REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

AVON PRODUCTS MANUFACTURING, INC., *Petitioner,*	**C.T.A. CASE No. 7038**
-versus-	Members: **Acosta,** *Chairperson.* **Bautista,** *and* **Casanova,** *JJ.*
THE COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**Promulgated:** MAY 13 2010 ; 11:16 am

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DECISION

ACOSTA, *PJ:*

This Petition for Review seeks the cancellation of respondent's Formal Letter of Demand and Final Assessment Notices Nos. LTAID-II-IT-99-00018, LTAID-ET-99-00011, LTAID-II-VAT-99-00017, LTAID-II-WTC-99-00002 and LTAID-II-EWT-99-00010, all dated February 28, 2003, assessing petitioner for deficiency income tax, excise tax, value-added tax, withholding tax on compensation, and expanded withholding tax for taxable year 1999 in the aggregate amount of P80,246,459.15, inclusive of interest and compromise penalties.

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THE FACTS

As stipulated by the parties in the Joint Stipulation of Facts and Issues[1] and as borne by the records of this case, the following are the undisputed facts:

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines with principal office address at the Calamba Premiere Industrial Park, Barangay Batino, Calamba Laguna.[2]

Respondent is the duly appointed Commissioner of Internal Revenue who holds office at the Bureau of Internal Revenue, National Office, Diliman, Quezon City, where he may be served with summons.[3]

Petitioner filed its VAT Returns and the Monthly Remittance Returns of Income Tax Withheld for the taxable year 1999 on the following dates: [4]

Return	**Date Filed**
3rd Quarter VAT Return	October 25, 1999
4th Quarter VAT Return	January 25, 2000

Monthly Remittance Return of Income Taxes Withheld	**Expanded**	**Compensation**
January	February 25, 1999	February 25, 1999
February	March 25, 1999	March 25, 1999
March	April 26, 1999	April 26, 1999
April	May 25, 1999	May 25, 1999
May	June 25, 1999	June 25, 1999
June	July 26, 1999	July 26, 1999
July	August 25, 1999	August 25, 1999
August	September 27, 1999	September 27, 1999
September	October 25, 1999	October 25, 1999
October	November 25, 1999	November 25, 1999
November	December 27, 1999	December 27, 1999
December	January 25, 2000	January 25, 2000

[1] *Rollo*, pp. 128-139.
[2] Joint Stipulation of Facts and Issues (JSFI), Par. 1, *Rollo*, p. 128.
[3] *Ibid.* Par. 2, p. 128.
[4] *Id.* Par. 17, p. 133.

Petitioner signed two Waivers of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code.[5]

On July 14, 2004, revenue agents from respondent's Large Taxpayers Collection & Enforcement Division served on petitioner a Collection Letter dated July 9, 2004. The Collection Letter required petitioner to pay an aggregate amount of Eighty Million Two Hundred Forty Six Thousand Four Hundred Fifty Nine Pesos and Fifteen Centavos (P80,246,459.15) representing deficiency income tax, excise tax, value added tax, withholding tax on compensation and expanded withholding tax, inclusive of interest and compromise penalties for the taxable year 1999. The amount of P80,246,459.15 demanded in the Collection Letter is broken down as follows:[6]

KIND OF TAX	YEAR	BASIC TAX	INTEREST	COMPROMISE	TOTAL AMOUNT
IT	1999	P22,012,984.19	P13,207,790.51	P 25,000.00	P35,245,774.70
ET	1999	913,514.87	658,675.57	73,200.00	1,645,390.44
VAT	1999	20,286,033.82	13,254,677.47	50,000.00	33,590,711.29
WC	1999	4,702,116.38	3,040,229.28	45,000.00	7,787,345.66
WE	1999	1,187,610.88	764,626.18	25,000.00	1,977,237.06
TOTAL		**P49,102,260.14**	**P30,925,999.01**	**P218,200.00**	**P80,246,459.15**

The deficiency tax assessments covered by the Collection letter are the very same deficiency taxes covered by the Preliminary Assessment Notice dated November 29, 2002, which was received by petitioner on December 23, 2002.[7]

In replying to the Preliminary Assessment Notice, petitioner requested for an extension of time which was granted by respondent. Petitioner was prompted to request for extension of time to reply to the Preliminary Assessment Notice because of the Christmas holidays and the volume of work required to prepare the reply.[8]

On February 14, 2003, petitioner filed a letter dated February 13, 2003 protesting against the Preliminary Assessment Notice.[9]

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[5] *Id.* Par. 16, p. 132.
[6] *Id.* Par. 3, p. 128.
[7] *Id.* Par. 4, p. 129.
[8] *Id.* Par. 5, p. 129.
[9] *Id.* Par. 6, p. 129.

Without ruling on the protest of petitioner to the Preliminary Assessment, respondent prepared the Final Assessment Notices and Formal Letter of Demand, all dated February 28, 2003, copy of which were received by petitioner on April 11, 2003. Except for the amount of interest, the Formal letter of Demand is the same as the Preliminary Assessment Notice. [10]

The Formal Letter of Demand breaks down the alleged deficiency taxes as follows:[11]

Assessment No. LTAID-II-IT99-00018

Income Tax

TAXABLE INCOME (LOSS) PER INCOME TAX RETURN		P 208,181,930.00
ADD: ADJUSTMENTS		
1. DISCREPANCY ITR & VAT RETURN SALES FIGURES	P 62,911,619.58	
2. TAXES & LICENSES (FRINGE BENEFIT TAX)		
34% TAX OF MR. KEN GIBSON	152,632.10	
DECEMBER 1998 FBT PAYMENT ADJUSTMENT	927.27	
3. DISCREPANCY ON ENDING INVENTORIES REFLECTED IN		
BALANCE SHEET VS. COST OF SALES	2,597,951.72	65,663,130.67
TAXABLE INCOME PER INVESTIGATION		273,845,060.67
INCOME TAX RATE		33%
INCOME TAX DUE PER INVESTIGATION		90,368,870.02
LESS INCOME TAX PAID PER RETURN	68,700,037.00	
UNSUPPORTED CREDITABLE TAX WITHHELD	344,151.17	68,355,885.83
BASIC DEFICIENCY INCOME TAX DUE		P 22,012,984.19
ADD PENALTIES		
20% INTEREST FROM DUE DATE TO APRIL 15, 2003		13,207,790.51
COMPROMISE		25,000.00
TOTAL DEFICIENCY INCOME TAX DUE		P 35,245,774.70

[10] *Id.* Par. 7, p. 129.
[11] *Id.* Par. 8, p. 129-131.

Assessment No. LTAID-ET-99-00011

Excise Tax

SALES SUBJECTED TO EXCISE TAX PER BOOK		P	388,450,462.43
ADD: SALES RETURN			4,536,996.85
SALES SUBJECT TO EXCISE TAX PER INVESTIGATION			392,987,459.28
EXCISE TAX RATE			20%
EXCISE TAX DUE PER INVESTIGATION			78,597,491.86
BEG. BALANCE			1,627,792.86
DEPOSITS			77,300,000.00
AVAILABLE			78,927,792.89
LESS ENDING BALANCE			1,243,815.90
APPLIED EXCISE TAX			77,683,976.99
BASIC DEFICIENCY EXCISE TAX DUE			913,514.87
ADD: PENALTIES			
20% INTEREST FROM DUE DATE TO APRIL 15, 2003	658,675.57		
COMPROMISE	73,200.00		731,875.57
TOTAL DEFICIENCY INCOME TAX DUE		P	1,645,390.44

Assessment No. LTAID-II-VAT-99-00017

Value Added Tax

	3RD QUARTER	4TH QUARTER	TOTAL
TAXABLE SALES PER RETURN	496,799,677.80	183,051,559.00	679,851,236.80
ADD: UNSUPPORTED EXPORT SALES		57,614,117.83	57,614,117.83
TOTAL TAXABLE SALES	496,799,677.80	240,665,676.83	737,465,354.63
OUTPUT TAX	49,679,967.78	24,066,567.68	73,746,535.46
LESS ALLOWABLE INPUT TAX:			
INPUT TAX PER RETURN	34,586,639.09	28,983,826.88	63,570,465.97
INPUT TAX CARRIED OVER		(10,678,670.98)	(10,678,670.98)
CREDITABLE INPUT TAX PER VAT RETURN	34,586,639.09	18,305,155.90	52,891,794.99
FROM NON-VAT SUPPLIER	(104,428.96)	(999,892.80)	(1,104,321.76)
INPUT TAX ON LOCAL PURCHASES			

