REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

FIRST PHILIPPINE HOLDINGS CORPORATION, *Petitioner,*	**CTA CASE NO. 8991** For: Assessment
-versus-	Members: CASTAÑEDA, JR., *Chairperson,* MINDARO-GRULLA, and BACORRO-VILLENA, *JJ.*
COMMISSIONER OF INTERNAL REVENUE *Respondent.*	Promulgated: DEC 17 2019 4:00 p.m.

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision on January 4, 2019, is a *Petition for Review* filed on February 20, 2015 praying that the deficiency tax assessments in the amount of ₱1,555,240,774.37 for taxable year 2009, be declared null and void.[1]

Petitioner First Philippine Holdings Corporation is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with office address at 6th Floor, Benpres Building, Exchange Road corner Meralco Avenue, Pasig City, Philippines.[2]

On the other hand, respondent is the Commissioner of the Bureau of Internal Revenue (BIR), the government agency tasked to, among others, collect all national internal revenue taxes. As

[1] Summary of the Case, Pre-Trial Order dated August 18, 2015, Docket – Vol. I, p. 414.
[2] Par. 1, Summary of Admitted Facts, *Joint Stipulation of Facts & Issues* (JSF), Docket - Vol. I, p. 394.

Commissioner, respondent has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the Tax Code or other laws or portions thereof administered by the BIR.[3]

On May 18, 2010, petitioner received a copy of *Letter of Authority* No. LOA-116-2010-00000053 (LOA) dated May 14, 2010,[4] authorizing the conduct of an audit of its taxable records for taxable year (TY) 2009.[5]

Subsequently, petitioner executed several *Waivers of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code* (Waivers), with the following details:[6]

1. On August 17, 2012, Mr. Francis Giles B. Puno executed a Waiver (First Waiver) for the period until December 31, 2012. The First Waiver was accepted by then Officer-in-Charge Assistant Commission for LTS Alfredo V. Misajon (OIC-ACIR Misajon) on September 6, 2012.[7]

2. On November 6, 2012, Ms. Perla R. Catahan executed another Waiver (Second Waiver) for the period until June 30, 2013, OIC-ACIR Misajon accepted the Second Waiver on November 15, 2012.[8]

3. On May 24, 2013, Ms. Catahan executed a subsequent Waiver (Third Waiver) for the period until December 31, 2013. OIC-ACIR Misajon accepted the Third Waiver on June 13, 2013.[9]

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[3] Par. 4, *Petition for Review*, vis-à-vis Par. 1, *Answer*, pp. 7 and 340, respectively; Par. 2, JSF, Docket - Vol. I, p. 395.
[4] Exhibit "P-1", Docket – Vol. II, p. 769.
[5] Par. 3, Summary of Admitted Facts, JSF, Docket - Vol. I, p. 395.
[6] Par. 4, Summary of Admitted Facts, JSF, Docket - Vol. I, p. 395.
[7] Par. 4.1, Summary of Admitted Facts, JSF, Docket - Vol. I, p. 395; Exhibit "P-7", Docket – Vol. II, pp. 881 to 882.
[8] Par. 4.2, Summary of Admitted Facts, JSF, Docket - Vol. I, p. 395; Exhibit "P-8", Docket – Vol. II, pp. 883 to 884.
[9] Par. 4.3, Summary of Admitted Facts, JSF, Docket - Vol. I, p. 395; Exhibit "P-9", Docket – Vol. II, pp. 885 to 886.

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4. On October 3, 2013, Mr. Ramon T. Pagdagdagan executed a final Waiver (Fourth Waiver) for the period until June 30, 2014. OIC-ACIR Misajon accepted the Fourth Waiver on October 29, 2013.[10]

On June 2, 2014, petitioner received a copy of the *Preliminary Assessment Notice* (PAN) of even date which assessed petitioner for deficiency income tax, value-added tax (VAT), expanded withholding tax (EWT), withholding tax on compensation (WC), fringe benefit tax (FBT) and documentary stamp tax (DST) for the TY 2009 in the total amount of ₱1,534,735,393.83.[11]

In response to the PAN, petitioner alleges that it filed a *Reply* dated June 16, 2014.[12]

However, on June 30, 2014, petitioner received a copy of the *Formal Letter of Demand* with *Final Assessment Notice* (FLD-FAN) dated June 27, 2014, finding it liable for deficiency income tax, VAT, EWT, WC, FBT, DST and corresponding penalties and interest for TY 2009 in the total amount of ₱1,555,240,774.37.[13] The alleged deficiency taxes are broken down as follows:

Tax	Basic Tax	Interest	Compromise Penalty	Total
Income Tax	₱ 527,107,058.70	₱ 447,968,793.45	₱ 50,000.00	₱ 975,125,852.15
VAT	10,181,362.04	9,104,648.13	50,000.00	19,336,010.17
EWT	11,634,558.97	10,593,695.74	25,000.00	22,253,254.71
WC	19,948,611.70	17,948,285.16	25,000.00	37,921,896.86
FBT	432,644.52	389,261.54	16,000.00	837,906.06
DST	262,302,864.34	237,437,990.08	25,000.00	499,765,854.42
TOTAL TAX DUE				**₱1,555,240,774.37**

[10] Par. 4.4, Summary of Admitted Facts, JSF, Docket - Vol. I, p. 395; Exhibit "P-10", Docket – Vol. II, pp. 897 to 898.

[11] Par. 5, Summary of Admitted Facts, JSF, Docket - Vol. I, p. 395; Exhibit "P-2", Docket – Vol. II, pp. 770 to 780.

[12] Exhibit "P-3", Docket – Vol. II, pp. 781 to 796.

[13] Par. 6, Summary of Admitted Facts, JSF, Docket - Vol. I, pp. 395 to 396; Exhibit "P-4", Docket – Vol. II, pp. 797 to 813.

On July 25, 2014, petitioner filed a *Protest* to assessment of even date in the form of a request for reconsideration.[14]

On December 10, 2014, petitioner filed a *Supplemental Protest*.[15]

Petitioner filed on February 20, 2015 the instant *Petition for Review*.

On May 19, 2015, respondent filed his *Answer*,[16] interposing the following special and affirmative defenses:

> "**SPECIAL AND AFFIRMATIVE DEFENSES**
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> Respondent hereby reiterates and re-pleads the preceding paragraphs of this answer as part of the Special and Affirmative Defenses.
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> **THE ASSESSMENT WAS MADE WITHIN THE PRESCRIPTIVE PERIOD TO ASSESS DEFICIENCY TAXES**
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> 5. Petitioner claims that the waivers executed by its own officers were defective and did not toll the running of the prescriptive period to assess deficiency taxes. Firstly, petitioner argues that its corporate officers, one (1) treasurer and two (2) comptrollers, were not authorized to sign the waivers in its behalf. Secondly, petitioner argues that former OIC Assistant Commissioner Alfredo V. Misajon was equally not authorized to sign the Waivers.
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> 6. However, respondent submits that the position assumed by petitioner is more of convenience rather than merit. As for its first ground to invalidate the waiver, respondent cannot help but notice that petitioner's fourth officer to sign the waiver was already

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[14] Par. 7, Summary of Admitted Facts, JSF, Docket – Vol. I, p. 396; Exhibit "P-5", Docket – Vol. II, pp. 814 to 863.

[15] Par. 8, Summary of Admitted Facts, JSF, Docket – Vol. I, p. 396; Exhibit "P-6", Docket – Vol. II, pp. 864 to 880.

[16] Docket – Vol. I, pp. 106 to 128.

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empowered with a Board Resolution. This tends to mislead the Honorable Court that the three (3) corporate officers who signed the previous waivers were not authorized to sign in behalf of petitioner. Moreover, the fourth corporate officer occupies the same position as the two before him as comptroller of petitioner.

7. The second ground alleged by petitioner to invalidate the Waiver likewise deserves scant consideration. Petitioner recognizes RDAO 5-2001 which authorizes an Assistant Commissioner to sign a Waiver in behalf of respondent. The designation of an *Officer-in-Charge* does not divest ACIR Misajon of his powers, more important his functions, to act as Assistant Commissioner for the Large Taxpayers Service. As stated in RDAO 5-2001, one of ACIR Misajon's functions is to sign waivers in behalf of the CIR. Also, there was no distinction under RDAO 5-2001 whether the revenue officer who will sign the waiver is an OIC or not.

8. Given the foregoing considerations, respondent respectfully submits that the waivers that were executed were validly executed and in accord with existing rules and regulations. Further, the case of "*Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue*" likewise tells us that strict adherence to RMO 20-90 is not absolute and a taxpayer may be estopped from questioning the validity of waivers.

9. Thus, given that it was petitioner who executed the assailed waivers, and that the same was accepted by respondent through ACIR Misajon, it is respectfully submitted that the assessment was made within the prescriptive period to assess deficiency taxes.

PETITIONER IS LIABLE FOR THE ASSESSED DEFICIENCY TAXES FOR 2009

10. 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 on respondent's actions and assessments.

11. Per investigation report of respondent's examiners, the following tax deficiencies were found:

Tax	Basic Tax	Interest	Compromise Penalty	Total Increments	Total
Income Tax	527,107,058.70	447,968,793.45	50,000.00	448,018,793.45	975,125,852.15
VAT	10,181,362.04	9,104,648.13	50,000.00	9,154,648.13	19,336,010.17
EWT	11,634,558.97	10,593,695.74	25,000.00	10,618,695.74	22,253,254.71
Compensation	19,948,611.70	17,948,285.16	25,000.00	17,973,285.16	37,921,896.86
FBT	432,644.52	389,261.54	16,000.00	405,261.54	837,906.06
DST	262,302,864.34	237,437,990.08	25,000.00	237,462,990.08	499,765,854.42
Total	831,607,100.27	723,442,674.10	191,000.00	723,633,674.10	1,555,240,774.38

The foregoing tax deficiencies were explained as follows:

I. INCOME TAX

a. That per Reconciliation of Service income per books as against the data from the third party information (Relief) resulted to a discrepancy/variance amounting to P14,601,213.26 hence should be part of income pursuant to Sec. 32 of the NIRC as per schedule on page 491;

b. Reconciliation of purchases per books and the third party information (Relief) have a difference amounting to P9,513,394.16 and should also be included in the computation of income tax as per schedule on page 490. pursuant to Sec. 32 of the NIRC;

c. Verification of payment of Inaec Aviation Corp. (Inaec) for the share in the rental income on helicopter shows that the above named taxpayer did not declare the income amounting to P2,885,262.00. Purchases from Inaec was also undeclared in the computation on Income tax. The said findings resulted to a total of undeclared income of P6,253,986.54 as per summary on page 511 which should be included in the computation of income tax pursuant to Sec. 32 of the NIRC;

d. Verification of the payment of goods to top 10,000 corporation against the alpha list of suppliers shows that a discrepancy amounting to P6,548,267.00, hence, should be part of adjustment in income tax computation on page 497, pursuant to Sec. 32 of the NIRC;

e. Verification of Donation on charitable institution amounting to P5,464,500.00 was disallowed since there is no proof or certificate presented which is violation of Sec. 34 (H) of the NIRC; (page 435);

f. Per verification of the representation expenses it shows that the amount of P3,979,609.13 exceed the ceiling as prescribed by law per computation page 508, pursuant to RR-10-2002;

g. Reconciliation of the expenses per financial statement as against the Income tax return (ITR) shows a discrepancy amounting to P1,151,652,963.00. The amount was not declared in the financial statement, hence, claimed as expenses in the ITR as per summary on page 509. Interest expense was not necessary and not related to the taxable income pursuant to Sec. 34 (A)(1). Per Notes to FS #12, Long term debt FRCN were used to finance acquisition of other company's shares and for debt repayment. These funds were also used to finance your affiliates as stated in Note #20, Related Party disclosures which the Advances to FPH Fund, FGHC International, First Philec Group amounted to P3,144,000,000.00, P2,410,000,000.00, and P969,000,000.00, respectively, which should be disallowed/added in the computation of income tax;

h. Verification of the salaries and wages per Financial statement /ITR as against the alpha list of employees shows that there is a discrepancy amounting to P65,838,758.38 as computed on page 501, which resulted to an under declaration of income pursuant to Sec. 32 of the NIRC;

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i. Comparison of income payments subject to withholding tax claimed per financial statement/income tax return as against the Alpha list disclosed that were not subjected to withholding tax amounting to P320,905,7283.26 per computation on pages 497 to 500 hence disallowed pursuant to Section 34 (K) of the NIRC, as amended;

j. The said findings resulted to a total deficiency tax on Income Tax amounting to P975,125,852.15 including increments per summary on page 555.

II.Value Added Tax:

a. That per verification of service income per books against the party information (Relief), it shows that there is a discrepancy on income amounting to P14,601,21326 as summarized in page 491, which should be added in the computation of VAT pursuant to Sec. 106 of the NIRC, as amended;

b. Comparison of purchases per books and the third party information (Relief) shows a discrepancy amounting to P9,513,394.16 as summarized on page 490, which should also be included in the computation of VAT pursuant to Sec. 106 of the NIRC, as amended;

c. Per verification of the service and other income, it shows that some of income were not included in the computation of VAT amounting P44,129,345.07. The said amount should be part in the computation on VAT as stated on page 505 pursuant to Sec. 106 of the NIRC, as amended;

d. Reconciliation of the payment of goods to top 10T corporation against the alpha list of suppliers shows that the taxpayer pays more than the amount claimed in the FS, hence the said discrepancy or unaccounted source of cash amounting to P6,548,267.00 should be part of adjustment in VAT computation on page 497, pursuant to Sec. 106 of the NIRC, as amended;

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e. The said findings resulted to a total deficiency tax on VAT amounting to P19,336,010.17 including increments per computation on pages 554.

III. WITHHOLDING TAX:

a. Withholding Tax-Compensation

Verification of the salaries and wages per alpha list and FS shows that there's a discrepancy amounting to P65,838,758.30 which resulted to a deficiency tax amounting to P37,921,896.86 including increments, pursuant to Sec. 80 (A) of the NIRC as per summary on page 552.

b. Expanded Withholding Tax (EWT)

Verification disclosed that some of the income payments were not subjected to Expanded Withholding Tax in violation of Section 57 of the NIRC and its implementing regulations particularly Revenue Regulations No. 2-98 as amended by Revenue Regulations No. 6-2001 and further amended by Revenue Regulations No. 12-2001 and subsequently further amended by Regulations No. 17-2003 and 30-2003. This resulted to deficiency EWT amounting to P22,253,254.71 inclusive of increments (computation on pages 548 to 549).

