REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

ITHIEL CORPORATION, Petitioner,	**CTA CASE NO. 8872**
	Members:
- versus -	**CASTAÑEDA, JR.**, Chairperson, **CASANOVA**, and **MANAHAN**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: FEB 23 2017 1:05 p.m.

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DECISION

CASTAÑEDA, JR., *J.*:

THE CASE

In this Petition for Review, petitioner Ithiel Corporation seeks to cancel the Assessment Notices and the corresponding Formal Assessment Notices (FAN), and to set aside the Final Decision on Disputed Assessment (FDDA) issued by respondent Commissioner of Internal Revenue for the alleged deficiency internal revenue taxes for taxable year 2009, in the total amount of ₱52,513,116.69.

THE FACTS

Petitioner alleges that it is a domestic corporation duly organized and existing under and by virtue of the laws of the

Republic of the Philippines, with principal office at #770 E. Rodriguez Extension Malibay, Pasay City.[1]

Respondent is the Commissioner of the Bureau of Internal Revenue (BIR), duly appointed to exercise the powers and perform the duties of her office including, *inter alia*, the power to decide disputed assessments, refunds of internal revenue taxes, fees, other charges, and penalties imposed in relation thereto, or other matters arising under the Tax Code. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On May 20, 2010[2] and September 3, 2010,[3] the BIR issued Letters of Authority Nos. 00043013 and eLA201000004866, respectively, against petitioner, covering petitioner's books of accounts and other accounting records for taxable year 2009. The BIR also issued the First Notice[4] and the Second and Final Notice for Presentation of Records[5] to petitioner. Petitioner complied thereto as per transmittal letter dated June 17, 2010.[6]

Consequently, the BIR issued a Notice of Informal Conference.[7] On October 5, 2012,[8] petitioner received a Preliminary Assessment Notice (PAN) from the BIR dated September 28, 2012, finding petitioner liable for deficiency Income Tax, Value-Added Tax (VAT) and Expanded Withholding Tax (EWT). On October 18, 2012,[9] petitioner filed its protest to the PAN dated October 17, 2012.

On December 7, 2012,[10] petitioner received Assessment Notice Nos. IT-ELA4866-09-12-0892, VT-ELA4866-09-12-0892 and WE-ELA4866-09-12-0892, assessing petitioner for deficiency Income Tax, VAT and EWT, respectively.

On January 4, 2013,[11] petitioner filed its Protest questioning the timeliness of the FAN, among others. On July 18, 2014,[12] petitioner

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[1] The Parties, Petition for Review, Docket, Vol. I, p. 7.
[2] Exhibit "R-1", BIR Records, p. 1.
[3] Exhibit "R-2", BIR Records, p. 2.
[4] Exhibit "R-3", BIR Records, p. 4.
[5] Exhibit "R-4", BIR Records, p. 5.
[6] Exhibit "P-2".
[7] Exhibit "R-5", BIR Records, p. 208.
[8] Exhibit "R-7", BIR Records, pp. 226-227.
[9] Exhibit "P-6".
[10] Exhibit "R-8", BIR Records, pp. 283-285.
[11] Exhibit "P-11".
[12] Exhibits "P-12-A-ICPA" to "P-12-D-ICPA".

received the FDDA denying petitioner's protest. As such, on August 18, 2014,[13] petitioner filed the instant Petition for Review.

In her Answer,[14] respondent raised the following pertinent Special and Affirmative Defenses:

> "5. Before our disquisition, it is important to stress that petitioner's assertion that the right of the BIR to assess it for deficiency taxes should have been done within the period of three (3) years from the last day of filing of tax return or date of actual filing, whichever is later, is **inaccurate**. In the Formal Assessment Notice dated December 5, 2012 and as embodied in the Final Decision on Disputed Assessment issued on January 4, 2014, it could be readily seen [that petitioner] was assessed an equivalent to fifty percent (50%) surcharge on income tax and value added tax pursuant to the provision of Section 248(B) of the NIRC, as amended, for failure to report receipt in an amount exceeding thirty percent (30%) of that declared per return. Indubitably, the tax code provides that in the case of a false or fraudulent return with intent to evade tax or failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery [of] the falsity, fraud or omission. Consequently, the 10 year prescriptive period should apply to the case of petitioner. xxx
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> xxx xxx xxx
>
> Section 222(a) limits the application of the ten year period to assess in cases of false or fraudulent return or failure to file a return and further provides that failure to report sales, receipt or income by more than 30% of that declared per return, and a claim of deductions by more than 30% shall make the taxpayer liable for substantial underdeclaration of sales and overstatement of deductions, which are prima facie evidence of false or fraudulent return. As stated, the petitioner was assessed an equivalent to fifty percent (50%) surcharge on income tax and value added tax

[13] Docket, Vol. I, pp. 6-22.
[14] Docket, Vol. I, pp. 62-70.

pursuant to the provision of Section 248(B) of the NIRC, as amended, for failure to report receipt in an amount exceeding thirty percent (30%) of that declared per return.

Further, the 10 year period to assess is also applicable in cases of non-withholding of taxes or non-payment of VAT. If the taxpayer failed to withhold some items of income payment that are subject to withholding taxes [and/or failed to pay the VAT thereon], thus, it failed to declare the same in the withholding tax returns and VAT returns. The withholding tax returns and VAT returns filed by the taxpayer can be considered as false return because it deviated from the truth when no income was declared, when in truth there was an income subject to tax (*Aznar vs. Court of Tax Appeals, G.R. No. L-20569, 23 August 1974*). Being considered as a false return, the applicable prescriptive period would be ten years from the discovery of falsity. Moreover, the Supreme Court has ruled that the filing of deficient returns, which prevent the Commissioner of Internal Revenue from computing the proper taxes is tantamount to non-filing. The Commissioner had to determine and assess the taxes on data obtained, not from the return, but from other sources (*Commissioner of Internal Revenue vs. Gonzales, L-19495, 24 November 1966*).

xxx xxx xxx"

On December 22, 2014,[15] the parties submitted their Joint Stipulation of Facts and Simplification of Issues (JSFSI). On February 3, 2015, the Court issued a Pre-Trial Order.[16]

During the hearing, petitioner presented the following witnesses: Ms. Normina B. Simafranca,[17] Mr. William M. Ligot, Jr.[18] and Mr. Michael L. Aguirre.[19] Petitioner likewise made a Formal Offer of Evidence.[20]

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[15] Docket, Vol. I, pp. 222-225.
[16] Docket, Vol. I, pp. 234-238.
[17] Minutes of the Hearing dated February 4, 2015, Docket, Vol. I, p. 239.
[18] Minutes of the Hearing dated March 4, 2015, Docket, Vol. I, p. 336.
[19] Minutes of the Hearing dated April 29, 2015, Docket, Vol. I, p. 356.
[20] Docket, Vol. I, pp. 362-546.

On the other hand, respondent presented witness Ms. Lizette F. Mortel and Ms. Kristin J. Villegas.[21] Further, respondent made a Formal Offer of Evidence[22] filed through registered mail on August 25, 2015.

On January 28, 2016, the Court issued a Resolution[23] directing the parties to submit their memoranda, among others. On March 4, 2016, petitioner submitted its Memorandum,[24] while respondent failed to submit the same.[25] On March 21, 2016,[26] the Court issued a Resolution submitting the instant case for decision. Hence, this Decision.

THE ISSUES

The parties submitted the following issues for the consideration of the Court:

> "a. Whether or not the Bureau of Internal Revenue's right to assess petitioner for Deficiency Value Added Tax covering the first, second and third quarters of taxable year 2009 has prescribed.
>
> b. Whether or not the Bureau of Internal Revenue's right to assess petitioner for Deficiency Expanded Withholding Tax for the months January to December of 2009 has prescribed.
>
> c. Whether or not petitioner is liable for deficiency internal revenue taxes for Income Tax, Value Added Tax and Expanded Withholding Tax, all for taxable year 2009."[27]

THE RULING

The instant Petition is partly meritorious.

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[21] Minutes of the Hearing dated August 12, 2015, Docket, Vol. II, p. 582.
[22] Docket, Vol. II, pp. 617-620.
[23] Docket, Vol. II, pp. 649-650.
[24] Docket, Vol. II, pp. 651-673.
[25] Records Verification, Docket, Vol. II, p. 674.
[26] Docket, Vol. II, p. 675.
[27] Issues, JSFSI, Docket, Vol. I, p. 224.

Part of the FANs with respect to VAT and EWT were issued beyond the 3-year prescriptive period

The Court shall first discuss the timeliness of the issuance of the FANs with respect to petitioner's deficiency VAT and EWT.

Section 203 of the National Internal Revenue Code (NIRC) of 1997, as amended, states:

> "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."

Petitioner's VAT

A perusal of the records shows that petitioner filed its return through the Electronic Filing and Payment System (EFPS). In relation to the above-quoted Section 203 of the NIRC of 1997, as amended, Section 114 of the same law pertinently provides:

> "SEC. 114. **Return and Payment of Value-added Tax.** –
>
> (A) In general. – Every person liable to pay the value-added tax imposed under this Title shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer: xxx xxx xxx

xxx xxx xxx"

Furthermore, Section 4 (3) of Revenue Regulations (RR) No. 06-01 provides:

> "(3) SECTION 4(3.3) of Revenue Regulations No. 1-98 is hereby amended to read as follows:
>
> 'SECTION 4. *Filing of Returns and Payment of Taxes.* –
>
> xxx xxx xxx
>
> 3.3 When to File and Pay
>
> Monthly VAT declarations of Large Taxpayers shall be filed, and taxes paid, not later than the 10th day following the end of each month; *provided, however, that with respect to Large Taxpayers who availed of the electronic filing and payment system (EFPS), the deadline for electronically filing the monthly VAT declaration and paying the tax due thereon via the EFPS shall be five (5) days later than the deadline set above. The quarterly VAT Returns of Large Taxpayers shall be filed, and the taxes paid, not later than the 25th day following the end of each quarter."*

Under the afore-quoted provisions, a VAT taxpayer has twenty-five (25) days following the close of each taxable quarter within which to file VAT return. In relation thereto, the CIR has three (3) years from the date the return was filed within which to assess. However, if a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the date the return was filed.

In the instant case, petitioner's quarterly VAT returns were filed on the following dates *vis-a-vis* the 3-year prescriptive period:

Quarter (Taxable Year 2009)	Date of Filing the VAT Return through EFPS	Last day to Assess by the BIR	Date of Receipt of the FAN
1st	April 21, 2009[28]	April 25, 2012	December 7, 2012
2nd	July 16, 2009[29]	July 25, 2012	December 7, 2012

[28] Exhibit "P-6-C-ICPA".

3rd	October 14, 2009[30]	October 25, 2012	December 7, 2012
4th	January 20, 2010[31]	January 25, 2013	December 7, 2012

Applying the above-quoted provisions, the FAN with respect to petitioner's deficiency VAT for the 1st to 3rd quarters of taxable year 2009 was issued beyond the 3-year prescriptive period.

Petitioner's EWT

To determine whether the FAN pertaining to petitioner's EWT was issued beyond the 3-year prescriptive period, RR 26-02 prescribes the time of filing of the return through EFPS, as follows:

> "SECTION 2. STAGGERED FILING OF RETURNS. xxx
>
> 'Section 7. TIME OF FILING OF RETURN. – For purposes of filing returns under the EFPS, the taxpayers classified under the following business industries shall be required to file the Monthly Withholding Tax Returns, except withholding of Value-Added Tax; Monthly VAT Declarations; and Monthly Percentage Tax returns, on or before the dates prescribed and presented herein-below:

BUSINESS INDUSTRY	*MONTHLY WITHHOLDING TAX RETURNS EXCEPT WITHHOLDING OF VALUE ADDED TAX*	*MONTHLY VAT DECLARATIONS AND MONTHLY PERCENTAGE TAX RETURNS*
xxx		
Group C xxx Real Estate Activities	• Thirteen (13) days following end of the month	• Twenty three (23) days following end of the month'"

Petitioner belongs to Group C, *i.e.*, it is engaged in real estate activities, because its primary purpose is as follows:[32]

[29] Exhibit "P-6-G-ICPA".
[30] Exhibit "P-6-K-ICPA".
[31] Exhibit "P-6-O-ICPA".
[32] See Note 1.