ALLOCABLE TO OTHER QUARTER	(3,582,693.75)	(4,768,311.71)	(8,351,005.46)
INPUT TAX ON IMPORTATION ALLOCABLE TO OTHER QUARTER	(224,684.00)	(570,642.00)	(795,326.00)
OVER CLAIMED INPUT TAX PER VAT SCHEDULE	(18,156.00)	(12,578.39)	(30,734.39)
OVER CLAIMED INPUT FROM LKS		(4,056,052.62)	(4,056,052.62)
DISALLOWED INPUT TAX ON PURCHASES OF AUTOMOBILES		(187,181.81)	(187,181.81)
	(3,929,962.71)	(10,594,659.33)	(14,524,622.04)
ALLOWABLE INPUT TAX PER INVESTIGATION	30,656,676.38	7,710,496.57	38,367,172.95
VAT PAYABLE	19,023,291.40	16,356,071.11	35,379,362.51
LESS VAT PAYMENT PER RETURN	15,093,328.69	-	15,093,328.69
BASIC DEFICIENCY VAT DUE	3,929,962.71	16,356,071.11	20,286,033.82
ADD PENALTIES			
20% INTEREST FROM DUE DATE TO APRIL 15, 2003	2,724,056.34	10,530,621.13	13,254,677.47
COMPROMISE	25,000.00	25,000.00	50,000.00
TOTAL DEFICIENCY VAT TAX DUE	6,679,019.05	26,911,692.24	33,590,711.29

Assessment No. LTAID-II-WTC-99-00002

Withholding Tax on Compensation - Under withholding

TAXABLE BASIS PER RETURN/ALPHA LIST			158,894,693.86
ADD ADJUSTMENTS			
COMPENSATION NOT SUBJECT TO WITHHOLDING TAX			14,248,837.51
TAXABLE BASIS PER AUDIT			173,143,531.37
TAX DUE			33,628,347.24
LESS: PAYMENT PER RETURN			28,926,230.86
BASIC DEFICIENCY W/HOLDING TAX ON COMPENSATION			
ADD PENALTIES			4,702,116.38
25% SURCHARGED			
20% INTEREST FROM DUE DATE TO ARPIL 15, 2003	P 3,027,390.00		
COMPROMISE	25,000.00		3,052,390.00
TOTAL DEFICIENCY WITHHOLDING TAX ON COMPENSATION		P	7,754,506.38

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Assessment No. LTAID-II-WTC-99-00002

Withholding Tax on Compensation - Late Remittance

TAX WITHHELD PER BOOK FOR THE MONTH OF DECEMBER 1999		P 3,542,158.51
LESS REMITTANCE ON JANUARY 25, 2000		2,960,860.27
AMOUNT OF LATE REMITTANCE		581,298.24
REMITTED ON FEBRUARY 28, 2000	506,757.15	
REMITTED ON APRIL 25, 2000	74,541.09	581,298.24
PENALTIES ON LATE REMITTANCE		
20% INTEREST FROM DUE DATE TO DATE OF REMITTANCE		12,839.28
COMPROMISE		20,000.00
TOTAL DEFICIENCY WITHHOLDING TAX ON COMPENSATION		P 32,839.28

Assessment No. LTAID-II-EWT-99-00010

Withholding Tax - Expanded

TAXABLE BASIS PER RETURN	P	1,008,066,201.30
ADD: ADJUSTMENTS		
INCOME PAYMENTS/EXPENSES NOT SUBJECT TO EWT		113,877,579.13
TAXABLE BASIS PER INVESTIGATION		1,121,943,780.43
EXPANDED WITHHOLDING TAX DUE		13,718,505.15
LESS: PAYMENTS PER RETURN		12,530,894.27
BASIC DEFICIENCY EXPANDED W/HOLDING TAX		1,187,610.88
ADD PENALTIES		
20% INTEREST FROM DUE DATE TO APRIL 15, 2003		764,626.18
COMPROMISE		25,000.00
TOTAL DEFICIENCY EXPANDED WITHHOLDING TAX	P	1,977,237.06

The alleged undeclared income of P62,911,619.58 arose from the discrepancy between the sales per Monthly and Quarterly VAT Returns and the reported sales per Financial Statement and Income Tax Return.[12]

Petitioner paid the amount of disallowed *taxes and licenses* of P152,632.10 and *December 1998 FBT payment adjustment* of P927.27 or a total of P153,559.37.[13]

In the adjustment to income captioned *"Discrepancy on ending inventories reflected in balance sheet vs. cost of sales – P2,597,951.72"*, respondent is imputing additional income on the alleged difference in the amount of ending inventories per balance sheet of P215,793,000 which is higher than the amount of ending inventories per Schedule of Cost of Goods Manufactured and Sold of P213,195,572.28.[14]

With regard to the *"Unsupported Creditable Tax Withheld – P344,151.17"*, respondent alleges that: (a) petitioner over-claimed withholding tax credits by P203,645.89 because the total amount indicated in the certificate of creditable tax is P12,705,654.11 while the amount claimed in the Income Tax Return is P12,909,300.00 and (b) petitioner's customer over-issued the certificate of creditable withholding tax by P140,505.28 representing the withholding tax on the sales made in 1998 but paid in 1999.[15]

With regard to the assessment for deficiency VAT captioned *"Unsupported export sales – P57,614,119.83"*, respondent alleges that exempt and zero-rated sales reported in the VAT returns and export sales book amounted to P57,614,119.83, however, documents/papers needed to substantiate the export sales were not provided or furnished to the Revenue Officers.[16]

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[12] *Id.* Par. 18, p. 133.
[13] *Id.* Par. 19, p. 133.
[14] *Id.* Par. 20, p. 133.
[15] *Id.* Par. 21, p. 133.
[16] *Id.* Par. 22, p. 134.

The input VAT in the amount of P1,104,321.76 was disallowed because it allegedly came from non-VAT taxpayers.[17]

With regard to the input VAT disallowance captioned *"Input tax on local purchases from other quarters – P8,351,005.46"*, respondent disallowed the input tax credits claimed by petitioner for the 3rd and 4th quarters of 1999 for the sole reason that the supporting supplier's VAT invoice are dated prior to the particular quarter (Schedule 6 of Details of Discrepancy).[18]

Respondent argues that under Section 110(A)(2)(a) of the Tax Code, input tax on domestic purchase is creditable to the purchaser upon consummation of the sale of goods or purchase. Hence, input taxes with supporting invoices bearing dates of the prior quarters should be disallowed.[19]

With regard to the input VAT disallowance captioned *"Input tax on importation from other quarters – P795,326.00"*, respondent maintained that the input tax on importation is creditable to the importer upon payment of the VAT prior to the release of the goods from Customs and disallowed the input taxes paid by petitioner in previous quarters.[20]

With regard to the input VAT disallowance captioned *"Overclaimed input tax – P30,734.39"*, respondent compared the input taxes on importation of goods reflected in the VAT return for the 4th quarter of 1999 and the input tax per Schedule attached to the Quarterly VAT Return and noted that the amount per Schedule is more than the amount per VAT Return.[21]

The alleged over-claimed input tax from LKS of P4,056,052.62 represents the difference between the input tax claimed by petitioner based on the invoices issued by LKS Construction and Development Corp. in December 1999 of P5,853,011.07 and the input tax of P1,796,958.45

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[17] *Id.* Par. 23, p. 134.
[18] *Id.* Par. 24, p. 134.
[19] *Id.* Par. 25, p. 134.
[20] *Id.* Par. 26, p. 134.
[21] *Id.* Par. 27, p. 134.

determined by respondent from the payments made by the supplier in 1999 of P19,586,847.15 (net of 1% withholding tax).[22]

Respondent disallowed the excess input tax of P10,678,670.98 in the Quarterly VAT Return for the 4th Quarter of 1999 which was carried over by petitioner to the first quarter of 2000.[23]

As detailed in Schedule "F" of the Details of Discrepancy, the assessment for deficiency expanded withholding tax arose from the difference between the balances of the following general ledger accounts and certain income payments per Alphalist:[24]

Raw Material Purchases		
	Ingredients	P283,684,015.00
	Container	478,848,271.00
	Packers	9,257,633.00
	Plates & Moulds	5,187,722.00
Supplies and Facilities		
	Uniform – Mgt.	727,147.39
	Uniform – R and F	184,771.71
	Technical Supplies	2,740,316.55
	Production Supplies	4,408,447.71
	Non-Cap Equipment	903,316.39
	Office Supplies	984,576.80
	Books and Subscription	19,468.84
Outside Services		
	Security	3,645,821 47
	Facility Expense-Cleaning	814,357.09
	Outside Agency Labor	2,910,776.00
Repairs and Maintenance		
	Repairs and maintenance – Materials	5,662,562.72
	Repairs and maintenance - Gasoline	169,100.20
	Repairs and maintenance – Contract	303,504.82
	Non-cap Software Purchase	51,256.34
	Other transpo- Miscellaneous	2,127,198.76

[22] *Id.* Par. 28. p. 134.
[23] *Id.* Par. 29. p. 135.
[24] *Id.* Par. 31. p. 135.