IV. DOCUMENTARY STAMP TAX

A DST for the Advances to and from related parties, Short term and long term loans, Lease contact and issuance of stocks with a total amount of P52,516,431,441.83, only P31,465,264.00 was subjected to DST. The remaining amount of P52,484,966,177.83 is still subject to DST which resulted to a deficiency tax amounting to P499,765,854.42 including increments (computation on page 550 to 551).

12. At this juncture, it must be stressed that when assessments are assailed, the burden of proof is upon the complaining party. It is, incumbent upon the complaining

party to show that the assessment was erroneous, in order to relieve himself from it.

13. Failure to present proof of error in the assessment will justify judicial affirmation of said assessment (*Delta Motors Co. vs. Commissioner, CTA Case No. 3782, 21 May 1986; Commissioner of Internal Revenue vs. Court of Appeals, et al., G.R. Nos. 104151 and 105563, 10 March 1995*)."

On June 1, 2015, respondent transmitted the *BIR Records* for the instant case.[17]

The pre-trial conference was set, and held on, July 9, 2015.[18]

Petitioner's *Pre-Trial Brief*[19] and respondent's *Pre-Trial Brief*[20] were both filed on July 6, 2015.

However, on even date, petitioner filed an *Omnibus Motion*,[21] praying, in effect, for an early resolution of the issue of prescription, prior to the conduct of a full-blown trial on the merits of the case.

During the pre-trial conference, the Court granted petitioner's *Omnibus Motion,* and set the presentation of petitioner's witnesses to testify on the issue of prescription on August 10, 2015.[22] The Court also directed the parties to submit their Joint Stipulation of Facts and Issues.

The parties submitted their *Joint Stipulation of Facts and Issues* (JSF) on August 6, 2015.[23] Consequently, the Court issued a Pre-

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[17] Respondent's *Compliance* dated May 28, 2015, Docket – Vol. I, pp. 350 to 351.
[18] Notice of Pre-Trial Conference dated May 22, 2015, Docket – Vol. I, pp. 348 to 349; Minutes of the hearing held on, and Resolution dated, July 9, 2015, Docket – Vol. I, pp. 381 and 384, respectively.
[19] Docket - Vol. I, pp. 353 to 364.
[20] Docket - Vol. I, pp. 370 to 373.
[21] Docket – Vol. I, pp. 374 to 379.
[22] Minutes of the Hearing held on July 9, 2015, Docket – Vol. I, p. 381; Resolution dated July 9, 2015, Docket – Vol. I, p. 384.
[23] Docket – Vol. I, pp. 394 to 401.

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Trial Order on August 18, 2015,[24] approving and adopting the said JSF, and considering the pre-trial as deemed terminated.

During the trial on the issue of prescription, petitioner presented documentary and testimonial evidence. As for its testimonial evidence, on September 7, 2015, petitioner offered the testimonies of the following witnesses: Mr. Techserve Allan Golfo,[25] Senior Manager for Corporate Accounting, Ms. Gemma Rose C. Roque,[26] Head of Comptrollership Group, and Atty. Esmeraldo C. Amistad,[27] Assistant Corporate Secretary and Assistant Compliance Officer.

Petitioner filed its *Formal Offer of Evidence* (FOE) on the issue of prescription on October 7, 2015.[28] Respondent filed his *Omnibus Motion (to Cancel Hearing Set on July 20, 2015 and Admit Comment)* on December 1, 2015.[29] In the Resolution dated December 1, 2015,[30] the Court admitted petitioner's Exhibits.

Respondent likewise presented documentary and testimonial evidence. He offered the testimony of his witness, Ms. Olivia S. Sison,[31] Revenue Officer II of the Bureau of Internal Revenue (BIR). There being no other witnesses to present, respondent's counsel made an oral FOE. Considering that petitioner did not interpose any objection, the Court admitted respondent's exhibits and gave the parties thirty (30) days from notice to file their respective memorandum.[32]

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[24] Docket – Vol. I, pp. 414 to 418.
[25] Exhibit "P-57", Docket – Vol. I, pp. 424 to 439; Minutes of the hearing held on, and Resolution dated, September 7, 2015, Docket – Vol. II, pp. 731 to 732, 733.
[26] Exhibit "P-58", Docket – Vol. II, pp. 582 to 597; Minutes of the hearing held on, and Resolution dated, September 7, 2015, Docket – Vol. II, pp. 731 to 732, 733.
[27] Exhibit "P-59", Docket – Vol. II, pp. 720 to 730; Minutes of the hearing held on, and Resolution dated, September 7, 2015, Docket – Vol. II, pp. 731 to 732, 733.
[28] Docket – Vol. II, pp. 751 to 768.
[29] Docket – Vol. II, pp. 1012 to 1015.
[30] Docket – Vol. II, pp. 1010 to 1011.
[31] Exhibit "R-6", Docket – Vol. II, pp. 1027 to 1030; Minutes of the hearing held on May 4, 2016, Docket – Vol. III, pp. 1052 to 1053; Resolution dated May 23, 2016, Docket – Vol. III, pp. 1055 to 1057.
[32] Minutes of the hearing held on May 4, 2016, Docket – Vol. III, pp. 1052 to 1053; Resolution dated May 23, 2016, Docket – Vol. III, pp. 1055 to 1057.

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Within the extended time granted by the Court, petitioner filed its *Memorandum (Re: Issue on Prescription)* on June 23, 2016,[33] while respondent filed his *Memorandum* on July 13, 2016.[34]

On September 27, 2016, the Court issued a Resolution resolving the issue on prescription.[35] The Court partially granted petitioner's *Omnibus Motion*. The dispositive portion of the said Resolution states:

> "**WHEREFORE**, in view of the foregoing, petitioner's **Omnibus Motion** is **PARTIALLY GRANTED**. Accordingly, respondent's right to assess the following: (1) deficiency VAT for the 1st and 2nd quarters of 2009; (2) deficiency EWT for the months of January to July 2009; (3) deficiency WT on compensation for the months of January to July 2009; and (4) deficiency FBT for the 1st and 2nd quarters of 2009 had already prescribed.
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> Set this case for hearing on November 7, 2016 at 9:00 a.m. for the presentation of evidence for the petitioner to determine its liability for the remaining tax deficiency assessments for the taxable year 2009.
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> **SO ORDERED**."

On October 14, 2016, respondent filed a *Motion for Reconsideration,*[36] with petitioner's *Comment (to Respondent's Motion for Partial Reconsideration)* filed on November 3, 2016.[37] Likewise, petitioner filed its *Motion for Partial Reconsideration (Re: Decision dated September 27, 2016)* on October 18, 2016,[38] with no comment from the respondent as per Records Verification Report dated November 21, 2016.[39]

In the Resolution dated March 9, 2017,[40] the Court denied both motions for lack of merit.

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[33] Docket – Vol. III, pp. 1072 to 1115.
[34] Docket – Vol. III, pp. 1117 to 1123.
[35] Docket – Vol. III, pp. 1126 to 1144.
[36] Docket – Vol. III, pp. 1145 to 1152.
[37] Docket – Vol. III, pp. 1173 to 1178.
[38] Docket – Vol. III, pp. 1154 to 1168.
[39] Docket – Vol. III, p. 1179.
[40] Docket – Vol. II, pp. 1181 to 1191

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Aggrieved, both parties separately filed their *Petitions for Review* with the CTA *En Banc*, by respondent on April 11, 2017 under CTA EB No. 1625, while that of petitioner's on April 17, 2017 under CTA EB No. 1626.

On April 19, 2017, petitioner's *Petition* was consolidated with that of respondent's, the case bearing the lowest docket number, via CTA *En Banc*'s Minute Resolution.[41]

Pending the resolution of the CTA *En Banc*, the trial on the merits in the instant case proceeded.

On May 29, 2017, petitioner filed a *Motion to Commission An Independent Certified Public Accountant*.[42] The Court commissioned Ms. Roselle Y. Caraig on June 14, 2017, as the Independent Certified Public Accountant (ICPA) to render a report on the case.[43]

When the case was called for the presentation of evidence for the petitioner to determine the liability for the remaining deficiency taxes for the TY 2009, petitioner presented documentary and testimonial evidence. As for its testimonial evidence, petitioner offered the testimonies of the following witnesses: Mr. Techserve Allan Golfo,[44] Senior Manager for Corporate Accounting, Ms. Victoria A. Martinez,[45] former Assistant Vice President, and Ms. Roselle Y. Caraig,[46] the Court-commissioned ICPA.

On August 3, 2017, the ICPA submitted her report[47] to the Court, which was later amended and submitted on September 7, 2017.[48]

[41] Docket – Vol. III, pp. 1200 to 1201.
[42] Docket, Vol. III, pp. 1217 to 1220.
[43] Minutes of the Hearing held on June 14, 2017, Docket - Vol. III, pp. 1362 to 1363.
[44] Exhibit "P-5006", Docket – Vol. IV, pp. 1416 to 1435; Minutes of the hearing held on July 31, 2017, Docket – Vol. IV, p. 1787; Order dated August 16, 2017, Docket – Vol. IV, p. 1788.
[45] Exhibit "P-5007", Docket – Vol. IV, pp. 1392 to 1397; Minutes of the hearing held on July 31, 2017, Docket – Vol. IV, p. 1787; Order dated August 16, 2017, Docket – Vol. IV, p. 1788.
[46] Exhibit "P-300", Docket – Vol. IV, pp. 1820 to 1843; Minutes of the hearing held on September 13, 2017, Docket – Vol. IV, p. 1847; Order dated August 16, 2017, Docket – Vol. IV, p. 1788.
[47] ICPA Report dated July 31, 2017.

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For petitioner's documentary evidence, it filed its *Formal Offer of Evidence* on October 30, 2017.[49]

On November 27, 2017, the said *Formal Offer of Evidence* was resolved by the Court,[50] admitting petitioner's exhibits, *except* for certain exhibits which were denied for not being found in the records and for failure to submit the duly marked exhibit.

Petitioner filed a *Motion for Partial Reconsideration (Re: Resolution dated November 27, 2017)* on December 12, 2017,[51] which was partially granted by the Court in its Resolution dated June 21, 2018,[52] admitting the previously denied exhibits except for Exhibit "P-93", for not being found in the records.

Petitioner's admitted documentary exhibits are the following:

Exhibit:	Description:
P-4	Formal Letter of Demand with Final Assessment Notice dated June 27, 2014
P-5	Petitioner's Protest filed on July 25, 2014
P-11	Income Tax Return of FPH for the year 2009
P-60	PRC Professional Identification Card
P-61	Bureau of Internal Revenue Accreditation Number 08-000745-40-2016 issued to Roselle Y. Caraig on June 8, 2016 by the Revenue National Accreditation Board valid until June 8, 2019
P-62	PICPA ID with ID Number 101274
P-63	Tax Management Association of the Philippines (TMAP) application form for Isla Lipana & Co. indicating Roselle Y. Caraig as the representative
P-64	Curriculum vitae
P-65	Reconciliation of undeclared sales
P-66	Reconciliation of undeclared purchases
P-67	Audited Financial Statement of FPH for Taxable Year 2009
P-68	Itemized summary of the donations of Eugenio Lopez Foundation, Inc., the Philippine Business for Social Progress, and the Lopez Group Foundation, Inc.
P-69	Certificate of Donation No. D033-093-2009 (certified by Benjamin F. Uichico, authorized signatory of the

[48] Exhibit "P-51", Amended ICPA Report dated August 31, 2017.
[49] Docket – Vol. V, pp. 1876 to 1887.
[50] Resolution dated November 27, 2017, Docket – Vol. V, pp. 2115 to 2117.
[51] Docket – Vol. V, pp. 2124 to 2127.
[52] Docket – Vol. V, pp. 2172 to 2178.

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	Philippine Business for Social Progress)
P-69-A	Certificate of Donation No. D043-007-2009 (certified by Marifi H. Hernandez, acting comptroller of ELFI)
P-69-B	Certificate of Donation No. D043-014-2009 (certified by Marifi H. Hernandez, acting comptroller of ELFI)
P-69-C	Certificate of Donation No. D043-022-2009 (certified by Marifi H. Hernandez, acting comptroller of ELFI)
P-69-D	Certificate of Donation No. D043-028-2009 (certified by Marifi H. Hernandez, acting comptroller of ELFI)
P-69-E	Certificate of Donation No. D043-035-2009 (certified by Marifi H. Hernandez, acting comptroller of ELFI)
P-69-F	Certificate of Donation No. D043-044-2009 (certified by Marifi H. Hernandez, acting comptroller of ELFI)
P-69-G	Certificate of Donation No. D043-047-2009 (certified by Marifi H. Hernandez, acting comptroller of ELFI)
P-69-H	Certificate of Donation No. D043-052-2009 (certified by Marifi H. Hernandez, acting comptroller of ELFI)
P-69-I	Certificate of Donation No. D043-054-2009 (certified by Marifi H. Hernandez, acting comptroller of ELFI)
P-69-J	Certificate of Donation No. D043-061-2009 (certified by Marifi H. Hernandez, acting comptroller of ELFI)
P-69-K	Certificate of Donation No. D043-040-2009 (certified by Marifi H. Hernandez, acting comptroller of ELFI)
P-69-L	Certificate of Donation No. D043-044-2009 (certified by Marifi H. Hernandez, acting comptroller of ELFI)
P-69-M	Certificate of Donation No. D043-048-2009 (certified by Marifi H. Hernandez, acting comptroller of ELFI)
P-70	Schedule with breakdown of Representation Expense of Petitioner
P-71	Reconciliation of Interest Expense of Petitioner
P-72	Reconciliation of Professional Fees
P-73	Reconciliation of Rental
P-74 to P-74-L	Reconciliation of ITR/FS and Alphalist
P-75	Judicial Affidavit of Roselle Y. Caraig (Re: Commissioning as Independent Certified Public Accountant)
P-75-A	Signature of Roselle Y. Caraig
P-76	Judicial Affidavit of Jason Jimenez
P-76-A	Signature of Jason Jimenez
P-77	Independent Certified Public Accountant (ICPA) Report dated August 31, 2017
P-78	Certificate of Filing of Amended Articles of Incorporation dated August 6, 2014 with attached Amended Articles of Incorporation of Petitioner
P-78-1	Amended Articles of Incorporation of Petitioner
P-78-2	Certificate of Filing of Amended By-Laws dated July 9, 2009 with attached Amended By-laws of Petitioner
P-79	BIR Certificate of Registration of Petitioner
P-80	Summary List of Sales for calendar year 2009
P-81	Summary List of Purchases for calendar year 2009