"xxx to build, erect, lease or otherwise, acquire, manage, occupy, maintain operate and deal in market, stalls and slaughterhouses, office buildings and lands, building for market stalls and slaughterhouse and business structures of all kinds for the accommodation of marketers, producers, service providers and the public client, consumers or buyers. xxx"

Applying the provisions of RR No. 26-02, the Court shall determine the applicability of the 3-year prescriptive period, as follows:

Period (2009)	**Date of Filing the Return**	**Last Day to Assess by the BIR**	**Date of Receipt of the FAN**
January	February 10, 2009[33]	February 13, 2012	December 7, 2012
February	March 9, 2009[34]	March 13, 2012	December 7, 2012
March	April 7, 2009[35]	April 13, 2012	December 7, 2012
April	May 7, 2009[36]	May 13, 2012	December 7, 2012
May	June 9, 2009[37]	June 13, 2012	December 7, 2012
June	July 9, 2009[38]	July 13, 2012	December 7, 2012
July	August 6, 2009[39]	August 13, 2012	December 7, 2012
August	September 5, 2009[40]	September 13, 2012	December 7, 2012
September	October 8, 2009[41]	October 13, 2012	December 7, 2012
October	November 6, 2009[42]	November 13, 2012	December 7, 2012
November	December 8, 2009[43]	December 13, 2012	December 7, 2012
December	January 11, 2010[44]	January 13, 2013	December 7, 2012

Based on the foregoing, the FAN with respect to petitioner's deficiency EWT from January to October 2009 was issued beyond the 3-year prescriptive period.

After determining whether the subject FANs were issued by the BIR within the 3-year prescriptive period, the Court shall now determine whether to apply the 10-year prescriptive period with respect to those assessments determined to have prescribed under the 3-year prescriptive period.

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[33] Exhibit "P-2-A-ICPA".
[34] Exhibit "P-2-C-ICPA".
[35] Exhibit "P-2-E-ICPA".
[36] Exhibit "P-2-G-ICPA".
[37] Exhibit "P-2-I-ICPA".
[38] Exhibit "P-2-K-ICPA".
[39] Exhibit "P-2-M-ICPA".
[40] Exhibit "P-2-N-ICPA".
[41] Exhibit "P-2-O-ICPA".
[42] Exhibit "P-2-P-ICPA".
[43] Exhibit "P-2-Q-ICPA".
[44] Exhibit "P-2-R-ICPA".

Applicability of the 10-year prescriptive period

Section 222 (a) of the NIRC of 1997, as amended, provides:

> "**SEC. 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes. –**
>
> (a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission: *Provided*, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof."

In *Jose B. Aznar v. Court of Tax Appeals and Collector of Internal Revenue*,[45] the Supreme Court characterized a false return as mere deviation from truth. In order to determine the veracity of respondent's claim, *i.e.*, that petitioner filed a false Return, the Court shall proceed to examine the records relevant to petitioner's deficiency VAT and EWT assessments.

The 10-year prescriptive period is not applicable to petitioner's VAT deficiency assessment

In finding that petitioner filed a false return, respondent alleged in his Answer that:

> "xxx In the Formal Assessment Notice dated December 5, 2012 and as embodied in the Final Decision on Disputed Assessment issued on January 4, 2014, it could be readily seen [that petitioner] was assessed an equivalent to fifty percent (50%) surcharge on income

[45] G.R. No. L-20569, August 23, 1974.

> tax and value added tax pursuant to the provision of Section 248(B) of the NIRC, as amended, for failure to report receipt in an amount exceeding thirty percent (30%) of that declared per return. Indubitably, the tax code provides that in the case of a false or fraudulent return with intent to evade tax or failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery [of] the falsity, fraud or omission. Consequently, the 10 year prescriptive period should apply to the case of petitioner. xxx"[46]

Verification of the records shows that the substantial under-declaration alleged by respondent in his Answer pertains to petitioner's alleged undeclared income in the amount of ₱32,649,322.61. This alleged undeclared income is intertwined to the determination whether petitioner committed falsity in its VAT Returns.

Upon comparison of the claimed income payments per BIR Form No. 1601-E as against financial statements, respondent allegedly found that petitioner had undeclared expenses in the amount of ₱32,649,322.61, as computed below:

Income Payments	Per ITR	Per Returns/ Alphalist	Undeclared Income
Advertising	₱ 148,387.60		
Research and Development	248,864.55		
Insurance	95,586.53		
Transportation and Travel	694,725.19		
Communication, light and water	572,466.16		
Direct Charges - Others	3,819,710.85		
Purchases of Services by Top 20,000 Corp.	***₱ 5,579,740.88***	***₱ 35,464,281.31***	***₱ 29,884,540.43***
Repairs and Maintenance-Supplies	₱ 5,635.00		
Office Supplies	61,849.63		
Miscellaneous	639,543.72		
Materials, Supplies and Facilities	1,442,795.48		
Purchases of Goods by Top 20,000 Corp.	***₱ 2,149,823.83***	***₱ 4,914,606.01***	***₱ 2,764,782.18***
Total	**₱ 7,729,564.71**	**₱ 40,378,887.32**	**₱ 32,649,322.61**

The undeclared expenses were treated as unaccounted source of cash considered as undeclared income as per *Perez v. CTA and*

[46] See Note 13.

CIR, L-10507 dated May 30, 1958, where unreflected sources of funds not accounted for in the taxpayer's tax returns led to the inference that part of the income was not reported, hence subject to income tax pursuant to Section 32 of the NIRC of 1997, as amended.

On the other hand, petitioner asserts that for income tax purposes, a taxpayer is free to deduct from its gross income a lesser amount, or not claim any deduction at all. What is prohibited by income tax law is to claim a deduction beyond the authorized amount. Thus, even assuming that there are undeclared purchases or expenses, the same is not prohibited by law. Further, there are reconciling items that were not considered by respondent, *to wit:*

(a) Non-Trade Receivables, in the amount of ₱16,668,795.55;

(b) Construction-In-Progress, in the amount of ₱5,678,933.57;

(c) Renovation In-Progress, in the amount of ₱2,783,572.29;

(d) Property & Equipment ₱2,372,431.14 and

(e) Other Service Contractors in the amount of ₱8,529,025.93.

Upon careful consideration of the foregoing, the Court agrees with the petitioner.

The imputation of alleged undeclared income is based on a mere presumption that since there were alleged undeclared expenses, there was likewise a corresponding undeclared income. Even if these alleged undeclared expenses are to be considered as income, the same will be offset by recording the equivalent payments as expenses. Hence, no taxable income will result from the said transactions.

While it is axiomatic that all presumptions are in favor of the correctness of tax assessments, the assessment itself should not be based on presumptions no matter how logical the presumption might

be. In order to stand the test of judicial scrutiny, the assessment must be based on actual facts.[47]

Consequently, it necessarily follows that no VAT-able income will result from the said transactions. Therefore, there is no falsity or deviation from truth on the VAT returns submitted by petitioner.

It must be stressed that like fraud, falsity also involves a question of fact and must not be presumed.[48] In order to be sustained, it must be supported by sufficient evidence. Considering that respondent's allegation of falsity in petitioner's VAT return arose from a mere presumption, the 10-year prescriptive period will not apply.

The 10-year prescriptive period is applicable to petitioner's EWT deficiency assessment

While petitioner's VAT deficiency assessment is not subject to the 10-year prescriptive period, the Court finds that the same is not true for petitioner's EWT deficiency assessment.

Records show that respondent's primary basis for alleging falsity in petitioner's EWT Returns pertains to the account Professional Fees in the amount of ₱8,511,311.84.

Petitioner asserts that respondent failed to consider that in Note 18 of the 2009 Audited Financial Statements (AFS), the account Professional Fees is labeled or designated as "Professional fee and other outside services". This alone proves that the amount of ₱9,379,916.87 includes not only payment to professionals but other services as well. Petitioner alleges that said amount is composed of (a) payments to contractors in the amount of ₱8,529,025.93 with paid withholding taxes in the amount of ₱217,616.68 and (b) payments as professional fees in the total amount of ₱609,671.32 subjected to withholding taxes which include ₱160,000 as payment to general professional partnership (GPP) and ₱62,399.10 as payment to Market Place Christian, a non-stock, non-profit organization.

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[47] *Collector of Internal Revenue v. Benipayo*, G.R. No. L-13656, January 31, 1962

[48] *Commissioner of Internal Revenue v. Mitsubishi Corporation-Manila Branch*, CTA EB No. 640, September 16, 2011, penned by Associate Justice Juanito C. Castañeda, Jr.

Based on the report of the Court-commissioned Independent Certified Public Accountant (ICPA), Mr. Michael L. Aguirre[49], it can be inferred that the "Professional fee and other outside services" under the 2009 AFS in the amount of ₱9,379,916.87 may be broken down into: (1) payments to contractors in the amount of ₱8,770,245.55, and (2) payments to professionals in the amount of ₱609,671.32.

Further, the ICPA report states that the payments to contractors in the total amount of ₱8,529,025.93 were allegedly fully subjected to withholding tax, while the remaining amount of ₱241,219.62 (₱8,770,245.55 minus ₱8,529,025.93) was noted as payment to Armadillo Holdings, Inc., which was not subjected to withholding tax. On the other hand, the ICPA found that payments to professionals in the amount of ₱609,671.32 includes ₱160,000 as payment to general professional partnership and ₱62,399.10 as payment to Market Place Christian, a non-stock, non-profit organization, which are not subject to withholding tax under Section 26 and 30 of the NIRC of 1997, as amended.

Upon careful examination of the records, however, the Court cannot favorably consider petitioner's allegation as well as the ICPA report that the Professional Fees reflected in the 2009 AFS and declared in the 2009 ITR in the amount of ₱9,379,916.87 consist of payments to contractors and professionals. First, the schedule provided in the ICPA report as payment made to contractors in the total amount of ₱8,529,025.93 is substantially different *vis-a-vis* the payments per Schedule 4 of BIR Form 1604-E[50], as shown below:

Supplier	Per ICPA Report				Per Schedule 4 of BIR Form 1604-E	
	Amount of Income Payment	Should be Withholding Tax (2%)	Withholding Tax per BIR 1604-E	Difference in Withholding	Amount of Income Payment	Amount of Tax Withheld
Alemania Allan	₱ 487.50	₱ 9.75	₱ 335.81	(₱ 326.06)	₱ 16,790.51	₱ 335.81
Armadillo Holdings	8,291,281.70	165,825.63	176,674.64	(10,849.01)	8,833,732.00	176,674.64
Christian Environment	36,788.60	735.77	8,289.63	(7,553.86)	414,481.50	8,289.63
Collado Rodrigo	9,141.00	182.82	182.82	-	9,141.00	182.82
Comoda Renato	11,887.50	237.75	1,640.48	(1,402.73)	82,024.00	1,640.48
Deita Aireen Duenas	98,724.79	1,974.50	1,974.50	-	98,724.79	1,974.50
Jandoc Randy	3,285.31	65.71	65.71	-	3,285.31	65.71
Mabborang Adona	19,203.52	384.07	463.12	(79.05)	23,156.00	463.12

[49] Exhibit P-18
[50] BIR Records, pp. 92-96.

Mercado Catherine	48,492.32	969.85	969.85	-		48,492.32	969.85
Patriot Security & Investment	9,733.69	194.67	27,020.13	(26,825.46)		1,351,006.35	27,020.13
Total	**₱8,529,025.93**	**₱170,580.52**	**₱217,616.69**	**(₱47,036.17)**		**₱10,880,833.78**	**₱217,616.69**

The ICPA report shows an over-withholding of tax in the amount ₱47,036.17 considering that petitioner declared a total amount of ₱10,880,833.78 income payments for the above enumerated suppliers and upon which the corresponding 2% taxes of ₱217,616.69 were withheld.

The Court also notes that per Schedule 4 of BIR Form 1604-E, the total income payments made to contractors and the related withholding taxes actually declared by petitioner were ₱23,795,738.77[51] and ₱475,914.78, respectively. Hence, it is difficult to believe that the "Professional fee and other outside services" per 2009 AFS includes only selected suppliers as enumerated in the ICPA report, when in fact there are other suppliers/contractors, as revealed in the records. Petitioner, as well as the ICPA, failed to show the different expense accounts where the entire payments to contractors of ₱23,795,738.77 were lodged, other than the professional expense. Consequently, the Court cannot ascertain whether part of the purported payment to contractors indeed formed part of the professional fees as claimed by petitioner.

Second, with regard to alleged payments to GPP and non-stock, non-profit organization in the respective amounts of ₱160,000 and ₱62,399.10, petitioner presented the Amended Articles of Partnership of RS Bernaldo & Associates[52] and the Certificate of Tax Exemption[53] and Certificate of Registration[54] of Market Place Christian Church Multipurpose Cooperative. While these two entities may not be subject to withholding tax as provided by law, petitioner, however, failed to prove that the amounts of ₱160,000 and ₱62,399.10 were indeed paid to RS Bernaldo & Associates and Market Place Christian Church Multipurpose Cooperative, respectively during the year 2009. In other words, petitioner failed to present proof of payment to these entities.