Operating Expenses		
	Uniform – Mgt.	556,651.91
	Uniform – R and F	467,186.55
	Production Supplies	30,760.75
	Non-Cap Equipment	584,395.84
	Office Supplies	1,321,429.12
	Books and Subscription	240,821.97
	Repairs and maintenance – Gasoline	43,037.32
	Repairs and maintenance – Contract	10,555.03
	Repairs and maintenance – Materials	92,736.90
	Repairs and maintenance – Vehicles	12,827.06
	Data Proc Maint	1,258,755.82
	Data Proc Supplies	800,258.74
	Non-Cap Sware	894,938.86
	Comp Sware Maint	377,922.56
Acquisition of Property, Plant and Equipment		485,397,352.00
Acquisition of Computer Software		750,190.00

In a letter dated May 9, 2003 which petitioner filed with respondent on the same day, petitioner protested the Final Assessments. In as much as the Preliminary Assessment was the same as the Final Assessment, petitioner re-submitted its protest to the Preliminary Assessment and adopted the same as its protest to the Final Assessment.[25]

Petitioner paid the following portions of the Final Assessment on January 30, 2004:

a. Disallowed taxes & licenses/Fringe Benefit Tax adjustment – P153,559.37; and
b. Withholding Tax on Compensation – Late Remittance P32,829.28.[26]

Respondent's Revenue Officers prepared a Memorandum dated May 27, 2004 recommending the enforcement and collection of the deficiency tax assessments on the sole justification that petitioner failed to submit supporting

[25] *Id.* Par. 9. p. 131-132.
[26] *Id.* Par. 10. p. 132.

documents within the 60-day period to submit all relevant supporting documents from the filing of the protest as required under Section 228 of the Tax Code.[27]

Based on the Memorandum dated May 27, 2004, the docket of the assessment was forwarded by the LT Audit & Investigation Division II to the LT – Collection & Enforcement Division, under a 1st Indorsement dated May 27, 2004.[28]

The LT Collection & Enforcement Division served the Collection Letter dated July 9, 2004 on petitioner on July 14, 2004.[29]

In a letter to the Deputy Commissioner for Large Taxpayers Service dated July 27, 2004 which was filed with respondent on the same date, petitioner requested for reconsideration and withdrawal of the Collection Letter on the ground that it is devoid of any legal an/or factual basis and is premature since the respondent has not issued a decision on petitioner's protest letter to the Final Assessment.[30]

Respondent did not act on petitioner's request for reconsideration and withdrawal of the Collection Letter. Thus, petitioner was constrained to treat the Collection Letter as the respondent's denial of the protest, hence, the Petition for Review to protect the interest of petitioner.[31]

Petitioner filed the Petition for Review[32] on August 13, 2004. Thereafter, on August 24, 2004, it filed an Urgent Motion for the Suspension of Collection of Tax.[33]

On October 15, 2004, respondent filed his Answer[34], after submission of two extensions of time to submit Answer which were all granted by the Court in the Orders dated September 16, 2004[35] and October 4, 2009[36]. The BIR Records were also forwarded on October 26, 2004.[37]

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[27] *Id.* Par. 11, p. 132.
[28] *Id.* Par. 12, p. 132.
[29] *Id.* Par. 13, p. 132.
[30] *Id.* Par. 14, p. 132.
[31] *Id.* Par. 15, p. 132.
[32] *Rollo*, pp. 1-52.
[33] *Rollo*, pp. 54-62.
[34] *Rollo*, pp. 79-88.
[35] *Rollo*, p. 69.
[36] *Rollo*, p. 74
[37] *Rollo*, p. 90.

In his Answer, respondent raised the following special and affirmative defenses:[38]

8. Section 222 of the Tax Code authorizes the taxpayer and the government to extend by mutual agreement the prescriptive periods for the assessment and collection of taxes. The assessments, all dated February 28, 2003 and received by Petitioner on April 11, 2003, are not barred by prescription as Petitioner's executed valid waivers of the defense of prescription dated October 14, 2002 and December 27, 2002 waiving the defense of prescription until January 14, 2003 and April 14, 2003, respectively;

9. The mere fact that petitioner was not allegedly furnished with copies of the accepted waivers did not invalidated the same, because such requirement in Revenue Memorandum Order No. 20-90 is merely formal in nature (Philippine Journalists, Inc. vs Commissioner of Internal Revenue, CA-GR Sp. No. 72128, August 5, 2003);

10. The assessments had already become final, executory and unappealable in view of the failure of the Petitioner to submit the pertinent documents in support of its protest within sixty (60) days from filing thereof as provided in Section 228 of the Tax Code;

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16. The assessment for deficiency excise tax in the amount of P1,534,821.84 arose from the fact that Petitioner failed to pay excise tax on its sales returns which it admits to be subject to excise tax (Paragraph 49, Petitioner);

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23. The input tax in the amount of P187,181.18 was disallowed, as input tax on purchases of automobiles is not allowed as creditable input tax under Section 110(A)(1)(a)(v) of the NIRC of 1997;

24. The assessment for deficiency withholding tax in the amount of P7,548,386.21 is the difference between the withholding tax per audit against the amount of such tax withheld and remitted by the taxpayer;

XXX XXX XXX

26. The assessment for deficiency expanded withholding tax in the amount of P1,925,177.41 arose from income payments/expenses not subjected to withholding taxes as detailed in Schedule F attached to the Final Assessment Notices, in violation of Section 2.57.2 of Revenue Regulation No. 2-98;

27. All presumptions are in favor of the correctness of tax assessments. The good faith of tax assessors and the validity of their actions are presumed. They will be presumed to have taken into consideration all the facts to which their attention was called (*CIR vs. Construction Resources of Asia, Inc., 145 SCRA 671*). It is incumbent upon the taxpayer to prove the contrary (*Mindanao Bus Company vs. CIR, 1 SCRA 538; CIR vs. Tuazon, Inc., 173 SCRA 397*) and failure to do so shall vest legality to respondent's actions and assessments.

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[38] *supra.*

Petitioner and respondent filed their Pre-trial Briefs on November 26, 2009[39] and December 1, 2004[40], respectively.

On February 28, 2005, the Joint Stipulation of Facts and Issues (JSFI)[41] was filed by the parties. A corresponding Resolution[42] dated March 3, 2005 approved said JSFI and thereafter terminated the pre-trial.

On July 19, 2005, the parties submitted an Amendment to Joint Stipulation of Facts[43] which was granted by the Court in a Resolution[44] promulgated on July 27, 2005.

During trial, the petitioner and respondent both presented their respective testimonial and documentary evidence in support of their positions.

On February 21, 2007, both petitioner and respondent filed a Joint Manifestation[45] manifesting that petitioner has filed an application for abatement over its deficiency excise tax assessment for the year 1999 pursuant to Revenue Regulations No. 15-2006, which the Court noted in the hearing of February 23, 2007.[46]

On March 7, 2009, the Court promulgated a resolution[47] ordering both parties to submit their respective memoranda within thirty (30) days from receipt of the resolution.

Both petitioner and respondent filed for an extension of time to file their respective memoranda.

Respondent and petitioner submitted their Memoranda[48] on July 13, 2009 and July 20, 2009, respectively.

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[39] *Rollo*, p. 92-113.
[40] *Rollo*, p. 114-122
[41] *supra*.
[42] *Rollo*, p. 140.
[43] *Rollo*, p. 158-160.
[44] *Rollo*, p. 161.
[45] *Rollo*, p. 284-289.
[46] Minutes of the Hearing, dated February 23, 2007, p.290.
[47] *Rollo*, p. 566.
[48] *Rollo*, p. 576-651.

On July 23, 2009, the Court issued a Resolution[49] submitting the case for decision.

THE ISSUES

By agreement of the parties, the issues to be tried and resolved in this case as enumerated in their Joint Stipulation of Facts and Issues are the following:

1. Whether or not respondent denied petitioner due process in the issuance of the assessments for deficiency income tax, deficiency excise tax, deficiency value-added tax ("VAT"), deficiency final withholding tax on compensation and deficiency expanded withholding tax and the Collection Letter in contravention of Section 228 of the National Internal Revenue Code of 1997 ("Tax Code") thus rendering the deficiency tax assessments and/or the Collection Letter null and void and of no force and effect.

2. Whether or not the assessments for deficiency VAT, deficiency expanded withholding tax and deficiency withholding tax on compensation had prescribed.

3. Whether or not petitioner failed to submit all the relevant documents in support of its protest thus rendering the assessments final and executory.