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P-82	Alphalist of Payees
P-83	Relevant working paper of Petitioner's external auditor to prove that there were not transactions with INAEC Corporation
P-84	Relevant working paper of Petitioner's external auditor to prove that the amount picked up by the BIR included transactions which should not be classified under "salaries and wages" account
P-84-1	Breakdown of the personnel expenses that should not be classified as salaries based on the working paper of Petitioner's external auditor
P-84-2	Breakdown of retirement benefit expense based on the working paper of Petitioner's external auditor
P-84-3	Breakdown of training and others based on the working paper of Petitioner's external auditor
P-84-4	Breakdown of reconciling items of the disallowed expenses issue
P-84-5	Breakdown of other outside services under disallowed expenses issue
P-84-6	Breakdown of the repairs and maintenance, office supplies expense and communication, light and water under the disallowed expense issue
P-84-7	Schedule of Exhibits
P-85	Audited Financial Statement of Petitioner for the year ending December 31, 2009
P-86	Floating Rate Corporate Notes (FRCN) Facility Agreement
P-87	Fixed Rate Corporate Notes (FXCN) Facility Agreement
P-88	Reconciling items of the identified discrepancy between the forex loss per AFS vs. forex loss per ITR based on relevant portion of the working paper from Petitioner's external auditor
P-89 to P-89-24	Official Receipts by the Law Firm of Quiason Makalintal Barot Torres and Ibarra to Petitioner
P-89-25 to P-89-40	Official Receipts by SGV & Co. to Petitioner
P-89-41 to P-89-64	Official Receipts by Migallos & Luna Law Office to Petitioner
P-89-53 to P-89-65	Official Receipts by Puno and Puno Law Offices to Petitioner
P-90 to P-90-2	Official Receipts by Watson Wyatt Worldwide to Petitioner
P-91	Official Receipts issued by First Philippine Realt Corporation
P-92 to P-92-74	Certificate of Creditable Tax Withheld At Source BIR Form No. 2307 of Petitioner
P-93-1 to P-93-54	Documentary Stamp Tax Declaration/Return BIR Form No. 2000 of Petitioner
P-300	Judicial Affidavit of Roselle Y. Caraig
P-300-A	Signature of Roselle Y. Caraig

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P-5001	FPH's Articles of Incorporation
P-5002	FPH's Annual Income Tax Return (BIR Form No. 1702) for taxable year 2009 filed with the BIR on April 14, 2010
P-5003	General Ledger of FPH
P-5004	Floating Rate Corporate Notes (FRCN) Facility Agreement
P-5005	Fixed Rate Corporate Notes (FXCN) Facility Agreement
P-5006	Judicial Affidavit of Techserve Allan U. Golfo
P-5006-A	Signature of Techserve Allan U. Golfo
P-5007	Judicial Affidavit of Victoria A. Martinez
P-5007-A	Signature of Victoria A. Martinez

During the hearing held on July 23, 2018, respondent's counsels manifested that they are adopting all the evidence presented in the preliminary determination of jurisdiction of this case, which was noted by the Court.[53] Consequently, on July 31, 2018, respondent filed its *Formal Offer of Evidence*,[54] with petitioner's *Comment/Opposition (To Respondent's Formal Offer of Evidence)* filed on August 24, 2018.[55]

Meanwhile, on September 3, 2018, CTA *En Banc* issued a Decision,[56] denying both petitions for lack of merit. The dispositive portion of the Decision states:

> "**WHEREFORE**, pursuant to Section 2 of Republic Act No. 1125, as amended by Republic Act No. 9503 in relation to Section 3 of Rule 2 of the Revised Rules of the Court of Tax Appeals, the Petitions for Review filed by First Philippine Holdings Corporation and the Commissioner of Internal are hereby **DENIED** for lack of merit. The findings and conclusions reached by the Second Division in the assailed Resolutions dated September 27, 2016 and March 9, 2017 Assailed Resolutions are hereby **AFFIRMED**.
>
> **SO ORDERED.**"

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[53] Minutes of the hearing held on June 23, 2018, Docket – Vol. V, p. 2177; Order dated July 23, 2018, Docket – Vol. V, p. 2178.
[54] Docket – Vol. V, pp. 2184 to 2187.
[55] Docket – Vol. V, pp. 2195 to 2201.
[56] Docket – Vol. V, pp. 2203 to 2249.

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Resolving respondent's *Formal Offer of Evidence*, the Court issued a Resolution dated October 3, 2018,[57] admitting respondent's exhibits and giving the parties a period of thirty (30) days from notice to file their respective memorandum.

Respondent's documentary exhibits are the following:

Exhibit:	Description:
R-8	Letter dated May 14, 2010
R-9	First Notice for the Presentation of Books of Accounts and other Accounting Record dated June 7, 2010
R-10	Second and Final Notice for the Presentation of Books of Accounts and other Accounting Record dated August 5, 2010
R-11	Letter dated April 5, 2011
R-12	Preliminary Assessment Notice with Details of Discrepancies
R-13	Formal Letter of Demand, Assessment Notices and Details of Discrepancies

In compliance thereof and within the extended time granted by the Court, petitioner filed its *Memorandum* on November 26, 2018,[58] while respondent failed to file his memorandum as per Records Verification Report dated December 6, 2018.[59]

On January 4, 2019, the instant case was submitted for decision.[60]

THE ISSUES

Based on the JSF, both parties are unable to agree on the issues to be resolved by the Court. Hence, the issues to be resolved for petitioner are as follows:[61]

1. Whether or not the right of the respondent to assess petitioner for deficiency taxes has already prescribed;

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[57] Docket – Vol. V, pp. 2269 to 2270.
[58] Docket - Vol. V, pp. 2303 to 2374.
[59] Docket – Vol. V, p. 2377.
[60] Resolution dated October 16, 2018, docket, Vol. III, p. 1779.
[61] Pars. 1 to 10, Issues to be Resolved, JSF, Docket – Vol. I, pp. 396 to 397.

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2. Whether or not petitioner was afforded due process in the issuance of the formal letter of demand and final assessment notice;

3. Whether or not petitioner's right to speedy disposition of cases was violated;

4. Whether or not the FLD-FAN is invalid for failure to comply with Revenue Memorandum Order No. 1-2000;

5. Whether or not petitioner is liable for deficiency income tax for taxable year 2009;

6. Whether or not petitioner is liable for deficiency VAT for taxable year 2009;

7. Whether or not petitioner is liable for deficiency EWT for taxable year 2009;

8. Whether or not petitioner is liable for deficiency WC for taxable year 2009;

9. Whether or not petitioner is liable for deficiency FBT for taxable year 2009; and

10. Whether or not petitioner is liable for deficiency DST for taxable year 2009.

On the other hand, the sole issue to be resolved on the part of the respondent is as follows:[62]

> Whether or not petitioner is liable to pay the assessed amount of ₱1,555,240,774.37, representing its deficiency Income Tax, VAT, EWT, WC, FBT, DST and corresponding penalties and interest, for taxable year 2009.

Petitioner's arguments:

Petitioner argues that it is not liable to deficiency taxes for the TY 2009.

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[62] Par. 1, JSF, Docket – Vol. I, p. 397.

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Petitioner avers that on the alleged assessed deficiency income tax, it stresses that it does not have any form of undeclared sales, unaccounted purchases or unrecognized income, nor does it maintain an unaccounted source of cash. It contends that being a listed company, it adopts the policy of transparency and full reporting with regard to its tax records and full compliance with applicable laws and regulations.

As to the assessed deficiency VAT, petitioner argues that Section 106 of the National Internal Revenue Code (NIRC) of 1997, is inapplicable as it is a seller of services, subject to VAT upon collection and not upon consummation of the sale. Further, petitioner maintains that it did not have undeclared purchases as well as unaccounted source of cash.

Petitioner disagrees with respondent when it was assessed of deficiency EWT and WC on the basis that the assessment lacks factual or legal basis. As such, the deficiency EWT and WC assessment must be cancelled for being in clear violation of its right to due process and non-compliance with Section 228 of the NIRC of 1997.

On the deficiency FBT, petitioner avers that this item should be cancelled as the expenses on transportation and travel were only used for the conduct of the business and cannot be considered as fringe benefits. Moreover, the item "Other Benefits" should also be cancelled as respondent failed to indicate where he got the figure.

Lastly, petitioner asserts that it is not liable for deficiency DST on the basis that the *Filinvest* Decision,[63] imposition of DST on inter-office advances granted to affiliated corporation, is not applicable in this case. It posits that the Filinvest Decision is not applicable to transactions beginning March 20, 2004 upon the effectivity of Republic Act No. 9243, which amended the provisions of the NIRC of 1997, relating to DST. According to petitioner, the said Decision cannot be applied retroactively.

Respondent's counter-arguments:

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[63] Referring to *Commissioner of Internal Revenue vs. Filinvest Development Corporation*, G.R. Nos. 163653 and 167689 dated July 19, 2011.

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Respondent maintains that petitioner is liable for deficiency income tax, VAT, EWT, WC, FBT and DST for the TY 2009.

COURT'S RULING

The *Petition for Review* must be partially granted.

As ruled in the Resolution dated September 27, 2016,[64] which was affirmed by the CTA *En Banc* in its Decision dated September 3, 2018,[65] the period to assess the following alleged deficiency taxes for the TY 2009 have already prescribed:

(1) deficiency VAT for the 1st and 2nd quarters of 2009;
(2) deficiency EWT for the months of January to July 2009;
(3) deficiency WT on compensation for the months of January to July 2009; and
(4) deficiency FBT for the 1st and 2nd quarters of 2009.

The Court shall now determine whether the petitioner is liable of the remaining alleged deficiency income tax, VAT for the 3rd and 4th quarters, EWT for the months of August to December, WC for the months of August to December, DST and compromise penalty for the TY 2009.

For an orderly discussion, the subject tax assessments shall be addressed in this sequence:

Tax Type	Total
EWT	₱ 22,253,254.71
WTC	37,921,896.86
IT	975,125,852.15
FBT	837,906.06
VAT	19,336,010.17
DST	499,765,854.42
Total	**₱1,555,240,774.37**

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[64] Docket – Vol. III, pp. 1126 to 1144.
[65] Docket – Vol. V, pp. 2203 to 2249.

I. DEFICIENCY EWT - ₱22,253,254.71

Respondent assessed petitioner of deficiency EWT for TY 2009 in the amount of ₱22,253,254.71, computed as follows:[66]

	Amount	Rate	Tax Due
Professional Fee (15%)	₱ 66,922,594.80	15%	₱ 10,038,389.22
Professional Fee (10%)	790,628.20	10%	79,062.82
Rental	19,090,158.00	5%	954,507.90
Payment to supplier of services to Top 10T Corp	1,160,877,170.00	2%	23,217,543.40
Payment of goods to Top 10T Corp	9,610,152.00	1%	96,101.52
Total	**₱1,257,290,703.00**		**₱ 34,385,604.86**
Less: Payment			22,751,045.89
Tax Still Due			**₱ 11,634,558.97**
Add: Interest (Computed up to 07.15.2014)	₱ 10,467,915.52		
Interest on late remittance	125,780.22	₱10,593,695.74	
Compromise Penalty		25,000.00	10,618,695.74
TOTAL DEFICIENCY EWT			**₱22,253,254.71**

The assessment resulted from the respondent's finding that there were income payments made by petitioner in the year 2009 that were not subjected to EWT as required under Section 2.57.2 of Revenue Regulations (RR) No. 02-98, as amended, detailed as follows:[67]

Income Payments	**Per ITR/FS**		**Per Alphalist**	**Discrepancy**	**Rate**	**EWT Due**
Professional Fee (15%)		₱ 66,922,594.80	₱ 53,113,965.12	₱ 13,808,629.68	0.15	₱ 2,071,294.4
Professional Fee (15%)		790,628.20	790,628.20	-		
Rental		19,090,158.00	17,864,647.74	1,225,510.26	0.05	61,275.5
Payment of services by Top 10T Corp						
Security Services	₱ 14,061,410.00					
Other Outside services	18,219,959.00					
Advertising	1,425,625.00					
Repairs and Maintenance -Labor	6,614,607.00					
Insurance	7,452,886.00					
Communication, Light and Water	6,757,086.00					
Interest	1,067,075,436.00					
Representation	5,020,086.00					
Others-Cost of Services	13,155,000.00					
Others-Operating Expenses	21,095,075.00	1,160,877,170.00	685,777,719.97	475,099,450.03	0.02	9,501,989.0
TOTAL		**₱1,247,680,551.00**	**₱757,546,961.03**	**₱490,133,589.97**		**₱11,634,558.9**
Add: Interest (Computed up to 07.15.2014)			₱ 10,467,915.52			

[66] Exhibit "P-4", Docket – Vol. II, p. 798.

[67] Exhibit "P-4", Details of Discrepancies, Schedule 8, Docket – Vol. II, p. 802.

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Income Payments	Per ITR/FS	Per Alphalist	Discrepancy	Rate	EWT Due
Interest on late remittance		125,780.22	₱10,593,695.74		
Compromise Penalty			25,000.00		10,618,695.:
TOTAL DEFICIENCY EWT					**₱22,253,254.7**

The Court shall discuss each of the above-enumerated categories of income payments.

a. Professional fees - ₱13,808,629.68

Section 2.57.2(A)(9) of RR No. 02-98, as amended, imposes 10% or 15% on payments for professional fees as follows:

> "***Sec. 2.57.2. Income payments subject to creditable withholding tax and rates prescribed thereon. — xxx.***
>
> (A) *Professional fees, talent fees, etc., for services rendered by individuals.* — On the gross professional, promotional and talent fees or any other form of remuneration for the services of the following individuals — Fifteen percent (15%), if the gross income for the current year exceeds P720,000; and Ten percent (10%), if otherwise;"

Petitioner contends that the assessed professional fees of ₱13,808,629.68 pertain to: (a) income payments to entities exempted from withholding, (b) professional fees subjected to 2% withholding and (c) legal fees which were not considered by respondent in his evaluation/audit.

Details of petitioner's reconciliation are as follows:[68]

Per ITR/FS		**₱67,713,223.00**
Less:		
1. Exempted from EWT-GPPs		
SGV & Co.	₱ 6,063,156.70	
Migallos & Luna Law Offices	300,000.00	
Puno & Puno Law Offices	363,000.00	
The Law Firm of QMBTI	2,155,090.84	
Villaraza Cruz Marcelo & Angangpaco	8,928,571.42	
2. Income subjected to 2% EWT		

[68] Exhibit "P-77", Table 6.15, p. 17.

Watson Wyatt Philippines	600,000.00	
Add:		
3. Various legal fees subjected to 15% EWT	1,560,000.00	
Professional fees subjected to 15% EWT	2,874,705.91	
Others	166,483.00	
Per Alphalist	**₱53,904,592.95**	

The Court-commissioned ICPA, Ms. Roselle M. Caraig, stated that it was not provided with Schedule 3 of the Annual Information Return of Income Tax Withheld (Expanded)/Income Payments Exempt from Withholding Tax (BIR Form No, 1604-E) to be able to verify the actual amount of income payments to General Professional Partnerships (GPPs) listed above. However, the ICPA was provided with the official receipts (ORs)[69] issued by the said GPPs to support petitioner's payments thereto for CY 2009.

