056.09
2575	7/10/2008	P-26.1-L	93,196.45
Total			₱ 1,126,999.51

The ICPA found that only the amount of ₱91,042.12 out of ₱1,126,999.51 is attributable to Direct Materials. The Court, however, cannot ascertain the veracity of this finding. Petitioner failed to offer evidence to prove that its payments amounting to ₱91,042.12 were incurred as part of its Direct Materials expense in its Cost of Sales. Absent petitioner's books and accounting records presented as evidence, the Court cannot validly vouch whether the amount of ₱91,042.12 can really be traced to the cost of Direct Materials. Without such evidence, the payments made to the tax-exempt Cooperative may have been included in other expense items which can be claimed as allowable deduction in the ITR.

The amount of ₱3,280,533.63 was found by ICPA to pertain to payments for taxes and licenses, and thus not subject to withholding. Scrutiny of the FS/ITR of petitioner shows that the total amount of ₱10,135,144.00 was included in the Taxes and Licenses account in petitioner's cost of services/sales. Petitioner, however, failed to present evidence that the amount claimed therein was included in the computation of the cost of Direct Materials. In its ITR, petitioner's cost of sales/services account is composed of various items in addition to Direct Materials. Hence, the Court could not ascertain the veracity of the ICPA's findings that the amount of ₱3,280,533.63 pertained to Direct Materials expense.

The ICPA also found that the amount of ₱4,678,148.91 is included in Direct Materials representing adjustments for consumption of supplies in inventory. This amount represents the

[79] Exhibits "P-26.1-A" to "P-26.1-L".

supplies of food and beverage inventories that were initially recorded as asset accounts upon each purchase, and then expensed monthly using the periodic inventory system. To support the claim that the proper withholding has been made on these purchases, petitioner submitted its G/L Batch Listing and schedules of food and beverage inventory,[80] and certain sales invoices and official receipts issued to "My Place Sandbox."[81] Review of the evidence presented does not establish that the purchases of inventory by petitioner were subjected to the proper withholding tax as the Court cannot ascertain whether those purchases were included in the Alphalist.

In his findings, the ICPA found that the amount of ₱51,257.15 were casual payments to non-regular suppliers of petitioner which are not subject to EWT. Petitioner, however, did not adduce evidence that the payments made were to non-regular suppliers. Petitioner failed to present as evidence the list of its regular suppliers as required by the rules. It must be noted that under Section 2.57.2 (M) of RR No. 2-98, as amended by RR No. 14-2008 dated November 26, 2008, petitioner, as withholding agent of EWT, is required to submit its list of regular suppliers to the BIR, to wit:

> "The withholding agent shall submit on a semestral basis a list of its regular suppliers of goods and/or services to the Large Taxpayers Assistance Division/Large Taxpayers District Office in the case of large taxpayers duly notified as such pursuant to RR 1-98, as amended, or Revenue District Office (RDO) having jurisdiction over the withholding agent's principal place of business on or before July 31 and January 31 of each year."

The ICPA likewise found that the amount of ₱238,757.25 was traced to petitioner's cash disbursement book but were not supported by official receipts or invoice but only petitioner's AP Batch Listing-Invoice from its accounting system; hence, petitioner was unable to substantiate this amount.

In sum, for reasons as afore-discussed, the amount of ₱9,453,248.25 for Direct Materials was properly disallowed as an expense.

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[80] Exhibits "P-28-A.1-ICPA" to "P-28-CM.2-ICPA".
[81] Exhibits "P-30-A.1-ICPA" to "P-30-A.6-ICPA".

b. Repairs and Maintenance—₱142,441.52

The ICPA found that the amount of ₱109,107.35 may be traced from the Alphalist. The amount of ₱5,181.79 represented payments from the petty cash fund to non-regular suppliers, and the amount of ₱28,152.86 was supported by AP Batch Listing Invoice. Petitioner, however, failed to adduce evidence that would show that this item of assessment was properly included in the Repairs and Maintenance expense as part of its cost of sales/services. Review of the Alphalist alone only establishes the fact of withholding. As discussed, petitioner likewise failed to present sufficient evidence to prove that all of the alleged purchases amounting to ₱5,181.79 were casual purchases of goods. Likewise, petitioner failed to substantiate the amount of ₱28,152.86 with official invoices and receipt. Hence, the disallowance of the item on Repairs and Maintenance in the amount of ₱142,441.52 is upheld.

c. Direct Charges-Other—₱15,980,322.32

The examination made by the ICPA showed that this item of assessment is composed of the following:

Particulars	**Amount**	**Exhibits**
Subjected to 1% withholding tax	₱ 897,718.19	P-13-A-ICPA to P-13-AO-ICPA
Subjected to 2% withholding tax	7,059,113.36	P-13-A-ICPA to P-13-AO-ICPA
Payments to EWT-exempt entity	777,180.41	P-25-I-ICPA to P-25-P-ICPA P-26.3-A-ICPA to P-26.3-U-ICPA
Payments for taxes and licenses	6,854,610.55	P-26.6-A-ICPA to P-26.6-AD.2-ICPA
Adjustments for reimbursements of expenses	(1,132,267.37)	
Payments from petty cash fund	23,295.36	P-26.3-V-ICPA to P-26.3-HR-ICPA
Payments from petty cash supported only by reprinted AP Batch Listing-Invoice	1,500,681.50	P-26.3-HS-ICPA to P-26.3-II-ICPA
Total	₱ 15,980,332.00	

The ICPA found that income payments of ₱897,728.19 and ₱7,059,113.36 were traced to the Alphalist. Petitioner, however, failed to present evidence that would ascertain that these payments were duly recorded and included in the Direct Charges-Other expense account that were included in petitioner's cost of sales/services as found in the FS/ITR.

The ICPA likewise found that income payment in the amount of ₱777,180.41 were made to Maynilad Water Co., Inc. (Maynilad), a company registered with the Board of Investments (BOI). Petitioner claims that the payment made to Maynilad is exempt from withholding tax under Section 2.57.5 (B) (2) of RR No. 2-98. To prove Maynilad's income tax-exempt status, petitioner submitted Maynilad's Certificate of Registration with the BOI,[82] with attached terms and conditions of income tax holiday,[83] and BIR Ruling dated August 5, 2008 ruling that Maynilad is exempt from the coverage of the withholding tax system.[84]

To establish the fact of income payments made to Maynilad, petitioner presented Statements of Account issued by Maynilad to Sta. Mesa Tourist Development Corporation, Anito Classic II, and Anito Lodge.[85] Petitioner likewise presented the SEC Certificate of Filing of the Articles and Plan of Merger between petitioner and Sta. Mesa Tourist Development Corp. and Supreme Harmony Corp.[86] and BIR Certificate of Registration.[87]

Despite being established by evidence on record that Maynilad was an income-tax exempt entity, petitioner still failed to adduce evidence that income payments were made to Maynilad. Petitioner did not present evidence that will prove that the supposed payments to Maynilad were duly recorded in Direct Charges-Others account as part of petitioner's cost of sales/services. Moreover, petitioner only submitted Statements of Account of its absorbed corporations, which fails the substantiation required by Section 34 (A) (1) (b) of the NIRC of 1997.

The amount of ₱6,854,610.55 for payment of taxes and licenses was found by the ICPA to be allocated in this item of assessment. Petitioner, however, did not present evidence that the payments made were included as part of its "Direct Charges-Others" account, the same way as it failed to prove that it allocated part of these payments to "Direct Materials", as previously discussed.

The ICPA finally found that ₱1,132,267.37 worth of adjustments had to be made regarding correcting entries on water, electricity and communication expenses. He likewise found that ₱23,295.36 were casual purchases made to non-regular suppliers, and that ₱1,500,681.50 were purchases traced to the cash disbursement book but no official receipt or invoice was presented. For failure to present evidence to prove these transactions by non-presentation of the correcting entries in the journal, the list of regular suppliers, and the

[82] Exhibit "P-25-I-ICPA".
[83] Exhibits "P-25-J-ICPA" to "P-25-N-ICPA".
[84] Exhibits "P-25-O-ICPA" to "P-25-P-ICPA".
[85] Exhibits "P-26.3-A-ICPA" to "P-26.3-U-ICPA".
[86] Exhibits "P-27-A-ICPA" to "P-27-AD-ICPA".
[87] Exhibits "P-27-AE-ICPA" to "P-27-AI-ICPA".

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official receipts or invoice required for substantiation, the disallowance of this item of expenses is upheld.

In view of the foregoing, the assessment arising from the disallowance of the Direct Charges-Other item in the amount of ₱15,980,322.32 is sustained.

d. Office Supplies—₱268,606.43

Similar to the previous items, the ICPA found that the amount of ₱170,197.51 herein may be traced from the Alphalist, and ₱102,034.49 pertains to various purchases from non-regular suppliers, of which ₱47,844.11 was traced to the cash disbursement book. As discussed, petitioner failed to adduce evidence to show that the amounts withheld were included in the Office Supplies expense account, and that the supposed casual payments to non-regular suppliers is properly substantiated. Hence, the disallowance of this item of Office Supplies in the amount of ₱268,606.43 is upheld.

In summary, amount of disallowed Purchases of Goods should be as follows:

Expense/Income Payments	Income Payment	
Per FS/ITR		
Direct Materials	₱	9,453,248.25
Repairs and Maintenance		142,441.52
Direct Charges-Others		15,980,322.32
Office Supplies		268,606.43
Subtotal	₱	25,844,618.52
Per Alphalist/1601E	₱	6,471,996.15
Disallowed Purchases of Goods	₱	19,372,622.37

Nonetheless, since the amount of discrepancy for income payments constituting purchase of goods as computed by the Court exceeded the amount of ₱18,122,469.24 as determined by respondent's examiner, consistent with due process of law, the amount of disallowance as determined by respondent's examiner must prevail.

