REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

LINGKOD BAYAN PAWNSHOP CO., INC.,
Petitioner,

- versus -

BUREAU OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8554

Members:

BAUTISTA, *Chairperson*
FABON-VICTORINO, and
RINGPIS-LIBAN, *JJ.*

Promulgated:

JUL 29 2015
2:50 p.m.

x- x

D E C I S I O N

***Fabon-Victorino, J.*:**

In this *Petition for Review*[1], petitioner Lingkod Bayan Pawnshop Co. Inc. seeks to declare null and void for lack of factual and legal bases the Final Decision dated August 24, 2012 and the Final Assessment Notice (FAN) dated December 28, 2011, both issued by respondent Commissioner of Internal Revenue (CIR), finding it liable for deficiency income tax (IT), expanded withholding tax (EWT), documentary stamp tax (DST) and compromise penalty for taxable year 2008.

THE FACTS

Petitioner is a domestic corporation with principal office at No. 28 C, Nicanor Roxas St. cor. Isarog St., Manresa I, Quezon City.[2] It is incorporated principally to engage in lending money on personal property delivered as security for loans in accordance with Presidential Decree (PD) No. 114.[3]

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[1] Docket, pp. 6-33.
[2] Par. 1, Joint Stipulation of Facts and Issues (JSFI), docket, p. 844.
[3] Exhibit "D", docket, pp. 1945 to 1956.

Respondent is the Commissioner of the Bureau of Internal Revenue (BIR), with authority to decide administrative tax cases, including disputed assessments. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On October 8, 2009, petitioner received Tax Verification Notice (TVN) No. 2003 00161264[4] dated October 7, 2009, covering taxable year 2008.[5]

On December 8, 2011, respondent issued a Preliminary Assessment Notice (PAN) with Details of Discrepancies.[6]

About twenty (20) days thereafter or on December 28, 2011, respondent issued the Formal Letter of Demand (FLD) No. 038-B193-08[7] with Details of Discrepancies[8] or Final Assessment Notices (FAN)[9], which petitioner received on January 5, 2012.[10]

On February 6, 2012, petitioner protested[11] the same.

On May 9, 2012, petitioner was informed about respondent's reinvestigation of its 2008 internal revenue tax liabilities.[12]

On June 20, 2012, petitioner received a Notice of Informal Conference.[13]

On July 4, 2012,[14] petitioner submitted supporting documents like Schedule of Advances from Stockholders[15] and Schedule of Alphalist and Expenses.[16] It also executed

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[4] Exhibit "Z", docket, p. 157; Exhibit "1-a", BIR Records, p. 17.
[5] Par. 4, JSFI, docket, p. 844.
[6] Exhibits "1-i" and "1-i-1", BIR Records, pp. 442 to 444.
[7] Exhibit "A", docket, pp. 36 to 39; Exhibit "1-j-7", BIR Records, pp. 447 to 448.
[8] Exhibit "1-j-5", BIR Records, pp. 445 to 446.
[9] Exhibits "1-j", "1-j-1", "1-j-2", "1-j-3" and "1-j-6", BIR Records, pp. 451 to 455.
[10] Par. 2, JSFI, docket, p. 845.
[11] Exhibit "B", docket, pp. 40 to 50.
[12] Par. 4, JSFI, docket, p. 845; Exhibit "F", docket, p. 115.
[13] Exhibits "G" and "G-1", docket, pp. 116 to 117; Exhibits "1-g", "1-g-1", and "1-g-2", BIR Records, pp. 415 to 419.
[14] Exhibit "H", docket, p. 118.
[15] Exhibit "I", docket, p. 119.
[16] Exhibit "J", docket, pp. 120 to 121.

a Waiver[17] of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code (NIRC) which respondent, through Revenue District Officer Ramer D. Narvaez, accepted on July 11, 2012.

On September 10, 2012, petitioner received respondent's Final Decision[18] dated August 24, 2012, reiterating the assessments indicated in the FAN.

Hence, this *Petition for Review* filed on October 10, 2012.

In her *Answer*[19] filed on December 6, 2012, respondent counters that the assessment for deficiency IT, EWT, DST, increments on late filing/remittances and compromise penalties for calendar year 2008 in the aggregate amount of ₱3,293,028.15, has factual and legal bases as contained in the FLD and FAN.

Moreover, petitioner failed to submit the required documents within sixty (60) days from the filing of its letter of protest to the FAN and FLD rendering the impugned assessment final, executory and demandable removing the same from the jurisdiction of the Court.

On June 7, 2013, a *Pre-Trial Order*[20] was issued based on the parties' *Joint Stipulation of Facts and Issues.*[21]

During the trial, petitioner presented its lone witness **Ms. Lorna C. Ignacio,** who, by way of a Judicial Affidavit,[22] testified that as petitioner's Accounting Supervisor, she monitors petitioner's tax compliance and attends all of its tax concerns with the BIR.

On January 5, 2012, petitioner received a FAN dated December 28, 2011 to which it filed a protest on February 6, 2012. Thereafter, petitioner received a notice of

[17] Exhibit "K", docket, p. 122.
[18] Exhibit "C", docket, p. 91; Exhibit "1-k", BIR Records, p. 542.
[19] Docket, pp. 321 to 325.
[20] Docket, pp. 863 to 870.
[21] Docket, pp. 844 to 850.
[22] Docket, pp. 2011-2025.

reinvestigation of its 2008 internal revenue tax liabilities. During her meeting with Revenue Officer (RO) Victoria Fontanilla on June 14, 2012, the latter requested documents in support of petitioner's protest specifically on the Salaries and Wages not subject to Withholding Tax and Deficiency Stamp tax on the Advances from Stockholders.

