REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY
FIRST DIVISION

PILMICO – MAURI FOODS CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 6151

COMMISSIONER OF INTERNAL REVENUE,
Respondent

Promulgated:
DEC 15 2004

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DECISION

This is a petition for review to reverse the final decision rendered by the respondent on the disputed assessments, specifically Assessment Notice No. 81-WT-13-96-98-11-126 for deficiency withholding tax, Assessment Notice No. 81-VAT-13-96-98-11-127 for deficiency value-added tax and Assessment Notice No. 81-IT-13-96-98-11-128 for deficiency income tax, for taxable year ending December 31, 1996.

Petitioner is a corporation, organized and existing under the laws of the Philippines, with principal place of business at Aboitiz Corporate Center, Banilad, Cebu City.

The books of accounts of the petitioner pertaining to 1996 were examined by the respondent thru Revenue Officer Eugenio D. Maestrado of Revenue District No. 81 (Cebu City North District) for deficiency income, value-added (VAT) and withholding tax liabilities.

As a result of the investigation, the following assessment notices were issued against the petitioner:

(a) Assessment Notice No. 81-WT-13-96-98-11-126, dated November 26, 1998, demanding payment for deficiency withholding taxes for the year 1996 in the sum of P384,925.05 (inclusive of interest and other penalties);

(b) Assessment Notice No. 81-VAT-13-96-98-11-127, dated November 26, 1998, demanding payment of deficiency value-added tax in the sum of P5,017,778.01 (inclusive of interest and other penalties);

(c) Assessment Notice No. 81-IT-13-9698-11-128, dated November 26, 1998, demanding payment of deficiency income tax for the year 1996 in the sum of P4,359,046.96 (inclusive of interest and other penalties).

The foregoing Assessment Notices were all received by the petitioner on December 1, 1998. On December 29, 1998, petitioner filed a protest letter against the aforementioned deficiency tax assessments through the Regional Director, Revenue Region No. 13, Cebu City.

In a final decision of the respondent on the disputed assessments dated July 3, 2000, the deficiency tax liabilities of the petitioner were reduced from P9,761,750.02 to P3,020,259.30, broken down as follows:

(a) Deficiency withholding tax from P384,925.05 to P197,780.67;

(b) Deficiency value-added tax from P5,017,778.01 to P1,642,145.79; and

(c) Deficiency Income Tax from P4,359,046.96 to P1,180,332.84.

The aforementioned decision of the respondent Commissioner, through the Regional Director of Revenue Region No. 13, Cebu City constitutes the final decision appealable to this court since it contains the instruction: "If you disagree, you may appeal this final decision with the Court of Tax Appeals within 30 days from date of receipt hereof, otherwise said deficiency taxes on income, VAT and withholding assessment shall become final, executory and demandable."

Hence, petitioner filed this petition for review on August 9, 2000.

In the "Joint Stipulation of Facts" filed on March 7, 2001, the parties have agreed that the following are the issues to be resolved:

I. Whether or not petitioner is liable for the payment of deficiency income, value-added, expanded withholding, final withholding, and withholding tax (on compensation).

II. <u>On the P1,180,382.84 deficiency income tax</u>

A. Whether or not the P5,895,694.66 purchases of raw materials are unsupported.

B. Whether or not the cancelled invoices and expenses for taxes, repairs and freight are unsupported.

C. Whether or not commission, storage and trucking charges claimed are deductible.

D. Whether or not the alleged deficiency income tax for the year 1996 was correctly computed.

III. <u>On the alleged deficiency value-added tax (P1,642,145.79) for the year 1996</u>

A. Whether or not input taxes claimed from the purchases of raw materials, cancelled invoices, trucking/storage and truck charges are unsupported.

B. Whether or not petitioner ever claimed non-vatable transportation expenses. If the answer is positive, did the respondent inform the petitioner in writing on the alleged non-vatable transportation expenses being formally asked in its protest and as mandatorily required in the CTRP.

IV. <u>On the deficiency withholding taxes</u>

Whether or not the petitioner failed to observe the withholding tax laws on payments subject to EWT, Final Withholding Tax and Withholding Tax on Compensation;

V. Whether or not respondent's decision on the 1996 internal revenue tax liabilities of petitioner is contrary to law and the facts.

The resolution of this case rests upon the propriety of the assessments made against the petitioner. As such, each and every item of disallowance of deductions and/or imposition of a tax contained in the Final Decision on the Disputed Assessment rendered by the respondent has to be reviewed in order to determine the correctness of the assessments.

I. DEFICIENCY INCOME TAX – P1,180,332.84

Respondent computed the deficiency income tax assessment of P1,180,332.84 ***(BIR records, page 364)*** as follows:

Net loss per return		P (2,975,757.00)
Add adjustments:		
UNSUPPORTED PURCHASES/EXPENSES:		
Raw materials – unsupported	P 5,893,694.66	
Missing cancelled invoice – not presented	182,711.92	
Taxes - unsupported	56,538.23	
Repairs – unsupported	81,464.76	
Freight – unsupported	87,311.14	6,301,720.71
SALARIES & WAGES not subjected to withholding tax		240,024.69
PRIOR YEAR'S CHARGES:		
Commission - prior year	P 45,222.90	
Storage charges - prior year	86,441.57	
Trucking charges - prior year	36,850.00	168,514.47
TAXABLE NET INCOME		P 3,734,502.87
Income Tax Due		P 1,307,076.00
Less tax withheld/paid per return		584,423.24
Deficiency income tax		P 722,652.76
Interest (4-16-1997 to 6-16-2000)		457,680.08
DEFICIENCY INCOME TAX		P 1,180,332.84

A. Raw Materials – P5,893,694.66

Respondent disallowed the amount of P5,893,694.66 representing purchases of raw materials on the ground that petitioner failed to substantiate with sufficient evidence, such as official receipts or other adequate records which would show the amount of the expense being deducted, and the direct connection or relation of the expense to the development, management, operation and/or conduct of the trade, business or profession of the taxpayer as required by Sec. 34 1(b), NIRC of 1997.

Petitioner counters that the National Internal Revenue Code of 1977, which was the law in force during the taxable year 1996, explicitly allows the deduction of the purchases of raw materials (Section 29). And there are only three requisites in order that an expense can qualify as a deduction for income tax purposes:

1. Expenses must be ordinary and necessary;
2. Expenses must be incurred in carrying on a trade or business;
3. Expenses must be paid or incurred within the taxable year.