Furthermore, verification of the records show that petitioner failed to withhold and remit the corresponding EWT due on rental

[51] This amount is the sum of income payment made to Corporate (WC 120) and Individual (WI 120) contractors per Schedule 4 of BIR Form 1604-E.
[52] Exhibits "P-14-A-ICPA" to "P-14-G-ICPA"
[53] Exhibit "P-14-H-ICPA"
[54] Exhibits "P-14-I-ICPA" to "P-14-J-ICPA"

expense and professional fees amounting to ₱867,496.87, as computed below, in violation of Section 2.57.2(E) of RR No. 2-98, as amended:

Income Payments	Per ITR	Per Returns/ Alphalist	Not Subjected	Rate	Tax Due
Rental	₱ 6,471,409.55	₱ 6,144,095.85	₱ 327,313.70	5%	₱ 16,365.69
Professional	9,379,916.87	868,605.03	8,511,311.84	10%	851,131.18
Total	**₱15,851,326.42**	**₱7,012,700.88**	**₱8,838,625.54**		**₱867,496.87**

Considering that petitioner failed to withhold the subject taxes, it is proper to disallow the above income payments as deduction from petitioner's gross income. Verily, these circumstances constitute falsity in petitioner's EWT Returns. As such, the 10-year prescriptive period shall apply.

In sum, petitioner's VAT deficiency assessment for the 1st to 3rd quarters of 2009 had already prescribed, for failure of respondent to show before the Court that petitioner filed false VAT Returns. However, the Court agrees with respondent that the 10-year prescriptive period should be applied with respect to petitioner's deficiency EWT assessment.

After properly determining which assessments properly remain against those which had already prescribed, the Court shall now proceed to determine the correctness of the assessments that did not prescribe.

A. **DEFICIENCY INCOME TAX**

Petitioner was assessed by respondent for deficiency income tax for the taxable year 2009 amounting to ₱31,815,870.62, inclusive of penalties, detailed as follows:

Taxable Income (Loss) per Return		₱ 12,754,872.54
Add: Adjustments		
Disallowed due to non-withholding (Schedule 1)	₱ 9,489,123.79	
Undeclared Income (Schedule 2)	32,649,322.61	
Undeclared Revenue (Schedule 3)	1,393,525.14	43,531,971.54
Total Taxable Income		56,286,844.08
Tax Due (30%)		₱ 16,886,053.22
Less: Tax Credits/Payments		

Prior Year's Excess Credits	₱ 1,343,855.24	
Creditable Tax Withheld	317,660.90	
Payments per Return	2,164,945.62	
Total	3,826,461.76	
Less: Unsupported Creditable Tax Withheld	317,660.90	3,508,800.86
Basic Deficiency Tax		₱ 13,377,252.36
Add: 50% Surcharge	₱ 6,688,626.18	
Interest (4.16.10 to 9.5.14)	11,749,992.08	18,438,618.26
Total Amount Due		**₱ 31,815,870.62**

As provided in the Details of Discrepancies attached to the FDDA[55], respondent alleges that petitioner is liable to pay income tax deficiencies pertaining to the following items:

1. Disallowed Expenses due to non-withholding	₱ 9,489,123.79
2. Undeclared Income	32,649,322.61
3. Undeclared Revenue	1,393,525.14
4. Unsupported Creditable Withholding Tax at Source	317,660.90

1. Disallowed Expenses due to non-withholding – ₱9,489,123.79

Respondent alleges that in view of petitioner's failure to withhold and remit the corresponding withholding taxes due on the following income payments, pursuant to Revenue Regulations (RR) No. 2-98, as amended, the same were disallowed as deduction from its gross income pursuant to Section 34(K) of the NIRC of 1997, as amended:

Income Payments	**Per ITR**	**Per Returns/ Alphalist**	**Not Subjected to Withholding Tax**
Rentals	₱ 6,471,409.55	₱ 6,144,095.85	₱ 327,313.70
Professional Fees	9,379,916.87	868,605.03	8,511,311.84
Salaries and Wages	14,543,453.74	13,892,955.49	650,498.25
Total	**₱ 30,394,780.16**	**₱ 20,905,656.37**	**₱ 9,489,123.79**

a. Rentals - ₱327,313.70

Petitioner alleges that out of the discrepancy of ₱327,313.70, the amount of ₱292,784.67 pertains to advance rental paid to lessor,

[55] Exhibit "P-13".

as determined below, in taxable year 2008, the withholding taxes of which were already paid and remitted in the year 2008:

Quezon City Treasurer's Office	₱ 66,315.79
Manolito/Procesa de Castro	226,468.88
Total	**₱ 292,784.67**

According to petitioner, said amount was reflected as rent expense in the books of accounts in the months of January and May of 2009. In support thereto, petitioner submitted the purported Sales Invoice[56], Official Receipt[57], A/P Batch Listing-Invoice,[58] 2008 Monthly Remittance Returns of Creditable Income Taxes Withheld (Expanded) (BIR Form 1601-E)[59] and Alphalist of Payees Subject to Expanded Withholding Tax[60] to prove that the amount of ₱292,784.67 was reflected as rent expense in the books of accounts in the months of January and May of 2009.

However, a careful analysis by the Court shows that said documents do not clearly establish that the amount of ₱292,784.67 pertains to advance rental made in the year 2008 and that the corresponding withholding taxes were indeed remitted to the BIR.

First, the amount of ₱66,315.79 was not really paid in advance to the Quezon City Treasurer's Office since the official receipt issued clearly indicates that it was issued on January 10 of year 2009. As to the amount of ₱226,468.88, no evidence was presented to show that the alleged payment was made in 2008 for rent expenses pertaining to the succeeding period/year. Besides, the A/P Batch Listing-Invoice shows that in the year 2008, the amount of ₱226,468.88 was already recognized as rent expense, and not as prepaid expense.

As to petitioner's allegation that the corresponding withholding taxes were already paid and remitted in the year 2008, the BIR Forms 1601-E presented by petitioner only show that it withheld taxes in 2008. However, the Court cannot ascertain whether the corresponding taxes of the rental expense subject of the present assessment were included therein.

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[56] Exhibit "P-15-1-A.1-ICPA".
[57] Exhibit "P-15-1-A.2-ICPA".
[58] Exhibit "P-15-1-B-ICPA".
[59] Exhibits "P-15.2-A-ICPA" to "P-15.2-L-ICPA"
[60] Exhibits "P-15.2-M.1-ICPA" to "P-15.2-M.3-ICPA".

Thus, for petitioner's failure to prove its claim, the disallowance of the rental expense of ₱327,313.70, as deduction from its gross income, is in order.

b. Professional Fees - ₱8,511,311.84

This item was already discussed in relation to the applicability of the 10-year prescriptive period to petitioner's deficiency EWT. Thus, for petitioner's failure to support its allegations, the findings of respondent shall be sustained.

c. Salaries and Wages - ₱650,498.25

Petitioner alleges that out of the discrepancy of ₱650,498.25, the amount of ₱441,486.11 is related to non-taxable employer's contribution to government agencies such as SSS, PHIC, and HDMF. On the other hand, the allowances given to employees in the amount of ₱209,012.14 are generally classified as *de minimis* benefits, hence, not subject to withholding tax.

The Court is not convinced.

Based on the Alphalist of Employees, respondent computed the salaries and wages of ₱13,892,955.49[61] as follows:

7.1 With Employees Terminated before Dec. 31, 2009		
Taxable		
Basic Salaries	₱ 551,132.33	
Salaries & Other Forms of Compensation	727,846.22	
13th Month Pay and Other Benefits	57,687.04	
Non-Taxable		
13th Month Pay and Other Benefits	55,885.75	
Salaries & Other Forms of Compensation	24,360.72	
SSS, Philhealth, Pag-ibig	19,132.90	
De Minimis Benefits	25,733.67	₱ 1,461,778.63
7.3 With No Previous Employer within the year		
Taxable		
Basic Salaries	₱ 7,101,304.90	
Salaries & Other Forms of Compensation	952,137.29	

[61] BIR Records, p. 220.

13th Month Pay and Other Benefits	2,023,420.00	
Non-Taxable		
13th Month Pay and Other Benefits	864,418.32	
Salaries & Other Forms of Compensation	225,695.13	
SSS, Philhealth, Pag-ibig	332,443.20	
De Minimis Benefits	486,833.98	11,986,252.82
7.4 With Previous Employer/s within the year		
Taxable		
Basic Salaries	₱ 298,731.05	
Salaries & Other Forms of Compensation	42,177.92	
13th Month Pay and Other Benefits	55,000.00	
Non-Taxable		
13th Month Pay and Other Benefits	2,758.50	
Salaries & Other Forms of Compensation	21,088.96	
SSS, Philhealth, Pag-ibig	11,265.00	
De Minimis Benefits	13,902.61	444,924.04
Total Salaries and Wages per Alphalist		**₱ 13,892,955.49**

The Court notes that respondent already considered the *de minimis* benefits in the aggregate amount of ₱526,470.26 (₱25,733.67 + ₱486,833.98 + ₱13,902.61) in his computation. Thus, the discrepancy could not be partly attributed to the allowances given to employees in the amount of ₱209,012.14, as claimed by petitioner, which it classified as *de minimis* benefits. Besides, petitioner did not explain why it failed to include the amount of ₱209,012.14 to the amount of ₱526,470.26 already declared as *de minimis* benefits. At any rate, petitioner failed to present evidence to substantiate the alleged *de minimis* benefits of ₱209,012.14 for the Court to ascertain whether the said amount indeed qualify as *de minimis* benefits. Thus, the Court gives no credence to petitioner's claim.

On the other hand, respondent failed to consider the SSS, Philhealth and Pag-ibig contributions pertaining to employer's share in the amount of ₱466,846.50, as determined below:

Contribution Type	Exhibit	Amount
HDMF	P-16-A-ICPA	₱ 13,297.70
HDMF	P-16-B-ICPA	12,567.38
HDMF	P-16-C-ICPA	12,562.48
HDMF	P-16-D-ICPA	12,762.48
HDMF	P-16-E-ICPA	12,762.48
HDMF	P-16-F-ICPA	13,261.10
HDMF	P-16-G-ICPA	12,990.10
HDMF	P-16-H-ICPA	14,104.10
HDMF	P-16-I-ICPA	14,224.02
HDMF	P-16-J-ICPA	13,884.02
HDMF	P-16-K-ICPA	14,084.02

HDMF	P-16-L-ICPA	14,615.72
Philhealth	P-16-M-ICPA	13,675.00
Philhealth	P-16-N-ICPA	12,800.00
Philhealth	P-16-O-ICPA	12,775.00
Philhealth	P-16-P-ICPA	13,050.00
Philhealth	P-16-Q-ICPA	13,050.00
Philhealth	P-16-R-ICPA	13,375.00
Philhealth	P-16-S-ICPA	13,225.00
Philhealth	P-16-T-ICPA	13,700.00
Philhealth	P-16-U-ICPA	13,650.00
Philhealth	P-16-V-ICPA	12,975.00
Philhealth	P-16-W-ICPA	13,375.00
Philhealth	P-16-X-ICPA	13,450.00
SSS	P-16-Y-ICPA	42,730.00
SSS	P-16-Z-ICPA	40,724.00
SSS	P-16-AA-ICPA	40,724.00
SSS	P-16-AB-ICPA	41,878.00
SSS	P-16-AC-ICPA	41,878.00
SSS	P-16-AD-ICPA	43,188.00
SSS	P-16-AE-ICPA	42,908.00
SSS	P-16-AF-ICPA	43,344.00
SSS	P-16-AG-ICPA	43,136.00
SSS	P-16-AH-ICPA	41,858.00
SSS	P-16-AI-ICPA	43,448.00
SSS	P-16-AJ-ICPA	43,656.00
Total Contributions		**₱ 829,687.60**
Less: Employees' Share		
7.1 - SSS, Philhealth, Pag-ibig	₱ 19,132.90	
7.3 - SSS, Philhealth, Pag-ibig	332,443.20	
7.4 - SSS, Philhealth, Pag-ibig	11,265.00	362,841.10
Employer Contributions		**₱ 466,846.50**

Thus, only the unsupported discrepancy between the claimed salaries and wages per ITR/FS and per alphalist in the amount of ₱183,651.75 shall be disallowed from petitioner's claimed deductions, computed as follows:

Salaries and Wages per ITR/FS		₱ 14,543,453.74
Salaries and Wages per BIR	₱ 13,892,955.49	
Add: SSS, Philhealth, Pagibig Contributions - Employer Share	466,846.50	14,359,801.99
Salaries and Wages not subjected to withholding		**₱ 183,651.75**

For petitioner's failure to withhold and remit the corresponding withholding taxes due on the following income payments of ₱9,022,277.29, the same shall be disallowed as deduction from its gross income, pursuant to Section 34(K) of the NIRC, as amended:

EWT	**Not Subjected**
Rental	₱ 327,313.70
Professional	8,511,311.84
Total	**₱ 8,838,625.54**
WTC	
Salaries & Wages	183,651.75
Grand Total	**₱ 9,022,277.29**

2. Undeclared Income – ₱32,649,322.61

This item was already discussed in relation to the applicability of the 10-year prescriptive period to petitioner's deficiency VAT. For lack of factual basis, the deficiency income tax assessment arising from petitioner's alleged undeclared income from unaccounted source of cash of ₱32,649,322.61 is cancelled.