During the Informal Conference on July 4, 2012, at Revenue District Office No. 38, she submitted the required documents. However, RO Fontanilla requested further documents, this time, pertaining to petitioner's claim for deduction of expenses from its income. RO Fontanilla also requested submission of a Waiver of the Defense of Prescription which petitioner complied on July 11, 2012.

On July 13, 2012, she presented to RO Fontanilla petitioner's original official receipts for the year 2008 to disprove petitioner's alleged unsupported expenses. However, the said official receipts were disallowed by RO Fontanilla saying that she specified in the Notice of Informal Conference under the "Summary of Deficiency Taxes" that she made a re-computation of petitioner's income tax deficiency which resulted in the reduction of Unsupported Expenses from ₱1,956,856.31 to ₱1,546,551.18. However, the said "Summary of Deficiency Taxes" merely enumerates petitioner's alleged tax deficiencies.

They also discussed other matters enumerated in the "Summary of Deficiency Taxes", such as Rental Payments; Telephone and Communication Expense; Light and Water Expense; Security Services; Transportation and Travel Expense; Office Supplies Expense; Miscellaneous Expenses; and Salaries and Wages. Their discussions failed to convince RO Fontanilla. On September 10, 2012 petitioner received the respondent's Final Decision reiterating the assessments contained in the FAN/FLD No. 038-B193-08 dated December 28, 2011.

To counter the foregoing, respondent first presented **RO Josephine C. Cortuna,** who also executed a Judicial Affidavit,[23] declaring that by virtue of Tax Verification Notice

[23] Docket, pp.890-893.

No. TVN2003 00161264 dated October 7, 2009 served upon petitioner together with the Check List of the necessary documents for investigation, she investigated petitioner's tax liabilities for taxable year 2008. Petitioner submitted only some of the required documents on the basis of which she discovered deficiencies on petitioner's IT, EWT, Percentage Tax, DST as well as late remittances of various returns. All these were indicated in her Revenue Officer's Audit Report.

During the Informal Conference, petitioner appeared but failed to submit documentary evidence for its various expenses claimed to have been reported in its Financial Statements. Thus, in her Memorandum dated May 3, 2011, she recommended the issuance of a PAN and endorsement of petitioner's tax docket to the Assessment Division of Revenue Region No. 7. A FAN dated December 28, 2011 was issued to petitioner, and later a Final Decision dated August 24, 2012.

To expedite the proceeding, the testimony of respondent's second witness, **RO Anna Marie Manlutac**, was dispensed with on stipulation that if presented, the witness would testify that she reviewed the audit conducted by RO Josephine Cortuna on petitioner's tax liabilities for taxable year 2008; she would identify the duly served PAN with Details of Discrepancies, FAN, FLD and Details of Discrepancies referred to in her Amended Judicial Affidavit.

On July 31, 2014, the case was submitted for decision, after parties filed their respective memoranda

THE ISSUES

The parties submitted the following issues[24] for the Court's resolution:

1. Whether or not petitioner is liable for deficiency income tax, expanded withholding tax, documentary stamp tax and compromise penalty for taxable year 2008 in the amount

[24] Issues to be Tried or Resolved, JSFI, docket, p. 846.

of THREE MILLION TWO HUNDRED NINETY THREE THOUSAND TWENTY EIGHT PESOS and 15/100 PESOS (Php3,293,028.15); and

2. Whether or not the assessment have already become final, executory and demandable.

Petitioner's Arguments:

Petitioner contends that the assailed Final Decision pertains to its recomputed deficiency assessment as a result of a reinvestigation but the revenue officers presented by respondent were those who conducted the original investigation of its account. At any rate, petitioner submitted to respondent supporting documents to its protest to the FAN, hence, the subject Final Decision has no legal basis. Besides, respondent failed to controvert the material allegations in its Petition for Review justifying the grant of the relief sought.

Respondent's Arguments:

Respondent maintains that for petitioner's failure to submit the necessary documents within sixty (60) days from the filing of its protests rendered the subject assessment final, executory and demandable depriving the Court of authority to entertain the instant appeal.

THE COURT'S RULING

First, there is a need to determine whether the subject assessment had become final and executory, as it will dictate the Court's jurisdiction over the instant petition.

Pertinent to the issue is Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, which reads as follows:

> "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:
>
> xxx xxx xxx
>
> 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 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."

It was established that petitioner received from respondent the FLD/FAN with Details of Discrepancies dated

December 28, 2011 on January 5, 2012. Hence, petitioner had thirty (30) days from notice or until February 4, 2012, within which to file protest with respondent. But since February 4, 2012 fell on a Saturday, petitioner filed its protest with supporting documents on the next working day, viz., February 6, 2012, which is allowed by the rules.

On September 10, 2012, petitioner received the subject Final Decision on the disputed assessment. Petitioner therefore had thirty (30) days from such receipt or until October 10, 2012 to appeal such Final Decision with this Court. Evidently, the Court has jurisdiction over the instant *Petition for Review* filed on October 10, 2012.