4. Assuming that the **deficiency income tax assessment** is valid, whether or not petitioner is liable to the deficiency income tax assessment. This issue is broken down as follows:

    a. Whether or not the discrepancy between the sales in the Income Tax Return and the VAT Returns of P62,911,619.58 represents undeclared sales subject to deficiency income tax;

    b. Whether or not there is a discrepancy between the ending inventories reflected in the balance sheet and the Schedule of Cost of Goods Manufactured and Sold;

    c. Assuming that the ending inventories per balance sheet is overstated, whether or not such overstatement would result in underpayment of income tax;

[49] *Rollo*, p. 652.

d. Whether or not petitioner over-claimed creditable tax withheld in the amount of P344,151.77.

5. Assuming that the **deficiency excise tax** is valid, whether or not the deficiency excise tax can be deducted from petitioner's excise tax deposit with respondent.

6. Assuming that the **deficiency VAT assessment** is valid, whether or not petitioner is liable to the deficiency VAT assessment . This issue is broken down as follows:

   a. Whether or not petitioner had unsupported export sales of P57,614,117.83;

   b. Whether or not the disallowed input VAT of P1,140,161.24 arose from purchases from non-VAT suppliers;

   c. Whether or not petitioner can claim input tax on purchases made in previous months during the period when the complete documents are submitted to its Finance Department.

   d. Whether or not petitioner can claim input taxes on importation during the period when it received from its brokers the importation documents.

   e. Whether or not a deficiency VAT can result from the finding that the input tax reflected in the Schedule of Importation attached to the VAT Return is more than the amount of input tax claimed in the VAT return;

   f. Whether or not the claim of input tax credit based on the VAT invoice, rather than the official receipts, issued by LKS Construction and Development Corp. is proper.

   g. Whether or not petitioner should be liable for interest on the disallowed input tax on the purchase of automobile only from the time the excess input tax credits were actually applied against output tax.

   h. Whether or not the disallowance of the entire amount of excess input tax credits as of the 4th quarter of 1999 is proper.

7. Whether or not the assessment for **deficiency withholding tax on compensation**, which was computed by comparing certain employee-related accounts in the general ledger with the gross compensation income per Alpha-list, is valid.

8. Assuming that the assessment for deficiency withholding tax on compensation is valid, whether or not petitioner is liable to the assessment for deficiency withholding tax on compensation.

9. Whether or not the **deficiency expanded withholding tax assessment**, which imposes the duty on petitioner to prove that not all of the income payments lodged in various asset or expense accounts are subject to withholding tax, is valid.

10. Assuming that the deficiency expanded withholding tax is valid, whether or not petitioner is liable to the assessment for deficiency expanded withholding tax.

THE DECISION OF THE COURT

The Court shall resolve the first, second and third issues *in seriatim*. As to the remaining issues, considering that they pertain to the tax assessments *per se*, they shall be discussed and resolved according to tax type.

There was no deprivation of due process in the issuance by respondent of the assessment for deficiency income tax, deficiency excise tax, deficiency VAT, deficiency final withholding tax on compensation and deficiency expanded withholding tax against petitioner.

Petitioner alleges that it was deprived of due process in the issuance of the assessment for deficiency income, excise, VAT, final withholding on compensation and deficiency expanded withholding taxes when respondent issued the Preliminary Assessment Notice (PAN) reiterating his audit finding and imputing more than 300% increase in the discrepancy, without justifiable reason and despite petitioner's explanation and submission of its financial records, including a clean opinion of petitioner's external auditors explaining its financial statements. Moreover, it avers that it was considered in default by the BIR despite its submission of a reply to the PAN and voluminous documents

explaining its position. It believes that the reiteration of the PAN in the Final Assessment Notice (FAN) is a clear violation of due process.

Respondent, on the other hand, stresses the presumption of the correctness of the tax assessment.

Indeed, the Court agrees with respondent that all presumptions are in favor of the correctness of tax assessments. The good faith of tax assessors and the validity of their actions are presumed. They will be presumed to have taken into consideration all the facts to which their attention was called. No presumption can be indulged that all of the public officials of the state in the various counties who have to do with the assessment of property for taxation will knowingly violate the duties imposed upon them by law.[50] It is the burden of the taxpayer to prove otherwise. [51]

To bolster its allegation of deprivation of due process, petitioner cites respondent's total disregard of the explanations and documents presented by petitioner in order to dispute the PAN, which eventually led to the latter's issuance of the FAN. Whether the petitioner's allegations over the action/inaction by the BIR can overturn the presumption of good faith on the part of the BIR in making the assessment, this Court is of the opinion that they cannot.

Petitioner's allegation that the BIR disregarded the submission of all the supporting documents submitted by the petitioner cannot be considered deprivation of due process.

It is basic that as long as a party is given the opportunity to defend his interests in due course, he would have no reason to complain, for it is this opportunity to be heard that makes up the essence of due process.[52]

In this case, petitioner, admittedly, was afforded by respondent not only an opportunity to present its side by receiving as evidence the former's Reply,

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[50] *Collector of Internal Revenue vs. Bohol Land Transportation Co., Bohol Land Transportation Co. vs. Collector of Internal Revenue*, GR Nos. L-13099 and L-13462, April 29, 1960.
[51] *Mindanao Bus Company vs. CIR*, 1 SCRA 538; CIR vs. Tuazon, Inc., 173 SCRA 397.
[52] *Estares v. Court of Appeals*, G.R. No. 144755, June 8, 2005, 459 SCRA 604, 623.

financial statements and documents; but, was even given several chances to explain and present its evidence. [53]

It is not the lack of opportunity to present its side, but the respondent's failure to appreciate the documents submitted by petitioner that beset the latter. The difference in the appreciation by the respondent of petitioner's supporting documents which led to respondent's assessment of petitioner's deficiency taxes is not violative of due process.

The respondent has the duty to receive the clarifications, explanations and conjectures forwarded to him by the taxpayer, however, he does not have the duty to accept them on face value. The determination of the actual liability of a taxpayer in an assessment relies on respondent's appreciation of the evidence presented before him. And absent any arbitrariness, the presumption is that respondent has made the assessment based on his findings and in good faith.

As a logical outgrowth of the presumption in favor of the validity of assessments, when such assessments are assailed, the burden of proof is upon the complaining party. It is incumbent upon the property owner clearly to show that the assessment was erroneous, in order to relieve himself from it.[54]

The Waivers are defective, thus, the assessment on petitioner's deficiency VAT, deficiency expanded withholding tax and deficiency withholding tax on compensation is considered to have been prescribed.

Petitioner alleges that the Waivers it executed on October 14, 2002 and December 27, 2002 which expired on January 14, 2003 and April 14, 2003, respectively, are invalid and ineffective since respondent did not provide petitioner a copy of the accepted Waivers, as required in Revenue Memorandum Order No. 20-90. Petitioner, thus, believes that since the waivers are ineffective and considering its submission of the VAT Returns and the Monthly Remittance

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[53] Par. 37.1. Par 37.4 quoting TSN hearing of April 7, 2005, p.19, 37.6, 37.11, 37.12 quoting TSN pp. 26-31, December 6, 2005, 37.13 quoting TSN pp.9-14, February 23, 2006, Petitioner's Memorandum dated July 17, 2009.

[54] 51 Am Jur, pages 620-621, *Interprovincial Autobus Co., Inc. vs. Collector of Internal Revenue*, 98 Phil 290.

Returns of Income Tax Withheld for taxable year 1999, was on the earliest on February 25, 1999 and the latest on January 25, 2000, the service of the FAN on April 11, 2003 is already barred by prescription.

On the other hand, respondent alleges that the assessment is valid given that respondent's failure to furnish copies of the waivers to petitioner did not invalidate the same since such requirement in RMO No. 20-90 is merely formal in nature.

The Court finds petitioner's argument meritorious.

On the outset, in order to protect the taxpayer from unreasonable investigation and from indefinite issuances of assessment, the law, specifically, Section 203 of the 1997 National Internal Revenue Code (NIRC), provides a period of three (3) years from the last day prescribed by law for the filing of a return or from the day when the return was filed, whichever is later, within which the BIR may issue an assessment for internal revenue taxes, to wit:

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

The parties may, however, stipulate in writing for the extension of said period of assessment by a written agreement executed prior to the lapse of the period prescribed by law, and by subsequent written agreements before the expiration of the period previously agreed upon, in conformity with Section 222 (b) of the 1997 NIRC and in conjunction with RMO No. 20-90 which provides, for its validity the following requisites, to wit:

> **Proper Execution of the Waiver of the Statute of Limitations under the National Internal Revenue Code**
>
> xxx xxx xxx

In the execution of said waiver, the following procedures should be followed:

1. The waiver must be in the form identified as Annex "A" hereof. . . .

2. The waiver shall be signed by the taxpayer himself or his duly authorized representative. In the case of a corporation, the waiver must be signed by any of its responsible officials.
Soon after the waiver is signed by the taxpayer, the Commissioner of Internal Revenue or the revenue official authorized by him, as hereinafter provided, shall sign the waiver indicating that the Bureau has accepted and agreed to the waiver. The date of such acceptance by the Bureau should be indicated. Both the date of execution by the taxpayer and date of acceptance by the Bureau should be before the expiration of the period of prescription or before the lapse of the period agreed upon in case a subsequent agreement is executed.