3. Undeclared Revenue – ₱1,393,525.14

Upon verification of the revenues per VAT Returns against revenues per FS, respondent noted a discrepancy of ₱1,393,525.14. Respondent presumes the existence of revenues which were not recorded, hence, the taxable income of ₱1,393,525.14, as herein computed, was added to gross income pursuant to Section 32 of the NIRC of 1997, as amended.

Gross Receipts per VAT Returns	₱ 81,380,273.72	
Less: A/R, beg. (net of output tax)	7,088,484.82	
Total	₱ 74,291,788.90	
Add: A/R, end (net of output tax)	10,845,035.71	₱ 85,136,824.61
Less: Revenue per Income Tax	81,915,009.22	
Other Income	1,828,290.25	83,743,299.47
Undeclared Revenues		**₱ 1,393,525.14**

Petitioner alleges that respondent failed to consider or segregate non-trade receivables from trade receivable in the computation of the accounts receivable. The ICPA also noted that respondent's analysis erroneously includes the "non-trade receivable" as part of the Account Receivable in its beginning and ending balances. Further, the provision of credit losses for the year 2009 was excluded from the computation of ending receivables. Taking into consideration the alleged "non-trade receivables" and "allowance

for credit losses", an overage of ₱218,888.00 exists, computed as follows:

Particulars	Amount	Exhibit
Revenue per Analysis		
Gross receipts per VAT Return	₱ 81,380,273.72	P-6 to P-6-O-ICPA
Less: AR, beg. (net of output tax)	3,055,819.64	P-10-V-ICPA
Total	78,324,454.08	
Add: AR, end (net of output tax)	5,199,957.14	P-10-ICPA
Total Revenue per Analysis	**₱ 83,524,411.22**	
Revenue per ITR		
Revenue per Income Tax	₱ 81,915,009.22	P-9-A-ICPA
Other Income	1,828,290.25	P-9-A-ICPA
Total Revenue per ITR	**₱ 83,743,299.47**	
Discrepancy	**(₱ 218,888.25)**	

A perusal of petitioner's 2009 Audited Financial Statements, particularly Note 7, explicitly shows that the account "Trade and Other Receivables" consists of Trade Receivables, Advances to Officers and Employees, Non-trade Receivables and Allowance for Credit Losses, to wit:

	2009	2008
Trade Receivables	₱ 6,921,694.00	₱ 3,422,518.00
Advances to officers and employees	111,032.00	216,761.00
Total	7,032,726.00	3,639,279.00
Non-trade receivables	6,277,099.00	4,299,824.00
Less: Allowance for credit losses	(1,097,742.00)	-
Total	5,179,357.00	4,299,824.00
Net Trade and Other Receivables	**₱12,212,083.00**	**₱ 7,939,103.00**
The movements in the allowance for credit losses:		
Balance at January 1	₱ -	₱ -
Provision for credit losses (Note 18)	1,097,742.00	-
Balance at December 31	₱ 1,097,742.00	₱ -

In the re-computation provided by the ICPA, the beginning balance of Accounts Receivable of ₱3,055,819.64 was computed by taking the amount of Trade Receivable for the year 2008 of ₱3,422,518.00 and by deducting the corresponding 12% VAT of ₱366,698.36. With respect to the ending balance of Account Receivable of ₱5,199,957.14, it was computed by taking the Trade

Receivable for the year 2009 of ₱6,921,694.00 minus the Allowance for Credit Losses of ₱1,097,742.00, and thereafter by deducting the 12% VAT of ₱623,994.86, *to wit*:

	2009	2008
Trade Receivables	₱ 6,921,694.00	₱ 3,422,518.00
Less: Allowace for Credit Losses	1,097,742.00	-
Net Trade Receivables	5,823,952.00	3,422,518.00
Less: 12% Output VAT	623,994.86	366,698.36
Accounts Receivable, ending	**₱5,199,957.14**	**₱3,055,819.64**

As much as the Court agrees with petitioner that the Advances to Officers and Employees in the amounts of ₱111,032.00 and ₱216,761.00, as well as the Non-trade Receivables of ₱6,277,099.00 and ₱4,299,824.00 for the years 2009 and 2008, respectively, should be excluded in the computation of its Total Revenue, the Court disagrees with petitioner that the whole amount of the Allowance for Credit Losses of ₱1,097,742.00 be considered as deduction against its Trade Receivable for the year 2009 to come up with the ending balance of Accounts Receivable, since the said amount was clearly subtracted from Non-trade Receivables which connotes that the said Allowance for Credit Losses relate to Non-trade Receivables.

Hence, disregarding the said allowance for credit losses, the Court finds that petitioner has undeclared revenue amounting to ₱761,238.54, as computed below:

Particulars	Amount
Revenue per Analysis	
Gross receipts per VAT Return	₱ 81,380,273.72
Less: AR, beg. (net of output tax)	3,055,819.64
Total	78,324,454.08
Add: AR, end (net of output tax)	6,180,083.93
Total Revenue per Analysis	**₱ 84,504,538.01**
Revenue per ITR	
Revenue per Income Tax	₱ 81,915,009.22
Other Income	1,828,290.25
Total Revenue per ITR	**₱ 83,743,299.47**
Discrepancy	**₱ 761,238.54**

Consequently, petitioner shall be held liable for the corresponding deficiency income tax on the said undeclared revenue.

4. Unsupported Creditable Tax Withheld – ₱317,660.90

Respondent's verification disclosed that petitioner claimed unsupported tax credits in the amount of ₱317,660.90, hence disallowed pursuant to Section 2.58.3 of RR No. 2-98, as amended.

Petitioner claims that all of its creditable withholding taxes for the subject year had been duly and properly supported contrary to the allegation of the respondent.

The Court finds petitioner's contention partially meritorious.

Based on the examination of the ICPA, out of the claimed creditable withholding taxes of ₱317,660.90, only ₱228,209.17 was supported by individual CWT certificates, as summarized in the Summary of Alphalist of Withholding Taxes (SAWT).[62]

However, upon further scrutiny of the submitted CWT certificates together with the report of the ICPA, the Court finds that the amount of ₱24,357.07 was not properly supported by valid certificates, as determined below:

Payor's Name	CWT	Exhibit
Certificates issued not in the name of the petitioner		
Aldaba, Maricris Roque	₱ 536.15	"P-20-C-ICPA"
Aldaba, Maricris Roque	471.65	"P-20-D-ICPA"
Aldaba, Maricris Roque	487.35	"P-20-E-ICPA"
Aldaba, Maricris Roque	518.85	"P-20-F-ICPA"
Suki Market	1,227.62	"P-20-AS-ICPA"
Encomienda, Emelita Mandrique	866.59	"P-20-DC-ICPA"
Encomienda, Emelita Mandrique	593.83	"P-20-DD-ICPA"
Manuel, Jinky M	999.36	"P-20-FN-ICPA"
Manuel, Jinky M	999.36	"P-20-FO-ICPA"
Manuel, Jinky M	1,010.34	"P-20-FP-ICPA"
Quinto, Gladys Grace	2,271.46	"P-20-HV-ICPA"
Subtotal	**₱ 9,982.56**	
Certificates issued were not signed by the payor/payor's authorized representative		
Bacani, Marlyn	₱ 330.75	"P-20-R-ICPA"
De Leon, Reynaldo	194.89	"P-20-BT-ICPA"
De Leon, Reynaldo	268.80	"P-20-BU-ICPA"

[62] Annex E of the ICPA Report.

De Leon, Reynaldo	210.00	"P-20-BV-ICPA"
De Leon, Reynaldo	268.80	"P-20-BW-ICPA"
De Leon, Reynaldo	268.80	"P-20-BX-ICPA"
De Leon, Reynaldo	210.00	"P-20-BY-ICPA"
De Leon, Reynaldo	210.00	"P-20-BZ-ICPA"
De Leon, Reynaldo	268.80	"P-20-CA-ICPA"
De Leon, Reynaldo	268.80	"P-20-CB-ICPA"
De Leon, Reynaldo	268.80	"P-20-CC-ICPA"
De Leon, Reynaldo	268.80	"P-20-CD-ICPA"
De Leon, Reynaldo	268.00	"P-20-CE-ICPA"
Moises, Josephine	195.00	"P-20-GH-ICPA"
Pagoso, Flora Jacinto	1,533.96	"P-20-HD-ICPA"
Pagoso, Flora Jacinto	1,533.96	"P-20-HG-ICPA"
Peralta, Jimmy	391.31	"P-20-HM-ICPA"
Ranchez, Roberto	194.89	"P-20-IU-ICPA"
Ranchez, Roberto	210.00	"P-20-IV-ICPA"
Ranchez, Roberto	210.00	"P-20-IW-ICPA"
Ranchez, Roberto	210.00	"P-20-IX-ICPA"
Ranchez, Roberto	210.00	"P-20-IY-ICPA"
Ranchez, Roberto	210.00	"P-20-IZ-ICPA"
Ranchez, Roberto	210.00	"P-20-JA-ICPA"
Ranchez, Roberto	210.00	"P-20-JB-ICPA"
Ranchez, Roberto	268.80	"P-20-JC-ICPA"
Ranchez, Roberto	268.80	"P-20-JD-ICPA"
Ranchez, Roberto	268.80	"P-20-JF-ICPA"
Reyes, Jesus	882.09	"P-20-KG-ICPA"
Reyes, Jesus	225.99	"P-20-KI-ICPA"
Reyes, Rosita G	194.60	"P-20-KN-ICPA"
Reynaldo, Salvador	92.75	"P-20-KQ-ICPA"
Subtotal	**₱ 10,826.19**	
Petitioner's name as payee is not indicated in the certificates		
Encomienda, Emelita Mandrique	₱ 857.18	"P-20-DB-ICPA"
Ramos, Imelda	272.63	"P-20-IQ-ICPA"
Ramos, Imelda	263.84	"P-20-IR-ICPA"
Subtotal	**₱ 1,393.65**	
Payee's TIN indicated in the certificate is not that of the petitioner		
Ramos, Imelda	**₱ 2,154.67**	"P-20-IP-ICPA"
TOTAL	**₱ 24,357.07**	

Since petitioner was able to establish that its creditable taxes withheld for taxable year 2009 in the amount of ₱203,852.10 (₱228,209.17 minus ₱24,357.07) are properly supported by CWT certificates, petitioner may validly claim the same as tax credit from its income tax liability.

In sum, petitioner shall be held liable for basic deficiency income tax in the amount of ₱3,048,863.55, computed as follows:

Taxable Income (Loss) per Return		₱ 12,754,872.54
Add: Adjustments		
Disallowed due to non-withholding	₱ 9,022,277.29	
Undeclared Revenue	761,238.54	9,783,515.83
Total Taxable Income		₱ 22,538,388.37
Tax Due (30%)		₱ 6,761,516.51
Less: Tax Credits/Payments		
Prior Year's Excess Credits	₱ 1,343,855.24	
Creditable Tax Withheld	203,852.10	
Payments per Return	2,164,945.62	3,712,652.96
Basic Deficiency Income Tax		**₱ 3,048,863.55**

B. **DEFICIENCY VALUE-ADDED TAX**

Respondent computed the deficiency VAT for CY 2008 as follows:

Sales subject to VAT per VAT Returns			₱ 81,380,273.72
Add: Undeclared Income (Schedule 2)			32,649,322.61
Total Revenues subject to VAT			₱ 114,029,596.33
Output Tax			₱ 13,683,551.56
Less: Input Tax Carry Over		₱ 20,024.56	
Claimed Input Tax		6,503,365.23	
Total		₱ 6,523,389.79	
Less: Input Tax on purchases of capital goods exceeding 1M deferred for the succeeding period	₱ 748,024.24		
Disallowed Input Tax (Schedule 4)	3,936,536.69		
Excess input tax carried over to the next quarter	690,857.89	5,375,418.82	1,147,970.97
VAT Payable			₱ 12,535,580.59
Less: Payments per Return			4,681,125.19
Basic Deficiency Tax			₱ 7,854,455.40
Add: 50% Surcharge		₱ 3,927,227.70	
Interest (1.26.10 to 9.5.14)		7,243,314.21	11,170,541.91
Total Amount Due			**₱19,024,997.31**

The deficiency VAT assessment of respondent is based on the following:

1. Undeclared Income	₱ 32,649,322.61
2. Disallowed input tax on purchases of capital goods exceeding 1M deferred for the succeeding period	748,024.24
3. Disallowed Input Tax	3,936,536.69
4. Excess input tax carried over to the next quarter	690,857.89

1. Undeclared Income – ₱32,649,322.61

This assessment is based on the same finding under the deficiency income tax assessment that petitioner had an undeclared income from undeclared expenses based on the comparison of claimed income payments per BIR Form No. 1601-E as against the 2009 AFS.