On petitioner's alleged failure to submit the necessary documents within sixty (60) days from the filing of the protests, the Supreme Court's disquisition on the phrase "relevant supporting documents" in the case of *Commissioner of Internal Revenue vs. First Express Pawnshop Company, Inc.*[25], is enlightening, thus:

> "The term 'relevant supporting documents' should be understood as those documents necessary to support the legal basis in disputing a tax assessment as determined by the taxpayer. The BIR can only inform the taxpayer to submit additional documents. The BIR cannot demand what type of supporting documents should be submitted. Otherwise, a taxpayer will be at the mercy of the BIR, which may require the production of documents that a taxpayer cannot submit."

Undoubtedly, petitioner submitted sufficient documents in support of its Protest, such as the following:

Formal Letter of Demand	Annex A
Schedule of Professional Fees, Security Services Fee and Rental Payments	Annex B
Schedule of Communication Expense	Annex C
Schedule of Light and Water Expense	Annex D

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

Schedule of Transportation and Travel Expenses	Annex E
Schedule of Office Supplies Expenses	Annex F
Schedule of Miscellaneous Expenses	Annex G
Schedule of Salaries and Wages	Annex H
Percentage Tax Return for February	Annex I
Withholding Tax on Compensation Return for April	Annex J
Expanded Withholding Tax Return for January, March and May	Annexes K, L and M

On the merits of the case, respondent assessed petitioner for deficiency IT, EWT, and DST, as well as increments on late filing/remittances and compromise penalties in the aggregate amount of ₱3,293,028.14, computed as follows:

Deficiency income tax	₱ 3,061,517.48
Deficiency expanded withholding tax	3,325.05
Deficiency documentary stamp tax	177,412.08
Increments on late filing/remittances	19,773.53
Compromise penalties	31,000.00
TOTAL	**₱3,293,028.14**

I. Deficiency Expanded Withholding Tax – ₱3,325.05

This item shall first be addressed as it will affect the deficiency income tax assessment, the discussion on which shall follow.

Examination by respondent shows that petitioner's income payment for repairs and maintenance was not subjected to withholding tax as required under Revenue Regulations (RR) No. 2-98, as amended. Consequently, it was disallowed as deduction from gross income, computed as follows:

	Amount	**Tax rate**	**Tax due**
Repairs and maintenance	₱103,518.00	2%	₱ 2,070.36
Deficiency expanded withholding tax			**2,070.36**
Add: 20% interest p.a. (1.16.09 to 1.27.12)			1,254.69
TOTAL AMOUNT DUE			**₱3,325.05**

On account of petitioner's inability to refute the above findings, both in its Protest Letter and in the instant Petition for Review, the assessment must be sustained.

II. Deficiency Income Tax – ₱3,061,517.48

Respondent assessed petitioner for deficiency income tax of ₱3,061,517.48, inclusive of interest, detailed as follows:

Taxable income(loss) per ITR			₱ -
Add: Adjustments per investigation			
Unsupported expenses		₱ 1,956,856.31	
Salaries and Wages not subjected to withholding tax		3,533,642.54	
Repairs and Maintenance not subjected to withholding tax		103,518.00	
Non-deductible Tax Amnesty		25,000.00	5,619,016.85
Taxable income per investigation			**₱ 5,619,016.85**
Income tax due thereon			**₱ 1,966,655.90**
Less: Allowable tax credits/payments:			
Prior year's excess tax credits		₱ 25,651.00	
Payments		1,424.00	
Total		₱ 27,075.00	
Less: Excess tax credits	₱ 24,237.00		
Excess MCIT over NIT	2,838.00	27,075.00	-
Deficiency Income Tax			₱ 1,966,655.90
Add: 20% interest p.a. (04.16.09 to 1.27.12)			1,094,861.58
TOTAL AMOUNT DUE			**₱ 3,061,517.48**

The Court shall now examine the validity of the above assessment by delving into the propriety of the following expense deductions disallowed by respondent:

A. Unsupported expenses	₱1,956,856.31
B. Salaries and wages not subjected to withholding tax	3,533,642.54
C. Repairs and maintenance not subjected to withholding tax	103,518.00
D. Non-deductible tax amnesty	25,000.00
E. Disallowed excess tax credits and excess MCIT over NIT	27,057.00

A. Unsupported Expenses – ₱1,956,856.31

Verification disclosed that no supporting documents to substantiate petitioner's claimed deductions were provided, hence, the expenses cited below[26] were disallowed as deductions from its gross income pursuant to Section 34(A)(1)(b) of the NIRC of 1997, as amended:

1. Rental			
Per Financial Statement		₱1,665,363.00	
Per Cash Voucher			
Office Rental	₱194,040.00		
Rental - E. Ongsiako	318,880.92		
Rental - PSS Realty	100,930.26		
CUSA	2,520.00	616,371.18	₱1,048,991.82
Less: Disallowed Rental with Unregistered Official Receipt			318,880.92
			730,110.90
2. Telephone & Communication Expense			
Per Financial Statement		181,512.00	
Per Cash Voucher:			
Globe/PLDT	16,235.63		
PLDT	16,147.69	32,383.32	149,128.68
3. Light & Water			
Per Financial Statement		83,053.00	
Per Cash Voucher:			
Water Bill - Jasmin Estores	6,153.28		
Meralco Bill	2,248.35		
Meralco Bill - Isarog Branch	6,063.00		
Electric Bill - PSS Realty	4,651.64		
Water Bill - PSS Realty	504.00		
Utility Bill - PSS Realty	2,250.00	21,870.27	61,182.73
4. Security Services			
Per Financial Statement		573,081.00	
Per Cash Voucher - PSS Realty		2,250.00	570,831.00
5. Professional Fee		66,176.00	
Transportation and Travel		92,247.00	
Office Supplies		44,512.00	202,935.00
6. Miscellaneous Expense			242,668.00
Unsupported Expenses			**₱1,956,856.31**

1. Rental – ₱730,110.90

Petitioner contends that per Alphalist[27], BIR Form No. 1604-E[28] for calendar year 2008, and Schedule of Professional Fees, Security Services Fee and Rental

[26] Details of Discrepancy, Formal Letter of Demand, Exhibit "A", docket, pp. 36 to 39.
[27] Exhibit "L-1", docket, p. 125.
[28] Exhibit "L", docket, p. 124.