With regard to the income payments to Watson Wyatt Philippines, the ICPA noted from the alphalist of payees attached to the BIR Form No. 1604-E that the total income payments amounted to ₱602,500.00 and not ₱600,000.00 as claimed by petitioner.[70] The ICPA was, likewise, provided with copies of the ORs[71] issued by Watson Wyatt Philippines aggregating to ₱662,750.00 to support the claimed expenses.

As to the reconciliation items "various legal fees subjected to 15%" and "professional fees subjected to 15% EWT", the ICPA was not provided with the details of the suppliers/income payments composing the said payments. However, the ICPA verified that the total income payments subjected to 15% withholding tax per alphalist of payees attached to the BIR Form No. 1604-E amounted to ₱53,111,018.37.

The ICPA was not able to verify the reconciling item "Others" as it was not provided with details and/or documents in support of petitioner's claim.

The Court sustains the assessment.

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[69] Exhibits "P-89-1" to "P-89-65".
[70] Exhibit "P-82".
[71] Exhibits "P-90-1" and "P-90-2".

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Section 22(B) of the NIRC of 1997, as amended, defines GPPs as "*partnerships formed by persons for the sole purpose of exercising their common profession, no part of the income of which is derived from engaging in any trade or business*". As a corollary, Section 26 of the same NIRC provides that a general professional partnership shall not be subject to income tax. Its partners are the ones liable in their individual capacity for the payment of income tax.

Consequently, GPPs are exempt from EWT as provided for under Section 2.57.5 of RR No. 02-98, as amended by RR No. 14-02, to wit:

> "Sec. 2.57.5. *Exemption from Withholding.* — The withholding of creditable withholding tax prescribed in these Regulations shall not apply to income payments made to the following:
>
> xxx xxx xxx
>
> (B) Persons enjoying exemption from payment of income taxes pursuant to the provisions of any law, general or special, such as but not limited to the following:
>
> xxx xxx xxx
>
> (4) General professional partnerships
>
> xxx xxx xxx"

However, in the instant case, petitioner failed to provide valid supporting documents, such as the Articles of Partnership of the subject payees to prove that the same are indeed GPPs. The ORs presented by petitioner merely established the amount of professional fees paid for a particular period.

As to the professional fees paid to Migallos & Luna Law Offices and Puno & Puno Law Offices, in the respective amounts of ₱300,000.00 and ₱363,000.00, there is no indication that the gross income for the year 2009 of the said payees did not exceed ₱720,000.00. Thus, the same shall be imposed with the 15% EWT rate.

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On the income payments to Watsons Wyatt Philippines amounting to ₱662,750.00, the Court cannot determine the taxability of the same because the supporting ORs[72] do not show the description or the nature of the said income payments. Also, petitioner did not submit the invoices referred to in the ORs.

As to the remaining reconciling items, *i.e.*, various legal fees subjected to 15% EWT in the amount of ₱1,560,000.00, professional fees subjected to 15% EWT in the amount of ₱2,874,705.91 and others in the amount of ₱166,483.00, the Court cannot verify the same without the corresponding details and supporting documents.

In sum, petitioner is liable for the deficiency 15% EWT assessment of ₱2,071,294.45 on professional fees of ₱13,808,629.68.

b. Rentals - ₱1,225,510.26

Petitioner contends that the difference in rentals amounting to ₱1,225,510.26 pertains to income payments to First Philippine Realty Corporation for purchases of food items.

However, a perusal of the OR[73] provided by petitioner shows that the amount indicated therein does not tally with the assessed amount of ₱1,225,510.26. Moreover, since the nature of the income payment cannot be ascertained from the supporting OR, the Court cannot determine the tax implication of the transaction. Thus, the income payment of ₱1,225,510.26 shall be considered as rentals subject to 5% EWT, under Section 2.57.2 of RR No. 02-98, as amended by RR No. 14-02, which states:

> "Sec. 2.57.2. Except as herein otherwise provided, there shall be withheld a creditable income tax at the rates herein specified for each class of payee from the following items of income payments to persons residing in the Philippines:
>
> xxx xxx xxx
>
> (C) Rentals

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[72] Exhibits "P-90-1" and "P-90-2".
[73] Exhibit "P-91".

(1) *Real properties.* — On gross rental for the continued use or possession of real property used in business which the payor or obligor has not taken or is not taking title, or in which he has no equity — Five percent (5%);

(2) *Personal properties.* — On gross rental or lease in excess of Ten Thousand Pesos (P10,000.00) per payment for the continued use or possession of personal property used in business which the payor or obligor has not taken or is not taking title, or in which he has no equity which include, but not limited to the following: land transport equipment, water transport equipment, air transport equipment, industrial equipment, commercial equipment, scientific equipment, agricultural machinery and equipment, construction/civil engineering machinery and equipment, telecommunication equipment, office furniture/machines/equipment, main frame computer and all other computer machines/equipment, materials handling equipment and auxiliary equipment — Five percent (5%);

However, the Ten Thousand Pesos (P10,000.00) threshold shall not apply when the accumulated gross rental or lease paid by the lessee to the same lessor exceeds or is reasonably expected to exceed P10,000.00 within the year. In which case, the lessee shall withhold the five percent (5%) withholding tax on the entire amount.

c. Purchases of Services by Top 10,000 Corporations - ₱475,099,450.03

Petitioner argues that the difference pertains to (a) salaries and wages paid to security guards through security agencies, (b) membership dues and charges paid to non-stock non-government institutions exempt from income (withholding) tax, (c) interest payments to financial institutions exempt from income (withholding) tax by virtue of their certificate of tax exemptions; and (d) payments to government or its political subdivisions for real property taxes, business permits and other local and national taxes and fees.[74]

The Court cannot likewise verify petitioner's claim due to lack of specific details and supporting documents pertaining to the items in the reconciliation submitted by the petitioner. Thus, this assessment item shall remain.

It is noted that while the assessment covering the months of January to July of TY 2009 had already prescribed, petitioner was unable to point out which portion of the assessment pertains thereto, hence, the entire EWT assessment shall be considered as pertaining to the months of August to December 2009.

In sum, petitioner is liable for basic deficiency EWT for TY 2009 in the amount of ₱11,634,558.97, computed as follows:

Income Payments	Amount	Rate	EWT Due
Professional Fee (15%)	₱ 13,808,629.68	15%	₱ 2,071,294.45
Rental	1,225,510.26	5%	61,275.51
Purchases of services by Top 10T Corp	475,099,450.03	2%	9,501,989.00
TOTAL	**₱490,133,589.97**		**₱11,634,558.97**

II. DEFICIENCY WTC - ₱37,921,896.86

Finding that petitioner failed to pay the corresponding WTC on unaccounted salaries and wages of ₱65,838,758.30 pursuant to Section 80(A) of the NIRC of 1997, as amended, respondent assessed petitioner of deficiency EWT in the amount of ₱37,921,896.86, computed as follows:[75]

Unaccounted Salaries and Wages		₱ 65,838,758.30
Rate		0.30
Deficiency Tax		₱ 19,948,611.70
Add: Interest (Computed up to 07.15.2014)	₱17,948,285.16	
Compromise Penalty	25,000.00	17,973,285.16
TOTAL DEFICIENCY WTC		**₱37,921,896.86**

74 Exhibit "P-77", Annexes 3, 3-1, 3-2 and 3-3.
75 Exhibit "P-4", Docket – Vol. II, pp. 797 to 813.

Respondent computed the unaccounted salaries and wages as follows:[76]

Salaries and Wages	
Per ITR	₱422,611,345.00
Per Alphalist	356,772,586.70
Unaccounted Salaries and Wages	**₱65,838,758.30**

Relative thereto, petitioner contends that the difference between the salaries and wages per ITR as against those shown in the alphalist of employees attached to the *Annual Information Return of Income Tax Withheld on Compensation and Final Withholding Taxes* or BIR Form No. 1604-CF pertains to 13th month pay as well as petitioner's contributions to pension plans, Social Security System (SSS), Home Development Mutual Fund (HDMF)/Pag-ibig and PhilHealth which are allegedly exempt from WTC. Details of petitioner's reconciliation are presented as follows:[77]

Salaries and Wages per ITR	₱453,174,482.00
Salaries and Wages per Alphalist of Payees	356,772,586.70
Unaccounted Salaries and Wages	₱ 96,401,895.30
Less: Payments not subjected to withholding tax on compensation	
Contributions to Pension plans	₱185,126,164.77
SSS, HDMF, and Philhealth	1,320,045.00
Fringe-Benefits – Others	8,774,250.41
Add: Classified under "Direct Charges-Salaries, wages and benefits"	98,818,564.88
Difference	**₱ -**

However, petitioner failed to present evidence to explain the actual nature of the aforesaid amounts. Thus, in the absence of proof that the amount of ₱65,838,758.30 is not subject to WTC, petitioner is liable for the corresponding basic deficiency WTC for TY 2009 in the amount of ₱19,948,611.70, as computed by respondent.

As earlier noted, respondent's right to assess petitioner of deficiency WTC for the months of January to July of TY 2009 had already prescribed. Petitioner was, however, unable to establish that the salaries and wages of ₱65,838,758.30 or a portion thereof pertained to the months of January to July, 2009. Thus, the Court shall consider the amount of ₱65,838,758.30 as pertaining to the months of August to December 2009.

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[76] Exhibit "P-4, Details of Discrepancies, Schedule 7, Docket – Vol. II, p. 801.
[77] Exhibit "P-77", p. 16, Table 6.14.

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III. DEFICIENCY INCOME TAX - ₱975,125,852.15

In the respondent's FLD, the deficiency income tax assessment was computed as follows:[78]

Taxable income per return		₱ -
Add (Less) adjustment:		
Undeclared Sales (SLS vs Relief)	₱ 14,601,213.26	
Undeclared Purchases (SLP vs Relief)	9,513,394.16	
Undeclared Income	6,253,986.54	
Unaccounted source of cash	6,548,267.00	
Disallowed Charitable Contribution	5,464,500.00	
Disallowed Representation	3,979,609.13	
Disallowed expenses	1,151,652,963.00	
Unaccounted Salaries and Wages	65,838,758.30	
Expenses not subjected to EWT	490,133,589.97	1,753,986,281.36
Adjusted Net income		**₱1,753,986,281.36**
Tax Due		₱ 526,195,884.41
Less: Payments		
Prior Years Excess Credits	₱ 78,401,789.00	
Creditable Withholding Tax (1st to 3rd Quarters)	6,372,031.00	
Creditable Withholding Tax (4th Quarter)	6,802,745.00	
Total	₱ 91,576,565.00	
Less: MCIT	-	
Total	₱ 91,576,565.00	
Less: Amount carry forward for next year	91,576,565.00	
Excess	₱ -	
Unsupported 2307		911,174.29
Tax still due and payable		₱ 527,107,058.70
Add: Interest (Computed up to 07.15.2014)	₱ 447,968,793.45	
Compromise Penalty	50,000.00	448,018,793.45
TOTAL DEFICIENCY INCOME TAX		**₱ 975,125,852.15**

As can be seen from the above computation, the assessment arose from the following items:

A. Undeclared Sales (SLS vs TPI-Relief)	₱ 14,601,213.26
B. Undeclared Purchases (SLP vs TPI-Relief)	9,513,394.16
C. Undeclared Income	6,253,986.54
D. Unaccounted source of cash	6,548,267.00
E. Disallowed Charitable Contribution	5,464,500.00
F. Disallowed Representation	3,979,609.13
G. Disallowed Expenses	1,151,652,963.00

[78] Exhibit "P-4", Docket – Vol. II, p. 797.

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H.	Unaccounted Salaries and Wages	65,838,758.30
I.	Expenses not subjected to EWT	490,133,589.97
J.	Amount carried forward for next year	91,576,565.00
K.	Unsupported Creditable Withholding Taxes	911,174.29

A. Undeclared Sales - ₱14,601,213.26

The undeclared sales were derived by the respondent as follows:

As described in the Details of Discrepancies, the undeclared sales of ₱14,601,213.26 is based on the difference between the Service Income per books against that RELIEF, hence must be added in the computation of income tax, pursuant to Section 32 of the NIRC of 1997, as amended.[79]

Registered Name	Amount per SLS	Registered Name	Amount per RELIEF	Difference
None	-	First Electro Dynamics Corporation	₱ 600,000.00	₱ 600,000.0
First Philippine Industrial Corporation	₱18,556,701.03	First Philippine Industrial Corporation	24,742,268.04	6,185,567.0
First Sumiden Circuits Inc	4,595,099.62	First Sumiden Circuits Inc	4,232,741.35	4,232,741.3
None	-	Hewlett Packard Philippines Corporation	136,564.25	136,564.2
None	-	INAEC Aviation Corporation	721,315.50	721,315.5
None	-	Kimberly Clark PhilsInc	51,278.60	51,278.6
Planet Sports	2,867,610.59	Planet Sports	3,751,215.66	883,605.0
Stock Transfer Service Inc	424,277.32	Stock Transfer Service Inc	1,060,693.40	636,416.0
None	-	The Mercantile Insurance Company Inc	49,205.92	49,205.9
Trans-Asia Oil and Energy Development Corporation	2,046,258.59	Trans-Asia Oil and Energy Development Corporation	3,150,778.09	1,104,519.5
Total				**₱14,601,213.2**

The resulting discrepancy as found in the above table was computed by deducting the amount reflected per petitioner's Summary List of Sales (SLS) from the amount of Summary List of Purchases (SLP) per Third-Party Information (TPI)/Reconciliation of Listing for Enforcement (RELIEF), or in case the amount per SLS is higher than the amount per RELIEF, by automatically reflecting the lower amount of income between SLS and RELIEF as an undeclared sales.

[79] Exhibit "P-2", Details of Discrepancies, Schedule 1, Docket – Vol. II, pp. 778 to 779.

On the other hand, petitioner asserts that as seller of services, its VAT payments are based on gross receipts. As such, there are significant differences in accounting methods between income tax accounting under accrual basis and VAT accounting under cash basis due to timing differences in recognizing income per income tax and per VAT. Thus, discrepancies between the RELIEF and SLS of the petitioner should not be automatically subjected to income tax.