Petitioner in its Memorandum contends that the purchases of raw materials which were disallowed by respondent constitute purchases of molasses from March 1996 to April 1996. Molasses being the principal raw material for yeast production. Further, the disallowed purchases were not only incurred but paid for within the same taxable year as evidenced by the following official receipts:

Exhibit No.	Official Receipt No.	Amount
B-2	29522	P 2,312,670.00
B-6	29744	1,367,564.10
B-10	29846	1,394,535.00
B-14	1750	802,630.00

B-17	2979	605,665.00
	Total	P 6,483,064.10

According to the petitioner, the molasses were purchased from Mr. Jose B. Tan Enterprises/Golden Restaurant. These purchases were evidenced by sales invoices in its name. "The official receipts were issued in the name of petitioner by Pilmico Foods Corporation. By virtue of an offsetting agreement, petitioner paid Pilmico Foods Corporation its purchases of molasses from Jose Tan Enterprises/Golden Restaurant. This payment to Pilmico Foods Corp. (PFC) is also payment to Jose Tan Enterprises (JTE) because the latter owes money to Pilmico Foods Corporation" *(Memorandum for Petitioner, CTA Records, p. 523)*. Such official receipts allegedly constitute evidence of valid payment for the purchases of raw materials, which are in the nature of purchases of ordinary and necessary business expense.

Petitioner presented as its additional evidence, PFC Accounts Receivable Ledger *(Exhibit O)*, which shows that the payments made by petitioner to PFC for the purchases of raw materials from JTE were offset or deducted against the receivable of PFC from JTE. Petitioner concluded that the Accounts Receivable Ledger *(Exhibit O)*, the Credit Agreement *(Exhibit M)* and the Real Estate Mortgage *(Exhibit N)* taken together serve as sufficient proofs to establish the existence of the offsetting agreement entered into by petitioner, PFC and JTE which offsetting agreement was a legitimate means of payment as well as an effective means of reducing the company's unpaid accounts. Petitioner further alleged that since it is a subsidiary of PFC, it is good business practice and not contrary to law for petitioner and PFC to have an offsetting agreement in order to expedite collection of receivables.

Petitioner also argues that "prior to the advent of Section 34 (b) of the 1997

Tax Code which took effect on January 1, 1998, there was no provision in the Internal Revenue Code which specifically imposes substantiation requirements for deductions from gross income" *(Memorandum for Petitioner, CTA Records, p. 518).*

The records reveal that petitioner is an entity which was established through a joint venture agreement between Pilmico Foods Corporation *(PFC for brevity)* and Mauri Fermentation Philippines, PTY., Limited, for the purpose of transferring Pilmico's business of manufacturing and marketing yeast and certain specialty products in the Philippines to the petitioner *(Exhibit A).*

The court agrees with petitioner's contention that the applicable law should be the National Internal Revenue Code of 1977, as amended (NIRC of 1977), since the subject purchases were made in 1996. Indeed, Section 29 of the NIRC of 1977, as amended, allows the deduction for purchases of raw materials and that it imposes only three requisites in order that an expense can be deductible, namely: (1) the expenses must be ordinary and necessary; (2) the expenses must be incurred in carrying on a trade or business; and (3) the expenses must be paid or incurred within the taxable year as enunciated in the case of *Atlas Consolidated Mining & Dev. Corp. vs. Commissioner of Internal Revenue, No. L-26911 & No. L-26924 promulgated on January 27, 1981.*

However, petitioner's contention that the NIRC of 1977 did not impose substantiation requirements on deductions from gross income is bereft of merit. Section 238 of the 1977 Tax Code [now Section 237 of the National Internal Revenue Code of 1997] provides:

> **SEC. 238.** ***Issuance of receipts or sales or commercial invoices.*** – All persons, subject to an internal revenue tax shall for each sale or transfer of merchandise or for services rendered valued at P25.00 or more, issue receipts or

> sales or commercial invoices, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service: *Provided*, That in the case of sales, receipts or transfers in the amount of P100.00 or more, or, regardless of amount, where the sale or transfer is made by persons subject to value-added tax to other persons also subject to value-added tax; or, where the receipt is issued to cover payment made as rentals, commissions, compensations or fees, receipts or invoices shall be issued which shall show the name, business style, if any, and address of the purchaser, customer, or client. **The original of each receipt or invoice shall be issued to the purchaser, customer or client at the time the transaction is effected, who, if engaged in business or in the exercise of profession, shall keep and preserve the same in his place of business for a period of three (3) years from the close of the taxable year in which such invoice or receipt was issued**, while the duplicate shall be kept and preserved by the issuer, also in his place of business for a like period. *(Emphasis supplied)*

From the foregoing provision of law, a person who is subject to an internal revenue tax shall issue receipts, sales or commercial invoices, prepared at least in duplicate. The provision likewise imposed a responsibility upon the purchaser to keep and preserve the original copy of the invoice or receipt for a period of three years from the close of the taxable year in which such invoice or receipt was issued. The rationale behind the latter requirement is the duty of the taxpayer to keep adequate records of each and every transaction entered into in the conduct of its business. So that when their books of accounts are subjected to a tax audit examination, all entries therein could be shown as adequately supported and proven as legitimate business transactions. Hence, petitioner's claim that the NIRC of 1977 did not require substantiation requirements is erroneous.

In fact, in its effort to prove the above-mentioned purchases of raw materials, petitioner presented the following sales invoices:

Exhibit	Invoice				
Number	No.	Date	Gross Amount	10% VAT	Net Amount
B-3	2072	04/18/96	P 2,312,670.00	P 210,242.73	P 2,102,427.27
B-7, B-11	2026	Undated	2,762,099.10	251,099.92	2,510,999.18
			P 5,074,769.10	P 461,342.65	P 4,613,426.45

The mere fact that petitioner submitted the foregoing sales invoices belies petitioner's claim that the NIRC of 1977 did not require that deductions must be substantiated by adequate records.

From the total purchases of P5,893,694.64 which have been disallowed, it seems that a portion thereof amounting to P1,280,268.19 (729,663.64 + 550,604.55) has no supporting sales invoices because of petitioner's failure to present said invoices.