Payments[29], it withheld the corresponding taxes for the rental payments to its lessors. Thus, such rental payments of ₱1,665,362.59 should be allowed as deduction from its taxable income pursuant to Section 34(K) of the NIRC of 1997, as amended.

2. Telephone and Communications Expense – ₱149,128.68

Citing Section 34(A)(1)(a) of the NIRC of 1997, as amended, petitioner claims that the amount of ₱140,303.22, as reflected in its Schedule of Communication Expense[30] for taxable year 2008 and per company vouchers, should be considered and allowed as deduction in computing its taxable income.

3. Light and Water – ₱61,182.73

According to petitioner, per the official receipts of its branches, the total expenses for light and water as indicated in the Schedule of Light and Water Expense[31] were ₱59,763.49, which should be considered in computing its taxable income for year 2008, in accordance with Sections 31 and 34(A)(1)(a) of NIRC of 1997, as amended.

4. Security Services – ₱570,831.00

Petitioner asserts that indicated in its Schedule of Professional Fees, Security Service Fees and Rental Payments that per alphalist, the corresponding withholding tax of ₱11,461.63 was remitted. That being the case, the income payment of ₱573,081.35 for the security services provided by Silverstar Investigation and Security Agency should have been allowed as deduction under Section 34(K) of the NIRC of 1997, as amended.

**5. Professional Fee (₱66,176.00),
Transportation and Travel (₱92,179.42),**

[29] Annex B, Letter of Protest, Exhibit "B", docket, p. 55.
[30] Annex C, Letter of Protest, Exhibit "B", docket, pp. 57 to 58.
[31] Annex D, Letter of Protest, Exhibit "B", docket, pp. 59 to 60.

Office Supplies (₱44,512.00) – ₱202,935.00

Petitioner explains that out of ₱202,935.00, ₱66,176.00 was paid to Rosario Laygo and Associates for legal services it rendered to it. Allegedly, such payment should not be subjected to withholding tax based on Section 26 of the NIRC of 1997, as amended, Section 2.57.5 of RR No. 2-98, as amended, and BIR Ruling [DA-(C-028) 122-10].

On the other hand, the amount of ₱92,179.42 reflected in the Schedule of Transportation and Travel Expenses[32], was paid for transportation and travel expenses in relation to its business operations.

Further, the amount of ₱44,509.50 was spent for office supplies used for the business operations, as indicated in the Schedule of Office Supplies Expenses[33]. The said amount should be deducted from petitioner's taxable income for 2008 in accordance with Section 34(A)(1)(a) in relation to Section 31 of the NIRC of 1997, as amended.

6. Miscellaneous Expenses – ₱242,668.00

In its Schedule of Miscellaneous Expenses[34] for calendar year 2008, petitioner's miscellaneous purchases for its business operations per vouchers amounted to ₱21,765.10. For petitioner, this amount should be deducted from its taxable income in accordance with Section 34(A)(1)(a) and Section 31 of the NIRC of 1997, as amended.

Evident from the foregoing that petitioner consistently leaned its refutations over respondent's assessment on Sections 31, 34(A)(1)(a) and 34(K) of the NIRC of 1997, as amended, which states, thus:

> "SEC. 31. *Taxable Income Defined.* – The term '*taxable income*' means the pertinent items of gross income specified in

[32] Annex E, Letter of Protest, Exhibit "B", docket, pp. 61 to 70.
[33] Annex F, Letter of Protest, Exhibit "B", docket, p. 71.
[34] Annex G, Letter of Protest, Exhibit "B", docket, pp. 72 to 84.

this Code, less the deductions and/or personal and additional exemptions, if any, authorized for such types of income by this Code or other special laws."

"SEC. 34. *Deductions from Gross Income*. – Except for taxpayers earning compensation income arising from personal services rendered under an employer-employee relationship where no deductions shall be allowed under this Section other than under Subsection (M) hereof, in computing taxable income subject to income tax under Sections 24(A); 25(A); 26; 27(A), (B) and (C); and 28(A)(1), there shall be allowed the following deductions from gross income:

(A) *Expenses*. –

(1) *Ordinary and Necessary Trade, Business or Professional Expenses*. –

(a) *In General*. – There shall be allowed as deduction from gross income all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on or which are directly attributable to, the development, management, operation and/or conduct of the trade, business or exercise of a profession, including:

xxx xxx xxx

(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 accordance with this Section, Sections 58 and 81 of this Code."