Petitioner accounted for the differences as follows: (a) the amount of ₱651,278.60 pertains to the rental income from First Electro Dynamics Corporation and Kimberly Clark Philippines Inc. which were accrued in 2009 but were not collected during the year, (b) the amount of ₱770,521.42 pertains to unearned and uncollected service income from INAEC Aviation Corporation and The Mercantile Insurance Company, (c) there is no unaccounted sales amounting to ₱760,165.93 to Stock Transfer Services Inc. and Trans-Asia Oil and Energy Development Corporation, such discrepancy is an excessive declaration of purchases from the said customers, (d) the amount of ₱136,564.25 pertains to rebates received from Hewlett Packard Philippines Corporation which petitioner treated as a reduction in expense; and (e) the difference in the declarations made by First Philippine Industrial Corporation, Planet Sports Inc., Stock Transfer Services, Inc., Trans-Asia Oil and Development Corporation and First Sumiden Circuits, Inc. in the total amount of ₱12,282,683.08 refers to income accrued but not yet collected in the year 2009. Furthermore, petitioner noted that for the sales made to First Sumiden Circuits, Inc. amounting to ₱4,595,099.62, it reported higher sales in its VAT Returns than the amount reported per RELIEF.

Petitioner likewise contends that the BIR should have secured certifications from concerned parties to authenticate said declarations and present such certifications to the petitioner in order that it can have a fair chance to validate the same. Thus, the imposition of income tax on any discrepancy is not factual but merely a conclusion.

The Court cancels the assessment.

To reiterate, respondent purportedly found petitioner to have undeclared sales/receipts not subjected to income tax derived per matching of the petitioner's SLS *vis-à-vis* the data from the BIR's RELIEF System.

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However, records do not show that the information provided by the BIR was verified. The method employed by respondent in securing the data from the RELIEF, which were compared with the figures appearing on petitioner's SLS, violates Revenue Memorandum Order (RMO) No. 04-03, which requires the BIR to verify the allegations stemming from TPI through externally sourced data.

Nowhere in the records did it show that the amount per petitioner's SLS received by the BIR was verified with externally sourced data to check its correctness. The respondent did not secure the required certifications or confirmation from the alleged third-party sources to support the integrity of the amounts per RELIEF.

Notably, RMO No. 04-03 recognizes the need to verify the amounts reflected in the quarterly report with other externally sourced data in ascertaining the taxpayer's under-declaration of revenues or overstatement of costs and expenses, if any. The pertinent portions of RMO No. 04-03 are quoted hereunder:

> "The Bureau of Internal Revenue is reengineering its work processes in order to increase revenue collections and to pursue quality audit by making use of available internal and external information resources. In order to strengthen and enhance its assessment functions, the utilization of information technology has been identified as an effective tool to improve tax administration through the development of the Reconciliation of Listings for Enforcement (RELIEF) System.
>
> The RELIEF System was created to support third-party information program and voluntary assessment program of the Bureau through the cross-referencing of third-party information from the taxpayer's Summary Lists of Sales and Purchases prescribed to be submitted on a quarterly basis pursuant to Revenue Regulations Nos. 7-95, as amended by RR 13-97, RR 07-99 and RR 08-2002.
>
> The RELIEF System shall cover all VAT taxpayers above threshold limits set by RR 8-2002 to submit Summary Lists of Sales and Purchases in magnetic form based on a prescribed electronic format. The consolidation and matching of information with other externally sourced data will detect under-declaration of

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> revenues/ over-declaration of cost and expenses, thus, resulting to greater tax potential."

Without the confirmation from third parties, the finding casts doubts as to the reliability and correctness of the assessment on the alleged undeclared sales.

While it is true that tax assessments have the presumption of correctness and regularity in its favor, it is also equally true that assessments should not be based on mere presumptions no matter how reasonable or logical the presumption might be. This principle was thoroughly discussed by the High Court in the case of *Commissioner of Internal Revenue vs. Hantex Trading Co., Inc.,*[80] the pertinent portions of which are quoted as follows:

> "We agree with the contention of the petitioner that, as a general rule, tax assessments by tax examiners are presumed correct and made in good faith. All presumptions are in favor of the correctness of a tax assessment. It is to be presumed, however, that such assessment was based on sufficient evidence. Upon the introduction of the assessment in evidence, a *prima facie* case of liability on the part of taxpayer is made. If a taxpayer files a Petition for Review in the CTA and assails the assessment, the *prima facie* presumption is that the assessment made by the BIR is correct, and that in preparing the same, the BIR personnel regularly performed their duties. This rule for tax initiated suits is premised on several factors other than the normal evidentiary rule imposing proof obligation on the petitioner-taxpayer: the presumption of administrative regularity; the likelihood that the taxpayer will have access to the relevant information; and the desirability of bolstering the record-keeping requirements of the NIRC.
>
> However, the *prima facie* correctness of a tax assessment does not apply upon proof that an assessment is utterly without foundation, meaning it is arbitrary and capricious. Where the BIR has come out with a 'naked assessment,' *i.e.,* without any foundation character, the determination of the tax due is without rational basis. In such a situation, the U.S. Court of

[80] G.R. No. 136975, March 31, 2005

Appeals ruled that the determination of the Commissioner contained in a deficiency notice disappears. *Hence, the determination by the CTA must rest on all the evidence introduced and its ultimate determination must find support in credible evidence."*

Accordingly, the assessment cannot be sustained since it was based merely on unverified amounts extracted from respondent's own database.

B. Undeclared Purchases - ₱9,513,394.16; and

D. Unaccounted source of cash – ₱6,548,267.00;

Respondent's comparison of the purchases reflected in petitioner's SLP against the amounts declared in the SLS per RELIEF, disclosed a difference amounting to ₱9,513,394.16 which was assessed with deficiency income tax pursuant to Section 32 of the NIRC of 1997, as amended. Below is the detailed breakdown of the alleged undeclared purchases of ₱9,513,394.16:[81]

Registered Name	Total Purchases	Registered Name	Gross Sales Of Seller	Undeclared Purchases
TN Ramos Construction And Development Corp	₱ 598,942.25	TN Ramos Construction and Development Corporation	₱4,314,875.10	₱3,715,932.85
Rufino Ernesto Jr Baltazar	1,312,310.75	Rufino Ernesto Jr Baltazar	3,662,607.15	2,350,296.40
None	-	BMR Modern Structures Inc	867,300.00	867,300.00
The Law Firm of QMBTI	(847,124.91)	*None*	-	847,124.91
None	-	Pilipinas Shell Petroleum Corporation	287,175.78	287,175.78
None	-	Macquarie Capital Securities Philippines Inc	216,148.05	216,148.05
Unison Computer Systems Inc	2,500.00	Unison Computer Systems Inc	203,242.86	200,742.86
Quartz Business Products Corporation	181,116.74	Quartz Business Products Corporation	341,755.46	160,638.72
None	-	Honda Cars Makati Inc	133,428.25	133,428.25
Certification International Philippines Inc	25,000.00	Certification International Philippines Inc	136,000.00	111,000.00
Manila Electric Company	68,009.41	Manila Electric Company	175,331.33	107,321.92
E-Plus Stationery Inc	71,407.00	Eplus Stationery Inc	150,462.51	79,055.51
Griffin Sierra ToursInc	15,920.25	Griffin Sierra Travel Inc	94,569.83	78,649.58
Watson Wyatt Philippines Inc	1,115,000.00	Watson Wyatt Philippines Inc	1,180,000.00	65,000.00
None	-	Integrated Computer Systems Inc	45,535.71	45,535.71

[81] Exhibit "P-2", Schedule 2

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Registered Name	Total Purchases	Registered Name	Gross Sales Of Seller	Undeclared Purchases
None	-	John Clements Consultants Inc	38,886.62	38,886.62
None	-	INAEC Aviation Corporation	36,305.50	36,305.50
Cats Motors Inc	8,221.83	Cats Asian Cars Inc	40,247.16	32,025.33
Crown Property Apprisal Corp	(31,250.00)	*None*	-	31,250.00
Mercury Drug Corporation	30,461.25	Mercury International Security Printing Corp.	53,571.42	23,110.17
None	-	O N Asia Motors Corporation	15,776.32	15,776.32
None	-	Mapfre Insular Insurance Corporation	14,906.67	14,906.67
Lane Archive Technologies of the Philippines	2,567.00	KomstakInc	17,421.02	14,854.02
None	-	Tan Ronnie	14,359.60	14,359.60
None	-	CT CitimotorsInc	8,009.24	8,009.24
Citibind Corporation	2,010.33	Citibind Corporation	9,115.62	7,105.29
Facilities Managers Inc	(6,499.50)	*None*	-	6,499.50
Ambassador Appliances Inc	22,406.25	Ambassador Appliances Inc	27,361.61	4,955.36
Total	**₱2,570,998.65**		**₱12,084,392.81**	**₱9,513,394.16**

Likewise, respondent's verification of the expenses claimed per petitioner's Audited Financial Statements (AFS) as against the purchases of goods by top ten thousand corporations as reported in the Alphalist of Suppliers shows a discrepancy amounting to ₱6,548,267.00 which respondent treated as unaccounted source of cash and subjected to deficiency income tax pursuant to Section 32 of the NIRC of 1997, as amended, computed as follows:[82]

Purchases of Goods by Top 10T Corp.	
Per FS	₱ 9,610,152.00
Per Alphalist	16,158,419.00
Difference	**(₱6,548,267.00)**

On the other hand, petitioner contends that the assessments on undeclared purchases and unaccounted source of cash amounting to ₱9,513,394.16 and ₱6,548,267.00, respectively, lack legal and factual bases because these were merely based on presumptions or conclusion. The FAN-FLD did not provide any details where the discrepancies noted by the respondent came from. In its reply to the PAN, petitioner requested from the respondent, the basis of the assessed amounts but the respondent ignored said request.

Moreover, petitioner asserts that even assuming there were unrecorded purchases, the respondent is in error in concluding that unrecorded purchases is equivalent to undeclared income. Without

[82] Exhibit "P-4", Details of Discrepancies, Schedule 4, Docket - Vol. II, p. 800

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proof that petitioner realized or received income, gain, or profit, there is no factual and legal bases to assess for undeclared income on the ground of unaccounted income payments.

The Court cancels the subject income tax assessment items.

The three (3) elements on the imposition of income tax are: (1) there must be gain or profit, (2) that the gain or profit is realized or received, actually or constructively, and (3) it is not exempted by law or treaty from income tax.[83] Income tax is assessed on income received from any property, activity or service. As such, income tax is imposed only when there is an income, and such income was received by the taxpayer and not when there is an under declaration of purchases.

In this case, the said elements are not present. Respondent's assessment was apparently based on a mere presumption that the alleged undeclared purchases/expenses constitute undeclared income.

For income tax purposes, a taxpayer is free to deduct from its gross income a lesser amount, or not to claim any deduction at all. What is prohibited by the income tax law is to claim a deduction beyond the amount authorized therein.[84]

Even when taxable income is imputed on the alleged undeclared purchases or expenses in the amounts of ₱9,513,394.16 and ₱6,548,267.00, as undeclared purchases or expenses, petitioner is also entitled to claim the corresponding deduction in the same amounts in the nature of direct cost or operating expense. Thus, no gain or profit would result from the transactions which can be subjected to income tax.

C. Undeclared Income - ₱6,253,986.54

[83] *Commissioner of Internal Revenue vs. Court of Appeals, et al.,* G.R. No. 108576, January 20, 1999.
[84] *The Commissioner of Internal Revenue vs. Phoenix Assurance Co., Ltd.,* G.R. No. L-19727, May 20,1965.

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Respondent's reconciliation of petitioner's sales with the SLP of INAEC Aviation Corporation (INAEC) shows that the rental income on petitioner's helicopter was not declared and only a portion of petitioner's purchases from INAEC were declared. In addition, respondent found that petitioner had undeclared other income in the amount of ₱3,000,000.00 which was assessed pursuant to Section 32 of the NIRC of 1997.[85] The details thereof are shown below:

Undeclared Sales (INAEC Aviation Corp.)		₱ 2,885,262.00
Undeclared Income due to undeclared purchases from INAEC Aviation Corp.	₱405,030.04	
Less: Purchases claimed per SLP	36,305.50	368,724.54
Undeclared Other Income		3,000,000.00
Total		**₱6,253,986.54**

Petitioner contends that it does not have any form of undeclared income, and said difference is recorded as follows: (a) undeclared rental income from INAEC Aviation Corporation amounting to ₱2,885,262.00 pertains to income earned and reported in 2006. Its summary list of purchases for the year 2009 shows that there are no purchases transactions with INAEC Aviation Corporation, (b) undeclared other income pertains to the proceeds from the sale of transportation equipment, with ₱2,549,018.33 and ₱305,882.20 representing the book value of the equipment and output VAT, respectively, and audit adjustment in the amount of ₱145,099.47. According to petitioner, since there was no gain from the said sale, the proceeds are not subject to income tax.

The ICPA, upon examination of the working papers of petitioner's external auditors, verified that there were no transactions with INAEC Aviation Corporation for TY 2009 in the amount of ₱2,885,262.00, and that there were no purchase transactions from INAEC Aviation Corporation per SLP. On the other hand, petitioner did not submit any supporting documents pertaining to the Other income amounting to ₱3,000,000.00.

The Court cancels the foregoing item of assessment.

We find that the subject assessment resulted from respondent's comparison of petitioner's sales to purchases from INAEC Aviation Corp. as reflected in its SLS and SLP and that shown per the BIR's RELIEF System. As we have stated earlier, without third party-

[85] Exhibit "P-4", Details of Discrepancies, Schedule 3, Docket - Vol. II, p. 800

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certifications, the assessment resulting therefrom is without factual basis.

E. Disallowed Charitable Contribution - ₱5,464,500.00

Invoking Section 34(H) of the NIRC of 1997, as amended, respondent disallowed petitioner's claimed donations to charitable institutions for failure to present proofs or Certificates of Donation.

Petitioner avers that all donations were properly substantiated with Certificates of Donations, in the form prescribed by the BIR.

The Certificates of Donations (BIR Forms No. 2322) offered by petitioner are summarized as follows:

Exhibit	Payee	Amount
P-69	Philippine Business For Social Progress	₱ 1,000,000.00
P-69-A	Eugenio Lopez Foundation, Inc.	400,000.00
P-69-B	Eugenio Lopez Foundation, Inc.	200,000.00
P-69-C	Eugenio Lopez Foundation, Inc.	200,000.00
P-69-D	Eugenio Lopez Foundation, Inc.	200,000.00
P-69-E	Eugenio Lopez Foundation, Inc.	400,000.00
P-69-F	Eugenio Lopez Foundation, Inc.	200,000.00
P-69-G	Eugenio Lopez Foundation, Inc.	200,000.00
P-69-H	Eugenio Lopez Foundation, Inc.	200,000.00
P-69-I	Eugenio Lopez Foundation, Inc.	500,000.00
P-69-J	Eugenio Lopez Foundation, Inc.	200,000.00
P-69-K	Eugenio Lopez Foundation, Inc.	950,000.00
P-69-L	Lopez Group Foundation, Inc.	1,563,000.00
P-69-M	Lopez Group Foundation, Inc.	1,500.00
	Total	**₱6,214,500.00**

It is here noted that there is a difference of ₱750,000.00 between the amounts of ₱5,464,500.00 reflected in the Annual ITR *vis-à-vis* the amount of ₱6,214,500.00 indicated in the Certificates of Donations, showing that the amount disallowed is more than the covered donations. As represented by petitioner, the difference pertains to donations made in 2009 but is to be accounted for in January 2010.