2. Professional Fees—₱879,395.47

Review shows that the amount of ₱359,896.14 is traceable to petitioner's Alphalist in BIR Form, as follows:

Month	Income Payment	Rate	EWT (WC010/ WC011)	Exhibit
January	₱ 55,193.13	10%	₱ 5,519.31	P-13-A-ICPA to P-13-B-ICPA
	12,000.00	15%	1,800.00	P-13-Y-ICPA to P-13-Z-ICPA
February	68,222.23	10%	6,822.22	P-13-C-ICPA to P-13-D-ICPA
	-	15%	-	P-13-Y-ICPA to P-13-Z-ICPA
March	36,481.16	10%	3,648.12	P-13-E-ICPA to P-13-F-ICPA
	-	15%	-	P-13-AC-ICPA to P-13-AD-ICPA
April	27,000.01	10%	2,700.00	P-13-G-ICPA to P-13-J-ICPA
	-	15%	-	P-13-AE-ICPA to P-13-AG-ICPA
May	22,555.56	10%	2,255.56	P-13-K-ICPA to P-13-L-ICPA
	-	15%	-	P-13-AH-ICPA
June	-	10%	-	P-13-M-ICPA to P-13-N-ICPA
	-	15%	-	P-13-AI-ICPA
July	55,666.60	10%	5,566.66	P-13-O-ICPA to P-13-P-ICPA
	-	15%	-	P-13-AJ-ICPA
August	28,333.34	10%	2,833.33	P-13-Q-ICPA to P-13-R-ICPA
	-	15%	-	P-13-AK-ICPA
September	18,333.34	10%	1,833.33	P-13-S-ICPA to P-13-T-ICPA
	-	15%	-	P-13-AL-ICPA
October	26,333.34	10%	2,633.33	P-13-U-ICPA to P-13-V-ICPA
	12,000.00	15%	1,800.00	P-13-AM-ICPA
November	18,333.00	10%	1,833.30	P-13-W-ICPA
	-	15%	-	P-13-AN-ICPA
December	18,333.33	10%	1,833.33	P-13-X-ICPA
	-	15%	-	P-13-AO-ICPA
Per Alphalist/1601E	₱ 398,785.04		₱ 59,817.76	
Per FS/ITR	₱ 875,506.58		₱ 131,325.99	
Difference	₱(476,721.54)		₱ (71,508.23)	

The ICPA found that income payment in the amount of ₱30,000.00 was made to an EWT-exempt entity, specifically to "Rayala Alonso and Partners," a general professional partnership (GPP).

It must be noted that under Section 26 of the NIRC of 1997, as amended, GPPs are, as an entity, exempt from the payment of income taxes and consequently, from withholding tax. Section 2.57.5 (B) (4) of RR No. 2-98, as amended by RR No. 14-02, likewise provides:

> "Section 2.57.5. *Exemption from Withholding.*—The withholding of creditable withholding tax prescribed in these Regulations shall not apply to income payments made to the following:
>
> (A) xxx
>
> (B) Persons enjoying exemption from payment of income taxes pursuant to the provisions of any law, general or special, such as but not limited to the following:

ᴍᴍ

(1) xxx

xxx xxx xxx

(4) General Professional Partnerships."

To support its claim, petitioner submitted the partnership's SEC Certificate of Registration and Articles of Partnership,[88] and official receipt[89] showing payment of said amount to the said GPP. Thus, petitioner was able to substantiate that the ₱30,000.00 income payment was made to a GPP.

The ICPA also found that payments were made out of the petty cash fund in the total amount of ₱15,902.80. However, as the ICPA found that no invoice or receipt was presented to substantiate these transactions, albeit petitioner submitted the printed AP Batch Listing from its accounting system.

In sum, the disallowance of the item of Professional Fees is upheld but in the modified amount of ₱446,721.54, computed as follows:

Item	Amount of Income Payment	
Per FS/ITR		₱ 875,506.58
Less: Traced to Alphalist/BIR Form 1601E	₱ 398,785.04	
Income Payment to GPP	30,000.00	₱ 428,785.04
Balance		₱ 446,721.54

3. Management and Consultancy—₱1,968,000.00

Review of petitioner's Alphalist in BIR Form 1601E as compared to its FS[90] and ITR for 2008[91] shows the following:

Month	Income Payment	EWT (WC051)	Exhibit
January	₱ 360,824.73	₱ 54,123.71	P-13-A-ICPA to P-13-B-ICPA P-13-Y-ICPA to P-13-Z-ICPA
February	-	-	P-13-C-ICPA to P-13-D-ICPA P-13-Y-ICPA to P-13-Z-ICPA
March	12,000.00	1,800.00	P-13-E-ICPA to P-13-F-ICPA P-13-AC-ICPA to P-13-AD-ICPA
April	-	-	P-13-G-ICPA to P-13-J-ICPA P-13-AE-ICPA to P-13-AG-

[88] Exhibits "P-25-Q-ICPA" to "P-25-U-ICPA".
[89] Exhibit "P-26.5-A-ICPA".
[90] Exhibits "P-4-A-ICPA" to "P-4-AQ-ICPA".
[91] Exhibits "P-6-A-ICPA" to "P-6-G-ICPA".

			ICPA
May	-	-	P-13-K-ICPA to P-13-L-ICPA P-13-AH-ICPA
June	-	-	P-13-M-ICPA to P-13-N-ICPA P-13-AI-ICPA
July	12,000.00	1,800.00	P-13-O-ICPA to P-13-P-ICPA P-13-AJ-ICPA
August	48,000.00	7,200.00	P-13-Q-ICPA to P-13-R-ICPA P-13-AK-ICPA
September	12,000.00	1,800.00	P-13-S-ICPA to P-13-T-ICPA P-13-AL-ICPA
October	-	-	P-13-U-ICPA to P-13-V-ICPA P-13-AM-ICPA
November	1,621,000.00	243,150.00	P-13-W-ICPA P-13-AN-ICPA
December	143,000.00	21,450.00	P-13-X-ICPA P-13-AO-ICPA
Per Alphalist/ 1601E	₱ 2,208,824.73	₱ 331,323.71	
Per FS/ITR	₱ 1,572,000.00	₱ 235,800.00	
Difference	₱ 636,824.73	₱ 95,523.71	

Since the income payments for management and consultancy services actually exceeded the aggregate amount of expenses as shown in FS/ITR, this assessed item of expense has been validly withheld with the 15% EWT. Hence, the disallowance of the item of Management and Consultancy in the amount of ₱1,968,000.00 is cancelled.

4. Purchases of Services/Contractors—₱21,369,572.04

Review of petitioner's Alphalist in BIR Form 1601E reveals the following:

Month	**Prime Contractors/Sub-Contractors (WC120)**		**Exhibit**
	Income Payment	**EWT**	
January	₱ 2,553,584.76	₱ 51,071.70	P-13-A-ICPA to P-13-B-ICPA P-13-Y-ICPA to P-13-Z-ICPA
February	2,292,195.39	45,843.91	P-13-C-ICPA to P-13-D-ICPA P-13-Y-ICPA to P-13-Z-ICPA
March	2,578,264.17	51,565.28	P-13-E-ICPA to P-13-F-ICPA P-13-AC-ICPA to P-13-AD-ICPA
April	1,634,675.99	32,693.52	P-13-G-ICPA to P-13-J-ICPA P-13-AE-ICPA to P-13-AG-ICPA
May	2,554,872.44	51,097.45	P-13-K-ICPA to P-13-L-ICPA P-13-AH-ICPA
June	1,017,877.37	20,357.55	P-13-M-ICPA to P-13-N-ICPA P-13-AI-ICPA
July	1,525,954.00	30,519.08	P-13-O-ICPA to P-13-P-ICPA P-13-AJ-ICPA

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August	975,697.14	19,513.94	P-13-Q-ICPA to P-13-R-ICPA P-13-AK-ICPA
September	951,241.50	19,024.83	P-13-S-ICPA to P-13-T-ICPA P-13-AL-ICPA
October	1,067,339.23	21,346.78	P-13-U-ICPA to P-13-V-ICPA P-13-AM-ICPA
November	2,970,695.00	59,413.90	P-13-W-ICPA P-13-AN-ICPA
December	116,746.30	2,334.93	P-13-X-ICPA P-13-AO-ICPA
Total	₱ 20,239,143.29	₱ 404,782.87	

Comparison of the amount shown in the Alphalist *vis-à-vis* petitioner's FS[92] and ITR for 2008[93] yield the following result:

Purchases of Services/ Contractors	**Per FS/ITR**	**Per Alphalist/ 1601E**	**Difference**
Outside Services	₱ 11,695,585.20		
Security Services	803,590.83		
Advertising	1,461,455.36		
Research and Development	415,925.13		
Insurance	121,598.00		
Representation and Entertainment	266,100.54		
Transportation	253,830.68		
Communication, light and water	1,891,804.76		
Miscellaneous	1,739,849.18		
Total	₱ 18,649,739.68	₱ 20,239,143.29	₱ (1,589,403.61)

The analysis shows that the income payments for services/contractors per the Alphalist actually exceeded the aggregate amount of related expenses per FS/ITR. Thus, this item of assessment is likewise cancelled.

In summary, the amount of ₱18,569,190.78 is sustained as disallowed expenses due to non-withholding, computed as follows:

Expense/Income Payments	**Per FS/ITR**	**Per Alphalist/1601E**	**Difference**
Purchase of Goods:	₱ 23,426,187.85	₱ 5,303,718.61	₱ 18,122,469.24
Professional Fees	845,506.58	398,785.04	446,721.54
Total	₱ 24,271,694.43	₱ 5,702,503.65	₱ 18,569,190.78

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92 Exhibits "P-4-A-ICPA" to "P-4-AQ-ICPA".
93 Exhibits "P-6-A-ICPA" to "P-6-G-ICPA".

C. Net Operating Loss Carry Over (NOLCO)—₱12,265,079.48

Respondent added back the amount of supposed net loss of petitioner for taxable year 2008 in the amount of ₱12,265,079.48 upon the allegation that petitioner operated on taxable income for the period.

It must be noted that in its amended ITR for taxable year 2008,[94] petitioner incurred a net operating loss of only ₱8,753,679.98.