Unquestionably, petitioner is entitled to deductions from its gross income the expenses which are ordinary and necessary in carrying out its business, provided the corresponding withholding taxes have been remitted to respondent. But the legal basis invoked by respondent on her assessment on the above-mentioned items is Section 34(A)(1)(b)[35], which requires the substantiation of such expenses to be considered allowable deductions under the NIRC of 1997. It reads, thus:

> "SEC. 34. *Deductions from Gross Income*. - 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 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." *(Emphasis supplied)*

In fine, petitioner must prove that sufficient documents exist to establish that the afore-stated expenses are valid as allowable deductions in accordance with Section 34(A)(1)(b) in relation to Sections 34(A)(1)(a) and 34(K) of the NIRC of 1997, as amended.

Well settled is the tenet that tax deductions, being in the nature of tax exemptions, are to be construed *in strictissimi juris* against the taxpayer. Corollary to this is

[35] Details of Discrepancy, Formal Letter of Demand, Exhibit "A".

the principle that the taxpayer claiming deduction must point to some specific provision of the statute in which such deduction is authorized and must prove his entitlement thereto. An item of expenditure, therefore, must fall squarely within the language of the law in order to be deductible.[36]

To qualify for deduction as ordinary and necessary trade, business, or professional expenses the following requisites must be met, to wit, (a) the expense must be ordinary and necessary; (b) it must have been paid or incurred during the taxable year; (c) it must have been paid or incurred in carrying on the trade or business of the taxpayer; and (d) **it must be supported by receipts, records or other pertinent papers**.[37] Furthermore, the proper substantiation requirement for an expense to be allowed is the official receipt or invoice.

Also pursuant to Section, 34(A)(1)(b) no deduction from gross income shall be allowed unless the taxpayer substantiates with sufficient evidence the amount of expense being deducted, and 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.[38]

Indeed, the foregoing expenses cannot be considered as allowable deductions from petitioner's gross income, for apart from its Schedules, no other evidence was presented to justify the same. Moreover, the Schedules are self-serving, unless corroborated by other supporting documents, which petitioner utterly failed to submit. Hence, there is no way by which the Court can determine petitioner's compliance with the substantiation requirement under the Tax Code. In fine, the findings of respondent on the matter is presumed correct and made in good faith and the taxpayer has the duty to prove otherwise.[39]

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[36] *H. Tambunting Pawnshop, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 173373, July 29, 2013.

[37] *Commissioner of Internal Revenue vs. Isabela Cultural Corporation*, G.R. No. 172231, February 12, 2007.

[38] Gancayco vs. CIR, G.R. No. L-13325, April 20, 1961, 1 SCRA 980.

[39] *Commissioner of Internal Revenue vs. Construction Resources of Asia, Inc. et al.*, G.R. No. L-68230, November 25, 1986.

B. Salaries and wages not subjected to withholding tax – ₱3,533,642.54

Per respondent, the review and reconciliation of Financial Statements (FS)/Income Tax Return (ITR) as against the alphalists of employees from whom taxes were withheld disclosed that the Salaries and Wages were not subjected to withholding tax. As a result, the amount of ₱3,533,642.54, as computed below, was disallowed as allowable deduction pursuant to Section 34(K) of the NIRC of 1997, as amended.

Salaries and wages per FS/ITR	₱ 3,977,057.00
Salaries and wages per alphalist	443,414.46
Salaries and wages not subjected to withholding tax	**₱3,533,642.54**

Petitioner rejects such assessment claiming that as reflected in the Schedule of Salaries and Wages for calendar year 2008[40], per returns filed with the BIR[41] and the attached alphalist of employees with no previous employer within the year, and alphalist of employees terminated before December 31, 2008[42], the total compensation paid from the month of January 2008 to December 2008 was ₱3,686,660.10[43] and the corresponding withholding tax of ₱197,306.47 was remitted. Therefore, the amount of ₱3,686,660.10 should be considered as an allowable deduction under Section 34(K) of the 1997 NIRC, as amended, and should be included in computing the taxable income of petitioner for the year 2008 in accordance with Section 31 of the same Code.

The Salaries and Wages claimed by petitioner as deduction in its Annual ITR for 2008 in the amount of ₱4,314,980.00[44] was accordingly traced to petitioner's Audited Financial Statements[45] (AFS) as follows:

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[40] Annex H, Letter of Protest, Exhibit "B", docket, p. 85.
[41] Exhibits "N" to "Y", "N-1" to "Y-1", and "M".
[42] Exhibit "M-1"
[43] Audited Financial Statements, BIR Records, Exhibit "1", pp. 1 to 13.
[44] Line 46, Annual Income Tax Return, BIR Records, Exhibit "1", pp. 14 to 16.
[45] BIR Records, Exhibit "1", pp. 1 to 13.

Salaries and Wages	₱ 3,686,660.00
SSS, Philhealth, and Pag-ibig Contributions	337,923.00
13th Month Pay and Incentives	290,397.00
Total	**₱4,314,980.00**

Of the foregoing amounts, only the Salaries and Wages of ₱3,686,660.00 and 13th Month Pay and Incentives of ₱290,397.00, or in the total amount of ₱3,977,057.00 were considered by respondent in the assessment.

Based on the reconciliation[46] provided by petitioner, the Salaries and Wages of ₱3,686,660.10 consisted of the following:

NT 13th month pay	₱ 257,721.16
SSS, GSIS, PHIC	179,485.80
NT Salaries	251,732.00
Tax Basic Salary	2,997,721.14
Total	**₱3,686,660.10**

Petitioner presented the Schedules, specifically Schedules 7.1 and 7.3[47], supporting the above breakdown of Salaries and Wages. These Schedules accordingly laid down the breakdown of the taxable and non-taxable salaries and other benefits of its employees per alphalist.