Since petitioner was able to present proper documents in support of its claimed deduction for donations amounting to ₱5,464,500.00, respondent's disallowance thereof must be cancelled.

F. Disallowed Representation Expense – ₱3,979,609.13

Respondent found that petitioner's claimed representation expense exceeded the ceiling prescribed by law pursuant to RR No. 10-2002, as shown below:[86]

Representation expense per ITR		₱ 5,020,086.00
Gross Receipt per ITR	₱104,047,687.00	
Rate as allowable	1%	
Ceiling for Representation Expense		1,040,476.87
Disallowed Representation Expense		**₱3,979,609.13**

Petitioner accounted for the breakdown of its representation expense per ITR amounting to ₱5,020,086.00, as follows:[87]

Representation Expense per ITR		**₱5,020,086.00**
Details:		
1. Actual Representation Expense per RR No. 10-2002	₱2,433,949.00	
2. Corporate Giveaways	1,857,387.00	
3. Investors Materials	285,000.00	
4. Others	443,750.00	5,020,086.00
Difference		-

With regard to corporate giveaways and investor materials, petitioner contends that these were essentially marketing expenses incurred in the ordinary course of business, hence deductible in full pursuant to Section 34(A)(1) of the NIRC of 1997.

As correctly pointed out by the ICPA, petitioner did not provide supporting documents for its claimed corporate giveaways and investor materials in order for this Court to verify the actual nature and tax implications of these expenses. Likewise, no details/documents were provided pertaining to the "Others" account.

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[86] Exhibit "P-4", Details of Discrepancies, Schedule 5, Docket - Vol. II, p. 801
[87] Exhibit "P-77", Table 6.7, p. 13

Indeed, Section 5 of RR No. 10-2002 sets the ceiling on entertainment, amusement, and recreation expense, as follows:

"SECTION 5. CEILING ON ENTERTAINMENT, AMUSEMENT, AND RECREATION EXPENSE – There shall be allowed a deduction from gross income for entertainment, amusement and recreation expense, as defined in Section 2 of these Regulations, in an amount equivalent to the actual entertainment, amusement and recreation expense paid or incurred within the taxable year by the taxpayer, but in no case shall such deduction exceed **0.50 percent (%)** of net sales (i.e., gross sales less sales returns/allowances and sales discounts) for taxpayers engaged in sale of goods or properties; or **1.00 percent (%)** of net revenue (i.e., gross revenue less discounts) for taxpayers engaged in sale of services, including exercise of profession and use or lease of properties. However, if the taxpayer is deriving income from both sale of goods/properties and services, the allowable entertainment, amusement and recreation expense shall in all cases be determined based on an apportionment formula taking into consideration the percentage of the net sales/net revenue to the total net sales/net revenue, but which in no case shall exceed the maximum percentage ceiling provided in these Regulations.

Apportionment Formula:

$$\frac{\text{Net sales/net revenue}}{\text{Total Net sales and net revenue}} \times \text{Actual Expense}$$

Illustration: ERA Corporation is engaged in the sale of goods and services with net sales/net revenue of ₱200,000 and ₱100,000 respectively. The actual entertainment, amusement and recreation expense for the taxable quarter totaled to ₱3,000.

Particulars	**Net sales/ Net revenue (1)**	**Ent., Amusement & Recreation Expense (EAR) based on Apportionment Formula* (2)**	**Max. Percentage Ceiling of EAR Expense** (3)**	**Allowable Amt to be claimed as EAR Expense (whichever is lower of col. 2 and 3) (4)**
Sale of Goods	₱ 200,000	₱ 2,000	₱ 1,000	₱ 1,000
Sale of Services	100,000	1,000	1,000	1,000
Total	**₱300,000**	**₱3,000**	**₱2,000**	**₱2,000**

*Apportionment Formula
Sale of Goods (₱200,000/P300,000) x P3,000
Sale of Services (₱100,000/P300,000) x P3,000

**Maximum Percentage Ceiling
Sale of Goods (₱200,000 x 0.50%)
Sale of Services (₱100,000 x 1%)

In the above illustration, ERA Corporation can only claim a total of P2,000 as entertainment, amusement and recreation expense."

Guided by the afore-cited provision, petitioner can only claim a total amount of ₱1,040,476.87 as representation and entertainment expense, as computed below. Thus, respondent's disallowance of petitioner's claimed representation expense in the amount of ₱3,979,609.13 is upheld.

Representation Expense per ITR	₱ 5,020,086.00
Less: 1% of the gross receipts per ITR	1,040,476.87
Disallowed Representation Expense	**₱3,979,609.13**

G. Disallowed Expenses – ₱1,151,652,963.00

Respondent disallowed the discrepancy between certain expenses per petitioner's AFS as against those shown in its ITR in the amount of ₱1,151,652,963.00, computed as follows:[88]

Particulars	Per FS	Per ITR	Difference
Salaries and Wages	₱ 545,000,000.00	₱ 583,611,345.00	(₱ 38,611,345.00)
Other outside services	8,000,000.00	18,219,959.00	(10,219,959.00)
Repairs and Maintenance	-	6,614,607.00	(6,614,607.00)
Office Supplies	-	2,610,152.00	(2,610,152.00)
Interest	-	1,067,075,436.00	(1,067,075,436.00)
Communication, Light and Water	-	6,757,086.00	(6,757,086.00)
Forex losses	-	19,764,378.00	(19,764,378.00)
TOTAL	**₱553,000,000.00**	**₱1,704,652,963.00**	**(₱1,151,652,963.00)**

In the Details of Discrepancies attached to the FLD, petitioner clearly provided the factual and legal bases of the disallowance of the interest expense of ₱1,067,075,436.00. As stated therein, the "*Interest expense was not necessary and not related to your taxable*

[88] Exhibit "P-4", Details of Discrepancies, Schedule 6, Docket - Vol. II, p. 801.

income pursuant to Sec. 34(A)(1). Per your Notes to FS #12, Long-term debt FRCN & FXCN were used to finance acquisition of other company's shares and for debt repayment. These funds were also used to finance your affiliates as stated in Note #20, Related Party disclosures which your Advances to FPH Fund, FGHC International, First Philec Group amounted to ₱3,144,000,000.00, ₱2,410,000,000.00 and ₱969,000,000.00, respectively."

However, as to the remaining disallowed expenses, namely, salaries and wages in the amount ₱38,611,345.00, other outside services in the amount of ₱10,219,959.00, repairs and maintenance in the amount of ₱6,614,607.00, office supplies in the amount of ₱2,610,152.00, communication, light and water in the amount of ₱6,757,086.00 and forex losses in the amount of ₱19,764,378.00 totalling ₱84,577,527.00, respondent failed to state in the Details of Discrepancies the factual and legal bases of the disallowance of the said expenses. Hence, the assessment on these items is void and must be cancelled and/or withdrawn pursuant to Section 228 of the NIRC of 1997, as amended, which provides that 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.

With regard to the disallowed interest expense of ₱1,067,075,436.00, the ICPA found that the same arose from the provisions of the Floating Rate Corporate Notes Facility Agreement (FRCN Agreement) and Fixed Rate Corporate Notes Facility Agreement (FXCN Agreement) entered into by petitioner with BDO Capital & Investment Corporation and Banco De Oro – ECPI, Inc. – Trust Banking Group.[89]

Section 34(B)(1) of the NIRC of 1997 provides that the amount of interest paid or incurred within a taxable year on indebtedness in connection with the taxpayer's profession, trade or business shall be allowed as deduction from gross income.

The term "interest" shall refer to the payment for the use or forbearance or detention of money, regardless of the name it is called or denominated.[90]

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[89] Exhibits "P-5004" and "P-5005", Docket – Vol. V, pp. 1985 to 2110
[90] BIR Ruling No. 196-03 dated 20 June 2003.

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To implement Section 34(B)(1) of the NIRC of 1997, as amended, Section 3 of RR No. 13-2000, laid down the requisites for an interest to be deductible from gross income, listed as follows:

1. There must be an indebtedness;
2. There should be an interest expense paid or incurred upon such indebtedness;
3. The indebtedness must be that of the taxpayer;
4. The indebtedness must be connected with the taxpayer's trade, business or exercise of profession;
5. The interest expense must have been paid or incurred during the taxable year;
6. The interest must have been stipulated in writing;
7. The interest must be legally due;
8. The interest payment arrangement must not be between related taxpayers as mandated in Section 34(B)(2), in relation to Section 36(B), both of the NIRC of 1997;
9. The interest must not be incurred to finance petroleum operations; and
10. In case of interest incurred to acquire property used in trade, business or exercise of profession, the same was not treated as a capital expenditure.

As aptly noted by the ICPA, the interest expense incurred by petitioner met all the requirements provided under RR 13-2000.[91] Requisites no. 1 to 3 and 6 to 8 were proven by the submission of the FRCN and FXCN Agreements;[92] requisite no. 4 was supported by the submission of the Articles of Incorporation[93] of petitioner showing that the indebtedness was incurred in its ordinary course of business; requisites 5, 9 and 10 were supported by Notes No. 12*(Long Term Debts)*, 21 *(Financial Risk Management Objectives and Policies)* and 22 *(Financial Instruments)* of petitioner's AFS[94], stating that the interest expense was incurred on these loan agreements, and that the proceeds from the loan were used to acquire shares and for purposes of debt repayments. Thus, respondent's disallowance of this item is cancelled.

H. Unaccounted Salaries and Wages - ₱65,838,758.30

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[91] Exhibit "P-77", Table 6.13, p. 15.
[92] Exhibits "P-5004" and "P-5005", Docket -Vol. V, pp. 1985 to 2110.
[93] Exhibit "P-78-1".
[94] Exhibit "P-67", Docket - Vol. V, pp. 1926 to 1928 and 1936 to 1944

Respondent found a discrepancy in petitioner's claimed salaries and was as reflected in its FS/ITR and as shown per its alphalist of employees in the amount of ₱65,838,758.30, as computed below. Respondent stated that such discrepancy resulted to an under declaration of petitioner's income, thus, was assessed pursuant to Section 32 of the NIRC of 1997, as amended.

Salaries and Wages	
Per ITR	₱422,611,345.00
Per Alphalist	356,772,586.70
Unaccounted Salaries and Wages	**₱65,838,758.30**

As we have stated under the deficiency WTC assessment, petitioner failed to explain and substantiate the discrepancy of ₱65,838,758.30, hence, the assessment thereon is sustained.

I. Expenses not subjected to EWT - ₱490,133,589.97

Notably, petitioner was also assessed of the corresponding deficiency EWT for the income payments of ₱490,133,589.97. Thus, based on the Court's findings under the deficiency EWT assessment *(supra)*, petitioner failed to withhold and remit proper taxes on the subject income payments, as follows:

Income Payments	**Amount**
Professional Fee (15%)	₱ 13,808,629.68
Rental	1,225,510.26
Purchases of services by Top 10T Corp	475,099,450.03
TOTAL	**₱490,133,589.97**

Consequently, the amount of ₱490,133,589.97 shall be disallowed from petitioner's claimed deductible expenses pursuant to Section 34(K) of the NIRC of 1997, which states:

> "(K) *Additional Requirements for Deductibility of Certain Payments.* – **Any amount paid or payable which is otherwise deductible from, or taken into account in computing gross income** or for which depreciation or amortization may be allowed under this Section, **shall be allowed as deduction only if it is shown that the tax required to be deducted and withheld therefrom has been paid** to the Bureau of

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Internal Revenue in accordance with this Section, Section 58 and 81 of this Code." (*Emphases ours*)

J. Amount carried forward for next year- ₱91,576,565.00; and

K. Unsupported Creditable Withholding Taxes - ₱911,174.29

Following the computation per FLD, respondent disallowed the excess tax credits carried over to the succeeding year in the amount of ₱91,576,565.00, and "Unsupported 2307" in the amount of ₱911,174.29 without indicating therein the basis for the disallowance. Thus, pursuant to Section 228 of the NIRC of 1997, as amended, the assessment on these amounts is void and must be cancelled.

Based on the foregoing, petitioner is liable for deficiency income tax for TY 2009 in the amount of ₱76,409,022.22, computed as follows:

Taxable Income per Return		₱ -
Add (Less) adjustment:		
Disallowed Representation Expense	₱ 3,979,609.13	
Unaccounted Salaries and Wages	65,838,758.30	
Expenses not subjected to EWT	490,133,589.97	559,951,957.40
Adjusted Net income		**₱559,951,957.40**
Tax Due		₱ 167,985,587.22
Less: Payments		
Prior Years Excess Credits	₱ 78,401,789.00	
Creditable Withholding Tax (1st to 3rd Quarters)	6,372,031.00	
Creditable Withholding Tax (4th Quarter)	6,802,745.00	91,576,565.00
Tax still due and payable		**₱ 76,409,022.22**

IV. VALUE-ADDED TAX - ₱19,336,010.17

Respondent computed the deficiency VAT assessment as follows:[95]

Sales per VAT	₱ 69,404,812.47

[95] Exhibit "P-4", Docket, Vol. II, p. 798.