Respondent failed to provide the factual and legal bases for the disallowance of the stated amount as he only alleged, as stated in the Details of Discrepancy attached to the FDDA, that petitioner operated on a taxable income instead of a net operating loss. The requirement to state in writing the factual and legal bases of an assessment is part of a taxpayer's right to due process.[95] Failure to observe such requirement renders the assessment void.[96]

Moreover, examination of petitioner's ITRs for taxable years 2009,[97] 2010[98] and 2011[99] show that petitioner was subjected to the minimum corporate income tax (MCIT), instead of the normal corporate income tax (NCIT) of 30% of taxable income since petitioner operated on a net operating loss position in all those years, as follows:

Taxable Year	Gross Income	Taxable Income (Loss)	MCIT	NCIT	Exhibit
2008	14,218,612.95	(8,753,679.98)	284,372.26	-	P-6-A-ICPA to P-6-F-ICPA
2009	4,071,373.23	(15,281,206.86)	81,427.46	-	P-24-A-ICPA to P-24-D-ICPA
2010	5,230,258.29	(4,452,535.42)	104,605.17	-	P-24-E-ICPA to P-24-H-ICPA
2011	12,542,914.00	(116,301.00)	250,858.28	-	P-24-J-ICPA to P-24-Q-ICPA

Under Section 27 (E) of the NIRC of 1997, as amended, the MCIT is imposed on the "gross income" of the taxpayer domestic corporation at the rate of two percent (2%). Gross income, for purposes of the MCIT, is defined as "gross sales less sales returns,

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[94] Exhibits "P-6-A-ICPA" to "P-6-F-ICPA".
[95] *Commissioner of Internal Revenue v. Liquigaz Philippines Corp.*, G.R. Nos. 215534 & 215557, April 18, 2016.
[96] Section 228, NIRC of 1997.
[97] Exhibits "P-24-A-ICPA" to "P-24-D-ICPA".
[98] Exhibits "P-24-E-ICPA" to "P-24-H-ICPA"
[99] Exhibits "P-24-J-ICPA" to "P-24-Q-ICPA"

discounts and allowances and cost of goods sold."[100] *Cost of goods sold* includes "all business expenses directly incurred to produce the merchandise to bring them to their present location and use."[101] In the computation of MCIT, the benefit of NOLCO is not included as it is not considered a sales return or discount, nor is it part of the cost of goods sold.

Section 6.5 of RR No. 14-2001 dated August 27, 2001 provides:

> "6.5. *NOLCO in Relation to the Minimum Corporate Income Tax (MCIT).* – In general, domestic and resident foreign corporations subject to the normal income tax rate are liable to the 2% MCIT, if applicable, computed based on gross income, whenever the amount of the MCIT is greater than the normal income tax due (computed with the benefit of NOLCO, if any), pursuant to Sections 27 and 28 of the Code. <u>Thus, such corporation cannot enjoy the benefit of NOLCO for as long as it is subject to MCIT in any taxable year.</u> Provided, however, that the running of the three-year period for the expiry of NOLCO is not interrupted by the fact that such corporation is subject to MCIT in any taxable year during such three-year period." (*Boldfacing supplied*)

In this case, it was shown by petitioner that during the three (3) years succeeding 2008, it was not able to avail of the benefit of NOLCO due to the imposition of the MCIT in those years. Since such benefit was not availed of, it is improper for respondent to add back the amount of NOLCO for taxable year 2008 as part of petitioner's adjusted taxable income. Hence, this item of assessment is cancelled.

D. *Excess MCIT Over NCIT—₱368,934.66*

Respondent disallowed the amount of ₱368,934.66 representing petitioner's excess MCIT over NCIT which he alleged was carried forward and credited against the NCIT for the three (3) years succeeding to taxable year 2008.

As with the previous item of assessment, respondent failed to state the factual and legal bases for the disallowance of this amount, which renders it void. It was likewise improper for respondent to disallow the said excess MCIT over NCIT because any tax benefit derived by petitioner from the carry-over of said amount redounds to the succeeding taxable year 2009. Since the tax benefit is in the succeeding year, which is outside the scope of the present

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[100] Section 27 (E) (4), NIRC of 1997.
[101] *Id.*

assessment, petitioner, at most, may only be assessed in the said succeeding year.

It must be noted that under Section 27 (E) (2) of the NIRC of 1997, as amended, the excess of MCIT over NCIT can only be carried forward and credited in the immediately succeeding three taxable years, provided that the corporate taxpayer is subjected to the NCIT. Conversely, when the taxpayer is still subjected to MCIT, no carry forward of the excess is applicable. As already found by the Court, petitioner was subjected to MCIT in the three (3) years succeeding taxable year 2008. Since MCIT was imposed on those succeeding years, the excess of MCIT over NCIT cannot be carried forward and applied in those years, and no tax benefit was availed of by petitioner. Therefore this item of assessment is cancelled.

It must be noted that on February 20, 2012, petitioner paid ₱25,689.03 representing deficiency income tax as evidenced by Payment Form (BIR Form No. 0605).[102] Said payment would be credited to its remaining basic deficiency income tax for taxable year 2008.

In sum, deficiency basic income tax for taxable year 2008 stands at ₱1,811,815.27, computed as follows:

Taxable income (loss) per ITR				₱(12,265,079.48)
Add:	Unaccounted expenses (Schedule 1)		-	
	Disallowed expenses due to non-withholding (Schedule 2)		₱18,569,190.78	18,569,190.78
Total				₱6,304,111.30
Add:	NOLCO			-
Adjusted Taxable Income				₱6,304,111.30
Income Tax Due				2,206,438.96
Less:	Tax credits/payments	-		
	Prior year's excess credits other than MCIT	-		
	Creditable tax withheld	-		
	Payments made	₱368,934.66	368,934.66	
	Less: Excess MCIT over NCIT	-		
	Excess amount carried forward to the succeeding period	-	-	368,934.66
Basic Deficiency Tax				₱1,837,504.30
Less:	Basic deficiency tax paid - 02/20/12			25,689.03
Basic deficiency tax still due				₱1,811,815.27

[102] Exhibit "P-7-A-ICPA"

II. Deficiency VAT for 1st to 4th Quarters of Taxable Year 2008

Respondent assessed petitioner of deficiency VAT for the full taxable year 2008 in the amount of ₱10,592,168.28, computed as follows:[103]

VATable receipts per return				₱64,470,011.27
Add:	Adjustments			
	Receipts not subjected to VAT (Schedule 3)		₱3,011,834.89	
	Unsupported exempt sales		24,604,871.76	
	Unaccounted expenses (Schedule 1)		1,102,290.16	28,718,996.81
Adjusted VATable sales				₱93,189,008.08
Output Tax (12%)				₱11,182,680.97
Less:	Tax Credits/Payments			
	Prior year's excess tax credits	₱ 75,019.57		
	Deferred input tax carried forward from previous period	568,137.86		
	Input tax claimed per returns	3,636,326.24	₱4,279,483.67	
	Less: Unsupported input tax (Schedule 4)	₱ 790,090.24		
	Input tax carried forward to succeeding period/quarter	191,612.49		
	Deferred input tax carried over to succeeding period	383,200.61	1,364,903.34	2,914,580.33
Tax Due				₱ 8,268,100.64
Less:	Payment per returns			3,970,258.10
Basic deficiency tax due				₱ 4,297,842.54
Less:	Basic deficiency tax paid - 02/20/12			215,327.84
Basic deficiency tax still due				₱ 4,082,514.70
Add:	Interest (01/26/09 to 1/13/17)			6,509,653.58
TOTAL AMOUNT DUE				₱10,592,168.28

1. Receipts not Subjected to VAT—₱3,011,834.89

Verification by respondent found that certain receipts by petitioner were not subjected to VAT, as follows:

Gross Receipts per FS		
Decreases in A/R, net of VAT	₱ 1,702,119.64	
Revenues for the year	88,913,500.22	
Other income	1,471,098.06	₱ 92,086,717.92
Less: Gross Receipts per VAT Returns		₱ 89,074,883.03
Receipts not subjected to VAT		₱ 3,011,834.89

[103] Final Decision on Disputed Assessment, Exhibit "P-10", Docket, pp. 396-400.

Re-computation by the ICPA showed the following:

Gross Receipts per FS			
Decreases in Trade Receivables, net of VAT		₱ 1,702,119.64	
Trade Receivables, end-2008, (₱137,635.00/112%)	₱ 122,888.39		
Trade Receivables, end-2008, (₱14,600.00/112%)	13,035.71	109,852.68	
Revenue for the year 2008		88,913,500.22	
Other income		1,332,930.00	₱ 90,356,282.90
Less: Gross Receipts per VAT Returns			₱ 89,074,883.03
Receipts not subjected to VAT			₱ 1,281,399.87

The ICPA's revalidation is found to be in order. Here, only the change in the balance of the Trade Receivables account was considered, and not the change in the balance of the whole Accounts Receivable account. This is justified since Note 6 of petitioner's FS[104] shows that the total receivables account in petitioner's balance sheet likewise consists of non-VATable accounts such as Non-Trade Receivables and Advances to Officers and Employees.

In its Memorandum,[105] petitioner posits that the Other Income of ₱1,332,930.00 reported in petitioner's FS pertains to the refund of deposits amounting to ₱826,087.85 from the Manila Electric Company, which petitioner contends are not considered sale of goods or services in the ordinary course of trade or business to be considered subject to VAT. Petitioner, however, failed to present any evidence to support such claim, and only alleged it in its pleadings. This was likewise observed by the ICPA in his Report. Hence, the amount of ₱1,281,399.87 is sustained as receipts were not subjected to VAT.

2. Unsupported Exempt Sales—₱24,604,871.76

Respondent's verification showed that the amount of ₱24,604,871.76 were exempt sales which petitioner failed to substantiate with necessary documentary evidence, thus considered taxable sales pursuant to Sections 106 and 108 of the NIRC of 1997.

Petitioner contends the amount of ₱20,283,266.00 represent exempt sales arising from lease of dormitories and rooms with a rate per unit not exceeding ₱10,000.00. Petitioner contends that these

[104] Exhibit "P-4-V-ICPA".
[105] Petitioner's Memorandum, Docket Vol. II, p. 561.

rental receipts are not subject to VAT under Section 109 (1) (Q) of the NIRC of 1997, as amended, as follows:

> "SEC. 109. **Exempt Transactions.** -
>
> (1) Subject to the provisions of Subsection (2) hereof, the following transactions shall be exempt from the value-added tax.
>
> xxx xxx xxx
>
> (Q) Lease of a residential unit with a monthly rental not exceeding Ten thousand pesos (P10, 000): *Provided*, That not later than January 31, 2009 and every three (3) years thereafter, the amount herein stated shall be adjusted to its present value using the Consumer Price Index as published by the National Statistics Office (NSO);
>
> xxx xxx xxx"

To support its claim that the rental income is VAT-exempt, petitioner presented its 2008 Quarterly VAT Returns,[106] 2008 Summary List of Sales (SLS),[107] official receipts,[108] petitioner's Articles of Incorporation,[109] and Lease Terms and Conditions.[110]

It must be noted that Section 113 (B) of the NIRC of 1997, as amended, provides for the requirements relative to the issuance of VAT invoices and VAT official receipts, to wit:

> "SEC. 113. **Invoicing and Accounting Requirements for VAT-Registered Persons.** –
>
> xxx xxx xxx
>
> **(B) Information Contained in the VAT Invoice or VAT Official Receipt**. - The following information shall be indicated in the VAT invoice or VAT official receipt:
>
> xxx xxx xxx
>
> (2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax. *Provided*, That:
>
> xxx xxx xxx

[106] Exhibits "P-18-A-ICPA" to "P-18-R-ICPA".
[107] Exhibits "P-19-A-ICPA" to "P-19-AN-ICPA".
[108] Exhibits "P-21-A-ICPA" to "P-21-CLQ-ICPA".
[109] Exhibits "P-5-A-ICPA" to "P-5-U-ICPA".
[110] Exhibits "P-29-A-ICPA" to "P-29-JD-ICPA".