A scrutiny of the invoices supporting the remaining balance of P4,613,426.45 (P5,893,694.64 less P1,280,268.19) revealed the following:

a) In Sales Invoice No. 2072 marked as Exhibit B-3, the name Pilmico Foods Corporation was erased and on top of it the name Pilmico Mauri Foods Corporation was inserted but with a countersignature therein;

b) For undated Sales Invoice No. 2026, petitioner presented two exhibits marked as Exhibits B-7 and B-11. Exhibit B-11 is the original sales invoice whereas Exhibit B-7 is a photocopy thereof. Both exhibits contained the word Mauri which was inserted on top and between the words Pilmico and Foods. The only difference is that in the original copy (*Exhibit B-11*), there was a countersignature although the ink used was different from that used in the rest of the writings in the said invoice; while in the photocopied invoice (*Exhibit B-7*), no such countersignature appeared. Petitioner did not explain why the said countersignature did not appear in the photocopied invoice considering it was just a mere reproduction of the original copy.

The sales invoices contain alterations particularly in the name of the purchaser giving rise to serious doubts regarding their authenticity and if they were really issued to the petitioner. Exhibit B-11 does not even have any date indicated therein, which is a clear violation of Section 238 of the NIRC of 1977 which required that the official receipts must show the date of the transaction.

Furthermore, petitioner should have presented documentary evidence establishing that Pilmico Foods Corporation did not claim the subject purchases as deduction from its gross income. After all, the records revealed that both petitioner and its parent company, Pilmico Foods Corporation, have the same AVP Comptroller in the person of Mr. Eugenio Gozon, who is in-charge of the financial records of both entities (*see TSN, March 26, 2001, page 6*).

Similarly, the official receipts presented by petitioner (*Exhibits B-2, B-6, B-10, B-14 & B-17*), cannot be considered as valid proof of petitioner's claimed deduction for raw materials purchases. The said receipts did not conform to the requirements provided for under Section 238 of the NIRC of 1977, as amended. First, the official receipts were not in the name of petitioner but in the name of Golden Restaurant. And second, these receipts were issued by PFC and not the alleged seller, JTE.

Likewise, petitioner's allegations regarding the offsetting of accounts between the petitioner, PFC and JTE is untenable. The following circumstances contradict petitioner's proposition: 1) the Credit Agreement itself does not provide for the offsetting arrangement; 2) the petitioner was not even a party to the credit agreement; and 3) the official receipts in question pertained to the year 1996 whereas the Credit Agreement *(Exhibit M)* and the Real Estate Mortgage Agreement *(Exhibit N)* submitted by petitioner to prove the fact of the offsetting of accounts, were both executed only in 1997.

Besides, in order to support its claim, petitioner should have presented the following vital documents, namely, 1) Written Offsetting Agreement; 2) proof of payment by Pilmico Mauri Foods Corporation to Pilimico Foods Corporation; and 3) Financial Statements for the year 1996 of Pilimico Foods Corporation to establish the fact that Pilmico Foods Corporation did not deduct the amount of raw materials being claimed by petitioner.

Considering that the official receipts and sales invoices presented by petitioner failed to comply with the requirements of Section 238 of the NIRC of 1977, the disallowance by the respondent of the claimed deduction for raw materials is proper.

B. Cancelled invoices - P182,711.92

An undeclared sales in the total amount of P182,711.92 was included in the assessment for deficiency income tax against the petitioner since the corresponding cancelled invoices were allegedly not presented to the revenue examiner. Hence, in the final decision of the respondent, the same amount was included as part of the Unsupported Purchases/Expenses adjustment to petitioner's net loss per its income tax return *(BIR Records, p. 364)*.

Petitioner avers that the invoices which have been marked cancelled pertain to unrealized sales and do not form part of its gross sales.

We find that it was erroneous on the part of respondent to include the aforementioned amount as part of petitioner's gross sales or gross income. The petitioner presented the cancelled invoices with serial numbers 9628 and 9663 reflecting the amounts of P165,494.56 and P17,217.36 as *Exhibits D and D-1*, respectively, which correspond to the aggregate amount of P182,711.92 found in the computation of the deficiency income tax assessment. The same cancelled invoices were likewise presented to the respondent since a copy of said invoices can be found in the BIR Records as pages 214 and 215 thereof.

Hence, the amount of P182,711.92 should no longer be included in the computation of the deficiency income tax assessment as well as in the computation of deficiency value-added tax.

C. Taxes - P56,538.23

Respondent disallowed taxes in the amount of P56,538.23 because of petitioner's failure to substantiate with sufficient evidence as required by Sec. 34 1(b) of the 1997 NIRC.

Petitioner asserted that the taxes disallowed by respondent represent real property taxes on machinery (Powdered Sugar/Baking, Yeast Plant Machinery) paid to the City Government of Iligan and such were duly supported by an official receipt *(Exhibit J*-2).

Petitioner cited Section 29 (2) (c) [now Sec. 34 (C)] of the Tax Code which provides that:

> "(1) *In general.* – Taxes paid or accrued within the taxable year in connection with the taxpayer's profession, trade or business, shall be allowed as deduction, except:
>
> (A) The income tax provided for under this Title;
>
> (B) Income, war profits, and excess profits taxes imposed by authority of any foreign country; but this deduction shall be allowed in the case of a taxpayer who does not signify in his return his desire to have any to any extent the benefits of paragraph (3) of this subsection (relating to credits of taxes of foreign countries);
>
> (C) Estate and gift's taxes;
>
> (D) Taxes assessed against local benefits of a kind tending to increase the value of the property assessed;
>
> (E) Electric energy consumption tax imposed by Batas Pambansa Blg. 36"

Petitioner concluded that the general rule is that taxes are allowable deductions from gross income unless they fall under any of the exceptions provided under the same section.

Petitioner submitted its Contract of Lease *(Exhibit E)* with PFC. The lease allegedly pertains to the site and yeast plant including the machinery classified as real property of petitioner. Petitioner said that one of the conditions for the lease is the payment of realty taxes and other assessments found in Section 7 of the said contract which states that "the *lessor* shall be responsible for the payment of realty taxes and other charges and assessments imposed by the local and/or national governments on the Leased Premises." According to petitioner, since PFC is the absolute and lawful owner of the land as well as the building on which the site and yeast plant is located, the realty taxes would necessarily be in the name of PFC.

It is however the position of the petitioner that in the Joint Venture Agreement *(Exhibit A)* which created petitioner, the ownership of the machinery used for the yeast production will be transferred to petitioner. Since the realty taxes for the machinery is the liability of the owner thereof, petitioner was bound to pay for the taxes, which in turn are allowable deductions under the Tax Code.