Verification of the alphalists *vis-a-vis* the Monthly Remittance Returns of Income Taxes Withheld on Compensation from January to December 2008 and the corresponding official receipts[48] submitted by petitioner shows that the taxable salaries and wages amounted to ₱2,997,721.14, the tax due of which in the amount of ₱197,306.47 was properly withheld and remitted by petitioner to the BIR. Petitioner is not required to withhold taxes on the remaining amount of ₱688,938.96 given that it pertains to non-taxable salaries and wages of its employees, nevertheless petitioner may still claim the same as allowable deduction.

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[46] Exhibit "J", docket, p. 120.
[47] Exhibit "J".
[48] Exhibits "N" to "Y" and "N-1" to "Y-1".

As to the 13th Month Pay and Incentives of ₱290,397.00, no evidence was presented to ascertain whether it had been properly subjected to withholding tax and accordingly remitted to the BIR; thus, the assessment shall remain.

In sum, only the Salaries and Wages, representing 13th Month Pay and Incentives in the amount of ₱290,397.00, shall not be allowed as deductible expense from petitioner's gross income.

C. Repairs and Maintenance not subjected to withholding tax – ₱103,518.00

As earlier discussed, for failure of petitioner to sufficiently refute the corresponding withholding tax assessment, it shall be disallowed as a deduction from gross income in accordance with Section 34(K) of the NIRC of 1997, as amended.

D. Non-deductible Tax Amnesty – ₱25,000.00

Respondent's verification as well disclosed that tax amnesty was deducted from petitioner's gross income when it is a non-deductible expense for income tax purposes by virtue of Revenue Memorandum Circular (RMC) No. 69-2007. As such, it should be disallowed. Note that petitioner did not protest this item.

Considering that the subject assessment covers taxable year 2008, only taxes paid or incurred during taxable year 2008 may be claimed as deductible expense by petitioner, in accordance with Section 34(C)(1) of the NIRC of 1997, as amended. Further, since the Tax Amnesty Program under Republic Act (RA) No. 9480 covers taxable year 2005 and prior years, the purported tax amnesty shall not be considered as allowable deduction from petitioner's gross income for taxable year 2008.

E. Disallowed Excess Tax Credits and Excess MCIT over NIT – ₱24,237.00 and ₱2,838.00

In arriving at the assessed amount of deficiency income tax of ₱1,966,655.90, respondent disallowed the excess tax credit amounting to ₱24,237.00 and the excess Minimum Corporate Income Tax (MCIT) over Normal Income Tax (NIT) amounting to ₱2,838.00.

However, respondent did not indicate in the Details of Discrepancy the basis for such disallowances, rendering the assessment null and void.

Besides, it was improper for respondent to disallow the said excess tax credits and MCIT as any tax benefit derived by petitioner from the carry-over of the said amount redounds to the succeeding year. Since the tax benefit will be in the succeeding year, at most, petitioner may only be assessed in the said succeeding year.

In fine, petitioner shall be held liable for basic deficiency income tax of ₱116,156.66, computed as follows:

Taxable income(loss) per ITR		₱ (1,966,538.00)
Add: Adjustments per investigation		
Unsupported expenses	₱ 1,956,856.31	
Salaries and Wages not subjected to withholding tax	290,397.00	
Repairs and Maintenance not subjected to withholding tax	103,518.00	
Non-deductible Tax Amnesty	25,000.00	2,375,771.31
Taxable income per investigation		**₱ 409,233.31**
Income tax due thereon		**₱ 143,231.66**
Less: Allowable tax credits/payments:		
Prior year's excess tax credits	₱ 25,651.00	
Payments	1,424.00	27,075.00
Deficiency Income Tax		**₱ 116,156.66**

III. Deficiency Documentary Stamp Tax – ₱177,412.08

Respondent's alleged investigation also showed that petitioner failed to submit proof of payments of the DST due on advances from stockholders, as provided under Section 179 of the NIRC of 1997, as amended. Consequently, petitioner was assessed for DST as follows:[49]

Advances from Stockholders		**₱19,117,371.00**
Deficiency documentary stamp tax (₱19,117,371.00 x ₱1.00/₱200.00)		**95,587.00**
25% Surcharge	₱23,896.75	
20% Interest p.a. (01.06.09 to 1.27.12)	57,928.34	81,825.09
TOTAL AMOUNT DUE		**₱ 177,411.09**

Petitioner argues that the advances from stockholders of petitioner amounting to ₱19,117,371.00 is not subject to DST as it is not covered by any document or instrument enumerated in Title VII of the Tax Code.

The Court is not persuaded.

Section 179 of the NIRC of 1997, as amended, imposes DST on every original issue of debt instruments amounting to ₱1.00 for every ₱200.00, or fractional part thereof, of the issue price of any such debt instrument.

In the case of *Commissioner of Internal Revenue vs. Filinvest Development Corporation*[50], the Supreme Court *En Banc* ruled over the issue on the imposition of DST on inter-office memo covering advances granted by an affiliated corporation, explaining that advances not supported by any formal debt instrument may still be subjected to DST. The relevant portion of the ruling is hereby quoted:

> "x x x
>
> Applying the aforesaid provisions to the case at bench, we find that the **instructional letters as well as the journal and cash vouchers evidencing**

[49] Formal Letter of Demand, Exhibit "A".
[50] G.R. No. 163653 and 167689, July 19, 2011.