3. The following revenue officials are authorized to sign the waiver.

A. In the National Office

1. ACIRs for Collection, Special Operations, National Assessment, Excise and Legal on tax cases pending before their respective offices. In the absence of the ACIR, the Head Executive Assistant may sign the waiver.	For tax cases involving not more than P500,000.00
2. Deputy Commissioner	For tax cases involving more than P500,000.00 but not more than P1M
3. Commissioner	For tax cases involving more than P1M

B. In the Regional Offices

1. The Revenue District Officer with respect to tax cases still pending investigation and the period to assess is about to prescribe regardless of amount.

2. The Regional Director, the Assistant Regional Director, the Chief, Assessment Branch or the Chief, Legal Branch with respect to cases still pending review and the period to assess/collect is about to prescribe, regardless of amount.

3. The Regional Director, the Assistant Regional Director, the Chief, Collection Branch or the Chief, Legal Branch with respect to cases still pending collection and the

> period to assess/collect is about to prescribe regardless of amount.
>
> 4. The waiver must be executed in three (3) copies, the original copy to be attached to the docket of the case, the second copy for the taxpayer and the third copy for the Office accepting the waiver. **The fact of receipt by the taxpayer of his/her file copy shall be indicated in the original copy.**
>
> 5. The foregoing procedures shall be strictly followed. Any revenue official found not to have complied with this Order resulting in prescription of the right to assess/collect shall be administratively dealt with. (Emphasis Ours)

In the case at bar, petitioner and respondent entered into separate written Waivers of the Statute of Limitations on October 14, 2002 and December 27, 2002. After review of the records of the case, the Court found the petitioner to have not received a copy of the signed waivers[55], an infirmity, which have already been ruled by the Honorable Supreme Court to have an effect of making the waivers invalid.

As aptly discussed in the case of *Philippine Journalists, Inc. vs. CIR*[56], the failure of respondent to provide petitioner with copies of the accepted Waivers render the same invalid and ineffective, viz:

> Finally, the records show that petitioner was not furnished a copy of the waiver. Under RMO No. 20-90, the waiver must be executed in three copies with the second copy for the taxpayer. The Court of Appeals did not think this was important because the petitioner need not have a copy of the document it knowingly executed. It stated that the reason copies are furnished is for a party to be notified of the existence of a document, event or proceeding.
>
> The flaw in the appellate court's reasoning stems from its assumption that the waiver is a unilateral act of the taxpayer when it is in fact and in law an agreement between the taxpayer and the BIR. When the petitioner's comptroller signed the waiver on September 22, 1997, it was not yet complete and final because the BIR had not assented. There is compliance with the provision of RMO No. 20-90 only after the taxpayer received a copy of the waiver accepted by the BIR. **The requirement to furnish the taxpayer with a copy of the waiver is not only to give notice of the existence of the document but of the acceptance by the BIR and the perfection of the agreement.** (Emphasis Ours)

[55] Exhibits "O-3" and "P-2".
[56] GR No. 162852, December 16, 2004.

Likewise, in a more recent case[57], the Supreme Court, applying RMO No. 20-90, once again ruled that the waiver in question is defective and did not extend the original three (3) year prescriptive period because the BIR failed to furnish a copy of the duly accepted waiver to the taxpayer, to wit:

> Applying RMO No. 20-90, the waiver in question here was defective and did not validly extend the original three-year prescriptive period. **Firstly, it was not proven that respondent was furnished a copy of the BIR-accepted waiver**. Secondly, the waiver was signed only by a revenue district officer, when it should have been signed by the Commissioner as mandated by the NIRC and RMO No. 20-90, considering that the case involves an amount of more than P1 million, and the period to assess is not yet about to prescribe. Lastly, it did not contain the date of acceptance by the Commissioner of Internal Revenue, a requisite necessary to determine whether the waiver was validly accepted before the expiration of the original three-year period. Bear in mind that the waiver in question is a bilateral agreement, thus necessitating the very signatures of both the Commissioner and the taxpayer to give birth to a valid agreement.
>
> Petitioner contends that the procedures in RMO No. 20-90 are merely directory and that the execution of a waiver was a renunciation of respondent's right to invoke prescription. We do not agree. RMO No. 20-90 must be strictly followed. In Philippine Journalists, Inc. v. Commissioner of Internal Revenue, we ruled that a waiver of the statute of limitations under the NIRC, to a certain extent being a derogation of the taxpayer's right to security against prolonged and unscrupulous investigations, must be carefully and strictly construed. The waiver of the statute of limitations does not mean that the taxpayer relinquishes the right to invoke prescription unequivocally, particularly where the language of the document is equivocal. (Emphasis provided)

As it appears from the evidence presented by both parties, no duly BIR-accepted waiver was received by petitioner involving the deficiency VAT, deficiency expanded withholding tax and deficiency withholding tax on compensation assessments. The Waivers executed on October 14, 2002 and December 27, 2002 are therefore, invalid and ineffective. The three (3) year prescriptive period for the assessment of taxes as provided in Section 203 of the 1997 NIRC shall apply from the date of filing of the return or from the date the return was filed.

Based on the foregoing discussion, the assessments on deficiency VAT, expanded withholding tax and withholding tax on compensation shall have prescribed on the following dates:

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[57] *CIR vs. FMF Development Corporation*, GR No. 167765, June 30, 2008.

Return	Date Filed[58]	Prescription Date
3rd Qtr VAT Return	October 25, 1999	October 25, 2002
4th Qtr VAT Return	January 25, 2000	January 25, 2003

Monthly Remittance Return of Income Taxes Withheld	**Expanded[59]**	**Compensation[60]**	**Prescription Date**
January	February 25, 1999	February 25, 1999	February 25, 2002
February	March 25, 1999	March 25, 1999	March 25, 2002
March	April 26, 1999	April 26, 1999	April 26, 2002
April	May 25, 1999	May 25, 1999	May 25, 2002
May	June 25, 1999	June 25, 1999	June 25, 2002
June	July 26, 1999	July 26, 1999	July 26, 2002
July	August 25, 1999	August 25, 1999	August 25, 2002
August	September 27, 1999	September 27, 1999	September 27, 2002
September	October 25, 1999	October 25, 1999	October 25, 2002
October	November 25, 1999	November 25, 1999	November 25, 20002
November	December 27, 1999	December 27, 1999	December 27, 2002
December	January 25, 2000	January 25, 2000	January 25, 2003

Considering that petitioner received the Final Assessment Notices and Formal Letter of Demand only on April 11, 2003[61], way beyond the period allowed by law to assess petitioner over its deficiency VAT, expanded withholding and withholding tax on compensation as enumerated above, the assessments for petitioner's deficiency VAT, expanded withholding and withholding tax on compensation have already prescribed.

Notably, the law prescribing a limitation of actions for the collection of the income tax is beneficial both to the Government and to its citizens; to the Government because tax officers would be obliged to act promptly in the making of assessment, and to citizens because after the lapse of the period of prescription citizens would have a feeling of security against unscrupulous tax agents who will always find an excuse to inspect the books of taxpayers, not to determine the latter's real liability, but to take advantage of every opportunity to molest peaceful, law-abiding citizens. Without such a legal defense taxpayers

[58] JSFI, par.17, p. 133.
[59] *Ibid.*
[60] *Id.*
[61] *Id.* par.7, p. 129.

would furthermore be under obligation to always keep their books and keep them open for inspection subject to harassment by unscrupulous tax agents. The law on prescription being a remedial measure should be interpreted in a way conducive to bringing about the beneficent purpose of affording protection to the taxpayer within the contemplation of the Commission which recommends the approval of the law.[62]

The failure of petitioner to submit the relevant documents in support of its protest did not make the assessment final and executory.

Since petitioner allegedly did not submit any relevant document to support its protest, respondent now claims that the assessment has become final, executory and demandable, hence, unappealable, considering further, that from the counting of one hundred eighty (180) days from the date of protest of petitioner, as required in Section 228 of the 1997 NIRC, the latter's filing of this case on August 13, 2004 is beyond the thirty (30) day prescriptive period within which to file its case.

Conversely, petitioner asserts that since the PAN and the FAN are the same, petitioner only re-submitted its protest to the PAN, including the relevant supporting documents. It avers that it has already submitted all the supporting documents it believed necessary to prove its defenses.