Petitioner further stated that the declaration of real property were still under the name of PFC, there were no separate declaration on the machinery. Hence, the assessment for the real property taxes issued by the City of Iligan were still in the name of PFC and as a consequence thereof, the official receipts were issued in the name of the latter. Petitioner contended that it paid for said taxes through check payments which were reflected in cash vouchers *(Exhibits J and J-10)* to prove payments of taxes and licenses through PFC for which the latter issued an official receipt *(Exhibit J-1)* representing reimbursement of the tax payment. Also, petitioner presented a schedule of the Taxes and Licenses attached to the report of its independent auditor *(Exhibit G)*.

The disallowance is proper.

Petitioner failed to prove that PFC actually paid the taxes in question. This could have been easily done by the presentation of the official receipt issued by the office of the Treasurer, City of Iligan. Moreover, petitioner failed to prove that an equivalent amount was deducted from the total taxes claimed by PFC as deduction from its gross income. Although, the official receipt (Exhibit J-1) tends to prove payment by petitioner to PFC, still, it does not in any way rule out the possibility that the same amount of P53,007.92 was not included in the total deductions claimed as taxes paid by Pilmico Foods Corporation. Without proof of actual payment by PFC of the tax and that there was no double deduction of the amount claimed, the court finds that respondent's disallowance is in order.

D. Repairs - P81,464.76

Respondent also disallowed repairs amounting to P81,464.76 also on the ground of petitioner's failure to substantiate with sufficient evidence as required by Sec. 34 1(b) of the 1997 NIRC.

Petitioner argues that the amount of repairs disallowed by respondent were shared expenses with Pilmico Foods Corporation pursuant to the Joint Venture Agreement *(Exhibit A)*.

The court holds that the journal voucher *(Exhibit H)* presented by petitioner to prove its payment of a shared expense is not a sufficient proof that said expense was in fact paid. *Exhibit H* only shows us the recording but not the actual payment of the amount of P40,954.68 as repairs and maintenance expense. Petitioner should have presented proofs such as the official receipts and invoices for the entire amount of its repairs and maintenance for us to determine that such amount was really paid by petitioner. In addition, petitioner failed to prove that PFC deducted the amount from the total amount of repairs and maintenance that it deducted from its gross income, considering that petitioner claims that the same is a shared expense. This court holds that the disallowance is also proper.

E. Freight – P87,311.14

Respondent likewise disallowed freight amounting to P87,311.14 as a deduction from petitioner's gross income on the ground of petitioner's failure to substantiate with sufficient evidence as required by Sec. 34 1(b) of the 1997 NIRC.

In petitioner's administrative protest *(Exhibit 3; BIR records, page 304)* petitioner admitted that freight charges amounting to P87,311.14 were dated 1995. Said admission is quoted hereunder:

> "The examiner alleged that these are all 1995 accounts. However, after our review, P87,311.14 for freight and P36,850.00 for trucking services are dated 1995, the rest are 1996 transactions."

In view of the foregoing admission, the propriety of the disallowance of freight charges in the amount of P87,311.14 is no longer an issue. This is also a proper disallowance.

F. Salaries & Wages – P240,024.69

Respondent included a portion of petitioner's Salaries and Wages in the amount of P240,024.69 in the computation of the deficiency income tax assessment for failure of petitioner to withhold the mandatory withholding tax on compensation, in violation of Section 9 of Revenue Regulations No. 6-85, which provides that any income payment, which is otherwise deductible in the manner under Sections 30 and 57 of the Tax Code as amended, shall be allowed as a deduction from the payor's gross income only if it is shown that the required tax to be withheld has been paid to the Bureau of Internal Revenue in accordance with Sections 53, 54, 91 and 93 of the Tax Code.

Respondent computed the salaries not subjected to withholding tax as follows:

SALARY PER F. STATEMENT				
	COST OF SALES	**Administrative**	**SELLING**	**TOTAL**
DIRECT LABOR	P2,182,016.00			P2,182,016.00
INDIRECT LABOR	1,578,939.00			1,578,939.00
SALARIES & WAGES		P1,596,095.00	P3,220,884.00	4,816,979.00
SALES COMMISSION			863,428.00	863,428.00
SUB TOTAL	P3,760,955.00	P1,596,095.00	P4,084,312.00	P9,441,362.00
SALARY PER ALPHA LIST				
WITH NO PREVIOUS EMPLOYER			P3,126,926.82	
TERMINATED EMPLOYEES			567,451.58	
CONFIDENTIAL EMPLOYEE			2,678,436.85	
NOT SUBJECT TO WITHHOLDING TAX			1,153,043.06	
SALARIES PAID TO AGENCIES -				
CORPORATE LINK			1,164,994.00	
ANGELIS SERVICES			510,485.00	
TOTAL				P9,201,337.31
SALARIES NOT SUBJECTED TO WITHHOLDING TAX				P 240,024.69

(BIR records, page 193)

In its Memorandum, petitioner did not make any comment on the respondent's disallowance of the salaries and wages of P240,024.69. However, in its protest letter to the BIR *(BIR records, page 305)* petitioner alleged:

> "Recorded to Salaries and Wages or other related accounts, such as, Direct Labor and Indirect Labor were salaries of directly hired employees. These were subjected to Withholding Tax on Compensation. Also included in such

> accounts were payments to agencies for hired merchandisers, factory and maintenance workers. Agencies under contract are Corporate Link, Angelis Services, ACN Eng'g. Sales & Services, GCN Eng'g. Sales & Services, & Kiwalan Arrastre Stevedoring Services. All payments to Corporate Link and Angelis Services were charged to Salaries & Wages, however, those paid to ACN Eng'g. Sales & Services & Kiwalan Arrastre were either charged to Direct Labor, Repairs & Maintenance or Freight & Handling, as the case maybe. These contracts were subjected to Expanded Withholding Tax. All these data were compared by the examiner to the Alpha List but he failed to include the last three agencies and immediately concluded that such were unsupported and not subjected to withholding tax. As indicated in the Alpha List, Pilmico-Mauri Foods Corp. paid these agencies P12,469, P171,103 and P130,946 respectively."