> **the advances FDC extended to its affiliates in 1996 and 1997 qualified as loan agreements upon which documentary stamp taxes may be imposed**. xxx" *(Emphasis supplied)*

The word "affiliates" comes within the term related party contemplated in Philippine Accounting Standards (PAS) 24: *Related Party Disclosures*, which defines a "related party" to be a party related to an entity if:

> (a) **directly, or indirectly** through one or more intermediaries, **the party**:
>
> (i) controls, is controlled by, or is under common control with, the entity (this includes parents, subsidiaries and fellow subsidiaries);
>
> **(ii) has an interest in the entity that gives it significant influence over the entity; or**
>
> (iii) has joint control over the entity.[51] *(Emphasis supplied)*

From the above definition, a stockholder is well within the scope of a related party as defined by the accounting standards. As such, advances to or from the same shall also be subject to DST.

Petitioner also advances the theory that since the Tax Verification Notice (TVN)[52] issued by respondent covers only taxable year 2008, the examination of its documents and records must be confined to the said taxable year being the scope of authority indicated in the TVN.

Petitioner maintains that per Schedule of Advances from Stockholders[53] as of December 31, 2008, its advances

[51] Par. 9, PAS 24: *Related Party Disclosures*, Philippine Financial Reporting Standards (PFRS), Part II of II, Financial Reporting Standards Council (FRSC) and Philippine Institute of Certified Public Accountants (PICPA), p. 766.
[52] Exhibit "1-a", BIR Records, p. 17.
[53] Exhibit "I".

from stockholders for taxable year 2008 amounted to ₱971,157.00 only. The amount of ₱19,117,371.00 as indicated in the FLD as advances from stockholders includes those from prior years amounting to ₱18,146,214.00. Thus, the assessment of deficiency DST on the advances from stockholders in the amount of ₱18,146,214.00 made in taxable years prior to 2008 is void for being beyond the scope of TVN No. 2003 00161264.

Petitioner's argument is meritorious.

Per petitioner's AFS, the Advances from Stockholders as of December 31, 2008 and 2007 amounted to ₱19,117,371.00 and ₱18,146,214.00[54], respectively. It is clear that only the amount of ₱971,157.00 pertains to taxable year 2008. Accordingly, as respondent's TVN covers taxable year 2008, only the amount pertaining to that year may be the subject of assessment for deficiency DST.

Therefore, the Court finds petitioner liable for deficiency DST in the reduced amount of ₱4,855.79, as computed below:

Advances from Stockholders for taxable year 2008	**₱971,157.00**
Deficiency documentary stamp tax (₱971,157.00 x ₱1.00/₱200.00)	**₱ 4,855.79**

IV. Increments on Late Filing/Remittances – ₱19,773.53

Respondent assessed petitioner in the amount of ₱19,773.53 for failure of petitioner to file returns within the prescribed period and for failure to pay the corresponding increments, pursuant to Sections 248, 249 and 250 of the NIRC of 1997, as amended, and Revenue Memorandum Order (RMO) No. 1-90, computed as follows:[55]

Month	Due Date	Date of Remittance	Amount	25% Surcharge	20% Interest p.a.	Total	Amount Paid	Total Amount Still Due
a. Percentage Tax								

[54] Balance Sheet, Audited Financial Statements, BIR Records, Exhibit "1", p. 8.
[55] Schedule 1, Details of Discrepancy, Formal Letter of Demand, Exhibit "A".

February	3/20/2008	3/25/2008	₱30,710.00	₱ 7,677.50	₱ 84.14	38,471.64	30,710.00	7,761.64
b. Withholding Tax on Compensation								
April	5/12/2008	5/18/2008	25,875.01	6,468.75	85.07	32,428.83	25,875.01	6,553.82
c. Expanded Withholding Tax								
January	2/11/2008	2/12/2008	7,258.30	1,814.58	3.98	9,076.86	7,258.30	1,818.56
March	4/10/2008	4/11/2008	7,456.05	1,864.01	4.09	9,324.15	7,456.05	1,868.10
May	6/10/2008	6/11/2008	7,070.20	1,767.55	3.87	8,841.62	7,070.20	1,771.42
			21,784.55	*5,446.14*	*11.94*	*27,242.63*	*21,784.55*	*5,458.08*
GRAND TOTAL								**19,773.54**

Petitioner insists that it was not late in the filing of the afore-mentioned returns as it was granted an extension. That being the case, it should not be assessed payments for late filing. Petitioner also expresses that it filed and paid the said taxes within the extension granted. In support thereof petitioner presented the following documents:

Exhibit No.	Document
AA	BIR Form 2551M (February 2008)
AA-1	BTR-BIR Payment Slip (March 25, 2008)
BB	BIR Form 1601-E (January 2008)
BB-1	BTR-BIR Payment Slip (February 12, 2008)
CC	BIR Form 1601-E (March 2008)
CC-1	BTR-BIR Payment Slip (April 11, 2008)
DD	BIR Form 1601-E (May 2008)
DD-1	BTR-BIR Payment Slip (June 11, 2008)
Q	BIR Form 1601-C (April 2008)
Q-1	BTR-BIR Payment Slip (May 12, 2008)

A scrutiny of the foregoing documents however indicates neither any categorical note nor wordings that respondent indeed granted petitioner an extension for the filing of its tax returns. Note however, that petitioner filed and paid its withholding tax due on compensation for the month of April 2008 (BIR Form 1601-C) on May 12, 2008 and not May 18, 2008 as claimed by respondent. Considering that the same was filed and paid on due date, petitioner should not be made liable to pay the increments pertaining thereto in the amount of ₱6,553.82.