As discussed earlier, the assessment lacks factual basis because it was based on a mere presumption that since there were alleged undeclared expenses, there was likewise a corresponding undeclared income. Even if these alleged undeclared expenses are to be considered as income subject to output VAT, the same will be offset by treating the equivalent payments as purchases for which input tax credits may be claimed. Hence, no VAT-able income will result from the said transactions. Accordingly, the deficiency VAT assessment on this item shall be cancelled.

2. Disallowed Input Tax on Capital Goods Exceeding ₱1 Million Deferred for the Succeeding Period – ₱748,024.24

Respondent did not apply the input tax on capital goods deferred to succeeding period amounting to ₱748,024.24 against the allowable input tax in computing deficiency VAT, since this shall spread evenly over the month of acquisition and the fifty-nine (59) succeeding months pursuant to Section 110(A) of the NIRC of 1997, as amended.

Petitioner alleged that contrary to a mere estimate or speculation made by respondent, records would show that the input VAT of ₱748,024.24 was properly and correctly applied in the quarterly VAT Returns.

The Court finds for petitioner.

Based on records, the amount of ₱748,024.24 was taken from petitioner's Quarterly VAT Return for the fourth[63] quarter of 2009 captioned as "Input Tax on Purchases of Capital Goods exceeding ₱1Million deferred for the succeeding period"[64]. Contrary to respondent's claim, petitioner properly deducted the input tax on capital goods exceeding ₱1Million deferred for the succeeding period from its total available input tax, which prove that petitioner claimed as input tax credit only the amortized portion of the said input tax. To illustrate:

	1st QTR 2009 *P-6-D-ICPA*	**2nd QTR 2009** *P-6-G-ICPA*	**3rd QTR 2009** *P-6-L-ICPA*	**4th QTR 2009** *P-6-O-ICPA*
Output VAT	₱2,472,346.81	₱2,416,684.26	₱ 2,521,120.81	₱ 2,355,480.97
Less: Allowable Input Tax				
Input Tax Carried Over from Previous Period	₱ 20,024.56	₱ 20,024.56		₱ 171,557.26
Amortization of Input Tax on Capital Goods:				
Input Tax Deferred on Capital Goods Exceeding ₱1Million from Previous Quarter				₱ 367,401.43
Add: Input Tax on Purchases of Capital Goods exceeding ₱1Million			₱ 373,628.57	408,705.28
Total	-	-	₱ 373,628.57	₱ 776,106.71
Less: Input Tax on Purchases of Capital Goods exceeding ₱1Million deferred for the succeeding period			367,401.43	748,024.24
Amortization of Input Tax on Capital Goods exceeding ₱1Million	-	-	**₱ 6,227.14**	**₱ 28,082.47**
Add: Input Tax on Purchases from Current Transactions				
Input Tax on Domestic Purchases of Goods other than Capital Goods	874,680.35	1,042,431.98	1,645,795.80	2,158,123.25
Total Allowable Input Tax	₱ 894,704.91	₱1,062,456.54	₱ 1,652,022.94	₱ 2,357,762.98
Net VAT Payable	₱1,577,641.90	₱1,354,227.72	₱ 869,097.87	₱ (2,282.01)
Less: Tax Credits/Payments				
Monthly VAT Payments-Previous 2 Months	₱1,173,496.91	₱ 964,235.58	₱ 957,931.29	₱ 688,575.88
VAT Paid in Return previously filed, if this is an amended Return	424,169.55		82,723.84	
Total	₱1,597,666.46	₱ 964,235.58	₱ 1,040,655.13	₱ 688,575.88
Tax Still Payable/(Overpayment)	**₱(20,024.56)**	**₱389,992.14**	**₱(171,557.26)**	**₱(690,857.89)**

[63] Exhibit "P-6-O-ICPA".
[64] Line 23A of Exhibit "P-6-O-ICPA".

Moreover, the Court notes that petitioner's claimed input tax for the taxable year 2009 actually amounts to ₱5,755,340.99 and not the entire input tax of ₱6,503,365.23, detailed as follows:

	1st QTR 2009 *P-6-D-ICPA*	**2nd QTR 2009** *P-6-G-ICPA*	**3rd QTR 2009** *P-6-L-ICPA*	**4th QTR 2009** *P-6-O-ICPA*	**Total**
Amortization of Input Tax on Capital Goods:					
Input Tax Deferred on Capital Goods Exceeding ₱1Million from Previous Quarter				₱ 367,401.43	₱ 367,401.43
Add: Input Tax on Purchases of Capital Goods exceeding ₱1Million			₱ 373,628.57	408,705.28	782,333.85
Total	-	-	₱ 373,628.57	₱ 776,106.71	₱ 1,149,735.28
Less: Input Tax on Purchases of Capital Goods exceeding ₱1Million deferred for the succeeding period			367,401.43	748,024.24	1,115,425.67
Amortization of Input Tax on Capital Goods exceeding ₱1Million	-	-	₱ 6,227.14	₱ 28,082.47	₱ 34,309.61
Add: Input Tax on Domestic Purchases of Goods other than Capital Goods	₱ 874,680.35	₱ 1,042,431.98	1,645,795.80	2,158,123.25	5,721,031.38
Total Claimed Input Tax	**₱874,680.35**	**₱1,042,431.98**	**₱1,652,022.94**	**₱2,186,205.72**	**₱5,755,340.99**

Clearly, the input tax on purchases of capital goods exceeding ₱1 Million was already subjected to amortization, in compliance with Section 110(A) of the NIRC of 1997, as amended.

Consequently, respondent's assessment is without basis and accordingly, should be cancelled.

3. Disallowed Input Tax – ₱3,936,536.69

Out of the ₱6,503,365.23 input tax on current purchases of goods, respondent disallowed the amount of ₱3,936,536.69 due to non-presentation of VAT invoices and official receipts to support input

tax claimed, pursuant to Section 110(A)(1) of the NIRC of 1997, as amended.

Petitioner asserts that the schedule of purchases and related supplier's documents show that input taxes in the total amount of ₱6,119,400.08 were validated and substantiated.

The report of the ICPA supports petitioner's averments that the total amount of ₱6,119,400.08, as summarized in the Schedule of Input Tax[65], is properly supported by related supplier's documents[66]. The ICPA, however, noted that input taxes included therein in the amount of ₱2,630,7541.22 is supported by Sworn Statements duly executed by the suppliers.

Considering that respondent's right to assess petitioner for deficiency VAT for the first, second and third quarters of 2009 have already prescribed, the Court will only determine whether the input VAT declared in the fourth quarter is supported by proper documents.

An examination of the quarterly VAT Return for the fourth quarter of 2009[67] shows that petitioner incurred input VAT in the amount of ₱2,566,828.53, which arose from purchases of capital goods exceeding ₱1 million (₱408,705.28) and purchases of goods other than capital goods (₱2,158,787.25). However, the Schedule of Input Tax (Annex F of the ICPA Report) shows only the amount of ₱2,417,010.07, hence, the difference of ₱149,818.46[68] should be disallowed outright for failure of the petitioner to submit supporting documents.

The said amount of ₱2,417,010.07 is determined as follows:

Exhibit	Date	Supplier	Input VAT
Input VAT on purchases of capital goods exceeding ₱1 Million			
"P-17-ALN-ICPA"	19-Nov-09	Nissan North EDSA	₱ 155,357.14
"P-17-AKQ-ICPA"	7-Dec-09	Metro Construction Inc.	253,348.14
		sub-total	***₱ 408,705.28***
Input VAT on purchases of good other than capital goods			
"P-17-J-ICPA"	8-Oct-09	Alaminos City Water District	₱ 6,245.30

[65] Annex F of the ICPA Report.
[66] Exhibits "P-17-A-ICPA" to "P-17-ARQ-ICPA".
[67] Exhibit "P-6-O-ICPA".
[68] ₱2,566,828.53 minus ₱2,417,010.07.

"P-17-K-ICPA"	12-Nov-09	Alaminos City Water District	6,336.18
"P-17-L-ICPA"	10-Dec-09	Alaminos City Water District	6,431.39
"P-17-M-ICPA"	31-Dec-09	Alaminos City Water District	6,548.24
"P-17-O-ICPA"	14-Oct-09	Alex's Construction Supplies	857.14
"P-17-P-ICPA"	14-Oct-09	Alex's Construction Supplies	857.14
"P-17-Q-ICPA"	15-Dec-09	Alex's Construction Supplies	618.21
"P-17-R-ICPA"	15-Dec-09	Alex's Construction Supplies	1,446.43
"P-17-S-ICPA"	17-Dec-09	Alex's Construction Supplies	642.86
"P-17-CG-ICPA"	22-Oct-09	Armadillo Holdings Inc.	19.44
"P-17-CH-ICPA"	27-Oct-09	Armadillo Holdings Inc.	19.40
"P-17-CI-ICPA"	27-Oct-09	Armadillo Holdings Inc.	40.50
"P-17-CJ-ICPA"	27-Oct-09	Armadillo Holdings Inc.	248.91
"P-17-CK-ICPA"	27-Oct-09	Armadillo Holdings Inc.	385.20
"P-17-CL-ICPA"	17-Nov-09	Armadillo Holdings Inc.	33,318.96
"P-17-CM-ICPA"	17-Nov-09	Armadillo Holdings Inc.	28,800.00
"P-17-CN-ICPA"	27-Nov-09	Armadillo Holdings Inc.	294.66
"P-17-CO-ICPA"	27-Nov-09	Armadillo Holdings Inc.	358.05
"P-17-CP-ICPA"	27-Nov-09	Armadillo Holdings Inc.	21,763.80
"P-17-CQ-ICPA"	27-Nov-09	Armadillo Holdings Inc.	12,187.49
"P-17-CR-ICPA"	27-Nov-09	Armadillo Holdings Inc.	28,245.26
"P-17-CS-ICPA"	27-Nov-09	Armadillo Holdings Inc.	418.15
"P-17-CT-ICPA"	27-Nov-09	Armadillo Holdings Inc.	1,674.64
"P-17-CU-ICPA"	27-Nov-09	Armadillo Holdings Inc.	39,978.90
"P-17-CV-ICPA"	21-Dec-09	Armadillo Holdings Inc.	33,318.96
"P-17-CW-ICPA"	21-Dec-09	Armadillo Holdings Inc.	28,800.00
"P-17-CX-ICPA"	31-Dec-16	Armadillo Holdings Inc.	(43,010.38)
"P-17-CY-ICPA"	31-Dec-09	Armadillo Holdings Inc.	2,221.25
"P-17-CZ-ICPA"	31-Dec-09	Armadillo Holdings Inc.	123.13
"P-17-DA-ICPA"	31-Dec-09	Armadillo Holdings Inc.	425.12
"P-17-DB-ICPA"	31-Dec-09	Armadillo Holdings Inc.	1,012.16
"P-17-DC-ICPA"	31-Dec-09	Armadillo Holdings Inc.	15,493.57
"P-17-DD-ICPA"	31-Dec-09	Armadillo Holdings Inc.	358.67
"P-17-DE-ICPA"	31-Dec-09	Armadillo Holdings Inc.	2,687.96
"P-17-DF-ICPA"	31-Dec-09	Armadillo Holdings Inc.	233.06
"P-17-DG-ICPA"	31-Dec-09	Armadillo Holdings Inc.	596.64
"P-17-DH-ICPA"	31-Dec-09	Armadillo Holdings Inc.	14.08
"P-17-DI-ICPA"	31-Dec-09	Armadillo Holdings Inc.	804.77
"P-17-DJ-ICPA"	31-Dec-09	Armadillo Holdings Inc.	655.23
"P-17-DK-ICPA"	31-Dec-09	Armadillo Holdings Inc.	1,247.37
"P-17-DL-ICPA"	31-Dec-09	Armadillo Holdings Inc.	231.80
"P-17-DM-ICPA"	31-Dec-09	Armadillo Holdings Inc.	193.63
"P-17-DN-ICPA"	31-Dec-09	Armadillo Holdings Inc.	3,796.37
"P-17-DO-ICPA"	31-Dec-09	Armadillo Holdings Inc.	4,262.05
"P-17-DP-ICPA"	31-Dec-09	Armadillo Holdings Inc.	157,545.87
"P-17-DQ-ICPA"	31-Dec-09	Armadillo Holdings Inc.	8,393.40
"P-17-DR-ICPA"	31-Dec-09	Armadillo Holdings Inc.	183,586.14
"P-17-DS-ICPA"	31-Dec-09	Armadillo Holdings Inc.	169,523.36
"P-17-DT-ICPA"	31-Dec-09	Armadillo Holdings Inc.	297.00
"P-17-DU-ICPA"	31-Dec-09	Armadillo Holdings Inc.	883.36

