Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

AR REALTY HOLDINGS CO., INC.,
Petitioner,

CTA Case No. 8239

-versus-

Members:
CASTAÑEDA, JR., *Chairperson*
CASANOVA, *and*
COTANGCO-MANALASTAS, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

APR 01 2014
4:30 p.m.

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DECISION

CASANOVA, J.:

This is a Petition for Review[1], filed by petitioner AR Realty Holdings Co., Inc., appealing the Final Decision on Disputed Assessment[2] dated February 8, 2011 and seeking for the cancellation of the deficiency internal revenue tax assessment, for the taxable year 2006, in the amount of *One Million Thirty-Three Thousand One Hundred Fifty-Six Pesos and 74/100 (P1,033,156.74),* allegedly representing deficiency income tax, Value Added Tax (VAT) and Expanded Withholding Tax (EWT).

The facts of the case, as culled from the records, are briefly narrated as follows:

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[1] Petition for Review (PFR), Docket, pp. 000004-000018.
[2] Final Decision on Disputed Assessment (FDDA), Annex "A", Petition for Review, *Id.*, p. 000019-000020.

Petitioner is a domestic corporation duly organized and existing under and by the virtue of the laws of the Republic of the Philippines, with principal office at Unit 1810 Cityland 10 Tower 1, 6815 H.V. Dela Costa, Ayala Avenue, Makati City and primarily engaged in realty operations. It may be served with notices, and processes of this Honorable Court through the undersigned Firm. Petitioner is duly registered with the Bureau of Internal Revenue – Revenue District Office No. 50 of Revenue Region No. 8 (BIR), South Makati City, Philippines.[3]

Respondent Commissioner of Internal Revenue (CIR) is the chief of the BIR, the government agency officially responsible for the assessment and collection of all national internal revenue taxes, fees and charges and the enforcement of all forfeitures, penalties and fines connected with such taxes. Respondent may be served with summons, notices and other legal processes of this Honorable Court at the 4th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City, Metro Manila.[4]

Respondent issued a Tax Verification Notice No. 00050126 dated July 20, 2007, authorizing Revenue Officer (RO) JERRY C. ANGELES under the supervision of Group Supervisor (GS) LUCY ABRASIA of Revenue District Office No. 50 – Revenue Region No. 8 to examine/audit petitioner's internal revenue taxes covering the taxable year 2006.[5]

After the Revenue Officer conducted his examinations of the records of the Petitioner, which include but is not limited to the duly filed tax returns, books and other accounting records of Petitioner, he submitted his findings through an undated Post Reporting Notice received by petitioner on February 27, 2008 with an alleged deficiency internal revenue taxes for the taxable year 2006 in the total amount of **P1,071,623.30**, including increments, to wit:[6]

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[3] Par. 1 , "Statement of Facts", Petition for Review, *Ibid.* p. 000005.
[4] Par. 2., "Statement of Facts", Petition for Review, *Id.*, p. 000005.
[5] Par. 3, "Stipulation of Facts", Joint Stipulation of Facts and Simplification of Issues, (JSFI), *Id.*, pp. 000123.
[6] Par. 4, "Stipulation of Facts", JSFI, *Id.*, p. 000123.

Tax Type	Basic	Surcharge	Interest	Compromise	TOTAL
Income Tax	P 901,595.60	-	P 153,776.15	-	P 1,055,371.474
EWT	4,063.28	-	896.36	-	4,959.64
Documentary Stamp Tax	6,954.00	P 1,738.50	1,599.42	P 1,000.00	11,291.92
TOTAL					**P1,071,623.30**

On July 24, 2008, petitioner received an undated Revised Post-Reporting Notice of the respondent with the revised assessment of the alleged deficiency internal revenue taxes in the amount of **P2,670,277.42**, including increments as follows:[7]

Tax Type	Basic	Surcharge	Interest	Compromise	TOTAL
Income Tax	P 260,985.87	-	P 57,416.89	-	P 318,402.76
EWT	4,063.28	-	1,097.09	-	5,160.37
Documentary Stamp Tax	7,925.00	P 1,981.25	2,139.75	P 2,000.00	14,046.00
Value Added Tax	1,881,184.11		451,484.19		2,332,668.29
TOTAL					**P2,670,277.42**

After a series of informal discussions, respondent issued a Preliminary Assessment Notice dated March 18, 2009 (hereinafter referred to as **"PAN"**) with an alleged deficiency taxes, inclusive of interest and compromise penalties, in the total amount of **P892,857.90** broken down as follows:[8]

Tax Type	Amount
Income Tax	P 364,322.86
Value-Added Tax	511,578.02
EWT	5,877.84
Doc. Stamp Tax	11,079.18
TOTAL	**P 892,857.90**

On April 3, 2009, petitioner duly filed a protest to the PAN, contesting the factual and legal bases of the respondent's assessment.[9]

[7] Par. 5 "Stipulation of Facts", (JSFI), *Id.*, pp. 000123=000124.
[8] Par. 6, "Stipulation of Facts", (JSFI), *Id.*, p. 000124.
[9] Par. 9 , "Statement of Facts", Petition for Review, *Id.* p. 000007.

Respondent issued an **Assessment Notice-Formal Assessment Notice (AN-FAN)** on April 8, 2009, which was received by petitioner on May 12, 2009, reiterating the alleged deficiency internal revenue taxes a follows: [10]

Tax Type	Assessment No.	Amount
Income Tax	IT-50126-06-09-0253	P 369,751.98
Value-Added Tax	VT-50126-06-09-0253	518,969.64
EWT	WE-50126-06-09-0253	5,962.45
Doc. Stamp Tax	DS-50126-06-09-0253	11,238.05
TOTAL		**P 905,922.12**

On April 30, 2009, respondent issued a letter alleging respondent's failure to file a timely protest to PAN and considered the protest to PAN as protest to FAN, and requesting for the payment of the undisputed documentary stamp tax amounting to **P11,183.70** allegedly not contested and included in the protest.[11]

On May 12, 2009, petitioner filed an administrative protest on the AN-FAN on the grounds of lack of legal and factual bases.[12]

On May 14, 2009, petitioner paid the undisputed Documentary Stamp Tax amounting to **P11,217.15**, including the interest until the time of payment.[13]

On June 24, 2009, petitioner received a letter from the respondent dated June 18, 2009 informing petitioner that due and by reason of the protest to AN-FAN, the docket of the case is being forwarded to Revenue District No. 50, South Makati, and further acknowledging petitioner's payment of P11,217.15.[14]

On February 11, 2011, petitioner received an **Amended Assessment Notice under Assessment No. IT-TVN147716-06-11-0290 dated February 8, 2011 (Amended AN-FAN)** directing the

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[10] Par. 10 , "Statement of Facts", Petition for Review, *Id.* p. 000007.
[11] Par. 7, "Joint Stipulation of Facts and Simplification of Issues", (JSFI), *Id.*, p. 000124.
[12] Par. 12 , "Statement of Facts", Petition for Review, *Id.* p. 000008.
[13] Par. 8, "Joint Stipulation of Facts and Simplification of Issues", (JSFI), *Id.*, p. 000124.
[14] Par. 9, "Joint Stipulation of Facts and Simplification of Issues", (JSFI), *Id.*, pp. 000124-000125.

payment of P377,980.91 or file a protest in writing to the CIR within 30 days from receipt or February 11, 2011.[15]

Attached to said Amended AN-FAN is the Final Decision on Disputed Assessment dated February 8, 2011 of respondent, through Jaime B. Santiago, CESO V, Regional Director of Revenue Region No. 8, finally denying the protest letter dated May 12, 2009 of herein Petitioner thereby reiterating the alleged assessment for internal revenue taxes contained in AN-FAN, except for some modification on unsupported expenses in the Income Tax and Documentary Stamp Tax already paid, and requesting herein petitioner to settle the same, otherwise, Petitioner may opt to appeal with this Honorable Court of Tax Appeals within thirty (30) days from receipt or until March 13, 2011.[16]

Hence, the instant petition filed pursuant to Section 228[17] of the National Internal Revenue Code of 1997.

[15] Par. 15 , "Statement of Facts", Petition for Review, *Id.* p. 000008.
[16] Par.10, "Joint Stipulation of Facts and Simplification of Issues", (JSFI), *Id.*, p. 000125.
[17] **Sec. 228. Protesting of Assessment.** - When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: Provided, however, That a preassessment notice shall not be required in the following cases:

(a) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax as appearing on the face of the return; or
(b) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or
(c) When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year; or
(d) When the excise tax due on exciseable articles has not been paid; or
(e) When the article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non-exempt persons.

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

Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice.

If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as

On April 18, 2011, respondent filed her Answer[18], via registered mail, averring the following Special and Affirmative Defenses:

"**SPECIAL AND AFFIRMATIVE DEFENSES**

7. Investigation of the Petitioner's taxable income for 2006 disclosed that its taxable income for 2006 is P4,726,760.91 but the income as declared by the Petitioner in its Income Tax Return is only P4,443,886.00 or a difference of P282,874.91. Petitioner avers that the Accounts Receivable taken into account by the Respondent in the computation of the under declared income includes Trade Receivables, Advances to Clients, and other Receivables. However, records disclosed that in the Audited Financial Statement, no breakdown was presented regarding the beginning and ending of Accounts Receivable and no documents were presented to support the Petitioner's claim.

8. Reinvestigation on the Petitioner's unsupported expenses of P147,176.00 disclosed that the water payments in the amount of P 15,950.00 were supported by invalid invoices and that the transportation expenses in the amount of P131,226.00 were supported by invoices not named after the company.

9. Investigation disclosed that the Petitioner failed to withhold and remit the corresponding expanded withholding tax on income payments for professional fee and contracted repairs and maintenance amounting to P6,696.00 and P204,134.00, respectively or a total of P176,380.00, in violation of Section 2.57.2 of Revenue Regulations (RR) No. 2-98, as amended. Hence, the same were disallowed as deduction from gross income pursuant to Section 34

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may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.

[18] Docket, pp. 000093-000101.

(K) of the Tax Code. Petitioner avers that the professional fees recorded in its books refers to fees paid to its external auditors, which is a general professional partnership and that the repairs and maintenance are expenses attributable to the purchase of supplies and materials for repairs and not for contracted services. However, no supporting documents were presented to substantiate the Petitioner's claim.

10. Investigation disclosed that Petitioner declared net operating loss in the amount of P220,761.00 for the taxable year 2006, which shall be carried over in the succeeding taxable year(s) pursuant to the provision of Section 34(D)(3) of the Tax Code. However, no proofs were presented to show that the same has not been carried over and not deducted against the taxable income for taxable years 2007, 2008, and 2009. Hence, it is appropriate that such loss should be taken into account in computing the correct income tax liability in order to recapture the income tax benefit realized in the following year because of such carry over. Furthermore, to allow the Petitioner to carry over the net operating loss and at the same time be benefited thereof in the year the loss was incurred by offsetting from said loss the findings per investigation would result to double benefits which was never been the intent of the provision.

11. Investigation disclosed that MCIT payment in the amount of P12,658.56 was not credited against the deficiency income tax since the same shall be carried forward and credited against the normal income tax for the three (3) immediately succeeding taxable years pursuant to Section 27 (E)(2) of the Tax Code. When the MCIT payment is carried over in the succeeding year, it may be credited against the normal income tax due of the said succeeding years, thereby giving benefit/credit to the taxpayer. The disallowance is made in order to recapture such benefit. To allow Petitioner to carry over the MCIT payment and credit it in the succeeding years and at the same time be credited in the year the MCIT is paid off by offsetting the same to its deficiency income tax would result to double benefit which is not the intent of the legal provision.

12. Verification disclosed that the excess tax credit carried over to succeeding period/year in the amount P837,589.42 was deducted from the total allowable tax credit considering that the said amount has been credited against the estimated quarterly income tax liabilities for the taxable quarter of the succeeding taxable years pursuant to Section 76 of the Tax Code. When the excess tax credits is carried over in the succeeding year, it may be credited against the normal income tax due of the said succeeding years, thereby giving benefit/credit to the taxpayer. The disallowance is made in order to recapture such benefit. To allow Petitioner to carry over excess tax credit and credit it in the succeeding years and at the same time be credited in 2006 by offsetting the same to its deficiency income tax would result to double benefit which is not the intent of the legal provision.

13. Investigation disclosed that the output tax due from Petitioner's receipts in the amount of P4,018,500.65 is P467,694.16 and not P465,824.67 as what was declared in the VAT returns. In its defense, Petitioner avers that the deficiency is mainly due to the changes in the rate used as a result of the timing difference of the collection of the rental income. However, no proofs were presented to substantiate Petitioner's claim.

14. Investigation disclosed that Petitioner failed to submit the required official receipts/sales invoice in support of its claim for input tax in the amount of P325,847.50. Moreover, despite the ample time given to Petitioner to present the supporting documents, it still failed to submit the same. Hence, the Respondent's assessment on unsupported input tax amounting to P325,847.50 is reiterated.

15. Records disclosed that Petitioner has claimed advance payments in the amount of P199,877.28 (quarterly amount of P49,969.32). However, verification from the VAT returns and the Integrated Tax Systems (ITS) showed that P22,693.96 has only been paid. Accordingly, the difference of P177,183.32 (P199,877.28 less P22,693.96) representing the unsupported claimed payment which is disallowed. Moreover, no documents were presented relative to

the disallowed advance payments claimed per VAT returns.

16. Verification disclosed that the excess input tax credit carried over to succeeding quarter/year in the amount of P1,598,841.31 was deducted from the allowable tax credits in computing the basic deficiency Value Added Tax considering that the tax benefit has already been forwarded to succeeding period. Such deduction was made in order to recapture the benefit which the Petitioner derived from such carry-over.

17. Investigation disclosed that Petitioner failed to withhold and remit the required expanded withholding tax on professional fee and contracted repairs and maintenance in the total amount of P 4,063.28. Accordingly, since Petitioner has not paid the corresponding expanded withholding tax due on professional fee and contracted repairs and maintenance in the total amount of P4,063.28 and it failed to present documents that will support its allegation that the said income payments should not be taxable, assessment thereof is reiterated.

18. Assessment are prima facie presumed to be correct and made in good faith. The taxpayer has the duty of proving otherwise. In the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed. *(Aban, Law of Basic Taxation in the Philippines, 1st Edition, p. 109);*

19. On the imposition of interest, the Tax Code clearly provides:

SEC. 249. ***Interest.*** **-**

(A) In General. - There shall be assessed and collected on any unpaid amount of tax, interest at the rate of twenty percent (20%) per annum, or such higher rate as may be prescribed by rules and regulations, from the date prescribed for payment until the amount is fully paid.

(B) Deficiency Interest. - Any deficiency in the tax due, as the term is defined in this Code, shall be subject to the interest prescribed in Subsection (A) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof.

(C) Delinquency Interest. - In case of failure to pay:

(1) The amount of the tax due on any return required to be filed, or
(2) The amount of the tax due for which no return is required, or
(3) A deficiency tax, or any surcharge or interest thereon on the due date appearing in the notice and demand of the Commissioner, there shall be assessed and collected on the unpaid amount, interest at the rate prescribed in Subsection (A) hereof until the amount is fully paid, which interest shall form part of the tax.

In *Aguinaldo Industries Corp. vs. CIR,* G.R. No. L-29790, February 25, 1982, the Supreme Court held:

'The rule as to when the interest and surcharges on delinquency tax payments become chargeable is well settled and the respondent Court applied it correctly. Construing the same provisions of the old Section 51 (e) and the Section 51 (d) of the Tax Code, as amended by Republic Act 2343, this Court held that the interest and surcharges on deficiency taxes are imposable upon failure of the taxpayer to pay the tax on the date fixed in the law for the payment thereof, which was, under the unamended Section 51 of the Tax Code, the fifteenth day of the fifth month following the close of the fiscal year in the case of taxpayers whose tax returns were made on the basis of fiscal years. [Commissioner of Internal Revenue vs. Connel Bros. Co. (Phil), 40 SCRA 416.]

The rule has to be so because a deficiency tax indicates non-payment of the correct tax, and such deficiency exists not only from the assessment thereof but from the very time the taxpayer failed to pay the correct amount of tax when it should have been paid (Ibid.) and the imposition thereof is mandatory even in the absence of fraud or wilful failure to pay the tax is full. (*sic*)

> As regards interest, the reason is ----
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> The imposition of 1% monthly is but a just compensation to the State for the delay in paying the tax and for the concomitant use by the taxpayers of funds that rightfully should be in the government s hands. (U.S. vs. Goldstein, 189 F (2d) 752; Ross vs. U.S. 148 Fed. Supp. 330; U.S. vs. Joffray 97 Fed. (2d) 488.) The fact that the interest charged is made proportionate to the period of delay constitutes the best evidence that such interest is not penal but compensatory (Castro vs. Collector of Internal Revenue, G.R. L-12174, December 28, 1662, Resolution on Motion for Reconsideration.)'
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> 20. Finally, Petitioner should be reminded that taxes are important because it is the lifeblood of the government and so should be calculated without unnecessary hindrance (*Commissioner vs. Algue, Inc. L-28896, 17 February 1988).* Taxes are enforced proportional contribution from persons and property levied by the state, thus, no one is considered entitled to recover that which he must give up to another- *Non videtur quisquam id capere quod ei necesse est alii restitutere."*

Respondent filed her Respondent's Pre-Trial Brief[19] on May 18, 2011 while petitioner filed its Pre-Trial Brief (for petitioner)[20] on May 23, 2011. On June 21, 2011, the parties filed their Joint Stipulation of Facts and Simplification of Issues (JSFI)[21], which was approved by this Court in a Resolution[22] dated June 28, 2011.

As jointly stipulated by the parties, the issues[23] to be resolved in the case at bench are as follows:

> WHETHER OR NOT THE FORMAL ASSESSMENT NOTICE ISSUED AGAINST PETITIONER FOR THE TAXABLE YEAR 2006 IS VALID.

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[19] *Id.*, pp. 000103-107.
[20] *Id.*, pp. 000108-000115.
[21] *Id.*, pp. 000122-000127.
[22] *Id.*, pp. 000130.
[23] JSFI, Docket, p. 000126.

> WHETHER OR NOT PETITIONER IS LIABLE FOR DEFICIENCY INCOME TAX IN THE AMOUNT OF ₱377,980.91, VALUE ADDED TAX IN THE AMOUNT OF ₱647,739.47 AND EXPANDED WITHHOLDING TAX IN THE AMOUNT OF ₱7,436.36, ALL FOR TAXABLE YEAR 2006 AND INCLUSIVE OF INTEREST UNTIL MARCH 12, 2011.

On August 5, 2011, petitioner filed a Motion to Commission an Independent Certified Public Accountant (ICPA), which was granted in open court in the hearing[24] of August 24, 2011. On November 10, 2011, the Court received the ICPA Report, which it noted in the Resolution[25] dated November 16, 2011.

During trial, both parties presented their respective documentary and testimonial evidence. Petitioner filed its Formal Offer of Evidence[26] on March 13, 2012, with respondent's Comment (To Petitioner's Formal Offer of Evidence)[27] filed on March 20, 2012. Respondent filed her Formal Offer of Evidence[28] on December 4, 2012, with petitioner's Comment (to Respondent's Formal Offer of Evidence dated December 3, 2012)[29] filed on December 12, 2012.

On March 14, 2013, petitioner filed its Memorandum[30] dated March 12, 2013. On the same day, respondent filed her Memorandum[31] via registered mail, which was received by this Honorable Court on March 26, 2013.

In a Resolution[32] dated April 3, 2013, the instant petition was submitted for decision.

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[24] *Id.*, pp. 000147.
[25] *Id.*, pp. 000208.
[26] *Id.*, pp. 000216-000223.
[27] *Id.*, pp. 000279-000280.
[28] *Id.*, pp. 00371-00375.
[29] *Id.*, pp. 00417-00418.
[30] *Id.*, pp. 000429-000444.
[31] *Id.*, pp. 000445-000451.
[32] *Id.*, pp. 000453.

After a careful and thorough evaluation of the arguments of both parties as well as the evidence they presented to support their respective position, this Court finds the present petition partly meritorious.

The Honorable Court shall discuss the issues submitted in *seriatim.*

Whether or not the Formal Assessment Notice issued against petitioner for the taxable year 2006 is valid.

Petitioner contends that the BIR examiner simply compared the 2006 duly filed BIR forms with its 2006 Audited Financial Statements without the benefit of actual and real audit. This leads to petitioner's position that the Formal Assessment Notice is null and void for failure to state in detail the facts and the law.[33]

Petitioner's assertion is bereft of merit.

The Preliminary Assessment Notice (PAN) with Details of Discrepancies dated March 18, 2009 was received by petitioner on March 19, 2009.[34] Pursuant to Section 3(3.1.2)[35] of Revenue Regulations No. 12-99, petitioner has fifteen (15) days from receipt thereof, or until April 3, 2009, to respond to the PAN. However, petitioner filed its letter of protest[36] to the PAN on April 7, 2009. Hence, respondent's Bureau, through Regional Director Alfredo V.

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[33] Memorandum for Petitioner, Docket, pp. 000434-000435.
[34] Exhibit "E", Docket, pp. 235-239 and Annexes "E" - "E.4" of Petition for Review, Docket, pp. 32-36.
[35] **3.1.2** ***Preliminary Assessment Notice (PAN).*** — If after review and evaluation by the Assessment Division or by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer, at least by registered mail, a Preliminary Assessment Notice (PAN) for the proposed assessment, showing in detail, the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based (see illustration in ANNEX A hereof). If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a formal letter of demand and assessment notice shall be caused to be issued by the said Office, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.
[36] Exhibit "F", Docket, pp. 000241-000245.

Misajon, replied in a letter[37] dated April 30, 2009 that a Formal Assessment Notice (FAN) dated April 8, 2009 has been issued and the petitioner's protest has been considered.

Examination of the assailed FAN with attached Details of Discrepancies[38] reveals that it contains the factual and legal bases of the assessments, thus complying with Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended.

Further, it is worthy of emphasis that "in the long line of cases, the Supreme Court has ruled that the requirement of the law to inform the taxpayer of **the basis of the assessment does not necessarily mean that it be a full narration of the facts and laws on which the assessment is based**. The purpose of the assessment is to enable the taxpayer to know the law and the facts on which the assessment is made, and to afford him his right to due process once it is served and received. Thus, so long as the parties are notified and given the opportunity to explain their side, the requirements of due process are satisfactorily complied with."[39] *(Emphasis supplied)*

Whether or not petitioner is liable for deficiency income tax in the amount of ₱377,980.91, value-added tax in the amount of ₱647,739.47 and expanded withholding tax in the amount of ₱7,436.36, all for taxable year 2006 and inclusive of interest until March 12, 2011.

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[37] Exhibit "H", Docket, pp. 000255-000256.
[38] Exhibit "G", Docket, pp. 000246-000254.
[39] *Hermano (San) Miguel Febres Cordero Medical Education Foundation (De La Salle- Health Sciences Institute), Inc. vs. CIR*, CTA Case No. 8194, January 9, 2012, citing *Calma et. al. vs. Court of Appeals, et. al.*, G.R. No. 122787, February 9, 1999.

I. Deficiency Income Tax

Respondent assessed petitioner of deficiency income tax for taxable year 2006 in the amount of ₱377,980.91, computed as follows:[40]

Taxable Income (Loss) per ITR		₱ (220,761.00)
Add: Discrepancies per investigation		
Under declared income	₱ 282,874.91	
Unsupported expenses	147,176.00	
Income payments not subjected to withholding tax	176,380.00	606,430.91
Taxable Income per investigation		₱ 385,669.91
Add: NOLCO		220,761.00
Total taxable income per investigation		**₱ 606,430.91**
Tax Due @ 35%		₱ 212,250.82
Less: Tax credits and payments		
Excess tax credit from prior year(s)	₱ 649,245.32	
Creditable tax withheld	201,002.66	
Total	₱ 850,247.98	
Less: MCIT Payment	12,658.56	
Excess tax credit carried over to succeeding year	837,589.42	-
Basic Tax Still Due		₱ 212,250.82
Add: Interest (04-16-07 to 03-11-11)		165,730.09
Total Amount Due and Collectible		**₱ 377,980.91**

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

a.	Undeclared income	₱ 282,874.91
b.	Unsupported expenses	147,176.00
c.	Income payments not subjected to withholding tax	176,380.00
d.	NOLCO	220,761.00

[40] Exhibit "A", Docket, p. 000225.

e.	MCIT Payments	12,658.56
f.	Excess tax credit carried over to succeeding year	837,589.42

The Court shall discuss the validity of the said assessment by looking into the propriety of each item.

a. Undeclared Income—₱282,874.91

Respondent computed the alleged undeclared income of ₱282,874.91 by taking into account the balances of petitioner's Accounts Receivable, beginning and ending, as shown below:

Receipts per VAT Returns	₱	4,018,500.65
Add: Accounts Receivable - end (net of VAT)		1,351,935.71
Total	₱	5,370,436.36
Less: Accounts Receivable - beg. (net of VAT)		643,675.45
Total Income per investigation	₱	4,726,760.91
Less: Income declared per ITR		4,443,886.00
Undeclared Income	₱	**282,874.91**

In its protest letter, petitioner counter argues that the Accounts Receivable account comprises of Trade Receivables, Advances to Clients and Other Receivables, and that only Trade Receivables should be considered in the reconstruction of sales/revenue subject to income tax from sales reported per VAT returns.[41]

The Court-commissioned Independent CPA (ICPA), Mr. Sonny S. Bonilla, observed that the income declared per petitioner's AITR amounting to ₱4,443,886.00 used by respondent in the computation of the undeclared income, consisted of the following:

Rental Income	₱	4,439,108.00
Dividend income		700.00
Miscellaneous income		4,078.00
Total	₱	**4,443,886.00**

[41] Exhibit "F", Docket, p. 000242.

Further, Mr. Bonilla stated that per his examination of petitioner's Annual Income Tax Return[42], all income earned were subjected to income tax of 35%, even the dividend income earned from a domestic corporation which should not have been subjected to income tax.

The Court agrees with the ICPA that the total income of ₱4,443,886.00, reflected per petitioner's Annual Income Tax Return for the year 2006, included the dividend income of ₱700.00[43]. This is confirmed by the Audited Statement of Income[44] of petitioner for the same year. However, such dividend income of ₱700.00 was not subjected to 35% income tax, contrary to the ICPA's finding, because petitioner reflected a net loss of ₱220,761.00[45]. Thus, petitioner paid 2% Minimum Corporate Income Tax (MCIT) of ₱12,658.56[46] on its gross income from operation of ₱632,928.00[47], which was arrived at by deducting its cost of services of ₱3,806,180.00[48] from its rental income of ₱4,439,108.00[49].

The ICPA likewise found that part of the Trade Accounts Receivable account in the amount of ₱325,549.15 *(Exhibit "O")* were reimbursements for the electric bills charged to Affable Trading Corporation and the same were excluded as part of the light, water and power expense of petitioner. As such, said reimbursements should not be considered as trade receivable.[50] Further, Mr. Bonilla noted that there was an overdeclaration of income amounting to ₱18,142.70 after the exclusion of the alleged reimbursement for electric bill charge and considering only the rental income declared per ITR, as shown below:[51]

Receipts per official receipts	₱	4,003,373.82
Add: Accounts Receivable - end (net of VAT)*		1,061,266.93
Total	₱	5,064,640.75

[42] Exhibit "M".
[43] Exhibit "M", line 17C (included in Non-Operating & Other Income of ₱4,778.00).
[44] Exhibit "N".
[45] Exhibit "M", line 20B.
[46] Exhbit "M", line 25.
[47] Exhibit "M", line 16C.
[48] Exhibit "M", line 15C.
[49] Exhibit "M", line 14C.
[50] Exhibit "AA" p. 3, Docket, p. 000261.
[51] Exhibit "AA", pp. 4-5, Docket, pp. 000262-000263.

Less: Accounts Receivable - beg. (net of VAT)	643,675.45
Total Income per investigation	₱ 4,120,965.30
Less: Income declared per ITR (rental income)	4,439,108.00
Over declared Income	**₱ (18,142.70)**

**Computed as:*

Accounts Receivable - End	₱ 1,514,168.11
Less: Other receivables	325,549.15
	₱ 1,188,618.96
Value-added tax	112%
	₱ 1,061,266.93

This Court finds petitioner's assertion untenable. Petitioner's Audited Financial Statements for the year 2006[52] do not disclose that its Accounts Receivable included advances to clients, other receivables or reimbursements amounting to ₱325,549.15. Further, the general journal submitted to support said reimbursements is insufficient.

Based on the foregoing, petitioner's undeclared income for taxable year 2006 amounts to ₱283,574.91, computed as follows:

Receipts per VAT Returns	₱ 4,018,500.65
Add: Accounts Receivable - end (net of VAT)	1,351,935.71
Total	₱ 5,370,436.36
Less: Accounts Receivable - beg. (net of VAT)	643,675.45
Total Income per investigation	₱ 4,726,760.91
Less: Income declared per ITR (net of dividend income)	4,443,186.00
Undeclared Income	**₱ 283,574.91**

b. Unsupported Expenses — ₱147,176.00

Respondent's examiner found that the following expenses were not duly substantiated:[53]

[52] Exhibit "N".
[53] Exhibit "A", Annex A, Docket, p. 227.

Expenses	Original Amount	Substantiated	Disallowed
Taxes and Licenses	₱ 43,465.00[54]	₱ 43,465.00	₱ -
Light, water and power	28,491.00[55]	12,541.00	15,950.00
Transportation Expense	131,226.00[56]	-	131,226.00
Telephone and Telegraph	63,164.00[57]	63,164.00	-
Insurance Expense	19,373.00[58]	19,373.00	-
Total	**₱ 285,719.00**	**₱ 138,543.00**	**₱147,176.00**

Petitioner asserts that the alleged unsupported expenses were properly documented and recorded in its books.[59] Anent petitioner's light, water and power expense amounting to ₱28,491.00, the ICPA was able to validate in the supporting documents only the amount of ₱23,633.33 and found that there was an allocation to Affable Trading Corporation in the amount of ₱9,307.91 which was deducted from the light, water and power account,[60] but no clear explanation and documentation were provided for the same. Meanwhile, only ₱103,242.81 of the ₱131,226.00 petitioner's transportation expense was validated by the ICPA.

After careful scrutiny of the receipts and invoices[61] presented by petitioner, this Court finds that petitioner was able to substantiate its light, water, power and transportation expenses only in the respective amounts of ₱2,965.99 and ₱97,308.76. The remaining claimed light, water, power and transportation expenses shall be disallowed for failure to meet the substantiation requirements under Section 34(A)(1) (b) of the NIRC of 1997, as amended:

Light, Water and Power						
Date	Journal Entry Number	Debit	Exhibits	Allowed	Disallowed	Reason for disallowance

54 Exhibit "N", Notes to Financial Statements for the years 2006 and 2005, under Note 10.
55 Exhibit "N", Notes to Financial Statements for the years 2006 and 2005 , under Note 10.
56 Exhibit "N", Notes to Financial Statements for the years 2006 and 2005, under Note 11.
57 Exhibit "N", Notes to Financial Statements for the years 2006 and 2005, under Note 11.
58 Exhibit "N", Notes to Financial Statements for the years 2006 and 2005, under Note 11.
59 Exhibit "F", Docket, p. 243.
60 Exhibit "AA", pp. 6-7, Docket, pp. 264-265.
61 Exhibits Q-1 to Q-29.1.A

1/10/2006	CD664	600.00	Q-1 to Q-1.1.A2		600.00	Supported by petty cash vouchers/pieces of paper dated 2005
1/20/2006	CD675	1,649.13	Q-2 to Q-2.1.A		1,649.13	Supported by invoice dated 2005 and not in the name and address of petitioner
1/26/2006	CD681	752.32	Q-3 to Q-3.1		752.32	MERALCO bill not in the name and address of petitioner
2/9/2006	CD693	958.58	Q-4 to Q-4.1.A.3		58.58	MERALCO bill not in the name and address of petitioner
					900.00	Supported only by petty cash vouchers /pieces of paper or dated 2005
2/9/2006	CD695	587.00	Q-5 to Q-5.1.A		587.00	Statement of account not in the name and address of petitioner
2/23/2006	CD705	817.00	Q-6 to Q-6.1		817.00	MERALCO bill not in the name and address of petitioner
3/7/2006	CD715	600.00	Q-7 to Q-7.1.A.2		600.00	Supported by petty cash vouchers/pieces of paper only
3/27/2006	CD728	1,500.00	Q-8 to Q-8.1.A.3		1,500.00	Supported by petty cash vouchers/pieces of paper only
3/31/2006	GJ724	424.67	Q-9 to Q-9.1.A		424.67	Statement of account partly unreadable
3/31/2006	GJ275	447.06	Q-10 to Q-10.1.A		447.06	Statement of account partly unreadable
4/7/2006	CD739	2,037.50	Q-11 to Q-11.1.A.3		837.50	MERALCO bill not in the name and address of petitioner
					1,200.00	Supported by petty cash vouchers/pieces of paper only
4/27/2006	CD747	833.30	Q-12 to Q-12.1		833.30	MERALCO bill not in the name and address of

						petitioner
4/30/2006	GJ277	984.06	Q-13 to Q-13.1.A	984.06	-	
5/22/2006	CD762	1,500.00	Q-14 to Q-14.1.A.3		1,500.00	Supported by petty cash vouchers/pieces of paper only
5/31/2006	GJ291	880.40	Q-15 to Q-15.1	880.40	-	
6/5/2006	CD769	1,679.83	Q-16 to Q-16.1.A.3		479.83	MERALCO bill not in the name and address of petitioner
					1,200.00	Supported by petty cash vouchers/pieces of paper only
6/26/2006	CD787	1,490.12	Q-17 to Q-17.1.A.4		290.12	MERALCO bill not in the name and address of petitioner
					1,200.00	Supported by petty cash vouchers/pieces of paper only
7/1/2006	GJ312	1,141.66	Q-18 to Q-18.1		1,141.66	Supported only by a statement of account
7/19/2006	CD805	900.00	Q-19 to Q-19.1.A.2		900.00	Supported by petty cash vouchers/pieces of paper only
7/24/2006	CD806	470.01	Q-20 to Q-20.1		470.01	MERALCO bill not in the name and address of petitioner
8/1/2006	GJ313	1,844.18	Q-21 to Q-21.1.B		1,844.18	Supported only by a statement of account
8/15/2006	CD834	600.00	Q-22 to Q-22.1.A.1		600.00	Supported only by petty cash vouchers/pieces of paper
9/1/2006	GJ318	1,913.13	Q-23 to Q-23.2		1,913.13	Supported only by statements of account
9/30/2006	GJ327	600.00	Q-24 to Q-24.1.A		600.00	Supported only by petty cash vouchers/pieces of paper
10/26/2006	CD877	2,704.27	Q-25 to Q-25.1.D		1,804.27	MERALCO bills not in the name and address of petitioner
					900.00	Supported only by petty cash

						vouchers/pieces of paper
11/24/2006	CD901	2,704.27	Q-26 to Q-26.1.D		1,003.05	MERALCO bill not in the name and address of petitioner
					1,200.00	Supported only by petty cash vouchers/pieces of paper
11/24/2006	CD902	571.22	Q-27 to Q-27.1		571.22	Supported only by a statement of account
12/21/2006	CD929	1,101.53	Q-28 to Q-28.1	1,101.53	-	
12/28/2006	GJ338	650.00	Q-29 to Q-29.1.A		650.00	Supported only by petty cash voucher/piece of paper
Total		32,440.02		2,965.99	29,474.03	
Less: Allocated to Affable Trading Corp.		9,307.91				
		23,132.11		**2,965.99**	**29,474.03**	

Transportation Expense						
Date	**Journal Entry number**	**Debit**	**Exhibits**	**Allowed**	**Disallowed**	**Reason for Disallowance**
1/10/2006	CD664	7,297.69	R-1 to R-1.1.J.1	1,363.64	5,934.05	Supported by gas receipts and petty cash vouchers dated 2005
1/31/2006	GJ244	45.00	R-2 to R-2.1	45.00		
2/1/2006	GJ249	1,887.80	R-3 to R-3.1	1,887.80		
2/9/2006	CD693	6,889.90	R-4 to R-4.G.1	6,889.90		
3/7/2006	CD715	6,426.94	R-5 to R-5.1.G.1	6,426.94		
3/27/2006	CD728	6,125.27	R-6 to R-6.1.G	6,125.27		
4/7/2006	CD739	6,554.94	R-7 to R-7.1.H	6,554.94		
5/3/2006	CD752	6,274.96	R-8 to R-8.1.F.1	6,274.96		
5/22/2006	CD762	6,625.55	R-9 to R-9.1.F	6,625.55		
6/5/2006	CD769	6,441.98	R-10 to R-10.1.G	6,441.98		
6/26/2006	CD787		R-11 to R-			

		6,893.37	11.1.H	6,893.37		
7/19/2006	CD805	6,754.11	R-12 to R-12.1.G.1	6,754.11		
8/2/2006	CD814	6,411.00	R-13 to R-13.1.F	6,411.00		
8/15/2006	CD834	5,504.12	R-14 to R-14.1.E	5,504.12		
9/1/2006	CD846	8,311.13	R-15 to R-15.1.F.1	8,311.13		
9/29/2006	CD860	6,603.17	R-16 to R-16.1.F	6,603.17		
10/26/2006	CD877	117.00	R-17 to R-17.1	117.00		
12/6/2006	CD912	7,929.88	R-18 to R-18.1.F.1	7,929.88		
12/28/2006	CD938	118.00	R-19 to R-19.1	118.00		
12/28/2006	GJ338	31.00	R-20 to R-20.1	31.00		
		103,242.81		**97,308.76**	**5,934.05**	

In the light of the foregoing, petitioner's unsupported expenses amounted to ₱59,442.25, computed as follows:

	Original Amount	Substantiated	Disallowed
Light, water and power	₱ 28,491.00	₱ 2,965.99	₱ 25,525.01
Transportation Expense	131,226.00	97,308.76	33,917.24
Total	**₱ 159,717.00**	**₱ 100,274.75**	**₱ 59,442.25**

c. **Income payments not subjected to withholding tax—₱176,380.00**

Respondent's investigation disclosed that petitioner failed to withhold and remit the corresponding expanded withholding tax on its income payments for professional fee and repairs and maintenance in the amounts of ₱6,696.00 and ₱169,684.00, respectively, in violation of Section 2.57.2 of Revenue Regulations No. 02-98, as amended. Hence, the same were disallowed as deduction from petitioner's gross income pursuant to Section 34(K) of the NIRC. Below is the computation of the disallowance of ₱176,380.00:[62]

[62] Exhibit "A", Annex A, Docket, p. 228.

Nature of Income payments	Per Audit	Per Alphalist	Not subjected to Withholding Tax
Professional Fee	₱ 6,696.00[63]	₱ -	₱ 6,696.00
Contracted Repairs & Maintenance	204,134.00[64]	34,450.00	169,684.00
Total	**₱ 210,830.00**	**₱ 34,450.00**	**₱ 176,380.00**

In its protest letter, petitioner contends that repairs and maintenance were expenses attributable to the purchase of supplies and materials for repairs and that the taxes on income payments pertaining to contracted services for repairs were religiously withheld. On the other hand, professional fees are not subject to expanded withholding tax because these pertain to income payments to its external auditor, which is a general professional partnership.[65]

Petitioner's argument regarding the non-withholding of tax on income payments made to their external auditor is supported by an official receipt issued by Mangay-ayam, Lim & Co. in the amount of ₱7,500.00[66] in connection with the audit and certification of petitioner's financial statements for the year 2005.[67] Moreover, the ICPA reported that said firm is, upon verification from the Security and Exchange Commission (SEC)[68], a general professional partnership upon verification with the Securities and Exchange Commission (SEC). As such, Mangay-ayam, Lim & Co. is exempt from income tax and consequently from EWT pursuant to Section 26 of the NIRC of 1997 in relation to Section 2.57.5(B) of RR No. 2-98, as amended by Section 4 of RR No. 14-02, which are all quoted herein below:

> "**SEC. 26.** *Tax Liability of Members of General Professional Partnerships.* — A **general professional partnership as such shall not be subject to the income tax** imposed under this Chapter. Persons engaging in business as partners in a general

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[63] Exhibit "N", Notes to Financial Statements for the years 2006 and 2005, under Note 11.
[64] Exhibit "N", Notes to Financial Statements for the years 2006 and 2005, under Note 10.
[65] Exhibit "F", Docket, pp. 242-243.
[66] Inclusive of VAT; Amount exclusive of VAT is ₱6,696.43.
[67] Exhibit "S".
[68] Exhibit "AA", page 9; Docket, p.267.

professional partnership shall be liable for income tax only in their separate and individual capacities.

"For purposes of computing the distributive share of the partners, the net income of the partnership shall be computed in the same manner as a corporation.

"Each partner shall report as gross income his distributive share, actually or constructively received, in the net income of the partnership. (*Emphasis supplied*)

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:

(A) 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:

(1) xxx xxx xxx
(2) xxx xxx xxx
(3) xxx xxx xxx
(4) General professional partnerships (*Emphasis supplied*)"

Anent its claimed deduction for repairs and maintenance in the amount of ₱204,134.00, petitioner was able to submit supporting documents showing payments amounting to ₱179,685.81, detailed as follows:

Date	Ref	Exh.	Particulars	Amount	Tax withheld	Supplier	Date	Exh.
5-Dec-06	CDB 910	T-20	Pest Control	25,000.00	500.00	Edper Pest Control	6-Dec-06	T-20.1
17-Aug-06	CDB 835	T-12	Labor - vehicle repair	400.00	8.00	Global City Auto Sales Inc.	17-Aug-06	T-12.1.A
10-Aug-06	CDB 828	T-10	Labor - vehicle repair	2,800.00	56.00	Global City Auto Sales	10-Aug-06	T-10.1.A

						Inc.		
12-Dec-06	CDB 920	T-21	Labor - vehicle repair	6,250.00	125.00	Citimotors Inc	30-Nov-06	T-21.1.A
Already subjected to EWT per Alphalist				**34,450.00**	**689.00**			
10-Jan-06	CDB 664	T-1	Faucet	727.27		J. CASIM Construction Supplies	22-Dec-05	T-1.1.A.1
10-Jan-06	CDB 664	T-1	Lavatory hose	90.91		Golden Hill Lumber & Hardware	2-Jan-05	T-1.1.B.1.A
10-Jan-06	CDB 664	T-1	Teflon Tape	9.09		Golden Hill Lumber & Hardware	2-Jan-05	T-1.1.B.1.A
Not within the taxable period of assessment				**827.27**				
10-Jan-06	CDB 664	T-1	Angle Valve	75.00		Nissan Construction Supply	2-Jan-06	T-1.1.B.1.D
9-Jun-06	CDB 775	T-8	Bulb	210.56		Citimotors Inc	26-May-06	T-8.3
29-Sep-06	CDB 860	T-15	Change Tire	50.00		Magallanes Management Corp - Maya	9-Sep-06	T-15.1.A.1
28-Dec-06	GJ 338	T-23	Cleaning Materials	957.95		SM Supermarket	12-Dec-06	T-23.1.B
2-Aug-06	CDB 814	T-9	Cleaning Materials	519.90		Robinsons Supermarket	20-Jul-06	T-9.1.A.1
29-Sep-06	CDB 860	T-15	Cool Guard	267.86		Magallanes Management Corp - Maya	13-Sep-06	T-15.1.C.1
26-Oct-06	CDB 877	T-18	Electrical supplies	395.00		Sold to "C"	26-Oct-06	T-18.1.B
15-Aug-06	CDB 834	T-11	Materials	288.00		Pio Cantiga	24-Jul-06	T-11.1.C.3
30-Sep-06	GJ 326	T-16	Materials	480.00		James Paolo Bergal Enterprises	11-Jul-06	T-16.1.A
21-Nov-06	CDB 895	T-19	Materials	3,434.54		Citimotors Inc	18-Nov-06	T-19.1.A
12-Dec-06	CDB 920	T-21	Materials	431.09		Citimotors Inc	30-Nov-06	T-21.1.A
9-Jun-06	CDB 775	T-8	Materials	4,015.63		Citimotors Inc	17-May-06	T-8.6
15-Aug-06	CDB 834	T-11	Mattings	100.00			11-Aug-06	T-11.1.A.1
30-Sep-06	GJ 326	T-16	Mattings	50.00		Bautista	14-Jul-06	T-16.1.C

2-Aug-06	CDB 814	T-9	Mighty Bond/Elasto Seal	66.52		Handy Man Do It Center	20-Jul-06	T-9.1.A.2
2-Aug-06	CDB 814	T-9	Motor Oil	209.82			26-Jul-06	T-9.1.B
15-Aug-06	CDB 834	T-11	Nails	48.00			14-Jul-06	T-11.1.C.4
30-May-06	CDB 764	T-7	Nylon Blade Yellow String	89.28		New Royal Plumbing & Hardware	25-May-06	T-7.1
7-Mar-06	CDB 715	T-4	Paints / Brush	143.30		Handy Man Do It Center	8-Feb-06	T-4.1.A.2
10-Aug-06	CDB 828	T-10	Parts	8,865.99		Global City Auto Sales Inc.	10-Aug-06	T-10.1.A
17-Aug-06	CDB 836	T-13	Parts	49,107.14		Rapide	26-Jul-06	T-13.1/T-13.1.A
1-Sep-06	CDB 846	T-14	Parts	267.86		Magallanes Management Corp - Maya	28-Aug-06	T-14.1.A.1/T-14.1.A.1.A
21-Nov-06	CDB 895	T-19	Parts	674.87		Citimotors Inc	20-Nov-06	T-19.1.B
12-Dec-06	CDB 920	T-21	Parts	11,197.79		Citimotors Inc	30-Nov-06	T-21.1.B
28-Feb-06	GJ 250	T-3	Parts	9,141.56		Global City Auto Sales Inc.	23-Feb-06	T-3.1
9-Jun-06	CDB 775	T-8	Parts	8,395.19		Citimotors Inc	17-May-06	T-8.7
17-Aug-06	CDB 835	T-12	Parts & Supplies	3,068.50		Global City Auto Sales Inc.	17-Aug-06	T-12.1.A
27-Dec-06	CDB 932	T-22	Parts & Supplies	2,367.76		Global City Auto Sales Inc.	16-Dec-06	T-22.1.A.1.A
9-Feb-06	CDB 693	T-2	Radiator Hose	169.64		Taurus Auto Supply	6-Feb-06	T-2.1.B.1
9-Jun-06	CDB 775	T-8	Rod, Antenna	2,235.60		Citimotors Inc	18-May-06	T-8.5
9-Feb-06	CDB 693	T-2	Tire Black	145.45		R& E Battery	30-Jan-06	T-2.1.A.1
31-Mar-06	GJ 257	T-5	Tires	10,928.03		Philippine Allied Enterprises	27-Feb-06	T-5.1.A.1
Purchases of materials, supplies and vehicle parts				**118,349.60**				
15-Aug-06	CDB 834	T-11	Emission Testing	300.00		R3 Motor Vehicle Emission Testing & Car Care Center	11-Aug-06	T-11.1.B.1

						Company		
21-Nov-06	CDB 895	T-19	Labor - vehicle repair	630.00		Citimotors Inc	18-Nov-06	T-19.1.A
27-Dec-06	CDB 932	T-22	Labor - vehicle repair	1,320.00		Global City Auto Sales Inc.	16-Dec-06	T-22.1.A.1.A
28-Feb-06	GJ 250	T-3	Labor - vehicle repair	1,600.00		Global City Auto Sales Inc.	23-Feb-06	T-3.1
9-Jun-06	CDB 775	T-8	Labor - vehicle repair	803.57		Citimotors Inc	27-May-06	T-8.2
9-Jun-06	CDB 775	T-8	Labor - vehicle repair	17,094.29		Citimotors Inc	17-May-06	T-8.6
9-Jun-06	CDB 775	T-8	Labor - vehicle repair	120.00		Citimotors Inc	26-May-06	T-8.1
9-Jun-06	CDB 775	T-8	Labor - vehicle repair	1,140.00		Citimotors Inc	18-May-06	T-8.4
15-Aug-06	CDB 834	T-11	Maintenance fee	400.00		Joven Cordero	25-Jul-06	T-11.1.C.1
30-Sep-06	GJ 326	T-16	Maintenance fee	300.00		Joven Cordero	14-Jul-06	T-16.1.B
30-Sep-06	GJ 327	T-17	Maintenance fee	400.00		Joven Cordero	14-Jul-06	T-17.1.A
26-Oct-06	CDB 877	T-18	Maintenance fee	500.00		Joven Cordero	24-Sep-06	T-18.1.A
28-Dec-06	GJ 338	T-23	Maintenance fee	250.00		Pio Cantiga	11-?-06	T-23.1.A
7-Mar-06	CDB 715	T-4	Maintenance fee	200.00		Pio Cantiga	9-Feb-06	T-4.1.A.1
10-Jan-06	CDB 664	T-1	Maintenance fee/repair of lavatory	150.00		Chirs E.	2-Jan-06	T-1.1.B
1-Sep-06	CDB 846	T-14	Service	116.07		Magallanes Manageme nt Corp - Maya	28-Aug-06	T-14.1.A.1/T-14.1.A.1.A
15-Aug-06	CDB 834	T-11	Vulcanization	90.00		Boya Motorcycle parts	7-Aug-06	T-11.1.A.1
29-Sep-06	CDB 860	T-15	Vulcanization	180.00		Boya Motorcycle parts	11-Sep-06	T-15.1.B.1
22-May-06	CDB 762	T-6	Vulcanization	170.00		Boya Motorcycle parts	10-May-06	T-6.1.A.1
22-May-06	CDB 762	T-6	Vulcanization	95.00		Petron service Station	3-May-06	T-6.1.B.1
15-Aug-06	CDB 834	T-11	Welding	200.00		Bautista	29-Jul-06	T-11.1.C.2
Payment for labor – vehicle repair, maintenance fees, welding, vulcanization, emission testing				**26,058.94**				
Total				**179,685.81**				

The above repairs and maintenance expenses of ₱179,685.81 included the amount of ₱827.27 pertaining to the year 2005, which is outside the period of assessment, and the amount of ₱34,450.00 found by the respondent to have been subjected to EWT per petitioner's 2006 alphalist. Thus, out of the repairs and maintenance expenses of ₱169,684.00, subject of the assessment, petitioner was able to provide supporting documents in the amount of ₱144,408.54 (₱179,685.81 less ₱34,450.00 less ₱827.27).

A scrutiny of the documents presented revealed that the amount of ₱144,408.54 represents payments for vehicle repair, lavatory repair, maintenance fees, welding, vulcanization and emission testing as well as purchases of the related materials, supplies and vehicle parts which are not subject to expanded withholding tax under RR No. 2-98, as amended by RR No. 17-03.

However, since petitioner did not provide supporting documents for the repairs and maintenance expense of ₱25,275.46 (₱169,684.00 less ₱144,408.54), the actual nature thereof cannot be ascertained. Consequently, the income payments in the amount of ₱25,275.46 shall be considered as subject to 2% expanded withholding tax pursuant to Section 2.57.2(E) of RR No. 2-98, as amended by Section 3 of RR No. 17-03 in line with the rule that tax assessments by tax examiners are presumed correct and made in good faith, with the taxpayer having the burden of proving otherwise. Failure to present proof of error in the assessment will justify the judicial affirmance of said assessment[69]. Therefore, the amount of ₱25,275.46 shall be disallowed from petitioner's claimed deduction for repairs and maintenance expenses pursuant to Section 34(K) of the NIRC of 1997, as amended, which states that:

> "(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 a deduction only if it is shown that the tax required to be deducted and withheld therefrom has been paid to the Bureau of Internal Revenue in

[69] Marcos II vs. Court of Appeals, et al., G.R. No. 120880, June 5, 1997

accordance with this Section, sections 58 and 81 of this Code.

d. Net Operating Loss Carry-Over (NOLCO) — ₱220,761.00

Petitioner contends that it properly reported its revenues and expenses which resulted to a net loss and that it is allowed to carry over the same to the succeeding taxable year pursuant to Section 34(D)(3) of the NIRC.[70] On the other hand, respondent asseverates in her Final Decision on Disputed Assessment (FDDA)[71] that the NOLCO in the amount of ₱220,761.00 was added back to taxable income considering that the tax benefit thereof has already been forwarded to succeeding period as provided for under Section 34 (D) (3) of NIRC. Respondent further states that to allow petitioner to carry over the NOLCO and at the same time be benefited therefrom in the year the loss was incurred by offsetting from said loss the findings per investigation, would result to double benefit which was never the intent of the provision.

Based on petitioner's Annual Income Tax Returns for taxable years 2007, 2008 and 2009,[72] the alleged Net Operating Loss was not carried over as deduction from gross income of the succeeding years. Further, said NOLCO is beyond the scope of the present assessment; it can only be the subject of assessment on the taxable year when it is claimed as a deduction. As held in the case of *Philippine Aerospace Development Corporation vs. Commissioner of Internal Revenue*:[73]

> "xxx Granting, for the sake of argument, that petitioner actually deducted its 2003 net loss as NOLCO in the succeeding year 2004 and the said deduction was not proper as petitioner did not incur net loss, **the same can only be the subject of assessment, when it was claimed as deduction in the year 2004 and not in the year 2003, for such is beyond the scope of the present assessment.** Hence, adding back the net loss amount of P4,555,067.00 to petitioner's taxable income for the year 2003 is erroneous." *(Emphasis supplied)*

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[70] Docket, p. 243, Exhibit "F".
[71] Docket, p. 228, Exhibit "A", Annex A.
[72] Exhibits "U", "V", and "W".
[73] CTA Case No. 7830, December 11, 2012.

Thus, adding back net loss in the amount of ₱220,761.00 is erroneous.

e. Minimum Corporate Income Tax (MCIT) — ₱12,658.56

Respondent avers that the MCIT payment in the amount of ₱12,658.56 was not credited against the deficiency income tax since the same shall be carried forward and credited against the normal income tax for the three (3) immediately succeeding taxable years pursuant to Section 27(E)(2) of the NIRC, as amended.[74]

Considering that the MCIT will be credited against the normal income tax for the three (3) immediately succeeding taxable years, its benefit will redound on the succeeding years and as such, petitioner may only be assessed in the year it would be credited. Further, petitioner's Annual Income Tax Returns showed that it incurred losses in the years 2007, 2008 and 2009;[75] thus, it did not enjoy the privilege of crediting the MCIT payment against its normal income tax.

Hence, respondent erred in not crediting petitioner's MCIT payment in computing petitioner's income tax liability for the year 2006.

f. Excess Tax Carried Over to Succeeding Year — ₱837,589.42

Respondent contends that the excess tax credit carried over to the succeeding year in the amount of ₱837,589.42 should be disallowed in order to recapture the benefit derived in crediting the same. Respondent further states that "to allow you to carry-over the excess tax credit and the MCIT and credit it in the succeeding years and of the same time be credited in the year the MCIT was paid by offsetting the same from deficiency income tax would result to double benefit."[76]

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[74] Docket, p. 228, Exhibit "A", Annex A.
[75] Exhibits "U", "V", and "W".
[76] Exhibit "A", Annex A, Docket, p. 228.

As previously discussed, the benefit of excess tax carry-over will redound to the succeeding year. It is inappropriate to disallow the same for such is beyond the scope of the present assessment.

In fine, notwithstanding that petitioner had undeclared income of ₱283,574.91, unsupported expenses of ₱59,442.25 and income payments of ₱25,275.46 not subjected to EWT , the income tax due thereon shall be offset against petitioner's total tax credits in the amount of ₱850,247.98. Thus, petitioner would not be liable for any deficiency income tax for taxable year 2006, as computed below:

Taxable Income (Loss) per ITR		₱ (220,761.00)
Add: Discrepancies per Investigation		
Undeclared income	₱ 283,574.91	
Unsupported expenses	59,442.25	
Income payments not subjected to withholding tax	25,275.46	368,292.62
Adjusted Taxable Income		₱ 147,531.62
Tax Due @ 35%		₱ 51,636.07
Less: Tax credits and payments		
Excess tax credit from prior year(s)	₱ 649,245.32	
Creditable tax withheld	201,002.66	850,247.98
Excess Tax Credits		**₱ 798,611.91**

II. Deficiency Value-Added Tax (VAT)

Petitioner was assessed of deficiency VAT for taxable year 2006 in the amount of ₱647,739.47, computed as follows:[77]

Receipts subjected to VAT per return		₱ 4,018,500.65
Output tax due thereon @ 10% and 12%		₱ 467,694.16
Less: Tax Credits		
Excess input tax from previous quarter of prior year	₱ 1,688,849.16	
Current input tax	325,847.50	
Payment	199,877.28	
Total	₱ 2,214,573.94	
Less: Unsupported input tax	325,847.50	
Unsupported payments	177,183.32	
Excess tax credit carried	1,598,841.31	112,701.81

[77] Exhibit "A", Docket, p. 226.

over to succeeding period		
Basic tax still due		₱ 354,992.35
Add: Interest (01-26-07 to 03-11-11)		292,747.12
Total amount due and collectible		**₱ 647,739.47**

The deficiency VAT assessment resulted from the following items:

a.	Output tax due	₱ 467,694.16
b.	Unsupported input tax	325,847.50
c.	Unsupported payments	177,183.32
d.	Excess input tax carried over to succeeding quarter/year	1,598,841.31

The propriety of each item shall be discussed hereafter.

a. Output tax due—₱467,694.16

Respondent found that there is a discrepancy between the output tax declared per VAT returns and the result of their investigation in the amount of ₱1,869.49, to wit:[78]

Output tax due @ receipts of ₱4,018,500.65	Per Investigation	Per VAT Returns
1st Quarter (₱1,217,184.09 @ 10% & 12%)	₱ 131,536.17	₱ 131,536.17
2nd Quarter (₱866,516.47 @ 12%)	103,981.98	103,981.98
3rd Quarter (₱950,464.36 @ 12%)	114,055.72	112,186.25
4th Quarter (₱984,335.73 @ 12%)	118,120.29	118,120.27
Total	**₱ 467,694.16**	**₱ 465,824.67**

Petitioner contends that the minimal deficiency is mainly due to the changes in the VAT rate used as a result of the timing difference of the collection of the rental income.[79]

The ICPA reported that petitioner's cash receipts books for the month of August 2006 included collections made for rental services

[78] Exhibit "A", Annex A, Docket, p. 228.
[79] Memorandum for the Petitioner, Docket, p. 441.

rendered for the month of January 2006 when the prevailing VAT rate was 10% as shown below.[80]

Exh.	OR No.	Date	Payor	Rent Income	Output per VAT returns (10%)	Output per BIR Audit (12%)	Discrepancy
P-51	277	8/30/06	Biolife Management Corp.	₱74,112.50	₱ 7,411.25	₱ 8,893.50	₱ 1,482.25
P-53	279	8/30/06	La Place de Cheri Salon	10,285.00	1,028.50	1,234.20	205.70
P-54	280	8/30/06	Afable Trading Corp.	9,075.00	907.50	1,089.00	181.50
			TOTAL	**₱93,472.50**	**₱ 9,347.25**	**₱ 11,216.70**	**₱ 1,869.45**

The Court finds respondent's assessment to be well-grounded. Section 108(A) of the NIRC of 1997, as amended by Republic Act (RA) No. 9337[81], authorized the President of the Philippines upon the recommendation of the Secretary of Finance to raise the VAT imposed on the sale of services and use or lease of properties from 10% to 12% after meeting certain conditions, thus:

> "SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.-*
>
> (A) *Rate and Base of Tax.-* There shall be levied, assessed and collected, a value-added tax equivalent to **ten percent (10%) of gross receipts derived from the sale or exchange of services, including the use or lease of properties: Provided, That the President,** upon the recommendation of the Secretary of Finance, **shall, effective January 1, 2006, raise the rate of value-added tax to twelve percent (12%)**, after any of the following conditions has been satisfied:
>
> "(i) Value-added tax collection as a percentage of Gross Domestic Product (GDP) of the previous year exceeds two and four-fifth percent (2 4/5%); or
>
> "(ii) National government deficit as a percentage of GDP of the previous year exceeds one and one-half percent (1 1/2%).

[80] Exhibit "AA", Docket, p. 271.
[81] RA 9337 was implemented on November 1, 2005.

Through Revenue Memorandum Circular (RMC) No. 07-06 dated January 31, 2006, the BIR published the full text of the Memorandum from Executive Secretary Eduardo Ermita dated January 31, 2006 announcing that the President has approved the recommendation of the Secretary of Finance to increase the VAT rate from 10% to 12% effective February 1, 2006 pursuant to Section 4 of RA No. 9337.

The 12% VAT on the sale of services and use or lease of properties is computed based on **gross receipts,** which is defined under Section 108 (a) of the 1997 NIRC, as amended, as follows:

> "The term **'gross receipts'** means 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 advance payments **actually or constructively received during the taxable quarter for the services performed or to be performed** for another person, excluding value-added tax." *(Emphasis supplied)*

Thus, although collections in the month of August 2006 included rental income for the month of January 2006, the same should be subjected to 12% VAT, which was the prevailing rate for the month of August 2006 when the rental payments were received. Hence, this Court finds respondent's findings meritorious.

b. Unsupported input tax—₱325,847.50

Respondent disallowed the input tax in the amount of ₱325,847.50 for failure of petitioner to substantiate the same. However, petitioner insists that subject input taxes were duly supported by invoices and receipts.

The ICPA examined petitioner's cash disbursements book and the related invoices and receipts supporting the input taxes of

₱256,951.25.[82] A review of the said documents showed the following findings:[83]

Findings	Input Tax
1. Input taxes on purchase of goods and services properly supported by VAT invoices and official receipts (ORs).	₱ 4,312.00
2. Input taxes on purchase of goods and services supported by cash register machine tapes.	11,864.92
3. Input taxes on purchase of goods and services supported by VAT invoices and ORs but input taxes are not separately shown.	22,113.96
4. Input taxes on purchase of goods and services amounting to more than ₱1,000 supported by VAT invoices and ORs but address and TIN of purchaser are not indicated in the VAT invoices or ORs.	138,577.17
5. Input taxes on purchase of goods not supported by VAT invoices and purchase of services not supported by VAT ORs.	65,074.51
6. Input taxes on purchase of goods and services supported by VAT invoices and ORs dated outside the taxable year 2006	11,822.16
7. Input tax on purchase of services supported by a non-VAT OR.	3,000.00
8. Input tax on purchase of goods supported by a VAT invoice issued not in the name of petitioner.	20.36
TOTAL	**₱ 256,785.08**

It should be noted that petitioner did not submit supporting documents for input taxes amounting to ₱69,062.42 (₱325,847.50 less ₱256,785.08).

Thus, only input taxes in the amount of ₱4,312.00 should be allowed for complying with the invoicing requirements under Section 113 of the NIRC of 1997, as amended, which provides:

> "Sec. 113. *Invoicing and Accounting Requirements for VAT-Registered Persons.* –

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[82] Exhibit "AA", Docket, pp. 272-273 and Exhibits "Y-1" to "Y-77.1".
[83] See details in Annex A of this report.

> (A) *Invoicing Requirements.* – A VAT-Registered person shall issue:
>
> > (1) A VAT invoice for every sale, barter or exchange of goods or properties; and
> >
> > (2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.
>
> (B) *Information Contained in the VAT Invoice or VAT Official Receipt.* – The following information shall be indicated in the VAT invoice or VAT official receipt:
>
> > (1) A statement that the seller is a VAT-registered person, followed by his taxpayer's identification number (TIN);
> >
> > (2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax; *Provided*, that:
> >
> > > a) **The amount of the tax shall be shown as a separate item in the invoice or receipt;**
> > > b) xxx xxx xxx
> > > c) xxx xxx xxx
> > > d) xxx xxx xxx
> >
> > (3) The date of transaction, quantity, unit cost and description of the goods or properties or nature of the service; and
> >
> > **(4) In the case of sales in the amount of one thousand pesos (₱1,000) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and Taxpayer Identification Number (TIN) of the purchaser, customer or client.**" *(Emphasis supplied)*

Anent the cash register machine tapes submitted, Section 4.110-8 of Revenue Regulations No. 16-2005 provides:

> "A cash register machine tape issued to a registered buyer shall constitute valid proof of substantiation of tax credit only if it shows the

information required under Secs. 113 and 237 of the Tax Code."

In the present case, all of the cash register machine tapes failed to comply with the substantiation requirements under Secs. 113 and 237 of the Tax Code and, thus, do not support a valid claim for input tax credit.

On the basis of the foregoing, petitioner's unsupported input tax is in the reduced amount of ₱321,535.50 (₱325,847.50 less ₱4,312.00).

c. Unsupported payments — ₱177,183.32

Respondent alleges that petitioner claimed advance payments for the year 2006 in the amount of ₱199,877.28 (quarterly amount of ₱49,969.32) but the latter's VAT returns and the respondent's Integrated Tax System (ITS) showed that petitioner only paid ₱22,693.96. Thus, the difference of ₱177,183.32 (₱199,877.28 less ₱22,693.96) representing unsupported claimed payment was disallowed by respondent.[84]

Petitioner avers that they are entitled to carry forward the said payments as part of excess input tax credits because they were erroneous but honestly made. The same resulted from errors in the presentation of monthly VAT Returns when there were excess input taxes carried over from previous period resulting to total VAT payables instead of overpayment,[85] to wit:

Exhibit	BIR FORM	Period Covered	Amount Paid
Z-1	2550M	November 2005	₱ 8,189.49
Z-2	2550Q	4th Quarter 2005	19,085.87
Z-3	2550M	January 2006	14,317.16
Z-4	2550M	February 2006	8,376.80
	TOTAL		₱ 49,969.32

[84] Exhibit "A", Annex A, Docket, p. 229.
[85] Exhibit "F", Docket, p. 244.

When the quarterly VAT return for the first quarter of 2006 was amended, said payments in the total amount of ₱49,969.32 were erroneously presented as advance payments (Item 26C of BIR Form No. 2550Q).[86]

A perusal of the documents supporting such payments shows no reason to claim the same as tax credit. In fact, petitioner's payments made in November and December 2005 and January and February 2006 were in order. Section 110(B) of the NIRC of 1997, as amended by Republic Act No. 9337 and implemented by Section 4.110-7(b) of Revenue Regulations No. 16-2005, provides:

> "**Sec. 110.** ***Tax Credits.***
>
> (A) xxx xxx xxx
>
> (B) *Excess Output or Input Tax.* – If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters: Provided, That **the input tax inclusive of input VAT carried over from the previous quarter that may be credited in every quarter shall not exceed seventy percent (70%) of the output VAT:** Provided, however, that any input tax attributable to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112." *(Emphasis supplied)*

From the foregoing provision, every VAT taxpayer will end up paying at least 30% of the output tax even if it accumulated a substantial amount of input tax. In the instant case, petitioner's total payments of ₱49,969.32 were actually 30% of its reported output tax due for the subject period, to wit:

	Nov-05 ***(Exh. Z-1)***	**4th Qtr 2005** ***(Exh. Z-2)***	**Jan-06** ***(Exh. Z-3)***	**Feb-06** ***(Exh. Z-4)***	**Total**
Output tax due	₱27,298.27	₱ 90,917.88	₱ 47,723.88	₱27,922.67	

[86] Exhibit "X-3".

70% - 30% cap	30%	30%	30%	30%	
VAT Payable	₱ 8,189.48	₱ 27,275.36	₱ 14,317.16	₱ 8,376.80	
Less: Monthly VAT payments	-	8,189.48	-	-	
TOTAL	**₱ 8,189.48**	**₱19,085.88**	**₱14,317.16**	**₱ 8,376.80**	**₱49,969.33**

Thus, petitioner erred when it presented the payments in the aggregate amount of ₱49,969.32 as advance payments in its Quarterly VAT Returns for the four quarters of the taxable year 2006 because there were no advance payments made. For the first quarter of 2006, petitioner should have reported only the amount of ₱22,693.96 (the sum of its VAT payments for the months of January and February 2006)[87] as "Monthly VAT Payments-previous two months" in Item 26A of BIR Form No. 2550Q.

It should be noted that the effectivity of the 70% cap as previously cited is from July 1, 2005 to December 13, 2006 when the NIRC of 1997 was amended by Republic Act No. 9361, the pertinent portion of which reads:

> "**Sec. 110.** *Tax Credits.*
>
> (A) xxx xxx xxx
>
> (B) *Excess Output or Input Tax.* – If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. **If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters:** Provided, however, that any input tax attributable to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112." *(Emphasis supplied)*

The taxable year covered by the subject assessment is 2006; hence, if petitioner's input tax exceeded its output tax, petitioner was liable to pay VAT equivalent to 30% of its output tax. For the period March to November 2006, petitioner's input tax exceeded its output

[87] ₱14,317.16 plus ₱8,376.80.

tax but did not pay any VAT as evidenced by its monthly and quarterly VAT returns.[88] It was inappropriate for the petitioner to claim payments of ₱49,969.32 as tax credit when in fact it was supposed to pay at least 30% of the output tax as required by law.

d. Excess input tax carried over to succeeding quarter/year— ₱1,598,841.31

Respondent deducted the excess input tax carried over to succeeding quarter/year from the total tax credit in order to recapture the benefit derived from such carry-over.

As discussed previously, the benefit of the excess input tax carried over to succeeding quarter/year redounds to the succeeding quarter/year; hence, it is inappropriate to deduct the same for it is beyond the scope of the assessment at hand.

In fine, pursuant to Section 110(B) of the NIRC of 1997, petitioner can only credit input taxes (including input taxes carried over from the previous quarter) up to 70% of its output taxes if total input taxes exceed the output taxes. For the period January to November 2006, petitioner had output taxes and input taxes in the total amounts of ₱441,341.67 and ₱1,693,161.16, respectively, as shown below:

Exhibit	**Period Covered in 2006**	**Output taxes**	**Input taxes[89]**
Carried over from previous quarter of prior year			₱ 1,688,849.16
X-3	1st Qtr	₱ 131,536.17	-
X-6	2nd Qtr	103,981.98	31.02
X-9	3rd Qtr	114,055.70 [90]	4,200.00
X-10	October	46,754.29	-
X-11	November	45,013.53	80.98
	TOTAL	**₱ 441,341.67**	**₱ 1,693,161.16**

[88] Exhibits X-3, X-6, X-9, X-10 and X-11.
[89] Includes only the properly substantiated input taxes from current transactions in the total amount of ₱4,312.00.
[90] Adjusted to include difference in VAT rate applied on rental income for the month of January 2006 but collected in August 2006.

On the basis of the foregoing, petitioner is liable for deficiency VAT for taxable year 2006 in the amount of ₱109,708.54, computed as follows:

Exhibit	Period Covered (2006)	Output tax	70% - 30% Cap	VAT Payable	Less: Monthly Payments	Tax still payable
X-3	1st Qtr	₱ 131,536.17	30%	₱ 39,460.85	₱ 22,693.96	₱ 16,766.89
X-6	2nd Qtr	103,981.98	30%	31,194.59	-	31,194.59
X-9	3rd Qtr	114,055.70	30%	34,216.71	-	34,216.71
X-10	October	46,754.29	30%	14,026.29	-	14,026.29
X-11	November	45,013.53	30%	13,504.06	-	13,504.06
	TOTAL	**₱441,341.67**		**₱132,402.50**	**₱22,693.96**	**₱109,708.54**

For the month of December 2006 when the 70% cap was removed, if the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters and petitioner need not pay 30% of its output tax.

III. Deficiency Expanded Withholding Tax (EWT)

Based on the finding that petitioner failed to withhold and remit the EWT on income payments made for professional fee and repairs and maintenance in the amounts of ₱6,696.00 and ₱169,684.00, respectively, in violation of Section 2.57.2 of Revenue Regulations 02-98, as amended, as discussed under the deficiency income tax assessment (see discussion in item I.c above), respondent assessed petitioner of deficiency EWT in the amount of ₱4,063.28, computed as follows:

Nature of Income payments	Per Audit	Per Alphalist	Not subjected to Withholding Tax	Tax Rate	Tax Due
Professional Fee	₱ 6,696.00	₱ -	₱ 6,696.00	10%	₱ 669.60
Contracted Repairs & Maintenance	204,134.00	34,450.00	169,684.00	2%	3,393.68
Total	**₱210,830.00**	**₱ 34,450.00**	**₱ 176,380.00**		**₱ 4,063.28**

As stated earlier, petitioner failed to prove that the taxes related to the income payments for repairs and maintenance in the amount of ₱25,275.46 were withheld and remitted. Thus, pursuant to Section 2.57.2(E) of RR No. 2-98, as amended, petitioner is liable to pay basic deficiency EWT in the amount of ₱505.51, computed as follows:

Income payments not subjected to EWT	₱ 25,275.46
Multiply by EWT rate	0.02
Basic Deficiency EWT	**₱ 505.51**

In view of the foregoing, this Court partially grants the instant Petition for Review. The assessment issued by respondent against petitioner covering deficiency income tax for taxable year 2006 in the amount of ₱377,980.91 is hereby cancelled and/or withdrawn. However, the assessments on deficiency VAT and EWT for taxable year 2006 is hereby upheld but in the adjusted aggregate amount of ₱137,767.57, inclusive of the 25% surcharge imposed under Section 248(3) of the NIRC of 1997, computed as follows:

	VAT	EWT	Total
Basic deficiency tax	₱ 109,708.54	₱ 505.51	₱ 110,214.05
Add: 25% Surcharge	27,427.14	126.38	27,553.52
TOTAL	**₱137,135.68**	**₱ 631.89**	**₱137,767.57**

In addition, petitioner is liable to pay:

(a) Deficiency interest at the rate of 20% per annum on the basic deficiency VAT and EWT computed from the dates indicated below until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended:

Tax Type	Deficiency Interest computed from
Value-added tax	January 25, 2007
Expanded withholding tax	January 15, 2007

(b) Delinquency interest at the rate of 20% per annum on the total amount of ₱137,767.57 and on the deficiency interest which has accrued as stated above in (a) computed from March 10, 2011 until full payment thereof, pursuant to Section 249 (C) of the NIRC of 1997, as amended.

WHEREFORE, the instant Petition for Review is hereby **PARTIALLY GRANTED.** Respondent is hereby ordered to **CANCEL AND SET ASIDE** Assessment Notice No. IT-TVN147716-06-411-0290 for the alleged deficiency income tax liability of petitioner. Finally, petitioner is hereby ordered to settle the deficiency VAT and EWT liabilities, including surcharges and interests.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

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

AMELIA R. COTANGCO-MANALASTAS
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
Chairperson, Second Division

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice

ANNEX A

INPUT TAXES FOR THE YEAR 2006

Exhibit	OR/Inv. No.	Date	Supplier	Inv./OR Amt.	Input Tax
1. Input taxes on purchase of goods and services properly supported by VAT invoices and ORs					
Y-36.2	24578	5/25/2006	New Royal Plumbing & Hardware	100.00	10.72
Y-38.1.C	502694	5/26/2006	Citimotors Makati	189.48	20.30
Y-51.1.A	11631	8/4/2006	RCC Marketing Corporation	39,200.00	4,200.00
Y-68.1.B	510083	11/20/2006	Citimotors Makati	755.85	80.98
Sub-total					*4,312.00*
2. Input taxes on purchase of goods and services supported by cash register machine tapes					
Y-1.1.A.1		12/13/2005	Magallanes Management Corp.	1,500.00	136.37
Y-1.1.B.1	00526952	12/14/2005	Magallanes Management Corp.	1,500.00	136.37
Y-1.1.C.1	832870	12/19/2005	Magallanes Management Corp.	1,500.00	136.37
Y-1.1.D.1		12/23/2005	Magallanes Management Corp.	1,500.00	136.37
Y-1.1.E.1		1/6/2006	E&R Legaspi Industries & Development Corp.	1,500.00	136.36
Y-11.1.A.1	1857839	1/9/2006	Diwal Balintawak Gas Station	1,500.00	136.36
Y-11.1.B.1	177779	1/18/2006	*not legible*	1,500.00	136.37
Y-11.1.D.1	00553224	1/23/2006	Magallanes Management Corp.	1,500.00	136.36
Y-11.1.E.1	00624486	1/30/2006	Magallanes Management Corp.	1,400.00	127.27
Y-11.1.F.1	00630534	2/3/2006	Magallanes Management Corp.	1,500.00	160.72
Y-20.1.A.1	00563337	2/7/2006	Magallanes Management Corp.	1,200.00	128.59
Y-20.1.B.1	007476	2/15/2006	Magallanes Management Corp.	1,500.00	160.72
Y-20.1.C.1	008403000205	2/8/2006	Handyman Do It Center	160.50	17.20
Y-20.1.E.1		2/21/2006	Magallanes Management Corp.	1,500.00	160.72

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Exhibit	OR/Inv. No.	Date	Supplier	Inv./OR Amt.	Input Tax
Y-20.1.F.1	1331714	3/3/2006	Magallanes Management Corp.	1,500.00	160.72
Y-20.1.G.1	00583139	3/7/2006	Magallanes Management Corp.	1,300.00	139.29
Y-24.1.A.1	1337078	3/7/2006	Magallanes Management Corp.	1,500.00	160.72
Y-24.1.B.1	00680944	3/13/2006	Magallanes Management Corp.	2,000.00	214.29
Y-24.1.C.1	00587782	3/14/2006	Magallanes Management Corp.	1,400.00	150.00
Y-24.1.D.1	53786	3/3/2006	Ace Hardware	144.50	15.48
Y-24.1.D.2	8876		SM Supermarket	345.75	37.05
Y-24.1.E.1	00592811	3/21/2006	Magallanes Management Corp.	1,500.00	160.72
Y-26.1.A.1	541130	3/23/2006	E&R Legaspi Industries & Development C	1,000.00	107.16
Y-26.1.C.1	1049626	3/31/2006	Diwal Balintawak Gas Station	1,500.00	160.72
Y-26.1.D.1	00600318	3/31/2006	Magallanes Management Corp.	1,500.00	160.72
Y-26.1.E.1	00602907	4/4/2006	Magallanes Management Corp.	1,500.00	160.72
Y-26.1.F.1	01375757	4/4/2006	Magallanes Management Corp.	1,500.00	160.72
Y-31.1.A.1	1063616	4/27/2006	Diwal Balintawak Gas Station	1,500.00	160.72
Y-31.1.B.1	1517910	4/9/2006	Diwal Balintawak Gas Station	1,000.00	107.15
Y-31.1.C.1	00610309	4/17/2006	Magallanes Management Corp.	1,500.00	160.71
Y-31.1.D.1		4/21/2006	Cash & Carry Wholesale Commodity	88.95	9.53
Y-31.1.E.1	00701267	3/27/2006	Magallanes Management Corp.	1,500.00	160.72
Y-34.1.A.1	00745637	5/2/2006	Magallanes Management Corp.	1,600.00	171.45
Y-34.1.B.1	00622355	5/3/2006	Magallanes Management Corp.	1,500.00	160.72
Y-34.1.C.1	9408	4/26/2006	SM Supermarket	471.50	50.52
Y-34.1.D.1	00628197	5/10/2006	Magallanes Management Corp.	1,500.00	160.71
Y-34.1.E.1	00632948	5/17/2006	Magallanes Management Corp.	1,200.00	128.57
Y-37.1.A.1	01443342	5/22/2006	Magallanes Management Corp.	1,500.00	160.73
Y-37.1.B.1	00770183	5/22/2006	Magallanes Management Corp.	2,000.00	214.30
Y-37.1.C.1	00942233	5/28/2006	Motorists' House, Inc.	500.00	53.56

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Exhibit	OR/Inv. No.	Date	Supplier	Inv./OR Amt.	Input Tax
Y-37.1.D.1	00641515	5/29/2006	Magallanes Management Corp.	1,500.00	160.71
Y-37.1.E.1	00779665	5/29/2006	Magallanes Management Corp.	1,500.00	160.71
Y-43.1.A.1	966926	6/2/2006	Pasong Tamo Select & Gas Station	1,000.00	107.17
Y-43.1.B.1	00647129	6/5/2006	Magallanes Management Corp.	2,000.00	214.29
Y-43.1.C.1	00790266	6/6/2006	Magallanes Management Corp.	1,500.00	160.71
Y-43.1.D.1		6/9/2006	Pasong Tamo Select & Gas Station	1,500.00	160.73
Y-43.1.E.1	00807589	6/19/2006	Magallanes Management Corp.	1,500.00	160.73
Y-45.1.A.1	00667525	7/3/2006	Magallanes Management Corp.	2,000.00	214.29
Y-45.1.B.1	00983206	6/26/2006	Magallanes Management Corp.	2,000.00	214.30
Y-45.1.C.1	00896374	7/11/2006	Therese & Ivansons Gasoline Station	400.00	42.38
Y-45.1.D.1	00676557	7/17/2006	Magallanes Management Corp.	1,500.00	160.71
Y-45.1.E.1	00672817	7/11/2006	Magallanes Management Corp.	1,500.00	160.71
Y-49.1.A.1	00679768	7/20/2006	Magallanes Management Corp.	1,500.00	160.71
Y-49.1.B.1	00680843	7/21/2006	Magallanes Management Corp.	2,000.00	214.29
Y-49.1.C.1		7/20/2006	Robinsons Supermarket	582.25	62.35
Y-49.1.C.2		7/20/2006	Handyman Do It Center	74.50	7.98
Y-49.1.D.1	00684853	7/27/2006	Magallanes Management Corp.	1,500.00	160.71
Y-49.1.E.1	00685647	7/28/2006	Magallanes Management Corp.	2,000.00	214.29
Y-53.1.A.1	00864514	8/3/2006	Magallanes Management Corp.	1,500.00	160.71
Y-53.1.B.1	00690998	8/4/2006	Magallanes Management Corp.	2,000.00	214.29
Y-53.1.C.1	00872213	8/9/2006	Magallanes Management Corp.	2,000.00	214.29
Y-53.1.D.1		8/14/2006	Magallanes Management Corp.	500.00	53.59
Y-59.1.A.1		8/15/2006	Magallanes Management Corp.	1,500.00	160.72
Y-59.1.B.1	00885510	8/19/2006	Magallanes Management Corp.	1,480.50	158.63
Y-59.1.C.1	00708196	8/22/2006	Magallanes Management Corp.	1,972.50	211.34
Y-59.1.D.1	9001	8/28/2006	Magallanes Management Corp.	430.00	46.07

Exhibit	OR/Inv. No.	Date	Supplier	Inv./OR Amt.	Input Tax
Y-59.1.E.1	01577896	8/27/2006	Magallanes Management Corp.	1,000.00	107.15
Y-59.1.F.1	01978858	8/30/2006	Diwal EDSA Buendia Service...	1,500.00	160.74
Y-59.1.G.1	00711689	9/1/2006	Magallanes Management Corp.	1,776.00	190.29
Y-61.1.A.1	0725920	9/20/2006	Magallanes Management Corp.	1,874.00	200.79
Y-61.1.B.1	00764582	9/13/2006	Genesis Shell Station II	1,400.00	149.98
Y-61.1.C.1	004728	9/13/2006	Magallanes Management Corp.	300.00	32.14
Y-61.1.D.1	00720314	9/13/2006	Magallanes Management Corp.	1,973.00	211.40
Y-61.1.E.1	00716991	9/8/2006	Magallanes Management Corp.	1,973.50	211.45
Y-73.1.A.1	00754545	11/7/2006	Magallanes Management Corp.	1,955.00	209.47
Y-73.1.B.1	00761238	11/17/2006	Magallanes Management Corp.	1,955.00	209.48
Y-73.1.C.1	01008527	11/23/2006	Magallanes Management Corp.	1,466.25	157.10
Y-73.1.D.1	00769614	11/30/2006	Magallanes Management Corp.	1,466.25	157.13
Y-73.1.E.1	00771577	12/5/2006	Magallanes Management Corp.	1,955.00	209.47
Y-76.1.B.1	00775425	12/11/2006	Magallanes Management Corp.	1,955.00	209.47
Y-76.1.C.1	00775688	12/11/2006	Magallanes Management Corp.	1,466.25	157.10
Sub-total					*11,864.92*
3. Input taxes on purchase of goods and services supporte by VAT invoices and ORs but input taxes are not separately shown					
Y-2.1	459	1/12/2006	Oni Properties, Inc.	24,134.35	2,298.50
Y-3.1	460	1/12/2006	Oni Properties, Inc.	21,200.00	2,019.05
Y-4.1	458	1/12/2006	Oni Properties, Inc.	2,185.00	209.09
Y-10.1	468	1/31/2006	Oni Properties, Inc.	63,369.86	6,010.30
Y-11.1.E.2	21267	1/30/2006	R&E Battery & Parts	160.00	14.55
Y-19.1	SS7849	2/23/2006	Global City Auto Sales	12,030.54	1,288.98
Y-20.1.D.1	7409	2/21/2006	Print Lane Printing Press	270.00	28.93
Y-52.1	SS10472	8/10/2006	Global City Auto Sales	13,065.90	1,399.91
Y-54.1	17008	8/17/2006	Global City Auto Sales	3,876.72	416.22

Exhibit	OR/Inv. No.	Date	Supplier	Inv./OR Amt.	Input Tax
Y-55.1	1807	7/26/2006	Rapide Auto Service Center	55,000.00	5,892.86
Y-58.1	0429	8/28/2006	Mangay-ayam, Lim & Co.	7,500.00	803.57
Y-68.1	808717	11/21/2006	Citimotors Makati	4,552.28	487.74
Y-74.1	810006	12/4/2006	Citimotors Makati	7,482.82	801.73
Y-76.1.E.1	22467	12/16/2006	Citimotors Makati	4,130.29	442.53
Sub-total					*22,113.96*
4. Input taxes on purchase of goods and services amounting to more than P1,000 supporte by VAT invoices and ORs but					
Y-7.1	3210	1/26/2006	GF & P Corporation	114,421.12	9,847.25
Y-13.1	29547	3/1/2006	Asalus Corporation	1,621.84	36.84
Y-21.1	3238	3/9/2006	GF & P Corporation	228,842.25	19,694.50
Y-25.1	1_88	2/27/2006	Philippine Allied Enterprises Corp.	12,239.40	1,311.36
Y-32.1	3262	5/11/2006	GF & P Corporation	232,079.42	22,389.74
Y-33.1	33114	5/18/2006	Asalus Corporation	1,571.84	36.84
Y-36.1	23377	5/25/2006	New Royal Plumbing & Hardware	11,200.00	1,200.00
Y-42.1	3310	7/5/2006	GF & P Corporation	233,765.20	23,633.40
Y-50.1	3330	8/9/2006	GF & P Corporation	233,661.54	23,633.40
Y-63.1	3382	10/20/2006	GF & P Corporation	354,100.70	35,450.10
Y-74.1.B	510546	11/30/2006	Citimotors Makati	12,541.53	1,343.74
Sub-total					*138,577.17*
5. Input taxes on purchase of goods not supported by VAT invoices and purchase of services not supported by VAT ORs					
Y-5.1	48001886694	12/4/2005	PLDT	1,936.43	176.04
Y-6.1		1/26/2006	Globe Telecom	2,206.46	200.59
Y-8.1	2236011769891	1/16/2006	Meralco	827.55	66.85
Y-9.1	3136011970477	1/17/2006	Meralco	22,275.90	1,869.30
Y-12.1		2/13/2006	Globe Telecom	1,949.63	177.24
Y-14.1	2236021797552	2/15/2006	Meralco	884.10	67.10

Exhibit	OR/Inv. No.	Date	Supplier	Inv./OR Amt.	Input Tax
Y-15.1	48001946014	2/4/2006	PLDT	1,673.32	181.53
Y-16.1		1/12/2006	Sky Cable	800.00	72.73
Y-17.1		2/12/2006	Sky Cable	864.00	92.57
Y-18.1	3136022001774	2/16/2006	Meralco	24,406.05	1,867.95
Y-22.1		3/22/2006	Globe Telecom	2,224.55	226.63
Y-23.1	3136031978346	3/18/2006	Meralco	29,760.80	2,424.74
Y-26.1.B.1	2236031784081	3/17/2006	Meralco	910.85	73.35
Y-27.1	3136041984524	4/17/2006	Meralco	27,011.50	2,372.76
Y-28.1	2236041772306	4/16/2006	Meralco	911.65	78.35
Y-29.1		3/4/2006	Globe Telecom	5,314.23	560.98
Y-30.1	48002006276	5/4/2006	PLDT	1,735.54	185.95
Y-35.1	3136051983337	5/18/2006	Meralco	30,788.45	2,730.90
Y-37.1.F.1	2236051781625	5/17/2006	Meralco	524.00	44.17
Y-38.1.A	440719	5/26/2006	Citimotors Makati	134.40	14.40
Y-38.1.B	441049	5/27/2006	Citimotors Makati	900.00	96.43
Y-38.1.D	440459	5/18/2006	Citimotors Makati	1,276.80	136.80
Y-38.1.E	502579	5/18/2006	Citimotors Makati	2,503.87	268.27
Y-38.1.F	440424	5/17/2006	Citimotors Makati	23,643.12	2,533.19
Y-38.1.G	502566	5/17/2006	Citimotors Makati	9,402.61	1,007.42
Y-39.1	3136061983427	6/17/2006	Meralco	30,199.80	2,762.77
Y-40.1	48002067250	6/28/2006	PLDT	1,788.94	205.88
Y-41.1	SUB424318	7/6/2006	Sky Cable	3,342.00	358.07
Y-43.1.F.1	2236061783337	6/16/2006	Meralco	316.15	26.03
Y-44.1			Globe Telecom	4,384.13	466.19
Y-46.1	2236071784558	7/17/2006	Meralco	515.55	45.54
Y-47.1	3136071989542	7/18/2006	Meralco	32,072.35	2,969.38

Exhibit	OR/Inv. No.	Date	Supplier	Inv./OR Amt.	Input Tax
Y-48.1		7/25/2006	Globe Telecom	2,696.45	285.10
Y-51.1.B	11632	8/4/2006	RCC Marketing Corporation	15,400.00	1,650.00
Y-56.1	3136081995859	8/18/2006	Meralco	26,223.75	2,495.11
Y-57.1			Globe Telecom	2,217.04	236.47
Y-60.1	3136092047458	9/18/2006	Meralco	28,443.10	2,741.60
Y-62.1		10/10/2006	Globe Telecom	2,475.96	265.28
Y-64.1.A	2236091789263	9/16/2006	Meralco	1,089.35	104.97
Y-64.1.B	2236101788428	10/17/2006	Meralco	907.35	87.46
Y-65.1		11/7/2006	Globe Telecom	2,526.50	266.42
Y-66.1	3136102050254	10/19/2006	Meralco	28,802.30	2,774.63
Y-67.1	48002181637	11/9/2006	PLDT	865.41	92.72
Y-69.1		11/23/2006	Globe Telecom	2,730.06	292.51
Y-70.1	3136111892767	11/18/2006	Meralco	31,159.05	2,767.62
Y-71.1	06163	9/2/2006	GF & P Corporation	121,314.20	11,816.70
Y-71.1.2	06183	11/3/2006	GF & P Corporation	121,314.20	11,816.70
Y-76.1.A.1		12/6/2006	Romy	54.00	5.79
Y-76.1.D.1		12/14/2006	Ms. Emz	15.00	1.61
Y-77.1	3136122058804	12/20/2006	Meralco	36,044.45	3,013.72
Sub-total					*65,074.51*
6. Input taxes on purchase of goods and services supported by VAT invoices and ORs dated outside the taxable year 2006					
Y-1.1.B.2	18039	12/13/2005	R&E Battery & Parts	60.00	5.46
Y-75.1	3496	3/12/2007	GF & P Corporation	117,492.10	11,816.70
Sub-total					*11,822.16*
7. Input tax on purchase of services supported by a non-VAT OR					
Y-72.1	1059	12/6/2006	EDPER Pest Control & General Services	27,500.00	3,000.00
Sub-total					*3,000.00*

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Exhibit	OR/Inv. No.	Date	Supplier	Inv./OR Amt.	Input Tax
8. Input tax on purchase of goods supported by a VAT invoice issued not in the name of petitioner					
Y-11.1.G.1	633878B	2/6/2006	Taurus Auto Supply	190.00	20.36
Sub-total					*20.36*
TOTAL					**256,785.08**