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Add: Other Income/Adjustment		
Undeclared Sales (SLS vs RELIEF)	₱ 14,601,213.26	
Undeclared Purchases (SLP vs RELIEF)	9,513,394.16	
Undeclared Service Income	44,129,345.07	
Unaccounted source of cash	6,548,267.00	74,792,219.49
Total		₱ 144,197,031.96
Less: Zero-rated Sales		7,070,366.89
Total Vatable Income per Audit		₱ 137,126,665.07
Rate		12%
Output Tax per Audit		**₱16,455,199.81**
Input Tax carried over from previous quarter		₱ 13,682,353.12
Input Tax deferred on capital goods exceeding 1M from previous period		
Input Tax generated during the year		
Purchases of Capital goods not exceeding 1M	₱ 385,008.72	
Purchases of Capital goods exceeding 1M	308,702.02	
Goods other than Capital Goods	538,113.14	
Services rendered by Non-resident	358,250.08	
Domestic Services	8,809,989.69	
Total Domestic Purchases		10,400,063.65
Total		₱ 24,082,416.77
Less: Input tax carried over to succeeding year		17,808,579.00
INPUT TAX PER AUDIT		₱ 6,273,837.77
Tax still due and payable		₱ 10,181,362.04
Add: Interest (Computed up to 07.15.2014)	₱ 9,104,648.13	
Compromise Penalty	50,000.00	9,154,648.13
TOTAL DEFICIENCY VAT		**₱19,336,010.17**

As can be seen from the above computation, the assessment arose from the following items:

a. Undeclared Sales (SLS vs RELIEF)	₱ 14,601,213.26
b.Undeclared Purchases (SLP vs RELIEF)	9,513,394.16
c. Undeclared Service Income	44,129,345.07
d. Unaccounted source of cash	6,548,267.00
e. Input tax carried over to succeeding year	17,808,579.00

a. Undeclared Sales (SLS vs RELIEF) - ₱14,601,213.26
b. Undeclared Purchases (SLP vs RELIEF) - ₱9,513,394.16

Based on the same findings under the deficiency income tax assessment (*supra*), the deficiency VAT assessment on the alleged undeclared sales of ₱14,601,213.26 and undeclared purchases of ₱9,513,394.16 resulted from respondent's comparison of petitioner's data per its SLS and SLP with third-party information per the BIR's RELIEF System.

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As we have discussed earlier, without third-party certifications as to the amounts reflected per the BIR RELIEF System, the assessment must be cancelled for lack of factual basis.

Moreover, as to the undeclared purchases, it must be emphasized that under Section 106 (A) of the NIRC of 1997, as amended, VAT is imposed on the "gross selling price or gross value in money of the goods or properties sold, bartered or exchanged, such tax to be paid by the seller or transferor".

Also, under Section 108 of the NIRC of 1997, as amended, VAT is imposed on the "gross receipts derived from the sale or exchange of services". Significantly, the law defines "gross receipts" as: "xxx the total amount of money or its equivalent representing the contract price, compensation, service fee, rental or royalty, including the amount charged for materials supplied with the services and deposits and advanced payments actually or constructively received during the taxable quarter for the services performed or to be performed for another person, excluding value-added tax."

Clearly, VAT can be imposed only when it is shown that the taxpayer received an amount of money or its equivalent from its sale, barter or exchange of goods or properties, or from sale or exchange of services, and not when there are undeclared purchases.

c. Undeclared Service Income - ₱44,129,345.07

Respondent found that petitioner had undeclared service income amounting to ₱44,129,345.07, as computed below, which was assessed with deficiency VAT pursuant to Section 106 of the NIRC of 1997, as amended, computed as follows:

Management fees		₱ 70,077,982.00
Rental income		33,969,705.00
Scrap sales		8,607.00
Sales commission		3,223,877.00
Total		₱107,280,171.00
Add: Other Income		
Undeclared income from Inaec Aviation Corp.	₱2,885,262.00	
Undeclared Income due to undeclared purchases		

from Inaec Aviation Corp.	368,724.54	
Undeclared Other Income (Proceeds on sale of Transportation Equipment)	3,000,000.00	6,253,986.54
Total		₱113,534,157.54
Less: Amount subjected to VAT		69,404,812.47
Undeclared service income		**₱ 44,129,345.07**

Petitioner contends that it does not have any form of undeclared service income and accounts for the noted discrepancies as follows:

a. The alleged undeclared management fees, rental income and sales commission in the amounts of ₱45,335,714.40, ₱5,718,354.88, and ₱3,223,877.00 pertained to income that were accrued in 2009 but was uncollected.

b. The service income in the amount of ₱2,885,262.00 from INAEC Aviation Corporation was not subjected to VAT since the service (i.e. lease of aircraft) is VAT-exempt.

c. Petitioner does not have undeclared income due to undeclared purchases from INAEC Aviation Corporation in the amount of ₱368,724.54.

d. The undeclared income of ₱3,000,000.00 actually pertains to the proceeds from the sale of transportation equipment, with ₱2,549,018.33 and ₱305,882.20 representing the return of capital and output VAT, respectively.

The ICPA verified that the undeclared management fees amounting to ₱44,800,000.00 pertains to accruals for 2009 which remained uncollected as of the close of the year, recorded as follows:[96]

Date	Ref	Description	Amount
12/31/2009	GJ09-12-000055	To take up accrual of FPIP management fee for CY 2009	₱44,800,000.00

[96] Exhibit "P-77", Table 6.18, p. 20.

The excess of ₱535,714.40[97] was not explained by the petitioner.

The ICPA's findings show that the sales commission amounting to ₱3,223,877.00 pertains to accrual for 2009 which were uncollected as of the close of the year, recorded as follows:[98]

Date	**Ref**	**Description**	**Amount**
12/31/2009	GJ09-12-000079	To set up receivable from FPIP on sales commission as of December 31, 2009	₱3,223,877.06

However, the ICPA was not able to verify the remaining items as they were not provided with documents to corroborate the same.

The Court partially upholds the assessment.

In the old case of *Consolidated Mines, Inc. vs. Court of Tax Appeals*,[99] the Supreme Court explained the nature of books of account, *i.e.*, general ledgers, as evidence. Thus:

> "A 'ledger' is a book of accounts in which are collected and arranged, each under its appropriate head, the various transactions scattered throughout the journal or daybook, land is not a 'book of original entries,' within the rule making such books competent evidence. *First Nat. Building Co. v. Vanderberg, 119 P 224, 227; 29 Okl. 583.*
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> Code Iowa, No. 3658, providing that 'books of account' are receivable in evidence, etc., means a book containing charges, and showing a continuous dealing with persons generally. A book, to be admissible, must be kept as an account book, and the charges made in the usual course of business. *Security Co. v. Graybeal, 52 NW 497, 85 Iowa 543, 39 Am St Rep 311.*
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> Books of account may therefore be admissible under the rule. <u>In tax cases, however, this Court appears not to place too high a probative value on them,</u>

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[97] (₱45,335,714.40 - ₱44,800,000.00).
[98] Exhibit "P-77", Table 6.19, p. 20.
[99] G.R. Nos. L-18843 and L-18844, 29 August 1974.

considering the statement in the case of *Collector of Internal Revenue v. Reyes* that "books of account do not prove *per se* that they are veracious; in fact they may be more consistent than truthful." Indeed, books of account may be used to carry out a plan of tax evasion. (*Underscoring supplied*)

In the foregoing case, the Supreme Court provided that in tax cases, books of accounts do not prove *per se* that they are reliable such that it may be given high probative value. In fact, mere presentation of these books of account without the presentation of its supporting documents may even be used to carry out plans for tax evasion.

Thus, entries in these schedules, general listings and general ledgers may not be given probative value by the Court, unless the supporting documents thereto are presented. Consequently, considering that said pieces of evidence cannot be given any probative value, it follows that petitioner failed to prove that it has no undeclared service income.

Nonetheless, even if the Court consider these schedules and journal entries as evidence tending to prove that petitioner has no undeclared income; still, petitioner failed to discharge the burden of proving the fact of why the said income is not subject to VAT.

Here, petitioner likewise failed to present to the Court any official receipts or subsequent journal entries supporting the subject of the assessment to establish the movement of the alleged accrued service income. With no basis for determining the nature and terms of the undeclared management fees, rental income and sales commission and for failure to disprove the existence of undeclared income, the subject assessment shall be upheld *except* for the amount of ₱6,253,986.54, which pertains to the following:

Undeclared income from Inaec Aviation Corp.	₱2,885,262.00
Undeclared Income due to undeclared purchases from Inaec Aviation Corp.	368,724.54
Undeclared Other Income (Proceeds on sale of Transportation Equipment)	3,000,000.00
	₱6,253,986.54

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As stated under the deficiency income tax assessment (*supra*), the amount of ₱6,253,986.54 resulted from respondent's comparison of petitioner's sales to and purchases from INAEC Aviation Corp. as reflected in its SLS and SLP and that shown per the BIR's RELIEF System. As we have stated earlier, without third party-certifications, the assessment resulting therefrom is without factual basis.

v. Excess Input Tax Carried Over to Succeeding Quarter - ₱17,808,579.00

In arriving at the deficiency VAT assessment, respondent deducted the input tax carried over to succeeding year in the amount of ₱17,808,579.00 from the total allowable input VAT without providing the basis for such deduction or disallowance. Hence, pursuant to Section 228 of the NIRC of 1997, such disallowance/assessment is considered void and must be cancelled.

Although the assessment for the 1st and 2nd quarters of TY 2009 had already prescribed, petitioner was unable to point out which portion of the assessment pertains thereto, hence, the entire VAT assessment shall be considered as pertaining to the 3rd and 4th quarters of TY 2009.

Thus, petitioner is not liable to pay deficiency VAT since the input VAT per re-computation in the amount of ₱24,853,057.02 is more than enough to cover the output tax amounting to ₱12,731,407.93, as shown below:

Sales per VAT		₱ 69,404,812.47
Add: Other Income/Adjustment		
Undeclared Service Income	₱44,129,345.07	
Less:	6,253,986.54	37,875,358.53
Total		₱ 107,280,171.00
Less: Zero-rated Sales		7,070,366.89
Total Vatable Income per Audit		₱ 100,209,804.11
Rate		12%
Output Tax		**₱12,025,176.49**
Input Tax carried over from previous quarter		₱ 13,682,353.17
Input Tax deferred on capital goods exceeding 1M from previous period		4,620,718.12
Input Tax generated during the year		
Purchases of Capital goods not exceeding 1M	₱ 385,008.72	

Purchases of Capital goods exceeding 1M	308,702.02	
Goods other than Capital Goods	538,113.14	
Services rendered by Non-resident	358,250.08	
Domestic Services	8,809,989.69	
Total Domestic Purchases		10,400,063.65
Total		₱ 28,703,134.94
Less: Input Tax on Capital Goods exceeding 1 million deferred for the succeeding period		3,850,077.92
Input Tax		**₱ 24,853,057.02**
TOTAL VAT PAYABLE(OVERPAYMENT)		**(₱12,827,880.53)**

V. FRINGE BENEFITS TAX - ₱837,906.06

Respondent's verification of petitioner's FBT account disclosed a discrepancy in the computation of FBT for the first quarter of 2009. Hence, pursuant to Section 80(A) of the NIRC of 1997, respondent assessed petitioner of deficiency FBT for the first quarter of 2009 in the amount of ₱837,906.06, computed as follows:[100]

Transportation and Travel		₱6,186,259.00
Other Benefits		696,864.55
Total		₱ 6,883,123.55
Divisor		0.68
Gross Up		₱10,122,240.51
Tax rate		0.32
Tax due		₱ 3,239,116.96
Less: Tax paid		2,806,472.44
Amount still due		₱432,644.52
Add: Interest (Computed up to 07.15.2014)	₱389,261.54	
Compromise Penalty	16,000.00	405,261.54
TOTAL DEFICIENCY FBT		**₱837,906.06**

Since the assessment for the first and second quarters of TY 2009 is declared invalid due to prescription, the deficiency FBT assessment of ₱837,906.06 covering the first quarter of 2009 is cancelled.

VI. DOCUMENTARY STAMP TAX - ₱499,765,854.42

Respondent's verification disclosed that petitioner failed to pay the corresponding DST on advances due to and from affiliates and

[100] Exhibit "P-4", Docket – Vol. II, pp. 799 and 803.

subsidiaries and Lease contracts in accordance with Sections 194 and 179 of the NIRC of 1997, as amended, shown as follows:[101]

Nature	Amount	Rate	Tax Due
Deposit for future subscription	₱ 5,300,000,000.00	1/200	₱ 26,500,000.00
Advances to landowners	88,000,000.00	1/200	440,000.00
Short Term Loan	11,205,000.00	1/200	56,025.00
Advances to subsidiaries	6,781,000,000.00	1/200	33,905,000.00
Advances from subsidiaries	27,975,000,000.00	1/200	139,875,000.00
Advances from FGHC	6,262,461.63	1/200	31,312.31
Lease Contract	22,637,467.20	1/1000	22,638.47
Long Term Debts	11,675,000,000.00	1/200	58,375,000.00
Issuance of stocks			
Common	594,326,513.00	1/200	2,971,632.57
Preferred	63,000,000.00	1/200	315,000.00
Total	₱52,516,431,441.83		₱ 262,491,608.34
Less: Payment			188,744.00
Tax Still Due			₱ 262,302,864.34
Add: Interest (Computed up to 07.15.2014)		₱237,437,990.08	
Compromise Penalty		25,000.00	237,462,990.08
TOTAL DEFICIENCY DST			**₱499,765,854.42**

DST is a tax on documents, instruments, loan agreements, and papers evidencing the acceptance, assignment, sale or transfer of an obligation, right or property incident thereto. DST is actually an excise tax because it is imposed on the transaction rather than on the document.[102] DST is also levied on the exercise by persons of certain privileges conferred by law for the creation, revision, or termination of specific legal relationships through the execution of specific instruments.[103]

a. Deposit for future subscription - ₱5,300,000,000.00

In the case of *Commissioner of Internal Revenue vs. First Express Pawnshop Company, Inc.*,[104] the Supreme Court ruled that deposits on future subscription of shares of stock are not subject to

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[101] Exhibit "P-4", Docket – Vol. II, p. 799.

[102] Section 173, 1997 Tax Code; De Leon and De Leon, The National Internal Revenue Code Annotated, 8th ed., Volume 2 (2003). See also *Michel J. Lhuillier Pawnshop, Inc. v. Commissioner of Internal Revenue*, G.R. No. 166786, 3 May 2006, 489 SCRA 147, 152-153.

[103] *Philippine Home Assurance Corporation v. Court of Appeals*, 361 Phil. 368, 372-373 (1999).

[104] G.R. Nos. 172045-46, June 16, 2009.

DST for the reason that there is yet no subscription that creates rights and obligations between the subscriber and the corporation, to wit:

> "In Section 175 of the Tax Code, DST is imposed on the original issue of shares of stock. The DST, as an excise tax, is levied upon the privilege, the opportunity and the facility of issuing shares of stock. In *Commissioner of Internal Revenue v. Construction Resources of Asia, Inc.,*[105] this Court explained that the DST attaches upon acceptance of the stockholder's subscription in the corporation's capital stock regardless of actual or constructive delivery of the certificates of stock. Citing *Philippine Consolidated Coconut Ind., Inc. v. Collector of Internal Revenue,*[106] the Court held:
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> > The documentary stamp tax under this provision of the law may be levied only once, that is upon the original issue of the certificate. The crucial point therefore, in the case before Us is the proper interpretation of the word 'issue.' In other words, when is the certificate of stock deemed 'issued' for the purpose of imposing the documentary stamp tax? Is it at the time the certificates of stock are printed, at the time they are filled up (in whose name the stocks represented in the certificate appear as certified by the proper officials of the corporation), at the time they are released by the corporation, or at the time they are in the possession (actual or constructive) of the stockholders owning them?
> >
> > x x x
> >
> > Ordinarily, when a corporation issues a certificate of stock (representing the ownership of stocks in the corporation to fully paid subscription) the certificate of stock can be utilized for the exercise of the attributes of ownership over the stocks mentioned on its

[105] 230 Phil. 76, 80-81 (1986).
[106] 162 Phil. 32 (1976).