"P-17-DV-ICPA"	31-Dec-09	Armadillo Holdings Inc.	558,472.53
"P-17-DY-ICPA"	17-Nov-09	Asian Dynasty Import-Export Corp.	9,642.86
"P-17-DZ-ICPA"	17-Nov-09	Asian Dynasty Import-Export Corp.	3,214.29
"P-17-EA-ICPA"	31-Dec-09	Asian Dynasty Import-Export Corp.	964.29
"P-17-EG-ICPA"	15-Oct-09	Atty. Raul L. Lambino	6,024.00
"P-17-EH-ICPA"	19-Nov-09	Atty. Raul L. Lambino	1,968.00
"P-17-EI-ICPA"	15-Dec-09	Atty. Raul L. Lambino	720.00
"P-17-EJ-ICPA"	17-Dec-09	Atty. Raul L. Lambino	4,176.00
"P-17-EK-ICPA"	31-Dec-09	Atty. Raul L. Lambino	6,054.00
"P-17-GY-ICPA"	23-Nov-09	Cesar L. Hulleza Jr.	160.71
"P-17-GZ-ICPA"	26-Nov-09	Cesar L. Hulleza Jr.	306.43
"P-17-HA-ICPA"	10-Dec-09	Cesar L. Hulleza Jr.	19.29
"P-17-HB-ICPA"	28-Dec-09	Cesar L. Hulleza Jr.	191.79
"P-17-HF-ICPA"	31-Dec-09	Chiba Industrial Sales Corp.	4,553.28
"P-17-HJ-ICPA"	14-Oct-09	Colossal A-Plus Corp.	1,028.57
"P-17-HP-ICPA"	26-Nov-09	Contrade Entrerprises	161.57
"P-17-HQ-ICPA"	3-Dec-09	Contrade Entrerprises	540.00
"P-17-HY-ICPA"	20-Oct-09	Crisanto M. Ferreria	38.36
"P-17-HZ-ICPA"	30-Oct-09	Crisanto M. Ferreria	64.82
"P-17-IA-ICPA"	10-Nov-09	Crisanto M. Ferreria	4.50
"P-17-IB-ICPA"	13-Nov-09	Crisanto M. Ferreria	188.79
"P-17-IC-ICPA"	27-Nov-09	Crisanto M. Ferreria	237.43
"P-17-ID-ICPA"	11-Dec-09	Crisanto M. Ferreria	450.00
"P-17-IE-ICPA"	14-Dec-09	Crisanto M. Ferreria	231.86
"P-17-IF-ICPA"	28-Dec-09	Crisanto M. Ferreria	73.93
"P-17-IG-ICPA"	28-Dec-09	Crisanto M. Ferreria	104.09
"P-17-IH-ICPA"	31-Dec-09	Crisanto M. Ferreria	51.43
"P-17-IN-ICPA"	14-Oct-09	DC Electrical Contract	20,864.04
"P-17-IP-ICPA"	12-Oct-09	Dinlys Industrial Sale	96.11
"P-17-IQ-ICPA"	12-Oct-09	Dinlys Industrial Sale	114.00
"P-17-IR-ICPA"	6-Nov-09	Dinlys Industrial Sale	209.14
"P-17-IS-ICPA"	7-Dec-09	Dinlys Industrial Sale	90.21
"P-17-JP-ICPA"	19-Oct-09	EFF Builders Corporation	5,280.53
"P-17-JQ-ICPA"	29-Oct-09	EFF Builders Corporation	5,092.89
"P-17-JR-ICPA"	23-Nov-09	EFF Builders Corporation	5,653.84
"P-17-JS-ICPA"	30-Nov-09	EFF Builders Corporation	5,456.03
"P-17-JT-ICPA"	30-Nov-09	EFF Builders Corporation	5,058.05
"P-17-JU-ICPA"	31-Dec-09	EFF Builders Corporation	5,494.49
"P-17-JV-ICPA"	31-Dec-09	EFF Builders Corporation	5,037.58
"P-17-KI-ICPA"	1-Oct-09	Elizardo M. Almendrala	15,944.05
"P-17-KJ-ICPA"	3-Nov-09	Elizardo M. Almendrala	15,944.05
"P-17-KK-ICPA"	1-Dec-09	Elizardo M. Almendrala	15,944.05
"P-17-KT-ICPA"	16-Oct-09	Enrich Plastic Product	1,904.46
"P-17-KU-ICPA"	15-Oct-09	Enrich Plastic Product	1,816.07
"P-17-KV-ICPA"	9-Nov-09	Enrich Plastic Product	2,582.14
"P-17-KW-ICPA"	9-Dec-09	Enrich Plastic Product	2,239.29
"P-17-LG-ICPA"	30-Oct-09	ESP General Merchandising	9,107.14
"P-17-LH-ICPA"	23-Nov-09	ESP General Merchandising	9,107.14
"P-17-LI-ICPA"	22-Dec-09	ESP General Merchandising	9,107.14

"P-17-LO-ICPA"	20-Oct-09	Euva Trading	1,715.25
"P-17-LU-ICPA"	1-Nov-09	Fairdeal Chemical Industry	260.36
"P-17-OU-ICPA"	15-Oct-09	Globe Telecom Inc.	148.73
"P-17-OV-ICPA"	15-Oct-09	Globe Telecom Inc.	191.80
"P-17-OW-ICPA"	15-Oct-09	Globe Telecom Inc.	91.07
"P-17-OX-ICPA"	15-Oct-09	Globe Telecom Inc.	231.15
"P-17-OY-ICPA"	15-Oct-09	Globe Telecom Inc.	163.37
"P-17-OZ-ICPA"	15-Oct-09	Globe Telecom Inc.	123.21
"P-17-PA-ICPA"	15-Oct-09	Globe Telecom Inc.	156.48
"P-17-PB-ICPA"	15-Oct-09	Globe Telecom Inc.	109.24
"P-17-PC-ICPA"	18-Nov-09	Globe Telecom Inc.	91.07
"P-17-PD-ICPA"	18-Nov-09	Globe Telecom Inc.	228.85
"P-17-PE-ICPA"	18-Nov-09	Globe Telecom Inc.	210.36
"P-17-PF-ICPA"	18-Nov-09	Globe Telecom Inc.	123.21
"P-17-PG-ICPA"	18-Nov-09	Globe Telecom Inc.	138.21
"P-17-PH-ICPA"	19-Nov-09	Globe Telecom Inc.	91.34
"P-17-PI-ICPA"	19-Nov-09	Globe Telecom Inc.	148.61
"P-17-PJ-ICPA"	19-Nov-09	Globe Telecom Inc.	359.96
"P-17-PK-ICPA"	19-Nov-09	Globe Telecom Inc.	136.73
"P-17-PL-ICPA"	21-Dec-09	Globe Telecom Inc.	91.07
"P-17-PM-ICPA"	21-Dec-09	Globe Telecom Inc.	221.96
"P-17-PN-ICPA"	21-Dec-09	Globe Telecom Inc.	186.44
"P-17-PO-ICPA"	21-Dec-09	Globe Telecom Inc.	91.07
"P-17-PP-ICPA"	21-Dec-09	Globe Telecom Inc.	187.12
"P-17-PQ-ICPA"	21-Dec-09	Globe Telecom Inc.	206.05
"P-17-PR-ICPA"	21-Dec-09	Globe Telecom Inc.	123.21
"P-17-PS-ICPA"	21-Dec-09	Globe Telecom Inc.	128.38
"P-17-PT-ICPA"	21-Dec-09	Globe Telecom Inc.	128.52
"P-17-PU-ICPA"	31-Dec-09	Globe Telecom Inc.	91.63
"P-17-PV-ICPA"	31-Dec-09	Globe Telecom Inc.	156.35
"P-17-PW-ICPA"	31-Dec-09	Globe Telecom Inc.	382.87
"P-17-PX-ICPA"	31-Dec-09	Globe Telecom Inc.	91.07
"P-17-PY-ICPA"	31-Dec-09	Globe Telecom Inc.	242.02
"P-17-PZ-ICPA"	31-Dec-09	Globe Telecom Inc.	123.21
"P-17-QA-ICPA"	31-Dec-09	Globe Telecom Inc.	142.71
"P-17-QB-ICPA"	31-Dec-09	Globe Telecom Inc.	97.50
"P-17-QI-ICPA"	12-Oct-09	Grist Chem Corporation	578.57
"P-17-QJ-ICPA"	27-Oct-09	Grist Chem Corporation	578.57
"P-17-QK-ICPA"	10-Nov-09	Grist Chem Corporation	578.57
"P-17-QL-ICPA"	7-Dec-09	Grist Chem Corporation	578.57
"P-17-QU-ICPA"	30-Oct-09	Hi Eles Industrial Corporation	2,398.28
"P-17-QV-ICPA"	30-Oct-09	Hi Eles Industrial Corporation	310.71
"P-17-QW-ICPA"	30-Oct-09	Hi Eles Industrial Corporation	332.14
"P-17-QX-ICPA"	30-Nov-09	Hi Eles Industrial Corporation	332.14
"P-17-QY-ICPA"	28-Dec-09	Hi Eles Industrial Corporation	332.14
"P-17-RC-ICPA"	16-Dec-09	Home Center Construction	790.07
"P-17-SA-ICPA"	18-Nov-09	Hundred Islands Service	498.17
"P-17-SJ-ICPA"	12-Oct-09	Imeson Hardware & Construction	840.32
"P-17-SK-ICPA"	23-Oct-09	Imeson Hardware & Construction	392.14

"P-17-SL-ICPA"	26-Oct-09	Imeson Hardware & Construction	990.00
"P-17-SM-ICPA"	28-Oct-09	Imeson Hardware & Construction	359.25
"P-17-SN-ICPA"	31-Oct-09	Imeson Hardware & Construction	414.64
"P-17-SO-ICPA"	14-Dec-09	Imeson Hardware & Construction	366.75
"P-17-SP-ICPA"	14-Dec-09	Imeson Hardware & Construction	326.79
"P-17-SQ-ICPA"	15-Dec-09	Imeson Hardware & Construction	338.04
"P-17-SR-ICPA"	17-Dec-09	Imeson Hardware & Construction	347.68
"P-17-TD-ICPA"	2-Dec-09	Integrated Computer System	307.50
"P-17-TE-ICPA"	1-Dec-09	Integrated Computer System	145.18
"P-17-UM-ICPA"	20-Oct-09	Inter-Power Supply Corporation	41.84
"P-17-UN-ICPA"	20-Oct-09	Inter-Power Supply Corporation	63.65
"P-17-UO-ICPA"	20-Oct-09	Inter-Power Supply Corporation	151.31
"P-17-UP-ICPA"	26-Oct-09	Inter-Power Supply Corporation	98.85
"P-17-UQ-ICPA"	26-Oct-09	Inter-Power Supply Corporation	60.54
"P-17-UR-ICPA"	12-Nov-09	Inter-Power Supply Corporation	267.56
"P-17-UZ-ICPA"	3-Dec-09	Jeciadyrl Trading	171.43
"P-17-YK-ICPA"	14-Oct-09	Jesus Gabriel N. Bufet	119.14
"P-17-YL-ICPA"	14-Oct-09	Jesus Gabriel N. Bufet	1,501.45
"P-17-YM-ICPA"	14-Oct-09	Jesus Gabriel N. Bufet	1,144.66
"P-17-YN-ICPA"	19-Oct-09	Jesus Gabriel N. Bufet	389.78
"P-17-YO-ICPA"	19-Oct-09	Jesus Gabriel N. Bufet	1,281.21
"P-17-YP-ICPA"	23-Oct-09	Jesus Gabriel N. Bufet	257.14
"P-17-YQ-ICPA"	26-Oct-09	Jesus Gabriel N. Bufet	304.50
"P-17-YR-ICPA"	26-Oct-09	Jesus Gabriel N. Bufet	516.20
"P-17-YS-ICPA"	27-Oct-09	Jesus Gabriel N. Bufet	299.25
"P-17-YT-ICPA"	28-Oct-09	Jesus Gabriel N. Bufet	400.18
"P-17-YU-ICPA"	29-Oct-09	Jesus Gabriel N. Bufet	353.01
"P-17-YV-ICPA"	31-Oct-09	Jesus Gabriel N. Bufet	139.29
"P-17-YW-ICPA"	6-Nov-09	Jesus Gabriel N. Bufet	308.57
"P-17-YX-ICPA"	6-Nov-09	Jesus Gabriel N. Bufet	323.60
"P-17-YY-ICPA"	6-Nov-09	Jesus Gabriel N. Bufet	801.76
"P-17-YZ-ICPA"	6-Nov-09	Jesus Gabriel N. Bufet	592.50
"P-17-ZA-ICPA"	12-Nov-09	Jesus Gabriel N. Bufet	337.74
"P-17-ZB-ICPA"	12-Nov-09	Jesus Gabriel N. Bufet	85.39
"P-17-ZC-ICPA"	12-Nov-09	Jesus Gabriel N. Bufet	122.14
"P-17-ZD-ICPA"	16-Nov-09	Jesus Gabriel N. Bufet	1,313.36
"P-17-ZE-ICPA"	16-Nov-09	Jesus Gabriel N. Bufet	197.89
"P-17-ZF-ICPA"	16-Nov-09	Jesus Gabriel N. Bufet	168.59
"P-17-ZG-ICPA"	16-Nov-09	Jesus Gabriel N. Bufet	162.11
"P-17-ZH-ICPA"	18-Nov-09	Jesus Gabriel N. Bufet	64.34
"P-17-ZI-ICPA"	23-Nov-09	Jesus Gabriel N. Bufet	329.29
"P-17-ZJ-ICPA"	23-Nov-09	Jesus Gabriel N. Bufet	1,049.36
"P-17-ZK-ICPA"	24-Nov-09	Jesus Gabriel N. Bufet	228.16
"P-17-ZL-ICPA"	26-Nov-09	Jesus Gabriel N. Bufet	182.14
"P-17-ZM-ICPA"	30-Nov-09	Jesus Gabriel N. Bufet	288.97
"P-17-ZN-ICPA"	30-Nov-09	Jesus Gabriel N. Bufet	283.86
"P-17-ZO-ICPA"	30-Nov-09	Jesus Gabriel N. Bufet	128.57
"P-17-ZP-ICPA"	30-Nov-09	Jesus Gabriel N. Bufet	643.74
"P-17-ZQ-ICPA"	30-Nov-09	Jesus Gabriel N. Bufet	415.19

"P-17-ZR-ICPA"	7-Dec-09	Jesus Gabriel N. Bufet	201.19
"P-17-ZS-ICPA"	15-Dec-09	Jesus Gabriel N. Bufet	400.93
"P-17-ZT-ICPA"	15-Dec-09	Jesus Gabriel N. Bufet	105.08
"P-17-ZU-ICPA"	17-Dec-09	Jesus Gabriel N. Bufet	875.89
"P-17-ZV-ICPA"	17-Dec-09	Jesus Gabriel N. Bufet	184.39
"P-17-ZW-ICPA"	22-Dec-09	Jesus Gabriel N. Bufet	454.71
"P-17-ZX-ICPA"	22-Dec-09	Jesus Gabriel N. Bufet	116.78
"P-17-ZY-ICPA"	28-Dec-09	Jesus Gabriel N. Bufet	357.75
"P-17-ZZ-ICPA"	28-Dec-09	Jesus Gabriel N. Bufet	298.85
"P-17-AAA-ICPA"	28-Dec-09	Jesus Gabriel N. Bufet	113.69
"P-17-AAB-ICPA"	29-Dec-09	Jesus Gabriel N. Bufet	632.85
"P-17-AAC-ICPA"	29-Dec-09	Jesus Gabriel N. Bufet	535.58
"P-17-AAD-ICPA"	31-Dec-09	Jesus Gabriel N. Bufet	200.00
"P-17-AAE-ICPA"	31-Dec-09	Jesus Gabriel N. Bufet	227.25
"P-17-AAH-ICPA"	7-Oct-09	K&I Petron Service Center	411.06
"P-17-ADE-ICPA"	26-Oct-09	Katong Lights General	57.32
"P-17-ADF-ICPA"	26-Oct-09	Katong Lights General	58.07
"P-17-ADG-ICPA"	26-Oct-09	Katong Lights General	103.39
"P-17-ADH-ICPA"	26-Oct-09	Katong Lights General	80.46
"P-17-ADI-ICPA"	10-Nov-09	Katong Lights General	81.00
"P-17-ADJ-ICPA"	10-Nov-09	Katong Lights General	137.57
"P-17-ADK-ICPA"	10-Nov-09	Katong Lights General	37.18
"P-17-ADL-ICPA"	10-Nov-09	Katong Lights General	81.21
"P-17-ADM-ICPA"	10-Nov-09	Katong Lights General	233.46
"P-17-ADN-ICPA"	10-Nov-09	Katong Lights General	20.14
"P-17-ADO-ICPA"	31-Dec-09	Katong Lights General	38.57
"P-17-ADP-ICPA"	31-Dec-09	Katong Lights General	71.04
"P-17-ADQ-ICPA"	31-Dec-09	Katong Lights General	64.07
"P-17-ADR-ICPA"	31-Dec-09	Katong Lights General	60.54
"P-17-ADS-ICPA"	31-Dec-09	Katong Lights General	17.46
"P-17-ADT-ICPA"	31-Dec-09	Katong Lights General	10.07
"P-17-ADU-ICPA"	31-Dec-09	Katong Lights General	66.11
"P-17-ADV-ICPA"	31-Dec-09	Katong Lights General	70.39
"P-17-ADW-ICPA"	31-Dec-09	Katong Lights General	6.21
"P-17-ADX-ICPA"	31-Dec-09	Katong Lights General	121.39
"P-17-ADY-ICPA"	31-Dec-09	Katong Lights General	103.18
"P-17-ADZ-ICPA"	31-Dec-09	Katong Lights General	27.96
"P-17-AEA-ICPA"	31-Dec-09	Katong Lights General	52.07
"P-17-AEB-ICPA"	31-Dec-09	Katong Lights General	138.32
"P-17-AEC-ICPA"	31-Dec-09	Katong Lights General	69.32
"P-17-AED-ICPA"	31-Dec-09	Katong Lights General	71.25
"P-17-AEE-ICPA"	31-Dec-09	Katong Lights General	51.64
"P-17-AEW-ICPA"	14-Oct-09	King JR Security Agency	2,457.14
"P-17-AEX-ICPA"	29-Oct-09	King JR Security Agency	2,428.57
"P-17-AEY-ICPA"	26-Nov-09	King JR Security Agency	2,171.21
"P-17-AEZ-ICPA"	26-Nov-09	King JR Security Agency	2,171.43
"P-17-AFA-ICPA"	18-Dec-09	King JR Security Agency	1,828.57
"P-17-AFB-ICPA"	31-Dec-09	King JR Security Agency	2,457.14
"P-17-AHJ-ICPA"	30-Oct-09	Macro Vision Management	7,110.01

"P-17-AHK-ICPA"	30-Oct-09	Macro Vision Management	813.38
"P-17-AHL-ICPA"	11-Nov-09	Macro Vision Management	745.13
"P-17-AHM-ICPA"	17-Dec-09	Macro Vision Management	6,211.50
"P-17-AHN-ICPA"	17-Dec-09	Macro Vision Management	828.40
"P-17-AHO-ICPA"	19-Dec-09	Madonna C. Abo	83.57
"P-17-AHP-ICPA"	30-Oct-09	Madonna C. Abo	111.88
"P-17-AHQ-ICPA"	31-Oct-09	Madonna C. Abo	474.86
"P-17-AHR-ICPA"	13-Nov-09	Madonna C. Abo	116.14
"P-17-AJB-ICPA"	28-Oct-09	MERALCO	26,611.47
"P-17-AJC-ICPA"	28-Oct-09	MERALCO	7,251.20
"P-17-AJD-ICPA"	31-Oct-09	MERALCO	2,929.69
"P-17-AJE-ICPA"	30-Nov-09	MERALCO	31,762.39
"P-17-AJF-ICPA"	23-Nov-09	MERALCO	19,969.07
"P-17-AJG-ICPA"	23-Nov-09	MERALCO	8,312.41
"P-17-AJH-ICPA"	30-Nov-09	MERALCO	3,202.77
"P-17-AJI-ICPA"	31-Dec-09	MERALCO	32,242.04
"P-17-AJJ-ICPA"	28-Dec-09	MERALCO	8,254.20
"P-17-AJK-ICPA"	28-Dec-09	MERALCO	21,214.99
"P-17-AJL-ICPA"	31-Dec-09	MERALCO	3,252.88
"P-17-AKC-ICPA"	22-Oct-09	Manuel S. Santos	222.86
"P-17-AKD-ICPA"	31-Dec-09	Marina Sales, Inc.	987.97
"P-17-AKL-ICPA"	30-Oct-09	Maynilad Water Service	31,222.92
"P-17-AKM-ICPA"	25-Nov-09	Maynilad Water Service	35,827.10
"P-17-AKP-ICPA"	18-Dec-09	Metro Construction Inc.	14,095.26
"P-17-AKZ-ICPA"	12-Oct-09	Nestor Viceral	308.57
"P-17-ALA-ICPA"	12-Oct-09	Nestor Viceral	308.57
"P-17-ALB-ICPA"	6-Nov-09	Nestor Viceral	308.57
"P-17-ALC-ICPA"	7-Dec-09	Nestor Viceral	308.57
"P-17-ALD-ICPA"	31-Dec-09	Newest Grocery & Cold	1,648.39
"P-17-ALZ-ICPA"	30-Oct-09	Noel Acullador	668.57
"P-17-AMA-ICPA"	11-Nov-09	Noel Acullador	36.43
"P-17-AMB-ICPA"	8-Dec-09	Noel Acullador	29.57
"P-17-AMU-ICPA"	28-Oct-09	Pangasinan Electric Coop	13,385.28
"P-17-AMV-ICPA"	23-Nov-09	Pangasinan Electric Coop	15,335.12
"P-17-AMW-ICPA"	28-Dec-09	Pangasinan Electric Coop	13,221.71
"P-17-APE-ICPA"	8-Oct-09	PLDT	478.77
"P-17-APF-ICPA"	8-Oct-09	PLDT	600.41
"P-17-APG-ICPA"	30-Oct-09	PLDT	457.35
"P-17-APH-ICPA"	30-Oct-09	PLDT	631.09
"P-17-API-ICPA"	30-Oct-09	PLDT	1,174.30
"P-17-APJ-ICPA"	12-Oct-09	PLDT	681.54
"P-17-APK-ICPA"	12-Oct-09	PLDT	208.87
"P-17-APL-ICPA"	23-Nov-09	PLDT	389.30
"P-17-APM-ICPA"	30-Nov-09	PLDT	625.37
"P-17-APN-ICPA"	30-Nov-09	PLDT	531.51
"P-17-APO-ICPA"	16-Nov-09	PLDT	163.30
"P-17-APP-ICPA"	16-Nov-09	PLDT	691.90
"P-17-APQ-ICPA"	10-Dec-09	PLDT	368.99
"P-17-APR-ICPA"	15-Dec-09	PLDT	604.10

"P-17-APS-ICPA"	31-Dec-09	PLDT	368.78
"P-17-APT-ICPA"	31-Dec-09	PLDT	617.46
"P-17-APU-ICPA"	16-Dec-09	PLDT	631.09
"P-17-AQO-ICPA"	12-Oct-09	RJC Security and Investigation Agency	5,072.57
"P-17-AQP-ICPA"	26-Oct-09	RJC Security and Investigation Agency	5,091.43
"P-17-AQQ-ICPA"	12-Nov-09	RJC Security and Investigation Agency	5,430.86
"P-17-AQR-ICPA"	27-Nov-09	RJC Security and Investigation Agency	5,091.43
"P-17-AQS-ICPA"	11-Dec-09	RJC Security and Investigation Agency	5,006.57
"P-17-ARM-ICPA"	11-Nov-09	Toyota Shaw Inc.	93,535.71
"P-17-ARN-ICPA"	18-Nov-09	Toyota Shaw Inc.	918.92
"P-17-ARO-ICPA"	23-Nov-09	YUSC Commercial	181.07
"P-17-ARP-ICPA"	23-Nov-09	YUSC Commercial	163.93
"P-17-ARQ-ICPA"	23-Nov-09	YUSC Commercial	264.54
		sub-total	***₱ 2,008,304.79***
Total			**₱ 2,417,010.07**

Upon further scrutiny of the related documents of the above input VAT, the Court finds that the total amount of ₱1,990,855.56 is supported by invoices and/or official receipts which do not comply with the invoicing and accounting requirements under Sections 110(A) and 113(A) and (B) of the NIRC of 1997, as amended by RA 9337, and as implemented by Sections 4.110-2, 4.110-8 and 4.113-1 of Revenue Regulations No. 16-05, to wit:

Exhibit	Date	Supplier's Name	Input VAT
A. Input VAT on purchase of capital goods exceeding ₱1 Million			
Input VAT supported by VAT Official Receipt but the amount of Input VAT is not separately indicated			
"P-17-AKQ-ICPA"	7-Dec-09	Metro Construction, Inc.	₱ 253,348.14
		subtotal	**253,348.14**
B. Input VAT on purchases of goods other than capital goods			
1. Input VAT supported by Non-VAT Receipts			
"P-17-J-ICPA"	8-Oct-09	Alaminos City Water District	₱ 6,245.30
"P-17-K-ICPA"	12-Nov-09	Alaminos City Water District	6,336.18
"P-17-L-ICPA"	10-Dec-09	Alaminos City Water District	6,431.39
"P-17-M-ICPA"	31-Dec-09	Alaminos City Water District	6,548.24
		subtotal	**₱ 25,561.11**
2. Input VAT supported by VAT Official Receipts/Invoices but issued not in the name of the Petitioner			
"P-17-Q-ICPA"	14-Oct-09	Alex's Construction and Supply	₱ 618.21
"P-17-R-ICPA"	15-Dec-09	Alex's Construction and Supply	1,446.43
"P-17-S-ICPA"	17-Dec-09	Alex's Construction and Supply	642.86
"P-17-HY-ICPA"	20-Oct-09	Crisanto M. Ferreria (Liquidation)	38.36
"P-17-HZ-ICPA"	30-Oct-09	Crisanto M. Ferreria (Liquidation)	64.82
"P-17-IA-ICPA"	10-Nov-09	Crisanto M. Ferreria (Liquidation)	4.5
"P-17-SJ-ICPA"	12-Oct-09	Imeson Hardware & Construction Supply	840.32
"P-17-SK-ICPA"	23-Oct-09	Imeson Hardware & Construction Supply	392.14
"P-17-SL-ICPA"	26-Oct-09	Imeson Hardware & Construction Supply	990