The failure of petitioner to submit any relevant supporting document after its submission of protest does not render the assessment final and executory. As addressed and explained by the Honorable Supreme Court in the case of *Commissioner of Internal Revenue vs. First Express Pawnshop Company, Inc.*[63], the term "relevant supporting documents" should be understood as those documents necessary to support the legal basis in disputing the assessment. The BIR can only inform the taxpayer to submit additional documents but it cannot demand what type of supporting documents should be submitted.

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[62] *Republic of the Phils. v. Ablaza*, 108 Phil. 1105, 1108 (1960).
[63] GR Nos. 172045-46, June 16, 2009.

Otherwise, a taxpayer will be at the mercy of the BIR, which may require the production of documents that a taxpayer cannot submit, to wit:

> We reject petitioner's view that the assessment has become final and unappealable. It cannot be said that respondent has failed to submit relevant supporting documents that would render the assessment final because when respondent submitted its protest, respondent attached the GIS and Balance Sheet. Further, petitioner cannot insist on the submission of proof of DST payment because such document does not exist as respondent claims that it is not liable to pay, and has not paid, the DST on the deposit of subscription.
>
> The term "relevant supporting documents" should be understood as those documents necessary to support the legal basis in disputing a tax assessment as determined by the taxpayer. The BIR can only inform the taxpayer to submit additional documents. The BIR cannot demand what type of supporting documents should be submitted. Otherwise, a taxpayer will be at the mercy of the BIR, which may require the production of documents that a taxpayer cannot submit.

Hence, the failure of petitioner to submit any relevant supporting documents within the sixty (60) day period after its submission of its protest does not render the assessment final and executory.

On the argument that petitioner filed the instant case outside the thirty (30) day period, as required in Section 228 of the 1997 NIRC, the same has no basis, considering that based on the records and the stipulation[64] of the parties, the Collection Letter dated July 9, 2004 and received by petitioner on July 14, 2004 served as respondent's denial of the protest. Petitioner's filing of the instant case on August 13, 2004 is within the thirty (30) day period as required in Section 228 of the 1997 NIRC.

Since the assessment on the deficiency VAT, expanded withholding tax and withholding tax on compensation has already prescribed, as discussed above, the Court shall limit the discussion on the remaining assessments for deficiency income tax and excise tax.

Deficiency Income Tax

Respondent's assessment for deficiency income tax of petitioner for the year 1999 is computed as follows:

[64] Supra on 29-32.

Taxable Income (Loss) Per Income Tax Return		P 208,181,930.00
Add: Adjustments		
1. Discrepancy ITR & Vat Return Sales Figures	P 62,911,619.58	
2. Taxes & Licenses (Fringe Benefit Tax)		
34% Tax of Mr. Ken Gibson	152,632.10	
December 1998 FBT Payment Adjustment	927.27	
3. Discrepancy on Ending Inventories Reflected In		
Balance Sheet vs. Cost of Sales	2,597,951.72	65,663,130.67
Taxable Income Per Investigation		P 273,845,060.67
Income Tax Rate		33%
Income Tax Due Per Investigation		P 90,368,870.02
Less Income Tax Paid Per Return	P 68,700,037.00	
Unsupported Creditable Tax Withheld	344,151.17	68,355,885.83
Basic Deficiency Income Tax Due		P 22,012,984.19
Add Penalties		
20% Interest From Due Date To April 15, 2003		13,207,790.51
Compromise		25,000.00
Total Deficiency Income Tax Due		**P 35,245,774.70**

In summary, the deficiency income tax assessment of P35,245,774.70 arose from the following items:

1. Discrepancy ITR & VAT Return Sales Figures	P 62,911,619.58
2. Taxes & Licenses (Fringe Benefit Tax)	
34% Tax of Mr. Ken Gibson	152,632.10
December 1998 FBT Payment Adjustment	927.27
3. Discrepancy on Ending Inventories Reflected In	
Balance Sheet vs. Cost of Sales	2,597,951.72
4. Unsupported Creditable Tax Withheld	344,151.17

a. Discrepancy between the ITR and VAT Return Sales Figures – P62,911,619.58

Invoking Section 32 of the NIRC, respondent imputed against petitioner an alleged undeclared sales/income in the amount of P62,911,619.58 representing the discrepancy between the total sales declared by petitioner in its Monthly and Quarterly VAT Returns for the year 1999 *vis-à-vis* the total sales and other

income reported by petitioner in its income tax return for the same year. The computation is as follows[65]:

Sales per VAT Return			
	Taxable	P 1,261,271,682.20	
	Exempt (Export)	192,520,555.92	P 1,453,792,238.12
Less:	Sales reported per ITR		
	Domestic Sales	P 1,254,789,455.45	
	Export Sales	130,096,055.13	
	Export not to ITC	4,810,382.96	
	Total	P 1,389,695,893.54	
	Add: Other Income	1,184,725.00	P 1,390,880,618.54
Understated Sales per Audit			**P 62,911,619.58**

A scrutiny of petitioner's Quarterly VAT Returns for the year 1999 shows that the sales figure of P1,453,792,238.12 used by the BIR examiner in arriving at the alleged undeclared sales of P62, 911,619.58 was higher by P176, 441,375.60 when compared to the actual sales amount of P1,277,350,862.52 declared by petitioner in its Quarterly VAT Returns, as shown below:

Sales per VAT Return	Per BIR Investigation	Per VAT Return	Difference
Taxable			
1st quarter (Exhibit BB-6)	P 285,790,660.90	P 109,349,285.30	P 176,441,375.60
2nd quarter (Exhibit BB-7)	295,629,784.50	295,629,784.50	
3rd quarter (Exhibit BB-8)	496,799,677.80	496,799,677.80	
4th quarter (Exhibit BB-9)	183,051,559.00	183,051,559.00	
Subtotal	P 1,261,271,682.20	P1,084,830,306.60	P 176,441,375.60
Exempt (export)			
1st quarter (Exhibit BB-6)	P 26,122,623.86	P 26,122,623.86	
2nd quarter (Exhibit BB-7)	31,491,493.97	31,491,493.97	
3rd quarter (Exhibit BB-8)	113,324,595.59	113,324,595.59	
4th quarter (Exhibit BB-9)	21,581,842.50	21,581,842.50	
Subtotal	192,520,555.92	192,520,555.92	
Total	**P 1,453,792,238.12**	**P1,277,350,862.52**	**P 176,441,375.60**

As correctly found by the Court-commissioned independent CPA, the discrepancy of P176,441,375.60 represents petitioner's sales for the months of

[65] Exhibit "3", Schedule "1", BIR Records, p. 2131.

January and February 1999 which were not included in the first Quarterly VAT Return but were declared in the respective Monthly VAT Declarations[66], as shown below:

	January *Exhibit BB-10*	February *Exhibit BB-11*	Total
Output Tax as reflected	P 7,822,320.14	P 9,821,817.42	P 17,644,137.56
Sales Net of VAT	78,223,201.40	98,218,174.20	**176,441,375.60**

Moreover, to adopt respondent's computation of the alleged undeclared sales of P62,911,619.58 and deduct the actual sales figure of P1,277,350,862.52 shown in the Quarterly VAT Returns from the sales/income of P1,390,880,618.54 reflected in petitioner's income tax return for the year 1999 will even show an overstatement of sales per ITR in the amount of P113,529,756.02, as shown below:

	Per BIR Investigation	Per VAT Return	Difference
Sales per VAT Return	P 1,453,792,238.12	P 1,277,350,862.52	P 176,441,375.60
	Per BIR Investigation	**Per GL/ITR**	**Difference**
Less: Sales reported per ITR			
Domestic Sales (Exhibit BB-2)	P 1,254,789,455.45	P 1,254,789,455.45	
Export Sales (Exhibit BB-3)	130,096,055.13	130,096,055.13	
Export not to ITC (Exhibit BB-4)	4,810,382.96	4,810,382.96	
Subtotal	P 1,389,695,893.54	P 1,389,695,893.54	
Add: Other Income (Exhibit BB-5)			
Other Income	P 467,126.00	P 467,126.00	
Gain on sale of property	264,512.00	264,512.00	
Foreign exchange gain	453,087.00	453,087.00	
Subtotal	P 1,184,725.00	P 1,184,725.00	
Total	P 1,390,880,618.54	P 1,390,880,618.54	
Understated (overstated) sales	**P 62,911,619.58**	**P (113,529,756.02)**	**P 176,441,375.60**

Patently, it is erroneous for the respondent to conclude hastily that petitioner had under-declared its sales for income purposes in the amount of P62,911,619.58 merely on the basis of comparing the sales figure per petitioner's

[66] Exhibits "BB-10" and "BB-11", respectively.

VAT returns and those reflected in its ITR. A further investigation should have been performed by the BIR to support its claim of under-declaration.

Clearly, as per the reconciliation established by the Court-commissioned Independent CPA (ICPA), the P62,911,619.58 sales discrepancy does not constitute taxable income on the part of the petitioner for income tax purposes, thus:

Total sales per VAT Return			P 1,453,792,238.12
Add:	(deduct) reconciling items		
1	1st and 2nd quarter export sales per GL included in the 3rd quarter export sales amount per VAT return	Annex 1	(58,408,045.61)
2	Domestic sales to Alcos for the 1st, 3rd and 4th quarters included in both export and domestic sales amount per VAT return	Annex 2	(2,729,156.09)
3	Sale of obsolete ingredients and containers directly credited to inventory account and reported as domestic sale in the 3rd and 5th quarter VAT returns	Annex 3	(2,124,057.28)
4	Foreign exchange gain subjected to income tax but not subjected to VAT since these resulted from export sales	Table 1.A.1	453,087.00
5	Net book value of assets sold subjected to VAT but not subjected to income tax	Annex 5	(280,903.30)
6	Difference in sale to Avon Cosmetics, Inc. (ACI) between VAT return vs. GLI/ITR (VAT lower)	Annex 3	172,283.55
7	Other income account per GL not included in VAT return	Annex 3	21,673.16
8	VAT output on fully depreciated fixed assets	Annex 5	(16,500.00)
9	Difference in Alcos amount recorded in VAT return vs. amount in export GL (VAT higher)	Annex 3	(0.85)
10	Rounding off difference		(0.16)
	Total reconciling items		(62,911,619.58)
Total sales per ITR			P 1,390,880,618.54

Based on the above reconciliation, the discrepancy of P62,911,619.58 was largely due to the amount of P58,408,045.61 representing the sum of the export sales for the first and second quarters of 1999 in the respective amounts of P26,122,623.86[67] and P32,285,421.75[68] as recorded in petitioner's General Ledger (GL). It is to be noted that the sales figures recorded in petitioner's GL[69]

[67] Exhibit "BB-Part I", Annex 1-1Q, p.2.
[68] Exhibit "BB-Part I", Annex 1-2Q, p.2.
[69] Exhibit "BB-2" (P1,254,789,455.45), "BB-3 2/2" (P130,096,055.13) and "BB-4" (P4,840,382.96).

make up the total amount of sales declared by petitioner in its income tax return[70] for the year 1999.

Aside from declaring the amount of P58,408,045.61 in the first and second Quarterly VAT Returns, petitioner also reflected the same amount in the third Quarterly VAT Return because the amount of P113,324,595.59[71] declared therein by petitioner represents the export sales balance per GL as of September 30, 1999[72] which covers the first, second and third quarters of 1999. Clearly, petitioner did not under-declare its sales per ITR but erroneously overstated its sales per VAT returns in the amount of P58,408,045.61.

However, it was noted that the export sales for the first and second quarters per GL in the amount of P58,408,045.61 do not tally with the export sales of P57,614,117.83[73] reflected per petitioner's Quarterly VAT Returns for the same periods. The difference of P793,927.78[74] pertains to petitioner's domestic sales to Alcos Global Corporation for the second quarter of 1999 which was erroneously booked under the "Gross Sales – Others – Export" account in the GL but correctly included in the domestic sales and excluded from export sales in the second Quarterly VAT Return.

As to the reconciling item amounting to P2,729,156.09[75], the same pertains to petitioner's domestic sales to Alcos Global Corporation for the first, third and fourth quarters which were included in both export and domestic sales per VAT returns. Again, petitioner did not under-declare its sales per income tax return but erroneously overstated its sales per VAT returns in the amount of P2,729,156.09.

As to the reconciling item amounting to P2,124,057.28[76], it actually pertains to petitioner's sale of obsolete ingredients and containers directly credited to inventory account and reported as domestic sales in its third and

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[70] Exhibit "BB-5 2/4", Section A, Schedule 1, line 41 (P1,389,695,894.00).
[71] Exhibit "C-3", Part III, line 18.
[72] Exhibit "C-4" (P109,951,569.29) and "C-5" (P3,373,026.30).
[73] Exhibit "BB-6 2/4", Part III, line 19 (P26,122,623.86) and Exhibit "BB-7 2/5", Part III, line 17 (P31,491,498.97).
[74] Exhibit "BB-Part I", Annex 1-2Q, page 2 and Annex 2, p.2.
[75] Exhibit "BB-Part I", Annex 2, p.3.
[76] Exhibit "BB-15.1" (P392,111.68) and "BB-15.2 (P1,731,945.60).

fourth Quarterly VAT Returns[77] for the year 1999. Since these items were sold at cost, there was neither a gain nor loss to be reported for income tax purposes.

As to the foreign exchange gain of P453,087.00 which represents the difference between the peso equivalent of petitioner's US denominated export sales at the time of sale and at the time of collection, the same was not subjected to VAT but was included in petitioner's taxable income for the year 1999.[78]

With regard the reconciling amount of P280,903.30, records show that the same represents the net book value of assets sold by petitioner for the year 1999, computed as follows[79]:

Fixed Asset	P 1,235,145.33
Less: Accumulated Depreciation	954,242.25
Net Book Value of Assets Sold	**P 280,903.08**

The net book value of P280,903.08 is not subject to income tax. However, the proceeds from the aforesaid sale amounting to P545,415.29 formed part of the P561,915.30[80] sales of fixed assets that were subjected to VAT in petitioner's 1999 fourth Quarterly VAT Return while the related gain in the amount of P264,512.21[81] was included in petitioner's taxable income for 1999:

Proceeds Net of VAT	P 545,415.29
Less: Net Book Value Solf	280,903.08
Net Book Value of Assets Sold	**P 264,512.21**

With reference to the reconciling amount of P172,283.55, the same pertains to the difference in sales to Avon Cosmetics, Inc (ACI) as reflected in the VAT returns and as declared in the income tax return for 1999, computed as follows[82]:

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[77] Exhibit "BB-Part I", Annex 2.
[78] Exhibit "BB-5 2/4", Part III, Section A, Schedule 4, line 57 in relation to Part II, line 17C and Exhibit "BB-Part I", p. 6, item 2.4.
[79] Exhibit "BB-Part I", Annex 5.
[80] Exhibit "BB-Part I", Annex 3.
[81] Exhibit "BB-5 2/4", Part III, Section A, Schedule 4, line 56 in relation to Part II, line 17C.
[82] Exhibit "BB-Part I", Annex 3.

1999	Sales Per VAT Return	Sales Per GL/ITR	Sales per GL/ITR is over(under)
1st Qtr	P 284,142,516.00	P 284,142,272.93	P (243.07)
2nd Qtr	294,705,572.30	294,777,480.83	71,908.53
3rd Qtr	495,690,693.10	495,690,693.08	(0.02)
4th Qtr	180,078,390.50	180,179,008.61	100,618.11
Total	**P 1,254,617,171.90**	**P 1,254,789,455.45**	**P 172,283.55**

Petitioner's sales to ACI, as reported in its ITR, was higher by P172,283.55 due to the difference in sales amounting to P71,908.53 which was subjected to income tax but was not subjected to VAT and sales returns amounting to P100,618.11 erroneously debited to Ingredients inventory account in the GL instead of sales returns and allowances subjected to income tax as found by the ICPA.[83]

With regard the reconciling amount of P21,673.16, the same refers to the other income (scrap sales to petitioner's employees) not subjected to VAT; but included as part of petitioner's gross income per ITR, computed as follows[84]:

	Sales to APMI Employees-Scrap		
1999	Sales Per VAT Return	Sales Per GL/ITR	Sales per GL/ITR is over(under)
1st Qtr	P 156,754.10	P 164,718.59	P 7,964.49
2nd Qtr	130,284.40	130,283.86	(0.54)
3rd Qtr	66,236.62	76,769.26	10,532.64
4th Qtr	92,177.90	95,354.47	3,176.57
Total	**P 445,453.02**	**P 467,126.18**	**P 21,673.16**

Regarding the reconciling item amounting to P16,500.00, the same refers to the 10% output VAT due on the P165,000.00 sale of fully-depreciated fixed assets, computed as follows[85]:

[83] Exhibit "BB-Part I", page 6, item 2.6.
[84] Exhibit "BB-Part I", Annex 3.
[85] Exhibit "BB-Part I", Annex 5.

Sale per VAT return	P 165,000.00
Gain on Sale per ITR	148,500.00
VAT Output	**P 16,500.00**

The taxable sale for VAT purposes is the gross amount of P165,000.00 while the taxable income for income tax purposes is based on the gain on sale of P148, 500.00, resulting to a reconciling amount of P16,500.00.