Petitioner's explanation of the discrepancy is incomplete and cannot be used as basis in determining whether its claim is correct or not. Petitioner should have presented, among others, its general ledger, vouchers, and billings from the aforesaid agencies in order to enable this court to determine how petitioner charged the aforesaid amounts, whether to the account direct labor, or repairs and maintenance, or freight and handling and for how much. Petitioner stated that it paid P12,469 to ACN Eng'g. Sales & Services; P171,103 to GCN Eng'g. Sales and Services; and P130,946 to Kiwalan Arrastre. These amounts add up to P314,518 which is greater than the disallowed amount of P240,024.69. If we deduct the P130,946 paid to Kiwalan Arrastre on the assumption that the same corresponds to freight charges, the net amount would only be P183,572 which is lesser than the disallowed amount. Thus, because of petitioner's failure to explain the difference between the total salaries per financial statement and the total salaries per its Alphalist of Employees, the court sees no reason to disturb the findings of the revenue examiner.

G. Prior Year's Charges – P168,514.47

Respondent included prior year's charges claimed as deduction in the total amount of P168,514.47 in the computation of the deficiency income tax since petitioner's deduction of the said amount from its income is contrary to the provisions of Section 34 (A) (1) (a) of the NIRC of 1997, which provides that there shall be allowed as deduction from gross income all the ordinary and necessary expenses **paid or incurred during the taxable year** in carrying on or which are directly attributable to, the development, management, operation and/or conduct of the trade, business or exercise of a profession. The prior year's charges which have been disallowed consist of the following:

Commission	45,222.90
Storage charges	86,441.57
Trucking charges	36,850.00
TOTAL	168,514.47

In its protest letter *(Exhibit 3)*, petitioner admitted that the trucking charges are dated 1995. With respect to the commission and storage charges, petitioner did not offer any proof except its claim in its protest letter that the expenses are for the year 1996. Petitioner failed to controvert respondent's findings. Hence, pursuant to Section 29(a)(1)(A) [now 34(A)(1)(a)] of the NIRC of 1977, as amended, the prior year's charges of P168,514.47 cannot be deducted from gross income because the same were not proven to have been paid or incurred during the subject taxable year 1996.

After determining the propriety of each item of disallowed expense, petitioner's deficiency income tax can now be determined.

In its Memorandum, petitioner stated that the final decision issued by respondent for deficiency income tax was computed using the net loss of P2,975,757.00. Petitioner maintains that the net loss figure used by respondent is clearly and manifestly inconsistent with what appears in the documents of the petitioner, more particularly in its income tax return *(Exhibit C)* which reflects that petitioner's net loss from operations was P3,164,264.00. That the act of the respondent in using a different figure deprives the petitioner of the opportunity to properly contest and dispute the assessment which constitutes a deprivation of due process.

It is the contention of the petitioner that "the assessment was arbitrary because respondent computed an assessment based on a figure/amount, which was a mere presumption because it has no factual basis. The presumption of correctness of assessment being a mere presumption cannot be made to rest on another presumption" citing Collector of Internal Revenue vs. Benipayo, 4 SCRA 182 quoted in Phil. Commercial Int'l Bank vs. Commissioner of Internal Revenue, CTA Case No. 4883 April 11, 1996 *(CTA Records, p.533).*

Petitioner's arguments are unmeritorious.

The respondent is correct in using the amount of P2,975,757.00 as the basis for the adjustments representing the disallowed expenses. *Exhibit G*, the petitioner's audited Financial Statements for the year 1996, reflects a net loss of P2,975,757 *(CTA Records, p. 304).* In fact, the same amount was even "closed" to the Retained Earnings Account in its Statements of Income and Retained Earnings. Between the income tax return and the audited financial statements, the latter deserves more weight because of the certification issued by the independent certified public accountant. In addition, the petitioner did not present all the pages of its 1996 income tax return showing the details on how the net loss of P3,164,264.00 was computed *(Exhibit C; BIR records, page 147).*

Considering all of the foregoing, petitioner's deficiency income tax for 1996 should be computed as follows:

Net loss		P (2,975,757.00)
Add: Raw materials	P5,893,694.66	
Taxes	56,538.23	
Repairs	81,464.76	
Freight	87,311.14	
Salaries & wages not subjected to tax	240,024.69	
Prior year's charges:		
Commission	45,222.90	
Storage charges	86,441.57	
Trucking charges	36,850.00	6,527,547.95
Taxable net income		P 3,551,790.95
Income tax due (35%)		P 1,243,126.83
Less: Tax withheld/paid per return		584,423.24
Basic deficiency income tax		P 658,703.59
Add: 20% Interest (4-16-97 to 6-16-2000)		417,960.96
Deficiency income tax		P 1,076,664.55

II. Deficiency Value-Added Tax – P1,642,145.79

The deficiency value-added tax assessment of P1,642,145.79 arose from the respondent's disallowance of petitioner's claimed input tax credits which were not allegedly supported by proper invoices as required by the Tax Code. Citing Revenue Audit Memorandum (RAMO) 1-90, respondent stated that for input taxes to be deductible, the purchase invoices must be issued in the name of the VAT-registered taxpayer claiming the input tax credits. Below is the respondent's detailed computation of the alleged deficiency value added tax (*BIR records, page 363*):

	Total Amount	VAT
Purchases-unsupported	P 5,893,694.66	P 589,369.47
Transportation-not vatable	3,386,847.40	338,684.74

Missing cancelled invoice	182,711.92	18,271.19
Storage/trucking/freight charges	292,067.47	29,206.75
Disallowed input tax on unsupported purchases/expenses		P 975,532.15
Interest		666,613.64
Deficiency Value-Added Tax		P1,642,145.79

Petitioner assailed the deficiency value added tax assessment and interposed the following points, to wit:

A. Purchases – P589,369.47

With respect to the input taxes from purchases of raw materials, petitioner claimed that the purchases were supported by invoices *(Exhibits B-3, B-7, B-11)*, which substantially complied with the requirements of Revenue Regulations No. 7-95.

After verification, out of the total input VAT of P589,369.46 claimed by petitioner on purchases of raw materials, petitioner did not submit any invoice for the input taxes of P72,966.36 and P55,060.45 or in the total amount of P128,026.81. Although petitioner presented invoices for the remaining input VAT of P461,342.65 (P589,369.46 less P128,026.81), the same cannot be considered valid as discussed in I A above (discussion on Income tax deficiency). Since the court ruled that the purchases of raw materials cannot be allowed as a valid deduction from income, necessarily, it follows that the corresponding input VAT cannot be considered as a valid deduction from output VAT due from the petitioner. The invoices were not issued in the name of petitioner and reflected a Taxpayer's Account Number (TAN) instead of a Taxpayer's Identification Number (TIN) contrary to the provisions of Section 4.104-5 of Revenue Regulations No. 7-95.