> face. The stocks can be alienated; the dividends or fruits derived therefrom can be enjoyed, and they can be conveyed, pledged or encumbered. The certificate as issued by the corporation, irrespective of whether or not it is in the actual or constructive possession of the stockholder, is considered issued because it is with value and hence the documentary stamp tax must be paid as imposed by Section 212 of the National Internal Revenue Code, as amended.
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> x x x

Revenue Memorandum Order No. 08-98 (RMO 08-98) provides the guidelines on the corporate stock documentary stamp tax program. RMO 08-98 states that:

> "1. All existing corporations shall file the Corporation Stock DST Declaration, and the DST Return, if applicable **when DST is still due on the subscribed share issued by the corporation**, on or before the tenth day of the month following publication of this Order.
>
> x x x
>
> 3. All existing corporations with authorization for increased capital stock shall file their Corporate Stock DST Declaration, together with the DST Return, if applicable **when DST is due on subscriptions made after the authorization**, on or before the tenth day of the month following the date of authorization. (Boldfacing supplied)

RMO 08-98, reiterating Revenue Memorandum Circular No. 47-97 (RMC 47-97), also states that what is being taxed is the privilege of issuing shares of stock, and, therefore, the taxes accrue at the time the shares are issued. RMC 47-97 also defines issuance as the point in which the stockholder acquires and may exercise attributes of ownership over the stocks.

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> As pointed out by the CTA, Sections 175 and 176 of the Tax Code contemplate a subscription agreement in order for a taxpayer to be liable to pay the DST. A subscription contract is defined as any contract for the acquisition of unissued stocks in an existing corporation or a corporation still to be formed. A stock subscription is a contract by which the subscriber agrees to take a certain number of shares of the capital stock of a corporation, paying for the same or expressly or impliedly promising to pay for the same.

Based on Note 7 of the Audited Financial Statements[107], petitioner contributed ₱5.3 billion or approximately US$110.1 million by way of deposit for future subscription. There was no agreement to subscribe to the unissued shares. Here, the deposit on stock subscription refers to an amount of money received by the corporation as a deposit with the possibility of applying the same as payment for the future issuance of capital stock. In *Commissioner of Internal Revenue v. Construction Resources of Asia, Inc.*[108], the Supreme Court held:

> "We are firmly convinced that the Government stands to lose nothing in imposing the documentary stamp tax only on those stock certificates duly issued, or wherein the stockholders can freely exercise the attributes of ownership and with value at the time they are originally issued. As regards those certificates of stocks temporarily subject to suspensive conditions they shall be liable for said tax only when released from said conditions, for then and only then shall they truly acquire any practical value for their owners."

The deposit on stock subscription is merely an amount of money received by a corporation with a view of applying the same as payment for additional issuance of shares in the future, an event which may or may not happen. The person making a deposit on stock subscription does not have the standing of a stockholder and he is not entitled to dividends, voting rights or other prerogatives and attributes of a stockholder. Hence, petitioner is not liable for the payment of DST on its deposit on subscription for the reason that

[107] Exhibit 85, p. 21.
[108] 230 Phil. 76, 80-81 (1986).

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there is yet no subscription that creates rights and obligations between the subscriber and the corporation.

Clearly, petitioner is not liable for the payment of DST on its deposit for future subscription. Thus, respondent's assessment thereon is cancelled.

b. Advances to landowners - ₱88,000,000.00

Per Note 10 of petitioner's AFS[109] for TYs 2009 and 2008, the assessed "Advances to landowners" in the amount of ₱88,000,000.00 actually pertains to transactions entered into by petitioner in 2008. Thus, it was erroneous on the part of respondent to assess petitioner of deficiency DST thereon for such is beyond the scope of the present assessment. Accordingly, respondent's deficiency DST assessment on the amount of ₱88,000,000.00 is cancelled.

c. Lease Contract - ₱22,637,467.20

Petitioner avers that the DST on the Lease Contract shall be for the account of the seller/lessee; hence it shall not be liable.

However, petitioner did not submit the related Lease Contract for the Court to verify the same. Neither is there any showing that petitioner has legal basis for claiming that it is not liable to DST. Thus, the assessment on this item is upheld.

d. Short Term Loan - ₱11,205,000.00

Petitioner contends that this pertains to a short term loan obtained by its subsidiary First Philippine Utilities Corporation (FPUC) from Metro Pacific Investments Corporation (MPIC).

Per Note 7 of the AFS,[110] under Significant Transactions and Information on Certain Investees, it was also stated that this was

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[109] Exhibit "P-67", p. 25, Docket - Vol. V, p. 1925.
[110] Exhibit "P-67", p.22, Docket – Vol. V, p. 1922.

covered by a Promissory Note and Pledge Agreement between FPUC and MPIC whereby the former unconditionally promises to pay the latter the principal amount of ₱11,205,000,000.00 on or before June 30, 2010 at an interest rate of 5% per annum. The loan is collateralized by the remaining 30,093,270 shares of MERALCO held by FPUC and 138,357,600 common shares of First Gen Corporation owned by FGHC International, both are subsidiaries of the petitioner.

Since the petitioner is not a party to the loan agreement, it is incorrect to assess the petitioner for DST on the said short term loan. Hence, this assessment is cancelled.

e. Advances to subsidiaries - ₱6,781,000,000.00

f. Advances from subsidiaries - ₱27,975,000,000.00

It was disclosed in the Notes to the AFS that these Advances to and from subsidiaries represent non-interest bearing and unsecured peso-denominated loans to meet working capital and investments requirements.[111] The petitioner did not submit other information and documents to substantiate the same. Thus, for failure to refute the BIR's findings, these items of assessment are upheld.

g. Advances from FGHC - ₱6,262,461.63

Petitioner maintains that advances from FGHC are not subject to DST since no written paper was signed and delivered by it to give right to debt. However, the Court cannot determine the nature of the transaction since petitioner did not provide any supporting documents for the advances from FGHC amounting to ₱6,262,461.63. Hence, this assessment remains.

h. Long Term Debts - ₱11,675,000,000.00

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[111] Exhibit "P-67", Note 20, p. 35, Docket - Vol. V, p. 1935.

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Petitioner avers that these long term debts pertain to Floating Rate Corporate Notes (FRCN) Facility Agreement and Fixed Rate Corporate Notes (FXCN) Facility Agreement issued in the year 2007, hence should not be covered by the current audit period assessment. It also contends that the DST on these agreements was already paid upon its execution.

Petitioner did not present any DST proof of payment on the agreements. However, a perusal of the FRCN and FXCN Facility Agreements[112] shows that these were executed on October 25, 2007 and March 28, 2007, respectively. Hence, the assessments on the long-term debts are invalid for being beyond the scope of the present assessment.

i. Issuance of Common stocks - ₱594,326,513.00

j. Issuance of Preferred stocks - ₱63,000,000.00

Petitioner avers that the amounts lifted by the BIR for the Common Stocks Issuance and Preferred Stocks Issuance pertain to previous taxable years wherein the beginning balance of the outstanding common stock as indicated in the 2009 AFS was considered in arriving at the amount for the Common Stocks Issuance. While preferred stocks issued during the years 2007 and 2008 were picked up for the Preferred Stocks Issuance. Petitioner claims that for the issuances occurred during the year 2009, the corresponding DST has already been paid.

As a rule, original issuance of shares is subject to DST of P1.00 on each P200 or a fractional part thereof, of the par value of the shares. In case of shares without par value, the amount of DST is based on the actual consideration for the issuance of such shares. DST is imposed on the privilege of issuing shares of stock. The shares are considered issued upon the acquisition of the stockholder of the attributes of ownership over the shares. The entire shares of stock subscribed are considered issued for purposes of the DST, even if not fully paid. Likewise, the obligation to pay the DST attaches

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[112] Exhibits"P-5004" and "P-5005", Docket - Vol. V, pp. 1985 to 2110

upon acceptance of the stockholder's subscription in the capital stock of a corporation regardless of the physical issuance and delivery to the stockholder of the certificate of stock. In the case of *Commissioner of Internal Revenue vs. Construction Resources of Asia, Inc. and the Court of Tax Appeals,*[113] the Supreme Court held that the delivery of the certificates of stock to the stockholders, whether actual or constructive, is not essential for the DST to attach. Moreover, receipt of dividends and sale of shares have their own tax implications.

In this regard, the assessment should include those subscribed during the year 2009 regardless of whether they were issued or not. Upon examination of Notes 13 and 14 of the AFS, the beginning balances of common shares and preferred shares issued prior to the year 2009 were considered in the amount sought to be assessed for DST subscription both for common stocks and preferred stocks. Issuances for common stocks amount to ₱39,892,180.00[114], while there was no subscribed nor issued preferred stocks during the year 2009. Petitioner submitted its DST Declarations/Returns (BIR Form No. 2000) as proof of the remittances of the DST for the shares of common stocks issued of 3,989,218.00.[115] Thus, the DST assessment pertaining thereto must be cancelled.

Based on the foregoing, the petitioner shall be liable for deficiency DST in the total amount of ₱173,645,205.78, computed as follows:

Nature	Amount	Rate	Tax Due
Advances to subsidiaries	₱ 6,781,000,000.00	1/200	₱ 33,905,000.00
Advances from subsidiaries	27,975,000,000.00	1/200	139,875,000.00
Advances from FGHC	6,262,461.63	1/200	31,312.31
Lease Contract	22,637,467.20	1/1000	22,637.47
Total	**₱34,784,899,928.83**		**₱173,833,949.78**
Less: Payment			188,744.00
Tax Still Due			**₱173,645,205.78**

VII. COMPROMISE PENALTIES – ₱191,000.00

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[113] G.R. No. L-68230 dated November 25, 1986.
[114] 3,989,218 number of shares at ₱10 par value per share.
[115]Exhibit "P-93-1" to "P-93-54".

Respondent imposed compromise penalties in the total amount of ₱191,000.00 against petitioner for its failure to file and/or pay an internal revenue tax at the time or times required by law or regulation pursuant to Section 255 of the NIRC of 1997, as amended, as determined using the schedule of suggested compromise penalties prescribed under Revenue Memorandum Order (RMO) No. 19-2007, broken down as follows:[116]

IT	₱ 50,000.00
VAT	50,000.00
EWT	25,000.00
WTC	25,000.00
FBT	16,000.00
DST	25,000.00
Total	**₱ 191,000.00**

It must be stressed that a compromise penalty is imposed to avoid prosecution for violation of the provisions of the NIRC of 1997.[117] Under RMO No. 01-90, as amended by RMO No. 19-2007, compromise penalties are only amounts suggested in settlement of criminal liability, and may not be imposed or exacted on a taxpayer in the event that a taxpayer refuses to pay the same. Clearly, the compromise penalty implies a mutual agreement between the parties in respect to the thing or subject matter which is so compromised. The imposition of the same without the conformity of the taxpayer is illegal and unauthorized.[118]

Since there is nothing in the records which would show that petitioner consented to the compromise penalties assessed for all the deficiency taxes, the compromise penalties in the total amount of ₱191,000.00 cannot be sustained.

WHEREFORE, in light of the foregoing considerations, the *Petition for Review* is **PARTIALLY GRANTED.** Accordingly, the assessments issued by respondent against petitioner for TY 2009 covering deficiency VAT and FBT are **CANCELLED** and **SET ASIDE.**

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[116] Exhibit "P-4", Docket - Vol. II, pp. 797 to 813

[117] *The Philippines International Fair, Inc. vs. The Collector of Internal Revenue, et. al.*, G.R. Nos. L-12928 and L-12932, March 31, 1962

[118] *Commissioner of Internal Revenue vs. Lianga Bay Logging Co., Inc., et al.,*, G.R. No. L-35266, January 21, 1991

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On the other hand, the deficiency IT, EWT, WTC, and DST assessments for TY 2009 are **AFFIRMED but with modifications**. Accordingly, petitioner should be **ORDERED TO PAY** respondent the aggregate amount of **₱1,214,705,419.96**, inclusive of the 25% surcharge, 20% deficiency interest, and 20% delinquency interest imposed under Sections 248(A)(3), 249(B) and (C) of the NIRC of 1997, as amended, computed until December 31, 2017, as follows:

	IT	EWT	WTC	DST	Total
Basic Tax	₱76,409,022.22	₱11,634,558.97	₱19,948,611.70	₱173,645,205.78	₱281,637,398.67
Add: 25% Surcharge	19,102,255.56	2,908,639.74	4,987,152.93	43,411,301.45	70,409,349.68
Add: 20% Deficiency Interest					
IT: from Apr. 16, 2010 to July 15, 2014 (₱76,409,022.22 x 20% x 1,552/365 days)	64,979,069.85				64,979,069.85
EWT: from Jan. 12, 2010 to July 15, 2014 (₱11,634,558.97 x 20% x 1,646/365 days)		10,493,415.93			10,493,415.93
WTC: from Jan. 12, 2010 to July 15, 2014 (₱19,948,611.70 x 20% x 1,646/365 days)			17,992,008.14		17,992,008.14
DST: from Jan. 12, 2010 to July 15, 2014 (₱173,645,205.78 x 20% x 1,646/365 days)				156,613,703.40	156,613,703.40
Total Amount Due as of July 15, 2014	**₱160,490,347.63**	**₱25,036,614.64**	**₱42,927,772.77**	**₱373,670,210.63**	**₱602,124,945.67**
Add: 20% Deficiency Interest from July 16, 2014 to Dec. 31, 2017 (₱281,637,398.67 x 20% x 1,265/365 days)					195,217,155.79

	IT	EWT	WTC	DST	Total
Add: 20% Delinquency Interest from July 16, 2014 to Dec. 31 2017 (₱602,124,945.67 x 20% x 1,265/365 days)					417,363,318.50
Total Amount Due as of Dec. 31, 2017					**₱1,214,705,419.96**

In addition, petitioner should be **ORDERED TO PAY** respondent delinquency interest at the rate of twelve percent (12%) on the total unpaid deficiency taxes due of **₱602,124,945.67** as of **July 15, 2014**, as determined above, computed from January 1, 2018 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended by Republic Act No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN), as implemented by RR No. 21-2018.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

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

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
2nd Division Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice