**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

**SECOND DIVISION**

**SALCEDO RISTORANTE ITALIANO, INC.,**
Petitioner,

-versus-

**COMMISSIONER OF INTERNAL REVENUE,**
Respondent.

**CTA CASE NO. 8880**

Members:

**Castañeda, Jr.,** *Chairperson,*
**Casanova,** *and*
**Manahan,** *JJ.*

Promulgated:

JUN 2 2 2017 2:15 p.m.

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# DECISION

**CASTAÑEDA, JR., *J.*:**

## STATEMENT OF THE CASE

Before this Court is a Petition for Review[1] filed by Salcedo Ristorante Italiano, Inc. (Salcedo) on August 27, 2014, praying that, after due hearing, judgment be rendered declaring null and void and cancelled the following deficiency assessments issued by respondent Commissioner of Internal Revenue (CIR) for the year 2008:

[1] Docket, pp. 7-29.

| | Basic Deficiency Tax | Interest | Totals |
|---|---|---|---|
| **Income Tax** | ₱ 1,221,418.54 | ₱ 1,317,124.21 | ₱2,538,542.75 |
| **Value-Added Tax (VAT)** | 565,469.89 | 634,565.66 | 1,200,035.55 |
| **Expanded Withholding Tax (EWT)** | 42,664.01 | 48,110.98 | 90,774.99 |
| **Withholding Tax on Compensation (WTC)** | 115,318.25 | 130,041.07 | 245,359.32 |
| **Compromise Penalty** | | | 12,000.00 |
| **Total** | ₱ 1,944,870.69 | ₱ 2,129,841.92 | ₱4,074,712.61 |

## THE FACTS

Petitioner Salcedo is a domestic corporation established and existing under the laws of the Republic of the Philippines with address at No. 156 Guava Drive, Ayala Alabang, Muntinlupa City.[2] Petitioner, a subsidiary company of Merry Cooks, Inc., is primarily engaged in food service industry with a restaurant outlet in Makati City.[3]

Respondent is the Commissioner of Internal Revenue (CIR), vested by law with authority to conduct investigation of internal revenue taxes paid by taxpayers, issue deficiency tax assessments and decide on any disputed deficiency internal revenue tax assessments or other charges, penalties imposed in relation thereto pursuant to the National Internal Revenue Code (NIRC) of 1997, as amended.[4]

On the following dates, petitioner filed its tax returns for taxable year 2008 with registered address at 114 H.V. Dela Costa Street, Salcedo Village, Makati City:[5]

| Tax Returns | | Date of Filing of Returns |
|---|---|---|
| **Income Tax** | | |
| | Calendar Year 2008 | Wednesday, April 15, 2009 |
| **Value-Added Tax** | | |
| | First Quarter - CY 2008 | Friday, April 25, 2008 |
| | Second Quarter - CY 2008 | Tuesday, July 22, 2008 |
| | Third Quarter - CY 2008 | Tuesday, October 28, 2008 |
| | Fourth Quarter - CY 2008 | Friday, January 23, 2009 |
| **Expanded Withholding Tax** | | |
| | January 2008 | Monday, February 11, 2008 |
| | February 2008 | Monday, March 10, 2008 |
| | March 2008 | Thursday, April 10, 2008 |

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[2] Par. 1, Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 129.
[3] Exhibit P-11, Judicial Affidavit of Rodrigo Bacon, Jr., Docket, pp. 146-147.
[4] Par. 2, Stipulation of Facts, JSFI, Docket p. 129.
[5] BIR Records, pp. 1-57.

| | | |
|---|---|---|
| | April 2008 | Monday, May 12, 2008 |
| | May 2008 | Tuesday, June 10, 2008 |
| | June 2008 | Thursday, July 10, 2008 |
| | July 2008 | Monday, August 11, 2008 |
| | August 2008 | Monday, September 8, 2008 |
| | September 2008 | Friday, October 10, 2008 |
| | October 2008 | Monday, November 10, 2008 |
| | November 2008 | Wednesday, December 10, 2008 |
| | December 2008 | Thursday, January 15, 2009 |
| **Withholding Tax on Compensation** | | |
| | January 2008 | Monday, February 11, 2008 |
| | February 2008 | Monday, March 10, 2008 |
| | March 2008 | Thursday, April 10, 2008 |
| | April 2008 | Monday, May 12, 2008 |
| | May 2008 | Tuesday, June 10, 2008 |
| | June 2008 | Thursday, July 10, 2008 |
| | July 2008 | Monday, August 11, 2008 |
| | August 2008 | Monday, September 8, 2008 |
| | September 2008 | Friday, October 10, 2008 |
| | October 2008 | Wednesday, November 5, 2008 |
| | November 2008 | Wednesday, December 10, 2008 |
| | December 2008 | Thursday, January 15, 2009 |

In a Memorandum of Assignment dated February 10, 2012, because of the alleged failure of the petitioner to comply with a previously issued Subpoena Duces Tecum dated September 21, 2011,[6] Revenue District Officer Ricardo B. Espiritu of Revenue District Office (RDO) No. 50 (South Makati) referred the matter to Revenue Officer Gene G. Etorma.[7]

The purpose of the assignment was for the "immediate assessment based on Best Evidence Obtainable Rule under RMC# 23-2000" the audit of all internal revenue tax liabilities for taxable year 2008 of petitioner pursuant to Tax Verification Notice No. 000147692 dated June 11, 2009.[8]

Accordingly, in a Notice of Informal Conference dated February 17, 2012, petitioner was invited for an informal conference at RDO No. 50 to "go over our findings; offer explanation or present objections to

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[6] Cross examination of Revenue Officer Villaflor A. Lagundi, Transcript of Stenographic Notes of the December 2, 2015 hearing, pp. 26-28. The Subpoena Duces Tecum (BIR Records, p. 54) was discussed and referred to during the cross examination in connection with the issue on whether the petitioner submitted documents in compliance with the subpoena.
[7] Exhibit R-1, Formal Offer of Evidence, Docket p. 217, BIR Records, p. 71.
[8] Exhibit R-1, Formal Offer of Evidence, Docket p. 217, BIR Records, p. 71.

said findings. You may submit at said conference whatever documentary evidence you may have to support any objection against the proposed assessment."[9]

Based on the Integrated Tax System (ITS) of the Bureau of Internal Revenue (BIR), petitioner's registered address was 114 H.V. Dela Costa Street, Salcedo Village, Makati City.[10]

Acting on this information, Revenue Officer Etorma attempted to serve the Notice of Informal Conference in said registered address but was informed by the building administrator that the petitioner already moved out of the building.[11]

Revenue Officer Etorma, thus, inquired if petitioner had an existing lease contract in the building.[12] The building administrator issued a Certification dated February 29, 2012, which stated that petitioner "does not have any existing lease contract with Classica Tower Condominium Assoc. Inc. and [is] no longer occupying Unit GF-1 at 114 H.V. dela Costa St., Salcedo Village, Makati City."[13]

In a Memorandum Report dated March 26, 2012 and addressed to the Regional Director,[14] Revenue Officer Etorma noted that petitioner, despite receiving a Subpoena Duces Tecum, still failed to present their books of account and other accounting records and, thus, he was instructed by the Legal Division to assess the taxpayer based on the best evidence obtainable under Section 6(B) of the 1997 NIRC and Revenue Memorandum Circular No. 23-2000. He reported that he tried to serve the Notice of Informal Conference but the taxpayer could no longer be located in their registered address.

Furthermore, the report stated that "[t]he building administrator certified that the taxpayer is no longer occupying their old address, while Barangay Bel Air and [Makati City] Business Permit Office certified that the taxpayer's last known address is still their old registered address with the BIR. The undersigned [Etorma] then mailed the NIC [Notice of Informal Conference] on 2-28-12 to the treasurer and the corporate secretary xxx. The NIC mailed to the Treasurer was returned to the sender (undersigned) on March 23,

[9] Exhibit R-2, Formal Offer of Evidence, Docket, p. 217, BIR Records, p. 78.
[10] ITS dated June 24, 2014, Exhibit R-4 and R-4-a, Formal Offer of Evidence, Docket, p. 217, BIR Records, p. 222; Question Nos. 16 and 17, Exhibit R-11, Judicial Affidavit of Revenue Officer Gene G. Etorma, Docket, p. 48.
[11] Question No. 13, Exhibit R-11, Judicial Affidavit of Revenue Officer Gene G. Etorma, Docket, p. 48.
[12] Question No. 13, Exhibit R-11, Judicial Affidavit of Revenue Officer Gene G. Etorma, Docket, p. 48.
[13] Exhibit R-3, Formal Offer of Evidence, Docket, p. 217, BIR Records, p. 88.
[14] Exhibit R-5, Formal Offer of Evidence, Docket, p. 218, BIR Records, pp. 104-105.

2012."[15] After a summary of his audit findings, Revenue Officer concluded the memorandum by stating "[i]n view of the foregoing, it is respectfully recommended that that case be forwarded to the Assessment Division for issuance of pre-assessment notice."[16]

Sometime in June 2012, petitioner stopped its operations and closed its business outlet in Makati City.[17] However, it did not inform the respondent of the cessation of the business and did not update the BIR registration system.[18] Petitioner, nonetheless, continued to monitor its receipt of correspondences in said address.[19]

Thereafter, Revenue Officer Etorma submitted Memorandum Report dated November 11, 2012[20] which reiterated his findings and recommendations in the earlier memorandum that the case be forwarded to the Assessment Division for the issuance of the Preliminary Assessment Notice (PAN).[21]

Thereafter, the PAN dated December 10, 2012[22] was issued and sent to the petitioner via registered mail.[23] The PAN was returned to sender.[24] As an alternative mode, Revenue Officer Etorma also sent the PAN by registered mail to the petitioner's Corporate Secretary and the Treasurer based on its General Information Sheet (GIS).[25]

Respondent then issued a Formal Assessment Notice (FAN) dated May 8, 2013 for the taxable year 2008 detailed as follows:[26]

| | |
|---|---|
| Income tax | ₱2,236,032.52 |
| Value-added tax | 1,059,984.93 |
| Expanded withholding tax | 80,208.34 |
| Withholding tax on compensation | 216,798.31 |
| Compromise penalty | 12,000.00 |

Because of the previous difficulty in locating the petitioner in its registered address, Revenue Officer Etorma once again sent the FAN

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[15] Exhibit R-5, Formal Offer of Evidence, Docket, p. 218, BIR Records, p. 104.
[16] Exhibit R-5, Formal Offer of Evidence, Docket, p. 218, BIR Records, p. 105.
[17] Question Nos. 13, 31-32, Exhibit P-11, Judicial Affidavit of Rodrigo Bacon, Jr., Docket, pp. 147 and 149.
[18] Cross Examination of Rodrigo Bacon, Jr., Transcript of Stenographic Notes of the August 10, 2015 hearing, p. 10.
[19] Question Nos. 13-15, Exhibit P-11, Judicial Affidavit of Rodrigo Bacon, Jr., Docket, p. 147.
[20] Exhibit R-6, Formal Offer of Evidence, Docket, p. 218, BIR Records, pp. 151-159.
[21] Question No. 22, Exhibit R-11, Judicial Affidavit of Revenue Officer Gene G. Etorma, Docket, p. 49.
[22] Exhibit R-7, Formal Offer of Evidence, Docket, p. 218, BIR Records, pp. 164-165.
[23] Question No. 22, Exhibit R-11, Judicial Affidavit of Revenue Officer Gene G. Etorma, Docket, p. 49.
[24] Question No. 22, Exhibit R-11, Judicial Affidavit of Revenue Officer Gene G. Etorma, Docket, p. 49.
[25] Transcript of Stenographic Notes of the December 2, 2015 Hearing, pp. 16-17.
[26] Par. 3, Stipulation of Facts, JSFI, Docket p. 129; Exhibit R-8, Formal Offer of Evidence, Docket, pp. 218-219, BIR Records, pp. 172-182.

by registered mail to Ma. Gianina Suarez, the Corporate Secretary based on the petitioner's GIS.[27]

In a letter dated May 23, 2013 addressed to the Chief of Assessment Division, Revenue Region No. 8 and signed by Ma. Gianina Suarez, Corporate Secretary, the petitioner designated Atty. Carlos V. Jaurigue as its duly authorized representative.[28]

On June 10, 2013, petitioner filed a protest letter against the assessments citing therein the grounds for cancellation.[29]

Accordingly, respondent reinvestigated the case.[30] Pursuant to this, in a Memorandum of Assignment dated July 2, 2013, Revenue Officer Villaflor A. Lagundi was assigned to conduct a further evaluation of the assessment against petitioner.[31]

In a Memorandum for the Regional Director, Revenue Officer Lagundi stated she "conforms with the original revenue officer's citation of Section 223 of the NIRC relative to the suspension of prescription to assess subject taxpayer, which states that 'the suspension of the statute of limitation provided in Section 203 will occur when the taxpayer cannot be located in the address given by him in the return filed upon which a tax is being assessed or collected' xxx. In view thereof, it is respectfully recommended that this docket be forwarded to [the] Assessment Division for the issuance of Final Decision on Disputed Assessment (FDDA)."[32]

On July 28, 2014,[33] petitioner received a copy of the Final Decision on Disputed Assessment (FDDA) dated July 18, 2014 from respondent informing it that it is still liable to pay deficiency internal revenue taxes inclusive of interest.[34] The petitioner also received a copy of the Details of Discrepancies attached to the FDDA citing the grounds for the deficiency tax assessments.[35] Respondent, through the Regional Director of Revenue Region No. 8, confirmed that the FDDA dated July 18, 2014 was the final decision on the protest against the assessments.[36]

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[27] Transcript of Stenographic Notes of the December 2, 2015 Hearing, pp. 16-17.
[28] Question No. 31, Exhibit R-11, Judicial Affidavit of Revenue Officer Gene G. Etorma, Docket, p. 50; BIR Records, p. 184.
[29] Par. 4, Stipulation of Facts, JSFI, Docket p. 129; Exhibit P-8, Formal Offer of Evidence, Docket, pp 190-195.
[30] Question No. 9, Exhibit R-12, Judicial Affidavit of Revenue Officer Villaflor A. Lagundi, Docket, p. 82.
[31] Exhibit R-9, Formal Offer of Evidence, Docket, p. 219, BIR Records, p. 200.
[32] Exhibit R-10, Formal Offer of Evidence, Docket, p. 219, BIR Records, p. 205.
[33] Petition for Review, par. 5, Docket, p. 7; Exhibit P-9, FDDA dated July 18, 2014, Docket, pp. 196-197.
[34] Par. 5, Stipulation of Facts, JSFI, Docket p. 129.
[35] Par. 6, Stipulation of Facts, JSFI, Docket p. 129.
[36] Par. 7, Stipulation of Facts, JSFI, Docket p. 130.

Hence, on August 27, 2014, petitioner filed the Petition for Review with the Court.[37]

After the service of Summons on September 4, 2014[38] and after requesting for an extension,[39] the CIR filed an Answer on October 22, 2014.[40]

Accordingly, in a Notice of Pre-Trial Conference, the Court set the pre-trial on December 4, 2014.[41] Respondent filed a Pre-Trial Brief on November 27, 2014[42] while petitioner Salcedo filed its Pre-Trial Brief on November 28, 2014.[43]

During the December 4, 2014 Pre-Trial Conference, petitioner's initial presentation of evidence was set on January 26, 2015 for the testimony of its lone witness, Mr. Rodrigo Bacon, Jr.[44] The January 26, 2015 hearing was later reset to February 25, 2015[45] and then again reset to March 11, 2015 upon motion of petitioner.[46]

In a Resolution promulgated on January 29, 2015, the Court ordered the counsels for both parties to show cause why they should not be cited for contempt for failure to comply with the December 4, 2014 Order of the Court to file their Joint Stipulation of Facts and Issues.[47]

In a Resolution promulgated February 27, 2015, the Court dismissed the case for failure of the petitioner to comply with its lawful Order dated December 4, 2014 and for failure of the parties to comply with the Resolution dated January 29, 2015. The hearings on March 2, 2015 and March 11, 2015 were also cancelled.[48]

Petitioner filed a Motion for Reconsideration of the February 27, 2015 Resolution which was granted by the Court in its May 21, 2015 Resolution.[49]

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[37] Docket, pp. 7-29.
[38] Summons, Docket, p. 30; Notification dated September 10, 2014, Docket, p. 31.
[39] Order dated October 2, 2014, Docket, p. 35.
[40] Docket, pp. 36-39.
[41] Docket, p. 41.
[42] Docket, pp. 42-45.
[43] Docket, pp. 87-90.
[44] Minutes of December 4, 2014 hearing, Docket, p. 95.
[45] Notice of Resetting dated January 22, 2015, Docket, p. 98.
[46] Order dated February 23, 2015, Docket, p. 105.
[47] Docket, p. 101.
[48] Docket, p. 113.
[49] Docket, pp. 126-128.

Finally, on June 15, 2015, the parties filed their Joint Stipulation of Facts and Issues[50] which was approved by the Court in its Pre-Trial Order dated June 23, 2015.[51]

With the termination of the pre-trial, the initial presentation of evidence for the petitioner was set on August 5, 2015[52] which was again reset to August 10, 2015, upon motion of the petitioner.[53]

On August 10, 2015, the accounting manager of petitioner's parent company Merry Cooks, Inc., Rodrigo Bacon, Jr. finally testified as a lone witness. Thereafter, petitioner was also granted until September 3, 2015 to file its Formal Offer of Evidence.[54]

On September 4, 2015, petitioner filed its Formal Offer of Evidence.[55] Acting on petitioner's Formal Offer of Evidence, the Court admitted all of petitioner's exhibits, i.e., Exhibits P-1, P-2, P-3, P-4, P-5, P-6, P-6-1, P-7, P-8, P-9, P-10 and P-11 subject to its final evaluation of their purpose, materiality, relevance and probative value.[56]

On October 21, 2015, respondent's first witness, Revenue Officer Etorma testified on direct by way of judicial affidavit.[57]

On December 2, 2015, Revenue Officer Etorma was cross-examined by petitioner's counsel and Revenue Officer Lagundi was presented as witness for the respondent.[58]

On December 15, 2015, respondent filed a Formal Offer of Evidence.[59] The Court admitted Exhibits R-1, R-1-a, R-2, R-2-a, R-3, R-4, R-4-a, R-5, R-5-a, R-6, R-6-a, R-7, R-7-a, R-8, R-8-a, R-8-b, R-8-c, R-9, R-9-a, R-11, R-11-a, R-12 and R-12-a but denied admission of Exhibits R-10 and R-10-a.[60] On Motion for Reconsideration[61] and considering the corrections made by respondent, the Court admitted Exhibits R-10 and R-10-a.[62]

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[50] JSFI, Docket pp. 129-130.
[51] Docket, pp. 132-135.
[52] Pre-Trial Order dated June 23, 2015, Docket, p. 135.
[53] Order dated July 30, 2015, Docket, p. 141.
[54] Minutes of August 10, 2015 hearing, Docket, p. 170.
[55] Docket, pp. 175-200.
[56] Resolution dated October 12, 2015, Docket, pp. 207-208.
[57] Minutes of October 21, 2016 hearing, Docket, p. 209; Exhibit R-11, Judicial Affidavit of Revenue Officer Gene G. Etorma, Docket, pp. 46-52.
[58] Transcript of Stenographic Notes of the December 2, 2015 Hearing; Minutes of December 2, 2015 Hearing, Docket, p. 215; Exhibit R-12, Judicial Affidavit of Revenue Officer Villaflor A. Lagundi, Docket, pp. 80-84.
[59] Docket, pp. 217-221.
[60] Resolution dated January 22, 2016, Docket, pp. 225-226.
[61] Docket, pp, 227-229.
[62] Resolution dated April 14, 2016, Docket, pp. 235-236.

In a Resolution promulgated on July 7, 2016, the case was deemed submitted for decision for failure of both parties to file their memoranda within the prescribed period.[63]

## THE ISSUES

The parties submitted the following issues for the Court's disposition:

> "1. Whether for taxable year 2008, Petitioner is liable for deficiency income tax in the amount of P2,538,542.75, deficiency value-added tax in the amount of P1,200,035.55, deficiency expanded withholding tax in the amount of P90,774.99, deficiency withholding tax on compensation in the amount of P245,359.32 and compromise penalty in the amount of P12,000, inclusive of interest until September 5, 2014?;
>
> 2. Whether or not the right of the Respondent to issue the deficiency income tax, value-added tax, expanded withholding tax, withholding tax on compensation and compromise penalty assessments for the taxable year ended December 31, 2008 has prescribed?;
>
> 3. Whether or not the final assessment notices for deficiency income tax, value-added tax, expanded withholding tax, withholding tax on compensation and compromise penalty liability of the Petitioner for the year 2008 was issued by Respondent beyond the three (3) year prescriptive period?; and
>
> 4. Whether or not the grounds relied upon by Respondent in issuing the deficiency income tax, value-added tax, expanded withholding tax, withholding tax on compensation and compromise penalty assessments were valid?" [64]

## THE COURT'S RULING

The Court deems it judicious to resolve beforehand the issue of the three-year prescription stipulated upon by the parties.[65] Jr

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[63] Docket, p. 242.
[64] JSFI, Docket p. 130.
[65] Par. 3, Issues, JSFI, Docket p. 130.

**Except with respect to the income tax assessment, respondent's right to assess the petitioner is already barred by prescription.**

As a general rule, the respondent has three (3) years from the filing of the return within which to issue an assessment against the taxpayer under Section 203 of the 1997 NIRC, as amended, thus:

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

Based on the records,[66] the deadline for the issuance of the FAN against the petitioner should accordingly fall on the following dates:

| Tax Return / Assessment | | Date of Filing of Return | Last Day of the Three-Year Prescription | Last Day of the Three-Year Prescription, if it fell on a weekend | Date of Issue of FAN |
|---|---|---|---|---|---|
| Income Tax | | | | | |
| | Calendar Year 2008 | Wednesday, April 15, 2009 | Sunday, April 15, 2012 | Monday, April 16, 2012 | Wed., May 8, 2013 |
| Value-Added Tax | | | | | |
| | First Quarter - CY 2008 | Friday, April 25, 2008 | Monday, April 25, 2011 | | Wed., May 8, 2013 |
| | Second Quarter - CY 2008 | Tuesday, July 22, 2008 | Monday, July 25, 2011 | | May 8, 2013 |
| | Third Quarter - CY 2008 | Tuesday, October 28, 2008 | Friday, October 28, 2011 | | May 8, 2013 |
| | Fourth Quarter - CY 2008 | Friday, January 23, 2009 | Wednesday, January 25, 2012 | | May 8, 2013 |
| Expanded Withholding Tax | | | | | |
| | January 2008 | Monday, February 11, 2008 | Friday, February 11, 2011 | | Wed., May 8, 2013 |
| | February 2008 | Monday, March 10, 2008 | Thursday, March 10, 2011 | | |
| | March 2008 | Thursday, April 10, 2008 | Sunday, April 10, 2011 | Monday, April 11, 2011 | |
| | April 2008 | Monday, May 12, 2008 | Thursday, May 12, 2011 | | |
| | May 2008 | Tuesday, June 10, 2008 | Friday, June 10, 2011 | | |
| | June 2008 | Thursday, July 10, 2008 | Sunday, July 10, 2011 | Monday, July 11, 2011 | |
| | July 2008 | Monday, August 11, 2008 | Thursday, August 11, 2011 | | |

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[66] BIR Records, pp. 1-57.

| | | | | | |
|---|---|---|---|---|---|
| | August 2008 | Monday, September 8, 2008 | Saturday, September 10, 2011 | Monday, Sept. 12, 2011 | |
| | September 2008 | Friday, October 10, 2008 | Monday, October 10, 2011 | | |
| | October 2008 | Monday, November 10, 2008 | Thursday, November 10, 2011 | | |
| | November 2008 | Wednesday, December 10, 2008 | Saturday, December 10, 2011 | Monday, Dec. 12, 2011 | |
| | December 2008 | Thursday, January 15, 2009 | Sunday, January 15, 2012 | Monday, Jan. 16, 2012 | |
| Withholding Tax on Compensation | | | | | |
| | January 2008 | Monday, February 11, 2008 | Friday, February 11, 2011 | | Wed., May 8, 2013 |
| | February 2008 | Monday, March 10, 2008 | Thursday, March 10, 2011 | | |
| | March 2008 | Thursday, April 10, 2008 | Sunday, April 10, 2011 | Monday, April 11, 2011 | |
| | April 2008 | Monday, May 12, 2008 | Thursday, May 12, 2011 | | |
| | May 2008 | Tuesday, June 10, 2008 | Friday, June 10, 2011 | | |
| | June 2008 | Thursday, July 10, 2008 | Sunday, July 10, 2011 | Monday, July 11, 2011 | |
| | July 2008 | Monday, August 11, 2008 | Thursday, August 11, 2011 | | |
| | August 2008 | Monday, September 8, 2008 | Saturday, September 10, 2011 | Monday, Sept. 12, 2011 | |
| | September 2008 | Friday, October 10, 2008 | Monday, October 10, 2011 | | |
| | October 2008 | Wednesday, November 5, 2008 | Thursday, November 10, 2011 | | |
| | November 2008 | Wednesday, December 10, 2008 | Saturday, December 10, 2011 | Monday, Dec. 12, 2011 | |
| | December 2008 | Thursday, January 15, 2009 | Sunday, January 15, 2012 | Monday, Jan. 16, 2012 | |

The Supreme Court held, in *Basilan Estates, Inc. v. Commissioner of Internal Revenue*,[67] that an assessment is deemed made when the notice to this effect is released, mailed or sent by respondent to the taxpayer, and it is not required that the notice be received by the taxpayer within the period of limitation, thus:

"PRESCRIPTION

There is no dispute that the assessment of the deficiency tax was made on February 26, 1959; but the petitioner claims that it never received notice of such assessment or if it did, it received the notice beyond the five-year prescriptive period. To show prescription, the annotation on the notice (Exhibit 10, No. 52, ACR, p. 54-A of the BIR records) "No accompanying letter 11/25/" is advanced as indicative of the fact that receipt of the notice was after March 24, 1959, the last date of the five-year period within which to assess deficiency tax, since the original returns were filed on March 24, 1954.

Although the evidence is not clear on this point, We cannot accept this interpretation of the petitioner, considering the presence of circumstances that lead Us to presume regularity in the performance of official functions. The notice of assessment shows the assessment to have been made on February 26, 1959, well within the five-year period. On the right side of the notice is also stamped

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[67] G.R. No. L-22492, September 5, 1967; see also *Barcelon, Roxas Securities, Inc. v. Commissioner of Internal Revenue*, G.R. No. 157064, August 7, 2006.

"Feb. 26, 1959" — denoting the date of release, according to Bureau of Internal Revenue practice. The Commissioner himself in his letter (Exh. H, p. 84 of BIR records) answering petitioner's request to lift, the warrant of distraint and levy, asserts that notice had been sent to petitioner. In the letter of the Regional Director forwarding the case to the Chief of the Investigation Division which the latter received on March 10, 1959 (p. 71 of the BIR records), notice of assessment was said to have been sent to petitioner. Subsequently, the Chief of the Investigation Division indorsed on March 18, 1959 (p. 24 of the BIR records) the case to the Chief of the Law Division. There it was alleged that notice was already sent to petitioner on February 26, 1959. These circumstances pointing to official performance of duty must necessarily prevail over petitioner's contrary interpretation. Besides, even granting that notice had been received by the petitioner late, as alleged, under Section 331 [now Section 203] of the Tax Code requiring five years [now three years] within which to assess deficiency taxes, the assessment is deemed made when notice to this effect is released, mailed or sent by the Collector to the taxpayer and it is not required that the notice be received by the taxpayer within the aforementioned five-year period." (*underscoring supplied*)

In the case at bench, respondent issued the FAN on May 8, 2013[68] against which petitioner filed a protest on June 10, 2013.[69] The facts are clear, therefore, that by the time the respondent made the assessments on May 8, 2013, the three-year periods to assess have already expired pursuant to Section 203 of the 1997 NIRC, as amended:

| **Tax Type Calendar Year 2008** | **Last Day of the Three-Year Prescription** |
|---|---|
| Income Tax | April 16, 2012 |
| Value-Added Tax (4th Quarter) | January 25, 2012 |
| Expanded Withholding Tax (December 2008) | January 16, 2012 |
| Withholding Tax on Compensation (December 2008) | January 16, 2012 |

In the Answer, respondent invoked the extended ten-year prescription under Section 222 of the 1997 NIRC, as amended, and yet failed to present any evidence to prove that petitioner indeed filed false returns or committed fraud.[70] It is also not disputed that the examiners made the assessments on the basis of the best evidence obtainable under Section 6, in the "absence of accounting records or other documents necessary for the proper determination of the taxpayer's

[68] Formal Assessment Notice, Exhibit R-8, Formal Offer of Evidence, Docket, pp. 218-219; BIR Records, pp. 172-182.
[69] Par. 4, Stipulation of Facts, JSFI, Docket p. 129; Exhibit P-8, Formal Offer of Evidence, Docket, pp. 190-195.
[70] Please refer to the PAN (Exhibit R-7), FAN (Exhibit R-8) and the Judicial Affidavits of Revenue Officers Gene Etorma (Exhibit R-11) and Villafor A. Lagundi (Exhibit R-12).

internal revenue tax liability."[71] Yet, it is unclear how the examiners arrived at the conclusion on the filing of a false return or the commission of fraud without the necessary explanation therefor. Thus, the CIR, to Our mind, failed in his burden to establish the particular facts and circumstances constituting basis for the application of Section 222.

In *Spouses Pacquiao v. Court of Tax Appeals*,[72] the Supreme Court held that an assessment under Section 6 of the 1997 NIRC must be based on facts, thus:

> "The FLD issued against the petitioners allegedly stated that the amounts therein were 'estimates based on best possible sources.' A taxpayer should be informed in writing of the law and the facts on which the assessment is made, otherwise, the assessment is void. An assessment, in order to stand judicial scrutiny, must be based on facts. The presumption of the correctness of an assessment, being a mere presumption, cannot be made to rest on another presumption.
>
> To stress, the petitioners had asserted that the assessment of the CIR was not based on actual transactions but on 'estimates based on best possible sources.' This assertion has not been satisfactorily addressed by the CIR in detail. Thus, there is a need for the CTA to conduct a preliminary hearing." (*underscoring supplied; citations omitted*)

Accordingly, the three-year prescription under Section 203 applies as there is no factual basis for the extended ten-year prescription under Section 222 of the 1997 NIRC, as amended.

Respondent CIR, in addition, invoked Section 223 of the 1997 NIRC as amended to suspend the running of prescription "when the taxpayer cannot be located in the address given by him in the return filed", specifically:

> **SEC. 223. *Suspension of Running of Statute of Limitations.*** - The running of the Statute of Limitations provided in Sections 203 and 222 on the making of assessment and the beginning of distraint or levy a proceeding in court for collection, in respect of any deficiency, shall be suspended for the period during which the Commissioner is prohibited from making the assessment or beginning distraint or levy or a proceeding in court and for sixty

[71] Formal Assessment Notice, Exhibit R-8, Formal Offer of Evidence, Docket, pp. 218-219; BIR Records, pp. 175-182.
[72] G.R. No. 213394, April 6, 2016.

> (60) days thereafter; when the taxpayer requests for a reinvestigation which is granted by the Commissioner; <u>when the taxpayer cannot be located in the address given by him in the return filed upon which a tax is being assessed or collected</u>: Provided, that, if the taxpayer informs the Commissioner of any change in address, the running of the Statute of Limitations will not be suspended; when the warrant of distraint or levy is duly served upon the taxpayer, his authorized representative, or a member of his household with sufficient discretion, and no property could be located; and when the taxpayer is out of the Philippines.

As early as February 2012, respondent's examiners have been attempting to serve the NIC and, thereafter, the PAN, to representatives of the petitioner in its registered address, without success. Revenue Officer Etorma later on learned from the building administrator that Salcedo moved out of building.[73] In fact, the building administrator issued a Certification dated February 29, 2012, which stated that petitioner "does not have any existing lease contract with Classica Tower Condominium Assoc. Inc. and [is] no longer occupying Unit GF-1 at 114 H.V. dela Costa St., Salcedo Village, Makati City."[74]

Furthermore, the taxpayer Salcedo admitted that it ceased commercial operations sometime in June 2012[75] and yet failed to inform the respondent of the cessation of the business and update the BIR registration system.[76]

Consequently, pursuant to Section 223, the running of prescription against the respondent CIR's right to assess was suspended beginning February 29, 2012 when its examiner was able to confirm that the taxpayer moved out of its registered address. By this time, however, the three-year prescription for the right to assess valued-added tax,[77] expanded withholding tax[78] and withholding tax on compensation[79] had already set in.

Accordingly, except for the income tax assessment,[80] the respondent's right to assess Salcedo is already barred by prescription. gr

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[73] Question No. 13, Exhibit R-11, Judicial Affidavit of Revenue Officer Gene G. Etorma, Docket, p. 48.
[74] Exhibit R-3, Formal Offer of Evidence, Docket, p. 217; BIR Records, p. 88.
[75] Question Nos. 13, 31-32, Exhibit P-11, Judicial Affidavit of Rodrigo Bacon, Jr., Docket, p. 147.
[76] Cross Examination of Rodrigo Bacon, Jr., Transcript of Stenographic Notes of the August 10, 2015 hearing, p. 10.
[77] January 25, 2012 for 2008 Fourth Quarter Value-Added Tax.
[78] January 16, 2012 for the December 2008 Expanded Withholding Tax.
[79] January 16, 2012 for the December 2008 Withholding Tax on Compensation.
[80] April 16, 2012 for 2008 Income Tax.

**Petitioner is liable to pay deficiency income tax.**

Respondent CIR assessed the petitioner deficiency income tax for the taxable year 2008, detailed thus:[81]

| | | |
|---|---|---|
| Taxable income (Loss) per ITR | | ₱ (485,013.58) |
| Add: Adjustments/Disallowance | | |
| 50% Disallowed expenses (Schedule 1) | ₱ 1,603,499.60 | |
| Disallowed expenses due to non-withholding of tax (Schedule 2) | 762,963.44 | |
| Disallowed salaries and wages due to non-withholding of tax (Schedule 3) | 1,123,304.22 | 3,489,767.26 |
| Total | | ₱ 3,004,753.68 |
| Add: NOLCO | | 485,013.58 |
| Adjusted taxable income | | ₱ 3,489,767.26 |
| Basic income tax due (35%) | | ₱ 1,221,418.54 |
| Less: Prior Year Excess Credits other than MCIT | ₱ 23,150.19 | |
| Less: Excess credits carried over to succeeding period | 23,150.19 | - |
| Basic deficiency income tax | | ₱ 1,221,418.54 |
| Add: Interest (4.16.09 to 9.5.14) | | 1,317,124.21 |
| **TOTAL AMOUNT DUE** | | **₱2,538,542.75** |

*NOLCO and Excess Credits*

With regard to the addition of petitioner's net loss for the taxable year of ₱485,013.58 to the taxable income as net operating loss carry-over (NOLCO) and the deduction of petitioner's excess credits carried over to the succeeding period of ₱23,150.19, respondent reasoned that the tax benefits of these amounts have already been forwarded to succeeding periods.[82]

Petitioner countered that the tax benefit of the net loss incurred in the taxable year 2008 was not claimed in the same year. Accordingly, adding the net loss back to the taxable income is erroneous. Corollary thereto, the excess credits carried over to the succeeding year would have no effect in the computation of the income tax liability of petitioner in 2008.[83]

The Court finds petitioner's argument tenable. Respondent failed to present the factual basis of the claim that the 2008 net loss was carried over by petitioner as NOLCO and deducted from the gross

[81] Exhibit P-9, Docket p. 196.
[82] Exhibit P-10, Docket p. 199.
[83] Exhibit P-8, Docket p. 193.

income of the succeeding period. Moreover, the application of the said NOLCO and excess credits in the subsequent taxable periods is beyond the scope of the present assessment. The same can only be the subject of assessment on the taxable year when they are claimed as deductions.

*Disallowed expenses - ₱3,489,767.26*

In addition, respondent also disallowed petitioner's expenses amounting to ₱3,489,767.26, computed as follows:

| | |
|---|---|
| 50% Disallowed expenses | ₱ 1,603,499.60 |
| Disallowed expenses due to non-withholding of tax | 762,963.44 |
| Disallowed salaries and wages due to non-withholding of tax | 1,123,304.22 |
| **TOTAL** | **₱3,489,767.26** |

Respondent disallowed 50% of petitioner's expenses for failure to provide supporting documents to substantiate the deductions, thus:

| | **Per FS** | **50% Disallowed** |
|---|---|---|
| Cost of goods sold | ₱ 2,334,073.00 | ₱ 1,167,036.50 |
| Bank service charge | 4,333.00 | 2,166.50 |
| Communication | 40,493.40 | 20,246.70 |
| Credit card commission | 75,488.66 | 37,744.33 |
| Dues and subscription | 112,616.42 | 56,308.21 |
| Fuel and lubricant | 7,005.00 | 3,502.50 |
| Insurance expense | 22,074.32 | 11,037.16 |
| Miscellaneous expense | 10,196.44 | 5,098.22 |
| Office supplies | 13,376.10 | 6,688.05 |
| Power, light & water | 450,353.27 | 225,176.64 |
| Printing and reproduction | 1,455.26 | 727.63 |
| Representation expense | 1,919.36 | 959.68 |
| Research and development | 446.43 | 223.22 |
| Staff training and development | 57,485.83 | 28,742.92 |
| Taxes, fees & licenses | 68,179.14 | 34,089.57 |
| Toll and parking fees | 411.06 | 205.53 |
| Transportation | 7,092.50 | 3,546.25 |
| **Total** | **₱ 3,206,999.19** | **₱ 1,603,499.60** |

Respondent based the 50% disallowed expenses on Section 6(B) of the NIRC of 1997, as amended, and as implemented by Revenue Memorandum Circular (RMC) No. 23-2000, pertinent portions of which are quoted hereafter for easy reference:

"SECTION 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* —

xxx xxx xxx

(B) *Failure to Submit Required Returns, Statements, Reports and other Documents.* — When a report required by law as a basis for the assessment of any national internal revenue tax shall not be forthcoming within the time fixed by laws or rules and regulations or when there is reason to believe that any such report is false, incomplete or erroneous, the Commissioner shall assess the proper tax on the best evidence obtainable.

In case a person fails to file a required return or other document at the time prescribed by law, or willfully or otherwise files a false or fraudulent return or other document, the Commissioner shall make or amend the return from his own knowledge and from such information as he can obtain through testimony or otherwise, which shall be *prima facie* correct and sufficient for all legal purposes." *(Underscoring supplied)*

**"REVENUE MEMORANDUM CIRCULAR NO. 23-00**

SUBJECT: Existing Revenue Procedures on the Assessment of Deficiency Internal Revenue Taxes Based on the "Best Evidence Obtainable"

TO: Internal Revenue Officers and Others Concerned

xxx xxx xxx

SECTION 2. Prescribed Revenue Procedures. —

xxx xxx xxx

2.3 *Assessment Based on Best Evidence Obtainable. — An assessment based on best evidence obtainable is justified when any of the grounds provided by law is clearly established viz:*

1. The report or records requested from the taxpayer are not forthcoming *i.e.* the records are lost; refusal of the taxpayer to submit such records;

2. The reports submitted are false, incomplete or erroneous. *Jr*

In every case where a taxpayer is ordered to be examined and he refuses or fails to submit his records giving rise to the issuance of a *subpoena duces tecum* pursuant to RMO No. 35-90, the assessment shall only be issued after a criminal case has been instituted for failure to obey summons.

After filing of the complaint against the taxpayer for violation of the *Subpoena Duces Tecum*, the Legal Division / Prosecution Division shall immediately return the docket of the case to the concerned Revenue Officer. The Revenue Officer shall, upon receipt of the docket, immediately proceed to determine the taxpayer's deficiency internal revenue lax liability in accordance with the 'Best Evidence Obtainable.'

2.4 *Existing Revenue Procedures and Jurisprudence Governing Assessment Based on the best Evidence Obtainable.* — Provided hereunder are the existing revenue procedures and jurisprudence governing issuance of a deficiency tax assessment based on the best evidence obtainable:

xxx xxx xxx

(c) *Assessment Based on Estimate, 50% Rule, in the Absence of Receipts to Prove Actual Amount of Expense Deduction.* — The Court held in the Mariano Zamora case that, if there is a showing that expenses have been incurred but the exact amount thereof cannot be ascertained due to absence of documentary evidence, it is the duty of the BIR to make an estimate of the deduction that may be allowable in computing the taxpayer's taxable income, bearing heavily against the taxpayer whose inexactitude is of his own making. That disallowance of 50% of the taxpayer's claimed deduction is valid.

'It is alleged by Mariano Zamora that the CTA erred in disallowing P10,478.50 as promotion expenses incurred by his wife for the promotion of the Bay View Hotel and Farmacia Zamora. He contends that the whole amount of P20,957.00, as promotion expenses in his 1951 income tax returns, should be allowed and not merely one-half of it or P10,478.50, on the ground that, while not all the itemized expenses are supported by receipts, the absence of some supporting receipts has been sufficiently and satisfactorily established. For, as alleged, the said amount of P20,957.00 was spent by Mrs. Esperanza A. Zamora (wife of Mariano), during her travel to Japan and the United States to purchase machinery for a new Tiki-Tiki plant, and to observe hotel management in modern hotels. The CTA, however, found that for said trip, Mrs. Zamora obtained only the sum of P5,000.00 from the Central Bank and that in her application for dollar allocation, she stated that she was going abroad on a combined medical and business trip, which facts were not denied by Mariano Zamora. No evidence had been submitted as to where Mariano had obtained the amount in excess of P5,000.00 given to his wife which she spent abroad. No explanation had been made either that the statement contained in Mrs. Zamora's

> application for dollar allocation that she was going abroad on a combined medical and business trip, was not correct. The alleged expenses were not supported by receipts. Mrs. Zamora could not even remember how much money she had when she left abroad in 1951, and how the alleged amount of P20,957.00 was spent.
>
> Section 30 of the Tax Code provides that in computing net income, there shall be allowed as deductions all the ordinary and necessary expenses paid or incurred during the taxable year, in carrying on any trade or business (Vol. 4, Mertens, Law of Federal Income Taxation, sec. 25.03, p.307). Since promotion expenses constitute one of the deductions in conducting a business, same must satisfy these requirements. Claims for the deduction of promotion expenses or entertainment expenses must also be substantiated or supported by record showing in detail the amount and nature of the expense incurred (N.H. Van Sicklen, Jr. vs. Comm. of Int. Rev., 33 BTA 544). Considering, as heretofore stated, that the application of Mrs. Zamora for dollar allocation shows that she went abroad on a combined medical and business trip, not all of her expenses came under the category of ordinary and necessary expenses; part thereof constituted her personal expenses. There having been no means by which to ascertain which expense was incurred by her in connection with the business of Mariano Zamora and which was incurred for her personal benefit, the Collector and the CTA in their decisions, considered 50% of the said amount of P20,957.00 as business expense and the other 50%, as her personal expense. We hold that said allocation is very fair to Mariano Zamora, there having been no receipt whatsoever, submitted to explain the alleged business expenses, or proof of the connection which said expenses had to the business or the reasonableness of the said amount of P20,957.00. While in situations like the present, absolute certainty is usually not possible, the CTA should make as close an approximate as it can, bearing heavily, if it chooses, upon the taxpayer whose inexactness is of his own making.'" *(Underscoring supplied)*

Petitioner argues that the foregoing disallowances have no factual basis. In its protest to the FAN, petitioner "strongly declare that all the documents required by the Revenue Officer to be submitted and presented at the Bureau of Internal Revenue [BIR] was brought to the [BIR]. [It] complied with the submission of all the documents considering that a Subpoena Duces Tecum was issued against one of its Manager *[sic]* directing him to submit the supporting documents."[84]

However, during trial, petitioner failed to present before the Court the supposed documents that it submitted to respondent's Bureau.

[84] Exhibit P-8, Docket p. 192.

It is worthy to note that assessments made by respondent's examiners are presumed correct and made in good faith, with the taxpayer having the burden of proving otherwise. In the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed. In *Marcos II vs. Court of Appeals, et. al.,*[85] the Supreme Court thus stated:

> "It is not the Department of Justice which is the government agency tasked to determine the amount of taxes due upon the subject estate, but <u>the Bureau of Internal Revenue whose determinations and assessments are presumed 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. Even an assessment based on estimates is *prima facie* valid and lawful where it does not appear to have been arrived at arbitrarily or capriciously</u>. The burden of proof is upon the complaining party to show clearly that the assessment is erroneous. <u>Failure to present proof of error in the assessment will justify the judicial affirmance of said assessment</u>. In this instance, petitioner has not pointed out one single provision in the Memorandum of the Special Audit Team which gave rise to the questioned assessment, which bears a trace of falsity. Indeed, the petitioner's attack on the assessment bears mainly on the alleged improbable and unconscionable amount of the taxes charged. But mere rhetoric cannot supply the basis for the charge of impropriety of the assessments made." (*underscoring supplied*)

In relation thereto, Section 34(A)(1)(b) of the NIRC of 1997, as amended, provides one of the requirements for the deductibility of expenses:

> "SECTION 34. *Deductions from Gross Income.* — xxx xxx xxx
>
> (A) *Expenses.* —
>
> (1) *Ordinary and Necessary Trade, Business or Professional Expenses.* —
>
> xxx xxx xxx
>
> (b) *Substantiation Requirements.* — No deduction from gross income shall be allowed under Subsection (A) hereof unless the taxpayer shall substantiate with sufficient evidence, such as official

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[85] G.R. No. 120880, June 5, 1997.

> receipts or other adequate records: (i) the amount of the expense being deducted, and (ii) the direct connection or relation of the expense being deducted to the development, management, operation and/or conduct of the trade, business or profession of the taxpayer."

Based on the foregoing, it is clear that for expenses to be deductible, the same must be substantiated with official receipts or other adequate records. Petitioner should have offered in evidence the supporting documents of its disallowed expenses to prove that respondent's assessment based on estimate is not in order. This petitioner failed to do; thus, the Court is constrained to uphold the assessment.

*Disallowed expenses due to non-withholding—₱762,963.44 and Disallowed salaries and wages due to non-withholding—₱1,123,304.22*

Respondent also found discrepancies when the following expense accounts per financial statements were compared with petitioner's remittance returns, which are construed as expenses not subjected to withholding tax, to wit:

| | **Per FS** | **Per 1601E** | **Not Subjected to WT** |
|---|---|---|---|
| Rentals | ₱ 585,000.00 | ₱ 243,750.00 | ₱ 341,250.00 |
| Professional fees | 17,647.00 | 5,882.40 | 11,764.60 |
| Management fees | 276,613.39 | 73,787.50 | 202,825.89 |
| Payment to contractors | | | |
| Repairs & maintenance | 104,720.50 | | |
| Advertising & promotions | 102,402.45 | | |
| Subtotal | 207,122.95 | | 207,122.95 |
| **Total** | **₱1,086,383.34** | **₱323,419.90** | **₱762,963.44** |

| | |
|---|---|
| Salaries and wages per FS | ₱ 1,173,904.22 |
| Salaries and wages per 1601C | 50,600.00 |
| **Disallowed expenses** | **₱ 1,123,304.22** |

*fz*

Petitioner submits that the assessment is without basis since it has withheld the proper taxes due on expenses incurred and remitted the same to the BIR.[86]

From the computation shown, respondent's examiner has considered the taxes withheld and remitted by petitioner and found discrepancies of ₱762,963.44 and ₱1,123,304.22. Again, aside from the stated allegations, petitioner failed to explain and account for the discrepancies. Petitioner Salcedo failed to present the necessary evidence to overturn respondent's assessment, thus, the Court must affirm the subject disallowances.

In fine, petitioner is found liable to pay deficiency income tax in the amount of ₱1,285,642.00, inclusive of the 25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, computed as follows:

| | | |
|---|---|---|
| Taxable income (Loss) per ITR | | ₱ (485,013.58) |
| Add: Adjustments/Disallowance | | |
| 50% Disallowed expenses | ₱ 1,603,499.60 | |
| Disallowed expenses due to non-withholding of tax | 762,963.44 | |
| Disallowed salaries and wages due to non-withholding of tax | 1,123,304.22 | 3,489,767.26 |
| Total | | ₱ 3,004,753.68 |
| Basic income tax due (35%) | | ₱ 1,051,663.79 |
| Less: Prior Year Excess Credits other than MCIT | | (23,150.19) |
| **Basic deficiency income tax** | | **₱1,028,513.60** |
| Add: Surcharge (25%) | | 257,128.40 |
| **TOTAL** | | **₱1,285,642.00** |

## Compromise Penalty

Finally, respondent imposed compromise penalties amounting to ₱12,000.00, broken down as follows:[87]

| Nature of Violation | Violated Provisions | Administrative Penalties |
|---|---|---|
| Failure to have the financial statement[s] audited by independent CPA | Sec. 232 of RR 19-2007 | ₱ 10,000.00 |
| Failure to submit 1604CF | Sec. 83(B) of NIRC & RR No. 2-98 | 1,000.00 |
| Failure to submit 1604E | Sec. 58(C) of NIRC & RR No. 2-98 | 1,000.00 |
| **Total** | | **₱ 12,000.00** |

[86] Exhibit P-8, pp. 3 & 5, Docket, pp. 192 & 194.
[87] Exhibit P-10, Docket p. 200.

"However, in lieu of instituting criminal action, this Office is amenable to settle the same extra judicially, subject to the condition that you shall pay administrative penalty in the total amount of ₱12,000.00 for the hereunder violations pursuant to the schedules of suggested compromise penalties prescribed under Revenue Memorandum Order (RMO) No. 19-2007, as amended."[88]

Such imposition cannot be sustained. Under the same RMO, "compromise penalties are only amounts suggested in [the] settlement of criminal liability, and may not therefore be imposed or exacted on the taxpayer, the violation shall be referred to the appropriate office for criminal action in the event that a taxpayer refuses to pay the suggested compromise penalty."[89] Absent any showing that petitioner is willing to pay the penalties, the same should not be imposed.

**WHEREFORE**, in view of the foregoing, the instant Petition for Review is **PARTLY GRANTED**. The value-added tax, expanded withholding tax and withholding tax on compensation assessments, including the imposition of the compromise penalties, are hereby **CANCELLED**.

However, petitioner is **ORDERED** to pay deficiency income tax in the amount of ₱1,285,642.00, inclusive of the 25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997.

In addition, petitioner is **ORDERED** to pay:

(a) Deficiency interest at the rate of 20% per annum on the basic deficiency income tax of ₱1,028,513.60 computed from April 15, 2009 until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended; and,

(b) Delinquency interest at the rate of 20% per annum on the total amount of ₱1,285,642.00 (representing basic deficiency income tax of ₱1,028,513.60 and 25% surcharge of ₱257,128.40) and on the deficiency interest which have accrued as afore-stated in (a), computed from September 5, 2014[90] until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.

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[88] Exhibit P-10, Docket p. 200.
[89] RMO No. 19-2007, III. Guidelines and Instructions No. 5.
[90] Exhibit P-9, Docket p. 197.

**SO ORDERED.**

**JUANITO C. CASTAÑEDA, JR.**
Associate Justice

WE CONCUR:

(on leave)
**CAESAR A. CASANOVA**
Associate Justice

**CATHERINE T. MANAHAN**
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.**
Associate Justice
Chairperson

## 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.

**ROMAN G. DEL ROSARIO**
Presiding Justice