B. Transportation Expense– P338,684.74

The relevant arguments raised by the petitioner are as follows:

"Firstly, if petitioner was being assessed for deficiency VAT on transportation based on its failure to subject said service to VAT then, it is the supplier of said transportation service which should have been assessed deficiency VAT. Petitioner is a manufacturer of Yeast and not engaged in transportation service. Petitioner is but a mere purchaser of said transportation service. The person liable for VAT is, under Section 105 of the Tax Code, "any person, who, in the course of trade or business, sells barters, exchanges, leases goods or properties, renders services, and any person who imports goods shall be subject to the value-added tax (VAT) imposed in Sections 106 to 108 of this Code.

Secondly, if petitioner was being assessed deficiency VAT for claiming input VAT on transportation expenses on the basis that they are "non-vatable" (as aforequoted) petitioner respectfully disagrees with respondent. It was proper for petitioner to claim input VAT on transportation service. Section 108 of the Tax Code provides:

"(A) *Rate and base of tax.* There shall be levied, assessed and collected, a value-added tax equivalent to ten percent (10%) of the gross receipts derived from the sale or exchange of services including the use or lease of properties.

The phrase "sale or exchange of service" means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration, including those performed or rendered by construction and service contractors; xxx; transportation contractors on their transport of goods or cargoes, including persons who transport goods or cargoes for hire and other domestic common carriers by land, air and water relative to their transport of goods and cargoes; xxx."

Further, petitioner is entitled to claim input VAT on the basis of Revenue Regulation Nos. 7-95, Section 4.104-2 provides:

"Section 4.104-2. *Persons who can avail of the input tax credit.* – The input tax credit on purchase of goods or properties or services shall be creditable:

(a) To the purchaser of the domestic goods or properties upon consummation of the sale and on the importation of said goods or properties.

(b) To the importer upon payment of VAT prior to the release of goods from Customs custody.

(c) To the purchaser of services or the lessee or licensee upon payment of the compensation, rental, royalty fee or fee."

Thirdly, if Petitioner was being assessed by Respondent for its failure to properly substantiate its claim for input VAT on its purchases of transportation service, then Respondent had the duty to inform Petitioner of the basis for its disallowance. Petitioner was not advised of the details or schedule of disallowed invoices, if any, to enable Petitioner to identify and then properly substantiate said disallowance. Since respondent examiner failed to observe the requirement of Revenue Regulations No. 12-99 in relation to Section 228 of the Tax Code by failing to inform petitioner of the details of its assessment for deficiency VAT on transportation expense up to the present Petitioner is still guessing why it was assessed with deficiency VAT on transportation expense.

Petitioner was denied due process when respondent failed to inform petitioner of the basis for its assessment of deficiency value added tax on alleged transportation expenses not subjected to VAT. Petitioner's protest to the Final Assessment Notice which was received by the Respondent on December 29, 1998 (*No. 7 of Joint Stipulation of Facts & Issues)* specifically requested the respondent to "give the composition as this was not presented in their previous report" referring to the deficiency VAT on ransportation expenses in the total amount of P338,684.74. Without reference to the basis of the deficiency assessment on VAT, petitioner could not be reasonably expected to defend itself since it had no way of knowing what documents to present in order to refute the findings of respondent. Section 228 of the Tax Code in part provides:

"Section 228. Protesting of assessment. – xxx

"The taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise the assessment shall be void."

Quite evident from the foregoing is the use of the word "shall" which connotes the mandatory nature of said provision. Indubitably, compliance with the said provision requiring the BIR to inform the taxpayer of the facts and the law on which the assessment is based is compulsory. Otherwise, non-observance of the said provision would entirely affect the validity of the assessment. The purpose of the aforesaid requirement is to give the taxpayer the opportunity to refute the findings of the examiner and to give a more accurate and detailed explanation regarding the proposed assessment(s).

> At the time Petitioner was issued the Final Assessment Notice which petitioner protested it had been denied the opportunity to properly and intelligently contest the findings of Respondent on VAT deficiency assessment because it was not provided with the factual and legal basis of such deficiency assessment for VAT on transportation expenses that allegedly were not subjected to VAT, trucking/storage and truck charges. Petitioner could not submit any evidence nor propound any argument since it is unable to identify the basis of the assessment of respondent.
>
> The deficiency assessment was not based on known or disclosed facts but is a mere conclusion without factual basis. No explanation was presented by respondent to support its assessment nor were evidence or documents presented to prove the correctness of the amounts stated in the deficiency assessment notice.
>
> The law is clear, the taxpayer must be informed in writing of the law and the facts on which the assessment is made; otherwise the assessment shall be void. Hence, the findings of the examiner on deficiency VAT for transportation expenses, trucking/storage and truck charges is void since petitioner was not informed of the basis of said findings. "The respondent has the bounden duty to inform the taxpayer not only of the law but more importantly, the surrounding circumstances supporting the assessment, for it is only through a detailed appraisal of its basis that the taxpayer may be able to dispute the imposition or agree with it." *(Memorandum for Petitioner, CTA Records, pp. 536-539)*

Respondent included the input VAT on the transportation expenses in the computation of the deficiency value added tax because based on the examiner's verification it was determined that these were non-vatable expenses. Petitioner should have adduced evidence necessary to rebut the findings of respondent. Petitioner should have presented a schedule of the input VAT claimed as deduction from output VAT, the Monthly VAT Declaration / Quarterly VAT Returns, together with the supporting documents such as VAT official receipts and/or sales Invoices in order to prove that the input VAT claimed on transportation expenses were duly supported by official receipts or sales invoices; or that petitioner did not claim any input VAT on transportation expenses.

With such failure of the petitioner to rebut respondent's findings, we affirm the above disallowance made by the respondent.

With respect to the allegation of the petitioner that it was denied due process, the records disclose that the respondent had attached a "Details of Discrepancies" to the "Final Decision on Disputed Assessment" that was sent to petitioner which substantially complies with Revenue Regulations No. 12-99.

C. Cancelled Invoices - P18,271.19

This deficiency VAT assessment corresponds to cancelled invoices in the total amount of P182,711.92. Having ruled earlier (in I B-discussion on income tax deficiency) that the amounts contained in the cancelled invoices should not be included in the computation of the deficiency income tax assessment, the inclusion of the corresponding VAT in the amount of P18,271.19 in the deficiency VAT assessment against petitioner cannot be sustained.