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(b) If the sale is exempt from value-added tax, **the term "VAT-exempt sale" shall be written or printed prominently on the invoice or receipt**;

xxx xxx xxx"
(*Boldfacing supplied*)

Section 4.113.1 of RR No. 16-2005 dated September 1, 2005 or the Consolidated Value Added Tax Regulations of 2005 reiterates the provisions of Section 113 (B) of the NIRC of 1997, as amended, as follows:

"**SEC. 4.113.1. *Invoicing Requirements*** –

xxx xxx xxx

(B) Information contained in VAT invoice or VAT official receipt. – The following information shall be indicated in VAT invoice or VAT official receipt:

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the VAT; *Provided,* That:

xxx xxx xxx

(b) If the sale is exempt from VAT, **the term "VAT-exempt sale" shall be written or printed prominently on the invoice or receipt**;

xxx xxx xxx"
(Boldfacing supplied)

The ICPA's revalidation showed that of the total amount of ₱24,604,871.76, only the amount of ₱20,283,266.00 were supported by VAT official receipts, and ₱4,321,605.76 remain unsupported. Upon examination, these official receipts did not apparently comply with the invoicing requirements under Section 113 (B) (2) of the NIRC of 1997, as amended, and Section 4.113.1 (B) (2) (b) of RR No. 16-2005, specifically, the term "VAT-exempt sale" was not written or printed prominently on the said VAT official receipts.

The importance of this requirement is stated in the case of *Commissioner of Internal Revenue v. Phil. Gold Processing & Refining Corp.*,[111] where the CTA *En Banc* emphasized that the imprinting of the word "zero-rated", or in this case "VAT-exempt sale", was added to distinguish sales that are subject to zero percent (0%)

[111] CTA EB No. 1460 (CTA Case No. 8652), Dec. 7, 2017.

VAT and those that are VAT exempt. In *Commissioner of Internal Revenue v. Toledo Power, Inc.*,[112] the Supreme Court ruled that:

> "[T]he words 'zero-rated' appeared on the VAT invoices/official receipts presented by the [petitioner] in support of its refund claim. Although the same was merely stamped and not pre-printed, the same is sufficient compliance with the law, since the imprinting of the word 'zero-rated' was required merely to distinguish sales subject to 10% VAT, those that are subject to 0% VAT (zero-rated) and exempt sales, to enable the Bureau of Internal Revenue to properly implement and enforce the other VAT provisions of the Tax Code."

Review of the official receipts shows that no writing, printing or even stamping of the words "VAT-exempt sales" were made prominently on receipts issued during the whole year 2008 to petitioner's residential lessees of ₱10,000.00 and below,[113] except for only 10 receipts[114] in the amount of ₱68,200.00. Even considering that the proper stamping of the words "VAT exempt sale" were made in the said receipts, petitioner still failed to present proof that the amounts represented rental income for the lease of petitioner's dormitory facilities. The copies of the Lease Terms and Conditions[115] which petitioner presented were mere statements detailing the names of the lessees and the stipulations of the lease, and which were only signed by an employee of petitioner without the conformity of the lessees. These are self-serving pieces of evidence uncorroborated by the actual lease agreements showing the consent of the lessees to be bound under a contract of lease for residential purposes with the rate ₱10,000.00 and below per month that would qualify as a tax-exempt transaction.

The legal effect of the failure to prominently write or print the words "VAT-exempt sale" in the VAT official receipts is provided for in Section 113 (D) (2) of the NIRC of 1997, as amended, to wit:

> "SEC. 113. **Invoicing and Accounting Requirements for VAT-Registered Persons**. –
>
> xxx xxx xxx
>
> **(D) Consequence of Issuing Erroneous VAT Invoice or VAT Official Receipt. –**
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> xxx xxx xxx

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[112] G.R. No. 183880, January 20, 2014.
[113] Exhibits "P-21-A-ICPA" to "P-21-CLQ-ICPA" and "P-29-A-ICPA" to "P-29-JD-ICPA".
[114] Exhibits "P-21-A-ICPA" to "P-21-J-ICPA".
[115] Exhibits "P-29-A-ICPA" to "P-29-JD-ICPA".

> (2) If a VAT-registered person issues a VAT invoice or VAT official receipt for a VAT-exempt transaction, but fails to display prominently on the invoice or receipt the term '***VAT exempt sale***', the issuer shall be liable to account for the tax imposed in Section 106 or 108 as if Section 109 did not apply."

For petitioner's failure to issue VAT official receipts which prominently show the written, printed or stamped words "VAT-exempt sale", and to prove that they arose from rentals from residential lessees with monthly rate of ₱10,000.00 and below, the amount of ₱6,969,678.48 representing tax-exempt sales as claimed in the VAT returns of petitioner shall be considered as sales subject to VAT pursuant to Section 113 (D) (2) of the NIRC of 1997.

3. Unaccounted Expenses—₱1,102,290.16

As previously discussed, there are no factual and legal bases to support this item of assessment as it is based merely on respondent's presumption that the difference between petitioner's salaries and rent expenses per FS/ITR and per Alphalist constituted undeclared income. Hence, the item of Unaccounted Expenses in the amount of ₱1,102,290.16 is cancelled.

4. Unsupported Input Tax—₱790,090.24

Respondent's verification disclosed that the amount of ₱790,090.24, which petitioner claimed as input VAT per return, was not supported by receipts and invoices, or were supported by non-VAT receipts and invoices. The Details of Discrepancy shows the following computation:

Particulars	Amount
Input Taxes claimed per VAT Returns	₱ 3,636,326.24
Less: Input Taxes per Schedule of Purchases Submitted	2,846,236.00
Unsupported Input Tax	₱ 790,090.24

In his Report, the ICPA found that the ₱790,090.24 discrepancy arose from the difference of input VAT claimed per VAT returns for 2008 against the Summary List of Purchases for the first, second and fourth quarters of 2008, as follows:

Period	Per VAT Returns	Per SLP	Difference	Reference
1st Quarter	₱1,204,600.04	₱1,290,072.27	₱(85,742.33)	P-18-A-ICPA to P-18-D-ICPA

				P-20-A-ICPA to P-20-I-ICPA
2nd Quarter	1,002,418.89	-	1,002,418.89	P-18-E-ICPA to P-18-H-ICPA
3rd Quarter	592,149.73	653,621.93	(61,472.20)	P-18-I-ICPA to P-18-L-ICPA P-20-R-ICPA to P-20-Z-ICPA
4th Quarter	837,157.58	902,541.80	(65,384.22)	P-18-M-ICPA to P-18-R-ICPA P-20-AA-ICPA to P-20-AG-ICPA
Total	₱3,636,326.24	₱2,846,236.00	₱790,090.24	

The alleged input VAT discrepancy was found to be attributable to the 2nd quarter of 2008. Examination of the Summary List of Purchases for the said period shows claimed total input VAT of ₱1,004,255.10, as follows:

Month	Input Tax per SLP	Exhibit
April	₱ 287,021.40	P-20-J-ICPA to P-20-L-ICPA
May	383,604.99	P-20-M-ICPA to P-20-O-ICPA
June	333,628.71	P-20-P-ICPA to P-20-Q-ICPA
Total	₱ 1,004,255.10	

Revalidation of the ICPA showed that only the amount of ₱914,568.77 is substantiated, while the amount of ₱89,686.33 is unsupported. However, upon further examination by the Court, the amount of ₱251,338.05 shall be further disallowed for invalid substantiation or the presented VAT invoices/official receipts failed to comply with the invoicing requirements under the law, broken down as follows:

Payee	Date	Invoice/ OR No.	Amount (Gross)	Input VAT	Exhibit
Failure to Provide Correct TIN of VAT Payer					
Grocer's Corner	3-May-08	88162	₱ 6,256.25	₱ 750.75	P-22-F-ICPA
Grocer's Corner	3-May-08	88161	3,063.42	367.61	P-22-G-ICPA
Darts Electric Works, Inc.	11-Apr-08	38740	261.17	31.34	P-22-U-ICPA
Home Center Construction Supply Corp.	16-Apr-08	133607	1,339.25	160.71	P-22-U-ICPA
The Bread Market Corp.	12-Apr-08	15811	258.92	31.07	P-22-AI-ICPA
The Bread Market Corp.	3-Jun-08	16148	130.33	15.64	P-22-AJ-ICPA
The Bread Market Corp.	10-Jun-08	16188	157.17	18.86	P-22-AK-ICPA
CNTC Enterprises	9-May-08	1282	2,857.17	342.86	P-22-AL-ICPA
CNTC Enterprises	15-Apr-08	1257	2,142.83	257.14	P-22-AM-ICPA
Grocer's Corner	4-Apr-08	87511	2,188.83	262.66	P-22-AP-ICPA
Grocer's Corner	3-May-08	88163	2,141.50	256.98	P-22-AQ-ICPA
Mansion Electrical Supply	4-Jun-08	32121	2,455.33	294.64	P-22-CU-ICPA
Mansion Electrical Supply	10-Jun-08	32136	3,821.42	458.57	P-22-CV-ICPA

CNTC Enterprises	9-Apr-08	1198	12,857.17	1,542.86	P-22-FR-ICPA
CNTC Enterprises	9-May-08	1281	8,660.75	1,039.29	P-22-FS-ICPA
BJVN Printing Press & Gen. Merch.	2-May-08	1839	2,142.83	257.14	P-22-FV-ICPA
RJC Security and Investigation Agency	18-Apr-08		8,095.00	971.40	P-22-FY-ICPA
RJC Security and Investigation Agency	9-May-08		7,589.00	910.68	P-22-FZ-ICPA
RJC Security and Investigation Agency	23-May-08		7,589.00	910.68	P-22-GA-ICPA
RJC Security and Investigation Agency	6-Jun-08		7,083.08	849.97	P-22-GB-ICPA
RJC Security and Investigation Agency	20-Jun-08		8,050.33	966.04	P-22-GC-ICPA
Grocer's Corner	5-Apr-08	87514	2,548.25	305.79	P-22-GO-ICPA
Grocer's Corner	5-Apr-08	87513	6,268.67	752.36	P-22-GP-ICPA
Grocer's Corner	5-Apr-08	87519	835.75	100.29	P-22-GQ-ICPA
Grocer's Corner	8-Jun-08	88591	1,144.17	137.30	P-22-GR-ICPA
Grocer's Corner	6-May-08	88214	12,560.25	1,507.23	P-22-GS-ICPA
Silver Star Resources Co., Inc.	12-Apr-08	36978	2,455.33	294.64	P-22-HI-ICPA
Silver Star Resources Co., Inc.	8-May-08	37240	2,289.25	274.71	P-22-HJ-ICPA
Supreme Energy Distribution, Inc.	8-Apr-08	7780	4,682.17	561.86	P-22-HK-ICPA
Asia Food Canning Manufacturing	23-Jun-08	9403	1,097.33	131.68	P-22-HL-ICPA
Asia Food Canning Manufacturing	19-Jun-08	9267	1,036.58	124.39	P-22-HM-ICPA
Asia Food Canning Manufacturing	27-Jun-08	9516	1,477.25	177.27	P-22-HN-ICPA
Asia Food Canning Manufacturing	6-Jun-08	8893	1,253.17	150.38	P-22-HO-ICPA
Asia Food Canning Manufacturing	3-Jun-08	8784	1,067.00	128.04	P-22-HP-ICPA
Asia Food Canning Manufacturing	14-Jun-08	9130	926.33	111.16	P-22-HQ-ICPA
Asia Food Canning Manufacturing	27-May-08	8623	1,134.83	136.18	P-22-HR-ICPA
Asia Food Canning Manufacturing	2-May-08	8030	1,551.33	186.16	P-22-HS-ICPA
Asia Food Canning Manufacturing	12-May-08	8269	1,191.08	142.93	P-22-HT-ICPA
Asia Food Canning Manufacturing	16-May-08	8345	1,258.92	151.07	P-22-HU-ICPA

Grocer's Corner	6-May-08	88213	5,034.83	604.18	P-22-IB-ICPA
Philippine Long Distance Telephone Co.	1-Jul-08	PKQOR000102218	1,409.00	169.08	P-22-ID-ICPA
Tamsons Enterprises, Inc.	11-Apr-08	36854	4,780.08	573.61	P-22-IE-ICPA
Care 1st Corp.	5-May-08	23719	3,737.58	448.51	P-22-IF-ICPA
Care 1st Corp.	6-Jun-08	24048	4,152.83	498.34	P-22-IG-ICPA
Care 1st Corp.	10-Mar-08	23081	4,152.83	498.34	P-22-IH-ICPA
San Miguel Corp.	15-Apr-08	510992293	3,593.75	431.25	P-22-II-ICPA
Contract Packaging Corp.	14-May-08	30494	900.00	108.00	P-22-IK-ICPA
Asia Food Canning Manufacturing	10-Apr-08	7558	759.67	91.16	P-22-IL-ICPA
Philippine Long Distance Telephone Co.	21-May-08	PKQOR000092926	2,488.83	298.66	P-22-IN-ICPA
Asia Food Canning Manufacturing	25-Apr-08	7886	674.42	80.93	P-22-IO-ICPA
Asia Food Canning Manufacturing	22-Apr-08	7807	552.33	66.28	P-22-IP-ICPA
Asia Food Canning Manufacturing	2-May-08	8020	694.83	83.38	P-22-IQ-ICPA
Asia Food Canning Manufacturing	29-Apr-08	7972	554.08	66.49	P-22-IR-ICPA
Asia Food Canning Manufacturing	30-Apr-08	8003	348.25	41.79	P-22-IS-ICPA
Asia Food Canning Manufacturing	20-May-08	8431	930.00	111.60	P-22-IT-ICPA
Asia Food Canning Manufacturing	16-May-08	8338	760.25	91.23	P-22-IU-ICPA
Asia Food Canning Manufacturing	13-May-08	8281	1,058.17	126.98	P-22-IV-ICPA
Asia Food Canning Manufacturing	6-May-08	8129	612.00	73.44	P-22-IW-ICPA
Asia Food Canning Manufacturing	26-May-08	8582	485.75	58.29	P-22-IX-ICPA
Asia Food Canning Manufacturing	4-Jun-08	8815	792.83	95.14	P-22-IY-ICPA
Polymer Products (Phil.), Inc.	8-May-08	93002	2,968.75	356.25	P-22-IZ-ICPA
Polymer Products (Phil.), Inc.	30-May-08	93101	1,208.75	145.05	P-22-JA-ICPA
Grovery Corp.	7-May-08	25759	3,270.00	392.40	P-22-JB-ICPA
Grovery Corp.	9-Apr-08	25587	5,682.83	681.94	P-22-JC-ICPA
Silver Star Resources Co., Inc.	10-Apr-08	36957	1,037.92	124.55	P-22-JD-ICPA
Silver Star Resources Co.,	6-May-08	37204	1,464.75	175.77	P-22-JE-ICPA

Inc.					
Silver Star Resources Co., Inc.	5-Jun-08	37533	3,081.25	369.75	P-22-JF-ICPA
San Miguel Corp.	9-Apr-08	510986097	23,616.08	2,833.93	P-22-JG-ICPA
San Miguel Corp.	1-May-08	511008896	16,377.67	1,965.32	P-22-JH-ICPA
San Miguel Corp.	2-Jun-08	511040427	30,496.42	3,659.57	P-22-JI-ICPA
Asia Food Canning Manufacturing	31-May-08	8698	1,137.50	136.50	P-22-JJ-ICPA
Asia Food Canning Manufacturing	13-Jun-08	9079	1,025.00	123.00	P-22-JK-ICPA
Asia Food Canning Manufacturing	6-Jun-08	8896	805.33	96.64	P-22-JL-ICPA
Asia Food Canning Manufacturing	6-May-08	8115	822.33	98.68	P-22-JM-ICPA
Asia Food Canning Manufacturing	17-May-08	8373	1,006.25	120.75	P-22-JN-ICPA
Asia Food Canning Manufacturing	12-May-08	8270	1,241.08	148.93	P-22-JO-ICPA
Asia Food Canning Manufacturing	29-Apr-08	7957	1,556.25	186.75	P-22-JP-ICPA
Asia Food Canning Manufacturing	22-Apr-08	7808	788.83	94.66	P-22-JQ-ICPA
Asia Food Canning Manufacturing	1-Apr-08	7350	1,371.00	164.52	P-22-JR-ICPA
Asia Food Canning Manufacturing	12-Apr-08	7601	1,101.33	132.16	P-22-JS-ICPA
Asia Food Canning Manufacturing	20-Jun-08	9288	1,593.33	191.20	P-22-JT-ICPA
St. Paulina's Marketing	4-Jun-08	54490	1,290.17	154.82	P-22-JU-ICPA
St. Paulina's Marketing	3-May-08	53458	2,567.83	308.14	P-22-JV-ICPA
St. Paulina's Marketing	8-Apr-08	52783	540.17	64.82	P-22-JW-ICPA
Philippine Long Distance Telephone Co.	1-Jul-08	PKQOR000102213	1,306.50	156.78	P-22-JX-ICPA
Philippine Long Distance Telephone Co.	29-May-08	PKQOR000094901	1,309.25	157.11	P-22-JY-ICPA
Philippine Long Distance Telephone Co.	1-Jul-08	PKQOR000102214	1,409.00	169.08	P-22-KA-ICPA
Philippine Long Distance Telephone Co.	1-Jul-08	PKQOR000102217	1,409.00	169.08	P-22-KB-ICPA
Philippine Long Distance Telephone Co.	29-May-08	PKQOR000094902	1,409.00	169.08	P-22-KC-ICPA
Philippine Long Distance Telephone Co.	29-May-08	PKQOR000094903	1,409.00	169.08	P-22-KD-ICPA
Fairdeal Chemical Industries, Inc.	4-Apr-08	3225	1,432.17	171.86	P-22-KE-ICPA

Fairdeal Chemical Industries, Inc.	8-Apr-08	3282	716.08	85.93	P-22-KF-ICPA
Fairdeal Chemical Industries, Inc.	2-May-08	3648	1,432.17	171.86	P-22-KG-ICPA
Fairdeal Chemical Industries, Inc.	6-May-08	3719	716.08	85.93	P-22-KH-ICPA
Fairdeal Chemical Industries, Inc.	2-Jun-08	4190	1,074.08	128.89	P-22-KI-ICPA
Fairdeal Chemical Industries, Inc.	7-Jun-08	4340	716.08	85.93	P-22-KJ-ICPA
Philippine Long Distance Telephone Co.	21-Apr-08	PKQOR000086681	1,399.75	167.97	P-22-KK-ICPA
Philippine Long Distance Telephone Co.	17-Jun-08	PKQOR000098707	1,269.00	151.08	P-22-KL-ICPA
Philippine Long Distance Telephone Co.	17-Jun-08	PKQOR000098705	2,644.25	317.31	P-22-KM-ICPA
Philippine Long Distance Telephone Co.	17-Jun-08	PKQOR000098708	2,607.00	312.84	P-22-KN-ICPA
Philippine Long Distance Telephone Co.	14-Jul-08	PKQOR000105373	1,287.00	154.44	P-22-KO-ICPA
Philippine Long Distance Telephone Co.	14-Jul-08	PKQOR000105374	2,574.00	308.88	P-22-KP-ICPA
Philippine Long Distance Telephone Co.	14-Jul-08	PKQOR000105375	2,811.50	337.38	P-22-KQ-ICPA
Silver Star Resources Co., Inc.	18-Jun-08	37667	1,540.17	184.82	P-22-KR-ICPA
Silver Star Resources Co., Inc.	22-Feb-08	36496	1,600.92	192.11	P-22-KS-ICPA
Silver Star Resources Co., Inc.	5-Jun-08	37528	1,540.17	184.82	P-22-KT-ICPA
Pacific Glass Corp.	31-Mar-08	199120	7,735.75	928.29	P-22-KU-ICPA
Fairdeal Chemical Industries, Inc.	10-Jun-08	4364	716.08	85.93	P-22-KV-ICPA
Fairdeal Chemical Industries, Inc.	4-Apr-08	3233	1,074.08	128.29	P-22-KW-ICPA
Fairdeal Chemical Industries, Inc.	5-Apr-08	3245	1,074.08	129.89	P-22-KX-ICPA
Fairdeal Chemical Industries, Inc.	7-May-08	3739	716.08	85.93	P-22-KY-ICPA
Fairdeal Chemical Industries, Inc.	9-May-08	3775	1,074.08	128.89	P-22-KZ-ICPA
San Miguel Corp.	2-May-08	511010514	3,919.67	470.36	P-22-LA-ICPA
San Miguel Corp.	10-Jun-08	511048499	3,919.67	470.36	P-22-LB-ICPA
San Miguel Corp.	13-May-08	511019730	4,861.58	583.39	P-22-LC-ICPA
San Miguel Corp.	27-May-08	511033926	3,919.67	470.36	P-22-LD-ICPA
San Miguel Corp.	1-Apr-08	510979445	4,803.58	576.43	P-22-LE-

					ICPA
San Miguel Corp.	10-Apr-08	510987663	4,927.67	591.32	P-22-LF-ICPA
San Miguel Corp.	15-Apr-08	510992271	3,919.67	470.36	P-22-LG-ICPA
Polymer Products (Phil.), Inc.	16-Jun-08	93182A	3,817.00	458.04	P-22-LH-ICPA
Polymer Products (Phil.), Inc.	16-Apr-08	92096A	3,562.50	427.50	P-22-LI-ICPA
HRI Marketing	8-May-08	4220	1,141.08	136.93	P-22-LJ-ICPA
Care 1st Corp.	4-Apr-08	23353	5,191.08	622.93	P-22-LK-ICPA
Care 1st Corp.	7-May-08	23726	4,152.83	498.34	P-22-LL-ICPA
Care 1st Corp.	13-Jun-08	24105	3,114.67	373.76	P-22-LM-ICPA
Ohana Trading Corp.	29-Apr-08	89642	2,488.42	298.61	P-22-LN-ICPA
Ohana Trading Corp.	5-Mar-08	87566	135.67	16.28	P-22-LO-ICPA
Zest-O Corp.	14-Apr-08	796778	1,908.50	229.02	P-22-LP-ICPA
Zest-O Corp.	10-Jun-08	820394	4,971.75	596.61	P-22-LQ-ICPA
St. Paulina's Marketing	16-Jun-08	54505	1,950.92	234.11	P-22-LR-ICPA
St. Paulina's Marketing	13-May-08	53724	714.25	85.71	P-22-LS-ICPA
St. Paulina's Marketing	30-Apr-08	53329	1,674.08	200.89	P-22-LT-ICPA
St. Paulina's Marketing	8-Apr-07	52801	825.92	99.11	P-22-LU-ICPA
Philippine Long Distance Telephone Co.	5-Jun-08	PKQOR000096396	2,294.50	275.34	P-22-LV-ICPA
Philippine Long Distance Telephone Co.	14-Jul-08	PKQOR000105381	1,812.00	217.44	P-22-LW-ICPA
Philippine Long Distance Telephone Co.	14-Jul-08	PKQOR000105380	2,171.08	260.53	P-22-LX-ICPA
Philippine Long Distance Telephone Co.	22-May-08	PKQOR000093382	2,171.08	260.53	P-22-LY-ICPA
Philippine Long Distance Telephone Co.	22-May-08	PKQOR000093380	2,171.08	260.53	P-22-LZ-ICPA
Philippine Long Distance Telephone Co.	22-May-08	PKQOR000093385	1,812.00	217.44	P-22-MA-ICPA
Philippine Long Distance Telephone Co.	22-May-08	PKQOR000093383	1,737.00	208.44	P-22-MB-ICPA
Philippine Long Distance Telephone Co.	14-Jul-08	PKQOR000105379	2,246.08	269.53	P-22-MC-ICPA
Philippine Long Distance Telephone Co.	14-Jul-08	PKQOR000105378	1,737.00	208.44	P-22-MD-ICPA
Philippine Long Distance Telephone Co.	14-Jul-08	PKQOR000105376	2,294.50	275.34	P-22-ME-ICPA
Philippine Long Distance Telephone Co.	5-Jun-08	PKQOR000096401	2,171.08	260.53	P-22-MF-ICPA
Philippine Long Distance Telephone Co.	5-Jun-08	PKQOR000096399	1,737.00	208.44	P-22-MG-ICPA

Philippine Long Distance Telephone Co.	5-Jun-08	PKQOR000096402	1,812.00	217.44	P-22-MH-ICPA
Philippine Long Distance Telephone Co.	5-Jun-08	PKQOR000096397	2,171.08	260.53	P-22-MI-ICPA
Philippine Long Distance Telephone Co.	22-May-08	PKQOR000093389	2,246.08	269.53	P-22-MJ-ICPA
Philippine Long Distance Telephone Co.	22-May-08	PKQOR000093387	2,294.50	275.34	P-22-MK-ICPA
Philippine Long Distance Telephone Co.	29-May-08	PKQOR000094905	1,409.00	169.08	P-22-ML-ICPA
Philippine Long Distance Telephone Co.	29-May-08	PKQOR000094907	1,409.00	169.08	P-22-MM-ICPA
Philippine Long Distance Telephone Co.	14-Jul-08	PKQOR000105370	1,409.00	169.08	P-22-MN-ICPA
Philippine Long Distance Telephone Co.	14-Jul-08	PKQOR000105371	1,409.00	169.08	P-22-MO-ICPA
Philippine Long Distance Telephone Co.	14-Jul-08	PKQOR000105372	1,409.00	169.08	P-22-MP-ICPA
Philippine Long Distance Telephone Co.	29-May-08	PKQOR000094906	1,409.00	169.08	P-22-MQ-ICPA
HRI Marketing	15-Apr-08	4072	503.58	60.43	P-22-MR-ICPA
St. Paulina's Marketing	5-Apr-08	52772	1,045.50	125.46	P-22-MS-ICPA
Fairdeal Chemical Industries, Inc.	11-Apr-08	3360	760.00	91.20	P-22-MT-ICPA
Fairdeal Chemical Industries, Inc.	15-Apr-08	3398	1,161.58	139.39	P-22-MU-ICPA
Fairdeal Chemical Industries, Inc.	5-Jun-08	4304	401.75	48.21	P-22-MV-ICPA
Fairdeal Chemical Industries, Inc.	5-Jun-08	4303	716.08	85.93	P-22-MW-ICPA
Agua Vida Systems, Inc.	2-May-08	61598	2,630.08	315.61	P-22-MX-ICPA
Polymer Products (Phil.), Inc.	21-Apr-08	92119	1,187.50	142.50	P-22-MY-ICPA
Zest-O Corp.	16-May-08	797398	1,145.08	137.41	P-22-MZ-ICPA
Zest-O Corp.	5-Jun-08	820316	1,145.08	137.41	P-22-NA-ICPA
Coca-Cola Bottlers Philippines, Inc.	11-Apr-08	BBI0092426-1	8,092.83	971.14	P-22-NB-ICPA
Coca-Cola Bottlers Philippines, Inc.	5-Jun-08	BBI0100801-5	6,703.58	804.43	P-22-NC-ICPA
Coca-Cola Bottlers Philippines, Inc.	2-Jun-08	BBI0108256-4	11,381.25	1,365.75	P-22-ND-ICPA
Ohana Trading Corp.	3-Apr-08	88306	5,967.83	716.14	P-22-NE-ICPA
Anson Emporium Corp.	3-Jun-08	0436879M	19,776.75	2,373.21	P-22-NF-ICPA
Philippine Long Distance Telephone Co.	29-May-08	PKQOR000094904	1,409.00	169.08	P-22-NG-ICPA

Grocer's Corner	3-May-08	88156	4,720.50	566.46	P-22-NH-ICPA
HRI Marketing	8-Apr-08	4025	1,007.17	120.86	P-22-NM-ICPA
HRI Marketing	6-May-08	4213	975.00	117.00	P-22-NN-ICPA
HRI Marketing	7-Jun-08	4403	1,628.58	195.43	P-22-NO-ICPA
Asia Food Canning Manufacturing	2-Apr-08	7376	389.08	46.69	P-22-NP-ICPA
Supreme Energy Distribution, Inc.	3-Jun-08	8258	5,852.67	702.32	P-22-NQ-ICPA
Coca-Cola Bottlers Philippines, Inc.	17-Apr-08	AAI0180390-5	3,803.57	456.43	P-22-NR-ICPA
Coca-Cola Bottlers Philippines, Inc.	13-Jun-08	AAI0227823-0	2,625.00	315.00	P-22-NS-ICPA
Coca-Cola Bottlers Philippines, Inc.	27-May-08	AAI0218374-5	750.00	90.00	P-22-NT-ICPA
Coca-Cola Bottlers Philippines, Inc.	10-May-08	AAI0209905-7	669.67	80.36	P-22-NU-ICPA
Coca-Cola Bottlers Philippines, Inc.	28-May-08	AAI0218889-2	111.58	133.39	P-22-NV-ICPA
Coca-Cola Bottlers Philippines, Inc.	3-May-08	AAI0205962-2	7,125.00	855.00	P-22-NW-ICPA
Coca-Cola Bottlers Philippines, Inc.	23-Apr-08	AAI0200811-6	3,787.50	454.50	P-22-NX-ICPA
Coca-Cola Bottlers Philippines, Inc.	18-Apr-08	AAI0198022-4	535.75	64.29	P-22-NY-ICPA
Coca-Cola Bottlers Philippines, Inc.	11-Apr-08	AAI0193407-2	1,852.67	222.32	P-22-NZ-ICPA
Coca-Cola Bottlers Philippines, Inc.	10-Apr-08	AAI0192662-3	4,794.67	575.36	P-22-OA-ICPA
Coca-Cola Bottlers Philippines, Inc.	5-Jun-08	AAI0223236-9	741.09	88.93	P-22-OB-ICPA
Coca-Cola Bottlers Philippines, Inc.	1-Apr-08	AAI0187461-7	2,964.25	355.71	P-22-OC-ICPA
Zest-O Corp.	11-Apr-08	796694	6,498.50	779.82	P-22-OM-ICPA
Zest-O Corp.	2-May-08	797098	4,203.50	504.42	P-22-ON-ICPA
Zest-O Corp.	2-Jun-08	820249	3,817.00	458.04	P-22-OO-ICPA
Philippine Long Distance Telephone Co.	5-Jun-08	PKQOR000096400	2,246.08	269.53	P-22-OQ-ICPA
Care 1st Corp.	14-May-08	23773	2,699.33	323.92	P-22-OT-ICPA
San Miguel Corp.	24-May-08	511032128	3,463.42	415.61	P-22-OV-ICPA
Anson Emporium Corp.	5-Jun-08	0436882M	35,491.08	4,258.93	P-22-OW-ICPA
Grovery Corp.	16-Apr-08	25631	1,285.75	154.29	P-22-OY-ICPA
Zest-O Corp.	6-Jun-08	820342	3,817.00	458.04	P-22-PD-ICPA
Maynilad Water Services, Inc.	31-Mar-08	266484187	13,003.17	1,560.38	P-22-PE-ICPA

Maynilad Water Services, Inc.	24-Apr-08	288945070	21,435.50	2,572.26	P-22-PF.1-ICPA to P-22-PF.2-ICPA
Maynilad Water Services, Inc.	30-May-08	289584680	11,470.08	1,376.41	P-22-PG.1-ICPA to P-22-PG.2-ICPA
International Elevator & Equipment, Inc.	2-May-08	17210	7,640.67	880.88	P-22-PH-ICPA
Polyfoam-RGC International Corp.	2-Apr-08	200660	127,575.00	15,309.00	P-22-PK-ICPA
Philippine Long Distance Telephone Co.	21-Apr-08	PKQOR000086680	2,691.50	322.98	P-22-PP-ICPA
Supreme Energy Distribution, Inc.	12-May-08	8096	5,852.67	702.32	P-22-PU.1-ICPA to P-22-PU.2-ICPA
Grocer's Corner	6-Mar-08	87008	4,137.08	496.45	P-22-PX-ICPA
Grocer's Corner	7-Mar-08	87009	8,330.33	999.64	P-22-PY-ICPA
Grocer's Corner	6-Mar-08	87010	10,438.83	1,252.66	P-22-PZ-ICPA
Grocer's Corner	7-Mar-08	87011	1,100.92	132.11	P-22-QA-ICPA
Grocer's Corner	8-Jun-08	88590	5,937.08	712.45	P-22-QB-ICPA
Grocer's Corner	6-May-08	88212	4,411.58	529.39	P-22-QC-ICPA
Grocer's Corner	3-Jun-08	88761	4,787.50	574.50	P-22-QD-ICPA
Grocer's Corner	3-Jun-08	88762	2,210.75	265.29	P-22-QE-ICPA
Mansion Electrical Supply	15-Mar-08	31782	6,674.08	800.89	P-22-QF.1-ICPA to P-22-QF.2-ICPA
RJC Security and Investigation Agency	11-Jul-08	14574	7,589.00	910.68	P-22-QG-ICPA
Darts Electric Works, Inc.	28-May-08	38829	1,950.17	234.02	P-22-QH-ICPA
Advance Computer Forms, Inc.	30-Apr-08	44926	1,053.58	126.43	P-22-QP.1-ICPA to P-22-QP.2-ICPA
Mansion Electrical Supply	29-May-08	32105	7,075.92	849.11	P-22-QT-ICPA
Supreme Energy Distribution, Inc.	2-May-08	7856	8,193.75	983.25	P-22-SG-ICPA
CNTC Enterprises	9-Apr-08	1251	15,089.25	1,810.71	P-22-SH-ICPA
CNTC Enterprises	6-May-08	1274	12,589.25	1,510.71	P-22-SI-ICPA
CNTC Enterprises	6-Jun-08	1309	16,383.92	1,966.07	P-22-SJ-ICPA
Grocer's Corner	6-Apr-08	87521	4,843.33	581.20	P-22-SK-ICPA
Grocer's Corner	6-Apr-08	87522	6,817.83	818.14	P-22-SL-ICPA
Grocer's Corner	6-Apr-08	87523	8,000.42	960.05	P-22-SM-ICPA
Grocer's Corner	3-May-08	88160	8,928.58	1,071.43	P-22-SN-ICPA
Grocer's Corner	3-Jun-08	88754	5,179.50	621.54	P-22-SO-ICPA
Grocer's Corner	3-Jun-08	88755	13,358.92	1,603.07	P-22-SP-

					ICPA
Grocer's Corner	3-Jun-08	88756	3,798.25	455.79	P-22-SQ-ICPA
Grocer's Corner	3-May-08	88157	5,999.08	719.89	P-22-SR-ICPA
Grocer's Corner	3-May-08	88158	4,214.75	505.77	P-22-SS-ICPA
Grocer's Corner	3-May-08	88159	1,989.25	238.71	P-22-ST-ICPA
Grocer's Corner	4-Apr-08	87510	2,717.83	326.14	P-22-SU-ICPA
Subtotal			₱977,048.30	₱117,329.13	

Failure to Provide the Correct Name of the VAT Payer					
Coca-Cola Bottlers Philippines, Inc.	8-May-08	BBI0101404-7	₱ 2,264.25	₱ 271.71	P-22-OG-ICPA
Coca-Cola Bottlers Philippines, Inc.	11-Jun-08	BBI0111025-8	5,433.92	652.07	P-22-OP-ICPA
Subtotal			₱ 7,698.17	₱ 923.78	

Evidence Presented is Not a VAT Invoice/Official Receipt					
Philippine Long Distance Telephone Co.	17-Apr-08	18270829	₱4,250.00	₱510.00	P-22-HV-ICPA
Philippine Long Distance Telephone Co.	17-May-08	18532523	4,250.00	510.00	P-22-HW-ICPA
Philippine Long Distance Telephone Co.	17-May-08	18532508	4,250.00	510.00	P-22-HX-ICPA
Philippine Long Distance Telephone Co.	17-May-08	18615571	1,484.08	178.09	P-22-HY-ICPA
Philippine Long Distance Telephone Co.	17-Apr-08	18365135	1,484.08	178.09	P-22-HZ-ICPA
Philippine Long Distance Telephone Co.	17-Jun-08	18941081	1,484.08	178.09	P-22-IA-ICPA
Philippine Long Distance Telephone Co.	17-Jun-08	19002828	4,250.00	510.00	P-22-IC-ICPA
Philippine Long Distance Telephone Co.	17-Apr-08	18270809	4,250.00	510.00	P-22-IJ-ICPA
Philippine Long Distance Telephone Co.	17-May-08	18532516	4,250.00	510.00	P-22-IM-ICPA
Philippine Long Distance Telephone Co.	17-Jun-08	19002835	4,250.00	510.00	P-22-JZ-ICPA
Bayan Telecommunications	8-Jul-08	84199012	668.75	80.25	P-22-OD.1-ICPA to P-22-OD.2-ICPA
Bayan Telecommunications	10-Jun-08	83081540	668.75	80.25	P-22-OE.1-ICPA to P-22-OE.2-ICPA
Bayan Telecommunications	13-May-08	982938	668.75	80.25	P-22-OF.1-ICPA to P-22-OF.2-ICPA
Philippine Long Distance Telephone Co.	17-Jun-08	19002838	4,250.00	510.00	P-22-OH-ICPA
Philippine Long	17-Mar-08	18059363	4,250.00	510.00	P-22-OI-

Distance Telephone Co.					ICPA
Manila Water Co., Inc.	14-May-08	RSBWS03010018	27,538.58	3,304.63	P-22-OJ-ICPA
Manila Water Co., Inc.	28-Apr-08	BAC0201112366570	25,986.00	3,118.32	P-22-OK-ICPA
Manila Water Co., Inc.	13-Aug-08	KNP040167012978	29,751.58	3,570.19	P-22-OL-ICPA
Philippine Long Distance Telephone Co.	14-May-08	2004368193	1,259.00	151.08	P-22-PQ.1-ICPA to P-22-PQ.2-ICPA
Philippine Long Distance Telephone Co.	14-May-08	2004402056	2,727.25	327.27	P-22-PR.1-ICPA to P-22-PR.2-ICPA
Subtotal			₱131,970.90	₱15,836.51	

Evidence is Out of Covered Period (2nd Quarter, 2008)					
Kalinisan Steam Laundry, Inc.	8-Aug-08	31832	₱14,139.50	₱ 1,696.75	P-22-NI.1-ICPA to P-22-NI.2-ICPA
Kalinisan Steam Laundry, Inc.	14-Jul-08	31817	10,500.86	1,260.10	P-22-NJ.1-ICPA to P-22-NJ.2-ICPA
Kalinisan Steam Laundry, Inc.	3-Jul-08	31809	20,854.67	2,502.56	P-22-NK.1-ICPA to P-22-NK.2-ICPA
Kalinisan Steam Laundry, Inc.	14-Jul-08	31816	6,587.42	790.49	P-22-NL.1-ICPA to P.22-NL.2-ICPA
Emco Printing Center	18-Jul-08	489	4,589.25	550.71	P-22-OR-ICPA
Emco Printing Center	18-Jul-08	492	9,642.83	1,157.14	P-22-OS-ICPA
Digi-ads, Inc.	18-Jul-08	7182	1,229.50	147.54	P-22-OX-ICPA
Kalinisan Steam Laundry, Inc.	14-Jul-08	31818	10,132.25	1,215.87	P-22-OZ-ICPA
Kalinisan Steam Laundry, Inc.	1-Aug-08	31828	9,278.17	1,113.38	P-22-PA-ICPA
Maynilad Water Services, Inc.	24-Jul-08	07-00010988	74,656.92	8,958.83	P-22-PI.1-ICPA to P-22-PI-.3-ICPA
Maynilad Water Services, Inc.	24-Jul-08	07-00010987	74,656.92	8,958.83	P-22-PJ.1-ICPA to P-22-PJ.3-ICPA
Kaizen Works & Innovations, Inc.	4-Jul-08	2993	714.25	85.71	P-22-PL-ICPA
Kaizen Works & Innovations, Inc.	4-Jul-08	2992	41,804.25	5,016.51	P-22-PM-ICPA
Kaizen Works & Innovations, Inc.	11-Jul-08	3000	1,242.42	149.09	P-22-PN-ICPA
Varken Printing Press	4-Jul-08	304	2,053.58	246.46	P-22-PO-ICPA
Kalinisan Steam Laundry, Inc.	15-Jul-08	31826	28,845.00	3,461.40	P-22-PS-ICPA
BPR Enterprise	22-Feb-08	1476	3,169.67	380.36	P-22-PV.1-ICPA to P-22-PV.2-ICPA
BPR Enterprise	No date	1515	3,169.67	380.36	P-22-PW.1-

					ICPA to P-22-PW.2-ICPA
Kalinisan Steam Laundry, Inc.	1-Jul-08	31806	118,416.08	14,209.93	P-22-QI-ICPA
Kalinisan Steam Laundry, Inc.	8-Jul-08	31815	118,703.75	14,244.45	P-22-QL-ICPA
Manila Electric Co.	10-Jul-08	57027	314,380.08	37,725.61	P-22-QS-ICPA
Kalinisan Steam Laundry, Inc.	11-Jul-08	31814	95,268.83	11,432.26	P-22-SZ-ICPA
Destiny Cable, Inc.	1-Aug-08	462842	13,035.75	1,564.29	P-22-TA.1-ICPA to P-22-TA.2-ICPA
Subtotal			₱977,071.62	₱117,248.63	
Total Disallowance				₱251,338.05	

Based on the foregoing, petitioner may be assessed for VAT deficiency on unsupported and disallowed input VAT in the amount of ₱339,024.38, as follows:

Particular	Amount	
Input VAT per Return		₱ 1,002,255.10
Less: Supported Input VAT per ICPA	₱ 914,568.77	
Less: Disallowed Input VAT per examination	(251,338.05)	663,230.72
Input VAT Deficiency		₱ 339,024.38

5. Excess Input Tax Carried Over to the Next Period—₱191,612.49
6. Deferred Input Tax Carried Over to the Next Period—₱383,547.29

Respondent deducted from allowable input tax the amount of ₱191,612.49 representing excess input tax carried over to the next period, and the amount of ₱383,547.29 representing deferred input tax carried over to the next period. Respondent failed to present any legal or factual bases in the Details of Discrepancy[116] attached to the FDDA to justify the disallowance of the said amounts.