In sum, only the increments on late filing/remittance for percentage tax and EWT shall remain, thus:

Month	Due Date	Date of Remittance	Basic Tax Due	25% Surcharge	20% Interest	Total	Amount Paid	Total Amount Still Due
a. Percentage Tax								
February	3/20/2008	3/25/2008	₱ 30,710.00	₱ 7,677.50	₱ 84.14	₱ 38,471.64	₱ 30,710.00	₱ 7,761.64
b. Expanded Withholding Tax								
January	2/11/2008	2/12/2008	7,258.30	1,814.58	3.98	9,076.86	7,258.30	1,818.56
March	4/10/2008	4/11/2008	7,456.05	1,864.01	4.09	9,324.15	7,456.05	1,868.10
May	6/10/2008	6/11/2008	7,070.20	1,767.55	3.87	8,841.62	7,070.20	1,771.42
			21,784.55	*5,446.14*	*11.94*	*27,242.63*	*21,784.55*	*5,458.08*
GRAND TOTAL			**₱52,494.55**	**₱13,123.64**	**₱96.08**	**₱65,714.27**	**₱52,494.55**	**₱13,219.72**

V. Compromise Penalty – ₱31,000.00

On the ground that petitioner purportedly committed the following violations of the Tax Code, respondent imposed the following suggested compromise penalties:

Non-Late-Filing/Payment on Documentary Stamp Tax	₱ 12,000.00
Increments on Late Filing/Remittance on:	
Percentage Tax	8,500.00
Withholding Tax on Compensation	6,000.00
Expanded Withholding Tax	4,500.00
TOTAL AMOUNT DUE	**₱31,000.00**

But jurisprudence has it that the imposition of compromise penalty without the conformity of the taxpayer is illegal and unauthorized.[56]

Clear from petitioner's protest that it does not agree with the imposition of the compromise penalty, thus, it cannot be imposed.

WHEREFORE, the instant *Petition for Review* is hereby **PARTIALLY GRANTED**. The assessment issued by respondent Commissioner of Internal Revenue against petitioner Lingkod Bayan Pawnshop Co., Inc. for taxable year 2008, finding petitioner liable for deficiency Income Tax, Documentary Stamp Tax, Expanded Withholding Tax,

[56] *Commissioner of Internal Revenue vs. Lianga Bay Logging Co., Inc. and the Court of Tax Appeals*, G.R. No. L-35266, January 21, 1991.

and increments for late filing/remittance is **AFFIRMED** with modifications.

Accordingly, petitioner is hereby **ORDERED TO PAY** the amount of **ONE HUNDRED SIXTY SEVEN THOUSAND SEVENTY THREE PESOS and TWENTY-FOUR CENTAVOS (₱167,073.24)**, representing deficiency IT, DST, EWT, and increments for late filing/remittance of percentage and expanded withholding taxes pursuant to Sections 248(A)(1), 248(A)(3) and 249(B) of the NIRC of 1997, as amended, broken down as follows:

Tax Type	Basic	Surcharge	Interest	Total
Income Tax	₱ 116,156.66	₱ 29,039.17		₱ 145,195.83
Documentary Stamp Tax	4,855.79	1,213.95		6,069.74
Expanded Withholding Tax	2,070.36	517.59		2,587.95
Sub-total	**₱123,082.81**	**₱30,770.71**		**₱153,853.52**
Increments on Late Filing/Remittance of Percentage Tax and EWT		13,123.64	₱ 96.08	13,219.72
TOTAL	**₱123,082.81**	**₱43,894.35**	**₱96.08**	**₱167,073.24**

In addition, petitioner is **ORDERED TO PAY** the following:

(a) Deficiency interest at the rate of twenty percent (20%) per annum pursuant to Section 249(B) of the NIRC, as amended:

1. on the basic deficiency income tax of ₱116,156.66, computed from April 15, 2009 until full payment thereof;

2. on the basic deficiency DST of ₱4,855.79, computed from the dates indicated below, until full payment thereof; and

Period	Amount of Advances from Stockholders:	Basic Deficiency DST	20% Deficiency Interest Computed from
January 2008	₱ 100,000.00	₱ 500.00	05-Feb-08
April 2008	100,000.00	500.00	05-May-08

w/

May 2008	150,000.00	750.00	05-Jun-08
August 2008	100,000.00	500.00	05-Sep-08
October 2008	150,000.00	750.00	05-Nov-08
December 2008	371,157.00	1,855.79	05-Jan-09
Total	**₱971,157.00**	**₱4,855.79**	

3. on the basic deficiency EWT of ₱2,070.36, computed from January 15, 2009, until full payment thereof.

(b) Delinquency interest at the rate of 20% per annum on the total amount of ₱153,853.52 and on the 20% deficiency interest which have accrued as afore-stated in (a), computed from September 10, 2012 until full payment thereof, pursuant to Section 249(C) of the NIRC of 1997, as amended.

(c) Delinquency interest at the rate of 20% per annum on the total deficiency increments for late filing/remittance of percentage and expanded withholding taxes in the amount of ₱13,219.72, computed from September 10, 2012, until full payment thereof, pursuant to Section 249(C) of the NIRC of 1997, as amended.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We concur:

LOVELL R. BAUTISTA
Associate Justice

(On Leave)
MA. BELEN M. RINGPIS-LIBAN
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.

LOVELL R. BAUTISTA
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