D. Storage/trucking/freight charges – P29,206.75

Since petitioner did not present a Schedule of the Input VAT claimed as deduction from output VAT, the Monthly VAT Declaration / Quarterly VAT Returns, together with the supporting documents such as VAT official receipts and/or sales invoices in order to prove that the input VAT on its Storage/trucking/freight expenses are supported by adequate records or that petitioner did not claim any input VAT on said expenses, the petitioner failed to persuade this court to reverse the respondent's inclusion of the disallowance of input VAT on storage/trucking/freight charges.

In view of the foregoing, petitioner should be made liable to pay for 1996 deficiency VAT of P1,609,247.47 as computed below, for failure to present valid VAT invoices and/or official receipts pursuant to Section 4.104-5 of Revenue Regulations No. 7-95 as well as other documents to prove its allegations:

Purchases-unsupported	P 5,893,694.66	P 589,369.47
Transportation-non vatable	3,386,847.40	338,684.74
Storage/trucking/freight charges	292,067.47	29,206.75
Disallowed input tax on unsupported purchases/expenses		957,260.96
Interest		651,986.51
Deficiency Value-Added Tax		P 1,609,247.47

III. Deficiency Withholding Tax

A. Deficiency Expanded Withholding Tax – P45,226.13

Respondent assessed petitioner for deficiency expanded withholding tax of P45,226.13, computed as follows:

Management Fee	P 2,007,251.77	5%	P 100,362.59
Repair (labor services)	385,098.00	1%	3,850.98
Freight	5,286,448.00	1%	52,864.48
Rental	2,015,212.80	5%	100,760.64
Printing	987,270.20	1%	9,872.70
Ads	16,500.00	1%	165.00
Total			P 267,876.39
Less: Remittance per return			241,009.38
Deficiency remittance			P 26,867.01
Interest (1-26-97 to 6-16-2000)			18,359.12
Deficiency Expanded Withholding Tax			P 45,226.13

In its memorandum, petitioner asseverates that the deficiency assessment for expanded withholding tax was computed by the respondent based on the remittance per return of P241,009.38. However, *Exhibit F* which is the Annual Information Return of Income Tax Withheld on Compensation, Expanded and Final Withholding Taxes (Form 1743-IR) filed on January 31, 1997 shows that petitioner remitted the amount of P257,764.17 and therefore not P241,009.38.

Petitioner posits that "[c]learly, Section 228 of the National Internal Revenue Code requires the respondent to inform the taxpayer in writing of the law and the facts on which the assessment is made; otherwise the assessment shall be void. As thus worded, the respondent has the bounden duty to inform the taxpayer not only of the law but more importantly, the surrounding circumstances supporting the assessment, for it is only through a detailed appraisal of its basis that the taxpayer may be able to dispute the imposition or agree with it" *(Abbott Laboratories, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 5718, February 16, 2001 as quoted in Enron Subic Power Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5993, September 12, 2001).* Petitioner further alleges that if it can be made liable for deficiency expanded withholding tax, the amount should only be the difference between P267,876.39 and P257,764.17 which is only P10,112.22.

Petitioner's averment that the assessment is void because the amount used by respondent corresponding to its Expanded Withholding Tax remittances was different from what was reflected in its Annual Information Return is without basis. The use of an incorrect amount in an assessment constitutes a factual issue.

A careful perusal of petitioner's Annual Information Return of Income Tax Withheld on Compensation, Expanded and Final Withholding Taxes (Form 1743-IR) filed on January 31, 1997 (*Exhibit F*) and Monthly Remittance Return of Income Taxes Withheld filed on February 10, 1997 (*BIR Records, page 23*) showed that the total taxes withheld and remitted by petitioner for 1996 amounted to P257,764.17. However, only the total amount of P247,054.06 was timely remitted while the remaining amount of P10,710.11 was belatedly remitted on February 10, 1997.

In order to determine petitioner's expanded withholding tax liability, the total remittance of P257,764.17 shall be deducted in two separate amounts consisting of P247,054.06 and P10,710.11, to properly compute the interest on the late remittance of P10,710.11.

Accordingly, petitioner is liable to pay for 1996 deficiency expanded withholding tax of P17,188.04 detained as follows:

Management Fee	P 2,007,251.77	5%	P 100,362.59
Repair (labor services)	385,098.00	1%	3,850.98
Freight	5,286,448.00	1%	52,864.48
Rental	2,015,212.80	5%	100,760.64
Printing	987,270.20	1%	9,872.70
Ads	16,500.00	1%	165.00
Total Expanded Withholding Tax Due			P 267,876.39
Less: Remittance per annual return			247,054.06
Deficiency Expanded Withholding Tax			P 20,822.33
Interest (1-26-97 to 2-10-97)			182.55
Total Amount Due			P 21,004.88
Less: Remittance on February 10, 1997			10,710.11
Deficiency Expanded Withholding Tax			P 10,294.77
Interest (2-11-97 to 6-16-2000)			6,893.27
Total Deficiency Expanded Withholding Tax			P 17,188.04

B. Deficiency Final Withholding Tax – P71,442.81

Pursuant to Sections 248 and 249 of the NIRC of 1977, as amended, respondent imputed surcharge, interest and compromise penalty amounting to P71,442.81 for petitioner's failure to remit on time the final withholding tax of 20% on royalty payments made. The deficiency final withholding tax was computed in the following manner:

Payments for Royalties not subjected to Final Tax		P 645,896.43
Tax due (20%)		P 129,179.28
Surcharge	P 32,294.82	
Interest (1-26-97 to 5-12-98)	34,361.69	
Compromise Penalty	16,000.00	82,656.51

Total	P 211,835.79
Less remittance on February 12, 1998	161,381.83
Deficiency	P 50,453.96
Add interest (5-13-98 to 6-16-2000)	20,988.85
Deficiency Final Withholding Tax	P 71,442.81

In its Memorandum, petitioner averred that:

"There is evident and palpable error in the above computation which was the basis of respondent's assessment. First, respondent admits that petitioner remitted the final withholding tax on February 12, 1998 but despite said fact, respondent computed interest from January 26, 1997 to May 12, 1998, amounting to P34,361.69. The interest which is the penalty for late filing should have been computed from the due date of the tax up to the time when it was actually remitted to the BIR. When the taxpayer remitted the tax on February 12, 1998, the interest should have been computed based on any deficiency or balance which was still owing to the government, assuming there were. Respondent computed the interest in violation of the provisions of Section 249(b) of the 1977 Tax Code which provides that: "Any deficiency in the tax due, as the term is defined in this Code, shall be subject to the interest prescribed in paragraph (a) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof". Further, Revenue Regulations No. 12-99 governing the rules on assessment of National Internal Revenue Taxes provides that the interest shall be computed based on the diminishing balance of the tax, inclusive of the interests, to wit:

"Section 2. General Principles. – xxx

In case the tax due from the taxpayer is paid on a partial or installment basis, the interest on the deficiency tax or the delinquency tax liability of the taxpayer shall be imposed from the due date of the tax until full payment thereof. The interest shall be computed based on the diminishing balance of the tax inclusive of interests."