In summary, therefore, it was established that petitioner had no undeclared sales per ITR for taxable year 1999. The P62,911,619.58 undeclared sales/income being charged by respondent against petitioner is erroneous and should be cancelled.

b. Taxes and Licenses (Fringe Benefit Tax) – P152,632.10 and P927.27

As admitted by the parties, petitioner has paid the amount of disallowed taxes and licenses of P152,632.10 and the December 1998 FBT payment adjustment of P927.27 or a total of P153,559.37[86].

Considering that payment was made, it can be inferred that petitioner has admitted respondent's disallowance of the amount of P153,559.37 but with the payment made, petitioner' liability is therefor extinguished.

c. Discrepancy on Ending Inventories Reflected in Balance Sheet vs. Cost of Sales – P2,597,951.72

The discrepancy, as alleged by respondent, arose from the comparison of the amount of ending inventories per balance sheet of P215,793,000.00 and the amount of ending inventories per Schedule of Cost of Goods Manufactured and Sold of P213,195,572.28.[87]

The Court has found petitioner to have sufficiently established through various document entry vouchers and the related individual general ledger accounts[88], trial balance[89] and Comparative Schedule of Cost of Goods

[86] JSFI, par.19, p. 133.
[87] *Ibid* par. 20, p. 133, although the discrepancy appears to be P2,597,427.72.
[88] Exhibit "BB-17" to "BB-21", inclusive of sub-markings as summarized in Exhibit "BB-Part I", Annex 6.
[89] Exhibit "BB-1".

Manufactured and Sold for the Year Ended December 31, 1999[90] that the alleged inventory overstatement represents variance/adjustments on standard cost to actual cost allocated to ending inventories. The Court found no under-declaration. Thus, the same should accordingly be cancelled.

d. Unsupported Creditable Tax Withheld – P344,151.17

The respondent alleges that the *"Unsupported Creditable Tax Withheld – P344,151.17"* arose from the following: (a) petitioner over-claimed withholding tax credits by P203,645.89 arising from the difference in the total of the amounts indicated in the certificate of creditable tax or P12,705,654.11 and the amount claimed in the ITR or P12,909,300.00 and (b) petitioner's customary over-issuance of the certificate of creditable withholding tax by P140,505.28 representing the withholding tax on sales made in 1998 but paid in 1999.

On the other hand, petitioner avers that *"Unsupported Creditable Tax Withheld – P344,151.17"* were products of mere timing differences between the issuance of the certificate of withholding tax by the withholding agent and the recording of the creditable withholding tax by petitioner when the income is collected which cannot be made basis for petitioner's liability.

The Court finds respondent's disallowance of petitioner's claimed tax credits amounting to P203,645.89 proper but not with respect to the amount of P140, 505.28.

On the outset, Section 2.58.3 (B) of Revenue Regulations (RR) No. 2-98 states that:

> SECTION 2.58.3. Claim for Tax Credit or Refund. —
>
> (B) Claims for tax credit or refund of any creditable income tax which was deducted and withheld on income payments shall be given due course only when it is shown that the income payment has been declared as part of the gross income and the **fact of withholding is established by a copy of the withholding tax statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom.**

[90] Exhibit "K-2".

> Proof of remittance is the responsibility of the withholding agent. (Emphasis Ours)

The foregoing clearly states that petitioner may claim creditable withholding tax if the same are supported by withholding tax certificates. In this case, the Court found petitioner's claimed tax credits of P203,645.89 to be unsupported by withholding tax certificates. The same, therefore, shall be disallowed as deduction from petitioner's income tax liability.

Petitioner, likewise, failed to prove the alleged timing difference in the recognition of the tax credits by petitioner and by its client, Avon Cosmetics, Inc. (ACI). Petitioner merely submitted a print-out of the details of its account "Accrued Income Tax-ACI" for the year 1999.[91] Petitioner did not submit any documentary evidence to prove that its client, ACI, recognized the subject tax credits not upon payment but upon accrual of the latter's purchases from petitioner.

Contrary to petitioner's assertion, the Court, based on the records submitted, found that petitioner's client, ACI, actually recognizes the withholding of the tax upon payment. This is proven by the fact that ACI issued to petitioner in 1999 a withholding tax credit certificate amounting to P140,505.28 for sales made in 1998 but paid in 1999. The allegation by petitioner of any timing difference in the recognition of the tax credits was not justified.

As to the disallowance of petitioner's claimed tax credits in the amount of P140,505.28, the Court finds the disallowance by respondent unmeritorious.

It is clear in the provision of Section 2.58.3 (A) of RR No. 2-98 that the application of creditable withholding tax is allowed to be used as tax credit either in the quarter of the taxable year in which income was earned or received, viz:

> SECTION 2.58.3. Claim for Tax Credit or Refund. —
>
> (A) The amount of creditable tax withheld shall be allowed as a tax credit against the income tax liability of the payee in the quarter of the taxable year in which income was earned or received.

[91] Exhibit "CC".

In the case at bar, petitioner credited the withholding tax of P140,505.28 in 1999, the year in which it received the income, as evidenced by the creditable withholding tax certificates received by petitioner in 1999. Applying the foregoing provision, therefore, petitioner is justified in recognizing tax credits in the amount of P140,505.28.

In sum, out of the total P344,151.17 tax credits disallowed by respondent, the disallowance amounting to P203,645.89 is upheld. However, the amount of P140,505.28 is a proper deduction from petitioner's 1999 income tax due.

All in all, in view of the foregoing discussion, petitioner is liable to pay deficiency income tax for taxable year 1999 in the amount of P357,485.25, computed as follows:

Taxable Income per Income Tax Return		P 208,181,930.00
Add: Disallowed Taxes and Licenses (Fringe Benefit Tax)		153,559.37
Taxable Income per Investigation		P 208,335,489.37
Income Tax Rate		33%
Income Tax Due per Investigation		P 68,750,711.49
Less: Income Tax Paid Per Return	P 68,700,037.00	
Less: Unsupported Creditable Tax Withheld	203,645.89	68,496,391.11
Basic Deficiency Income Tax Due		P 254,320.38
Add: 25% Surcharge		63,580.10
20% Interest (April 15, 2000 to January 30, 2004)		193,004.77
Total Deficiency Income Tax		P 510,905.25
Less: Income tax payment made on January 30, 2004		153,559.37
Total Deficiency Income Tax Still Due		**P 357,345.88**[92]

Excise Tax

Respondent assessed petitioner over its deficiency excise tax for the year 1999 in the amount of P1,645,390.44, inclusive of interest and compromise.

By virtue of the parties' Joint Manifestation[93] which they filed on February 21, 2007, the Court noted petitioner's Application for Abatement over its deficiency excise tax assessment for the year 1999 and the respondent's acknowledgment of petitioner's payment of the basic tax assessed amounting to P913,514.87. Considering that petitioner has correspondingly paid the basic tax,

[92] This amount includes a 25% surcharge pursuant to Section 248(3) of the 1997 NIRC but excludes the compromise penalty of P25,000 originally imposed by respondent there being no compromise agreement between the parties.
[93] *Rollo*, p. 284-289.

the interest and compromise therein were abated. The assessment for deficiency excise tax of petitioner for the year 1999 is deemed cancelled and withdrawn.

WHEREFORE, the Petition for Review is hereby **PARTIALLY GRANTED.** Accordingly, respondent is **ORDERED TO CANCEL/WITHDRAW** the Final Demand and Final Assessment Notices: (1) **Assessment No. LTAID- ET-99-00011** for deficiency Excise Tax, (2) **Assessment No. LTAID-II-VAT-99-00017** for deficiency Value Added Tax, (3) **Assessment No. LTAID-II-WTC-9900002** for deficiency Withholding Tax on Compensation - Under Withholding and Later Remittance, and (4) **Assessment No. LTAID-EWT-99-00010** for deficiency Expanded Withholding Tax.

However, petitioner is **ORDERED** to **PAY** respondent the deficiency Income Tax under **Assessment No. LTAID-II-IT-99-00018** in the amount of P357,345.88 for taxable year 1999.

In addition, petitioner is liable to pay: i) a deficiency interest on the deficiency basic income tax due of P100,761.01[94] at the rate of 20% per annum from January 31, 2004 until fully paid pursuant to Section 249(B) of the 1997 NIRC and ii) a delinquency interest on the total amount due (inclusive of the deficiency interest) at the rate of 20% per annum from July 24, 2004 until fully paid pursuant to Section 249(C)(3) of the 1997 NIRC.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

[94] Deficiency Basic Income Tax Due per Investigation of P254,320.38 less income tax payment of P153,559.37 on January 30, 2004.

ON LEAVE
CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ERNESTO D. ACOSTA
Presiding Justice
Chairperson, First Division