The Court holds that it was improper for respondent to disallow the said excess input tax and deferred input tax because any tax benefit derived by petitioner from the carry-over of the said amounts redounds to the succeeding quarters of 2009. Since the tax benefit will be in the succeeding year, at most, petitioner may only be assessed in the said succeeding year.

[116] Exhibit "P-10", Docket, pp. 398-399.

Therefore, the disallowance of the excess input tax carried over to the next period in the amount of ₱191,612.49 and the deferred input tax carried over to the next period in the amount of ₱383,547.29 is cancelled.

It must be noted that on February 20, 2012, petitioner paid ₱215,327.84 representing deficiency VAT as evidenced by Payment Form (BIR Form No. 0605).[117] The aforesaid payment shall be considered in computing petitioner's basic deficiency VAT liability.

In fine, the basic deficiency VAT of petitioner for the first to fourth quarters of taxable year 2008 amounts to ₱2,716,708.72, computed as follows:

VATable receipts per return				₱64,470,011.27
Add:	Adjustments			
	Receipts not subjected to VAT (Schedule 3)		₱ 1,281,399.87	
	Unsupported exempt sales		24,604,871.76	
	Unaccounted expenses (Schedule 1)		-	25,886,271.63
Adjusted VATable sales				₱90,356,282.90
Output Tax (12%)				₱10,842,753.95
Less:	Tax Credits/Payments			
	Prior year's excess tax credits	75,019.57		
	Deferred input tax carried forward from previous period	568,137.86		
	Input tax claimed per returns	₱3,636,326.24	4,279,483.67	
	Less: Unsupported input tax (Schedule 4)	339,024.38		
	Input tax carried forward to succeeding period/quarter	-		
	Deferred input tax carried over to succeeding period	-	339,024.38	₱ 3,940,459.29
Tax Due				₱ 6,902,294.66
Less:	Payment per returns			3,970,258.10
Basic deficiency tax due				₱ 2,932,036.56
Less:	Basic deficiency tax paid - 02/20/12			₱ 215,327.84
Basic deficiency tax still due				₱ 2,716,708.72

III. Deficiency EWT for November and December 2008

As shown above, only income payments representing Purchase of Goods and Professional Fees have discrepancies between those reflected in petitioner's FS/ITR and in its Alphalist.

[117] Exhibit "P-7-B-ICPA"

The assessments for deficiency EWT for the months of January to October of taxable year 2008, however, have already prescribed. Thus, the Court shall determine petitioner's deficiency EWT liability for the months of November and December of taxable year 2008.

Audit of petitioner's FS/ITR, together with its Trial Balances,[118] and its Alphalist shows deficiency EWT in the amount of ₱53,896.18 for the months of November and December of taxable year 2008, computed as follows:

Account	Per T/B	Per Alphalist	Variance	Tax Rate	Tax Due
Direct Materials					
Direct Charges-Others	₱11,902,632.00				
Repairs and Maintenance	14,909.00				
Office Supplies	40,097.00				
Subtotal	₱11,957,638.00	₱291,942.00	₱11,665,696.00	0.01	₱116,656.96
Professional Fees	₱ 163,166.00	₱ 36,666.00	₱ 126,500.00	0.15	₱ 1,216.65
Total EWT					₱135,631.96
Payment of EWT - 02/20/12					81,735.78
Total EWT Due					₱ 53,896.18

It must be noted that on February 20, 2012, petitioner paid ₱81,735.78 representing deficiency EWT as evidenced by Payment Form (BIR Form No. 0605).[119] The aforestated payment was taken into consideration in determining petitioner's basic deficiency EWT liability.

In sum, the assessment for deficiency EWT is sustained but in the modified amount of ₱53,896.18.

IV. Compromise Penalty

Respondent assessed petitioner with compromise penalty in the amount of ₱13,000.00 for failure to submit monthly Alphalist of Payees for the year 2008 in violation of Section 2 or RR No. 2-2006, and for failure to submit quarterly Schedule of Purchases for the second quarter of 2008 in violation of Section 4.114-3(2) of RR No. 16-2005, in relation to Section 255 of the NIRC of 1997.

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[118] BIR Records, pp. 367-379.
[119] Exhibit "P-7-C-ICPA"

It must be stressed that a compromise penalty is imposed to avoid prosecution for violation of the provisions of the NIRC of 1997, as amended. It is well-settled that the Court has no jurisdiction to compel a taxpayer to pay the compromise penalty because it is a mutual agreement between the parties in respect to the thing or subject matter that is so compromised, and the choice of paying or not paying it distinctly belongs to the taxpayer. Absent a showing that petitioner consented to the compromise penalty, the imposition of compromise penalty contained in the assessment is deleted.

WHEREFORE, in light of the foregoing, Titanium Corporation's Petition for Review filed on January 11, 2017 is **PARTIALLY GRANTED**. The assessments for basic deficiency income tax, value-added tax and expanded withholding tax are **AFFIRMED WITH MODIFICATIONS.** Accordingly, petitioner is **ORDERED TO PAY** the Bureau of Internal Revenue the amount of ₱6,420,538.60, ₱9,822,473.37 and ₱218,573.77 representing deficiency income tax, value-added tax and expanded withholding tax, respectively, inclusive of the 25% surcharge, 20% deficiency interest, and 20% delinquency interest imposed thereon under Sections 248(A)(3), and 294(B) and (C) of the NIRC of 1997, as amended, respectively, computed until December 31, 2017, detailed below:

		Income Tax	**Less: Payment on Feb. 20, 2012**	**Balance**
Basic Deficiency Tax	₱	1,837,504.30	25,689.03	1,811,815.27
Add: 25% Surcharge		459,376.08		459,376.08
Deficiency Interest from 04/16/09 to 02/20/12 (₱1,837,504.30 x 20% x 1041/365 days)		1,048,132.59	14,639.23	1,033,493.36
Total Amount Due, February 20, 2012		3,345,012.96		
Deficiency Interest from 02/21/12 to 01/09/17 (₱1,811,815.27 x 20% x 1,785/365 days)		1,772,104.25		1,772,104.25
Total Amount Due, January 9, 2017	₱	5,117,117.22	40,328.26	5,076,788.96
Deficiency Interest				
From 01/10/17 to 12/31/17 (₱1,811,815.27 x 20% for 356/365 days)	₱	353,428.07		353,428.07
Delinquency Interest				
From 01/10/17 to 12/31/17 (₱5,076,788.96 x 20% x 356/365 days)				990,321.57
Total Amount Due, December 31, 2017	₱			6,420,538.60

		Value-Added Tax	Less: Payment on Feb. 20, 2012	Balance
Basic Deficiency Tax	₱	2,932,036.56	215,327.84	2,716,708.72
Add: 25% Surcharge		733,009.14		733,009.14
Deficiency Interest from 01/26/09 to 02/20/12* (₱2,932,036.56 x 20% x 1,121/365 days)		1,800,993.42	132,146.40	1,668,847.02
Total Amount Due, February 20, 2012		5,466,039.12		
Deficiency Interest from 02/21/12 to 01/09/17* (₱2,716,708.72 x 20% x 1,785/365 days)		2,657,164.42		2,657,164.42
*Total Amount Due, January 9, 2017**	₱	8,123,203.54	347,474.24	7,775,729.30
Deficiency Interest From 01/10/17 to 12/31/17				
(₱2,716,708.72 x 20% for 356/365 days)	₱	529,944.28		529,944.28
Delinquency Interest				
From 01/09/17 to 12/31/17 (₱7,775,729.30 x 20% x 356/365 days)				1,516,799.80
Total Amount Due, December 31, 2017	₱			9,822,473.37

		Expanded Withholding Tax	Less: Payment on Feb. 20, 2012	Balance
Basic Deficiency Tax	₱	135,631.96	81,735.78	53,896.18
Add: 25% Surcharge		33,907.99		33,907.99
Deficiency Interest from 01/16/09 to 02/20/12 (₱135,631.96 x 20% x 1,131/365 days)		84,054.66	50,474.64	33,580.02
Total Amount Due, February 20, 2012		253,594.61		
Deficiency Interest from 02/21/12 to 01/09/17* (₱53,896.18 x 20% x 1,785/365 days)		52,714.89		52,714.89
Total Amount Due, January 9, 2017	₱	306,309.50	132,210.42	174,099.08
Deficiency Interest From 01/10/17 to 12/31/17				
(₱53,896.18 x 20% for 356/365 days)	₱	10,513.45		10,513.45
Delinquency Interest				
From 01/10/17 to 12/31/17 (₱174,099.08 x 20% x 356/365 days)				33,961.25
Total Amount Due, December 31, 2017	₱			218,573.77

In addition, petitioner is **ORDERED TO PAY** the Bureau of Internal Revenue the delinquency interest at the rate of twelve percent (12%) computed from January 1, 2018 until full payment thereof, pursuant to Section 249(C) of the 1997 NIRC, as amended by Republic Act No. 10963, also known as the Tax Reform for Acceleration and Inclusion (TRAIN) and as implemented by RR No. 21-2018, on the following amounts:

Tax	Amount
Income Tax	₱ 5,076,788.96
VAT	₱ 7,775,729.30
EWT	₱ 174,099.08

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

CATHERINE T. MANAHAN
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.

ROMAN G. DEL ROSARIO
Presiding Justice