Second, it was unlawful on the part of respondent to impose a compromise penalty in the amount of P16,000.00 since compromise is essentially mutual and petitioner did not agree to its imposition. "A compromise by its very nature implies mutual agreement by the parties in regard to the thing or subject matter which is to be compromised. An offer of compromise does not, therefore, assume the category of a compromise until it is voluntarily accepted by the other party, and no obligation arises or is created by a simple offer or suggestion coming from one of the parties without acceptance by the other *(Ben L. Chuy, et al. vs. Collector of Internal Revenue, CTA Case, July 16, 1958)*." *(As cited* *in Paramount Insurance Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4844, June 7, 1996).*

Thus, according to petitioner, even assuming that it should be made liable to pay the deficiency assessment for late remittance of royalties subject to final withholding tax, the correct computation should be as follows:

Payments for Royalties not subjected to Final Tax	P 645,896.43
Tax Due (20%)	P 129,179.28
Surcharge	32,294.82
Interest (1-26-97 to 2-12-98)	27,039.17
Total	P 188,513.27
Less remittance on February 12, 1998	161,381.83
Deficiency	P 27,131.44

A review of the Monthly Remittance Return of Income Taxes Withheld filed by petitioner *(BIR Records, pp. 321 and 322)* revealed that petitioner remitted the final withholding tax of P161,381.83 only on May 12, 1998. Therefore, the respondent was correct in computing the interest from January 26, 1997 to May 12, 1998. The respondent's subsequent erroneous indication of the date February 12, 1998 in his computation of petitioner's deficiency final withholding tax does not constitute an admission on his part that the remittance was made on February 12, 1998. Otherwise, the respondent would not have computed the interest until May 12, 1998, the actual date of remittance.

With respect to the imposition of the compromise penalty of P16,000.00, the petitioner is correct in saying that since no compromise agreement was reached by the parties, no compromise penalty shall be imposed. In sustaining this court in the case of *DR. FELISA L. VDA. DE SAN AGUSTIN, in substitution of JOSE Y. FERIA, in his capacity as EXECUTOR OF THE ESTATE OF JOSE SAN AGUSTIN vs. COMMISSIONER OF*

INTERNAL REVENUE, G.R. No. 138485, September 10, 2001, the Supreme Court ruled:

> "The Court of Tax Appeals correctly held that the compromise penalty of P20,000.00 could not be imposed on petitioner, a compromise being, by its nature, mutual in essence. The payment made under protest by petitioner could only signify that there was no agreement that had effectively been reached between the parties."

Consequently, the basic deficiency final withholding tax of the petitioner for 1996 is therefore only P48,915.18, computed as follows:

Payments for Royalties not subjected to Final Tax	P 645,896.43
Tax Due (20%)	P 129,179.28
Surcharge	32,294.82
Interest (1-26-97 to 5-12-98)	34,361.69
Total	P 195,835.79
Less: Remittance on March 12, 1998	161,381.83
Deficiency	P 34,453.96
Interest (5-13-98 to 6-16-2000)	14,461.22
Deficiency Final Withholding Tax	**P 48,915.18**

C. Deficiency Withholding Tax on Compensation – P81,111.73

Respondent likewise assessed petitioner a deficiency withholding tax on compensation in the amount of P81,111.73 for failure of petitioner to file and remit the withholding tax on compensation for the month of December 1996 on time, since petitioner remitted the same only on February 10, 1997. The respondent's computation of the deficiency withholding tax on compensation of P81,111.73 *(BIR records, pages 362 to 363)* is shown below:

Withholding Tax on Compensation	P 122,972.63
Penalty for failure to file and remit on time withholding Tax on compensation (withholding tax for the month of	

December 1996 was filed and remitted on February 10, 1997):	
Surcharge	30,743.16
Interest (1-26-97 to 2-10-97)	943.35
Compromise Penalty	17,000.00
Total	P 171,659.14
Less payment per remittance on February 10, 1997	122,971.63
Deficiency	P 48,686.51
Interest (2-11-97 to 6-16-2000)	32,425.22
Deficiency Withholding Tax on Compensation	P 81,111.73

In its Memorandum, the only objection made by the petitioner to the above assessment is the imposition of the P17,000.00 compromise penalty. As stated above, the imposition of a compromise penalty is improper when there is no compromise agreement agreed upon by the parties.

Hence, petitioner is liable to pay for 1996 deficiency withholding tax on compensation in the amount of P52,905.12, computed as follows:

Withholding Tax on Compensation	P 122,972.63
Penalties for failure to file and remit on time withholding tax on compensation (withholding tax for the month of December 1996 was filed and remitted on February 10, 1997):	
Surcharge	30,743.16
Interest (1-26-97 to 2-10-97)	943.35
Total	P 154,659.14
Less: Remittance on February 10, 1997	122,971.63
Deficiency	P 31,687.51
Interest (2-11-97 to 6-16-2000)	21,217.61
Deficiency Withholding Tax on Compensation	P 52,905.12

Having resolved the propriety of each item in the assessments made by the respondent, the total deficiency tax liabilities of the petitioner for the year 1996 amounts to P2,804,920.36 computed as follows:

Deficiency Tax	Amount
Income	P 1,076,664.55
VAT	1,609,247.47

Withholding Tax		
Expanded Withholding Tax	P 17,188.04	
Final Withholding Tax	48,915.18	
Withholding Tax on Compensation	52,905.12	119,008.34
Total		P 2,804,920.36

WHEREFORE, the petitioner is hereby **ORDERED to PAY** the respondent an aggregate sum of P2,804,920.36 (inclusive of surcharge and deficiency interest) representing petitioner's Income, VAT and Withholding Tax deficiencies for taxable year 1996 plus 20% delinquency interest *per annum* on the above amount of P2,804,920.36 computed from July 4, 2000 until full payment thereof pursuant to Section 249 of the 1977 Tax Code, as amended.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

We Concur:

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the First Division of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Justice