"P-17-SN-ICPA"	31-Oct-09	Imeson Hardware & Construction Supply	414.64
"P-17-SP-ICPA"	14-Dec-09	Imeson Hardware & Construction Supply	326.79
"P-17-SR-ICPA"	17-Dec-09	Imeson Hardware & Construction Supply	347.68
"P-17-YK-ICPA"	14-Oct-09	Jesus Gabriel N. Bufet (Liquidation)	119.14
"P-17-YL-ICPA"	14-Oct-09	Jesus Gabriel N. Bufet (Liquidation)	968.67
"P-17-YM-ICPA"	14-Oct-09	Jesus Gabriel N. Bufet (Liquidation)	1,144.66
"P-17-YN-ICPA"	19-Oct-09	Jesus Gabriel N. Bufet (Liquidation)	389.78
"P-17-YO-ICPA"	19-Oct-09	Jesus Gabriel N. Bufet (Liquidation)	1,037.17
"P-17-YP-ICPA"	23-Oct-09	Jesus Gabriel N. Bufet (Liquidation)	257.14
"P-17-YQ-ICPA"	26-Oct-09	Jesus Gabriel N. Bufet (Liquidation)	296.47
"P-17-YR-ICPA"	26-Oct-09	Jesus Gabriel N. Bufet (Liquidation)	516.2
"P-17-YS-ICPA"	27-Oct-09	Jesus Gabriel N. Bufet (Liquidation)	299.25
"P-17-YT-ICPA"	28-Oct-09	Jesus Gabriel N. Bufet (Liquidation)	400.18
"P-17-YU-ICPA"	29-Oct-09	Jesus Gabriel N. Bufet (Liquidation)	353.01
"P-17-YV-ICPA"	31-Oct-09	Jesus Gabriel N. Bufet (Liquidation)	139.29
"P-17-YW-ICPA"	6-Nov-09	Jesus Gabriel N. Bufet (Liquidation)	308.57
"P-17-YX-ICPA"	6-Nov-09	Jesus Gabriel N. Bufet (Liquidation)	294.14
"P-17-YY-ICPA"	6-Nov-09	Jesus Gabriel N. Bufet (Liquidation)	801.76
"P-17-YZ-ICPA"	6-Nov-09	Jesus Gabriel N. Bufet (Liquidation)	592.5
"P-17-ZA-ICPA"	12-Nov-09	Jesus Gabriel N. Bufet (Liquidation)	228.35
"P-17-ZB-ICPA"	12-Nov-09	Jesus Gabriel N. Bufet (Liquidation)	85.39
"P-17-ZC-ICPA"	12-Nov-09	Jesus Gabriel N. Bufet (Liquidation)	122.14
"P-17-ZD-ICPA"	16-Nov-09	Jesus Gabriel N. Bufet (Liquidation)	960.78
"P-17-ZE-ICPA"	16-Nov-09	Jesus Gabriel N. Bufet (Liquidation)	197.89
"P-17-ZF-ICPA"	16-Nov-09	Jesus Gabriel N. Bufet (Liquidation)	158.04
"P-17-ZG-ICPA"	16-Nov-09	Jesus Gabriel N. Bufet (Liquidation)	162.11
"P-17-ZH-ICPA"	18-Nov-09	Jesus Gabriel N. Bufet (Liquidation)	64.34
"P-17-ZI-ICPA"	23-Nov-09	Jesus Gabriel N. Bufet (Liquidation)	299.25
"P-17-ZJ-ICPA"	23-Nov-09	Jesus Gabriel N. Bufet (Liquidation)	808.29
"P-17-ZK-ICPA"	24-Nov-09	Jesus Gabriel N. Bufet (Liquidation)	181.45
"P-17-ZL-ICPA"	26-Nov-09	Jesus Gabriel N. Bufet (Liquidation)	182.14
"P-17-ZM-ICPA"	30-Nov-09	Jesus Gabriel N. Bufet (Liquidation)	259.18
"P-17-ZN-ICPA"	30-Nov-09	Jesus Gabriel N. Bufet (Liquidation)	250.68
"P-17-ZO-ICPA"	30-Nov-09	Jesus Gabriel N. Bufet (Liquidation)	114.91
"P-17-ZP-ICPA"	30-Nov-09	Jesus Gabriel N. Bufet (Liquidation)	637.98
"P-17-ZQ-ICPA"	30-Nov-09	Jesus Gabriel N. Bufet (Liquidation)	390.87
"P-17-ZR-ICPA"	7-Dec-09	Jesus Gabriel N. Bufet (Liquidation)	112.59
"P-17-ZS-ICPA"	15-Dec-09	Jesus Gabriel N. Bufet (Liquidation)	391.29
"P-17-ZT-ICPA"	15-Dec-09	Jesus Gabriel N. Bufet (Liquidation)	105.08
"P-17-ZU-ICPA"	17-Dec-09	Jesus Gabriel N. Bufet (Liquidation)	623.46
"P-17-ZV-ICPA"	17-Dec-09	Jesus Gabriel N. Bufet (Liquidation)	157.61
"P-17-ZW-ICPA"	22-Dec-09	Jesus Gabriel N. Bufet (Liquidation)	454.71
"P-17-ZX-ICPA"	22-Dec-09	Jesus Gabriel N. Bufet (Liquidation)	79.82
"P-17-ZZ-ICPA"	28-Dec-09	Jesus Gabriel N. Bufet (Liquidation)	298.85
"P-17-AAA-ICPA"	28-Dec-09	Jesus Gabriel N. Bufet (Liquidation)	113.69
"P-17-AAB-ICPA"	29-Dec-09	Jesus Gabriel N. Bufet (Liquidation)	632.85
"P-17-AAC-ICPA"	29-Dec-09	Jesus Gabriel N. Bufet (Liquidation)	535.58
"P-17-AAD-ICPA"	31-Dec-09	Jesus Gabriel N. Bufet (Liquidation)	200
"P-17-AAE-ICPA"	31-Dec-09	Jesus Gabriel N. Bufet (Liquidation)	227.25
"P-17-AAH-ICPA"	7-Oct-09	K&I Petron Service Center	411.06
"P-17-AKC-ICPA"	22-Oct-09	Manuel L Santos (Liquidation)	222.86
		subtotal	**₱ 23,715.17**

3. Input VAT supported by Documents other than VAT Official Receipts/VAT Invoices			
"P-17-QX-ICPA"	30-Nov-09	Hi Eles Industrial Corporation	₱ 332.14
"P-17-QY-ICPA"	28-Dec-09	Hi Eles Industrial Corporation	332.14
"P-17-APE-ICPA"	8-Oct-09	PLDT	478.77
"P-17-APF-ICPA"	8-Oct-09	PLDT	600.41
"P-17-APG-ICPA"	30-Oct-09	PLDT	457.35
"P-17-API-ICPA"	30-Oct-09	PLDT	1,174.30
"P-17-APJ-ICPA"	12-Oct-09	PLDT	681.54
"P-17-APK-ICPA"	12-Oct-09	PLDT	208.87
"P-17-APL-ICPA"	23-Nov-09	PLDT	389.3
"P-17-APN-ICPA"	30-Nov-09	PLDT	531.51
"P-17-APO-ICPA"	16-Nov-09	PLDT	163.3
"P-17-APP-ICPA"	16-Nov-09	PLDT	691.9
"P-17-APQ-ICPA"	10-Dec-09	PLDT	368.99
"P-17-APR-ICPA"	15-Dec-09	PLDT	604.1
"P-17-APS-ICPA"	31-Dec-09	PLDT	368.78
"P-17-APT-ICPA"	31-Dec-09	PLDT	617.46
"P-17-APU-ICPA"	16-Dec-09	PLDT	631.09
"P-17-AHN-ICPA"	17-Dec-09	Macro Vision Management & Gen. Services Co.	828.4
		subtotal	**₱ 9,460.35**
4. Input VAT supported by VAT Official Receipts/Invoices but the amount of Input VAT is not separately indicated			
"P-17-DZ-ICPA"	17-Nov-09	Asian Dynasty Import-Export Corp.	₱ 3,214.29
"P-17-EG-ICPA"	15-Oct-09	Atty. Raul L. Lambino	6,024.00
"P-17-EH-ICPA"	19-Nov-09	Atty. Raul L. Lambino	1,968.00
"P-17-EI-ICPA"	15-Dec-09	Atty. Raul L. Lambino	720
"P-17-EJ-ICPA"	17-Dec-06	Atty. Raul L. Lambino	4,176.00
"P-17-EK-ICPA"	31-Dec-09	Atty. Raul L. Lambino	6,054.00
"P-17-GY-ICPA"	23-Nov-09	Cesar L. Hulleza Jr. (Liquidation)	160.71
"P-17-GZ-ICPA"	26-Nov-09	Cesar L. Hulleza Jr. (Liquidation)	306.43
"P-17-IB-ICPA"	13-Nov-09	Crisanto M. Ferreria (Liquidation)	145.72
"P-17-IC-ICPA"	27-Nov-09	Crisanto M. Ferreria (Liquidation)	237.43
"P-17-ID-ICPA"	11-Dec-09	Crisanto M. Ferreria (Liquidation)	438.21
"P-17-IE-ICPA"	14-Dec-09	Crisanto M. Ferreria (Liquidation)	231.86
"P-17-IN-ICPA"	14-Oct-09	DC Electric Contractors Inc.	20,864.04
"P-17-JQ-ICPA"	29-Oct-09	EFF Builders Corporation	5,092.89
"P-17-JR-ICPA"	23-Nov-09	EFF Builders Corporation	5,653.84
"P-17-JS-ICPA"	30-Nov-09	EFF Builders Corporation	5,456.03
"P-17-JT-ICPA"	30-Nov-09	EFF Builders Corporation	5,058.05
"P-17-JU-ICPA"	31-Dec-09	EFF Builders Corporation	5,494.49
"P-17-JV-ICPA"	31-Dec-09	EFF Builders Corporation	5,037.58
"P-17-KI-ICPA"	1-Oct-09	Elizardo M. Almendrala	15,944.05
"P-17-KJ-ICPA"	3-Nov-09	Elizardo M. Almendrala	15,944.05
"P-17-KK-ICPA"	1-Dec-09	Elizardo M. Almendrala	15,944.05
"P-17-KT-ICPA"	16-Oct-09	Enrich Plastic Product	1,904.46
"P-17-KU-ICPA"	15-Oct-09	Enrich Plastic Product	1,816.07
"P-17-KV-ICPA"	9-Nov-09	Enrich Plastic Product	2,582.14
"P-17-KW-ICPA"	7-Dec-09	Enrich Plastic Product	2,239.29
"P-17-LG-ICPA"	3-Oct-09	ESP General Merchandise	9,107.14
"P-17-LH-ICPA"	23-Nov-09	ESP General Merchandise	9,107.14
"P-17-LI-ICPA"	22-Dec-09	ESP General Merchandise	9,107.14
"P-17-LO-ICPA"	20-Oct-09	EUVA Trading	1,715.25

"P-17-OU-ICPA"	15-Oct-09	Globe Telecom, Inc.	148.73
"P-17-OV-ICPA"	15-Oct-09	Globe Telecom, Inc.	191.8
"P-17-OW-ICPA"	15-Oct-09	Globe Telecom, Inc.	91.07
"P-17-OX-ICPA"	15-Oct-09	Globe Telecom, Inc.	231.15
"P-17-OY-ICPA"	15-Oct-09	Globe Telecom, Inc.	163.37
"P-17-OZ-ICPA"	15-Oct-09	Globe Telecom, Inc.	123.21
"P-17-PA-ICPA"	15-Oct-09	Globe Telecom, Inc.	156.48
"P-17-PB-ICPA"	15-Oct-09	Globe Telecom, Inc.	109.24
"P-17-PC-ICPA"	18-Nov-09	Globe Telecom, Inc.	91.07
"P-17-PD-ICPA"	18-Nov-09	Globe Telecom, Inc.	228.85
"P-17-PE-ICPA"	18-Nov-09	Globe Telecom, Inc.	210.36
"P-17-PF-ICPA"	18-Nov-09	Globe Telecom, Inc.	123.21
"P-17-PG-ICPA"	18-Nov-09	Globe Telecom, Inc.	138.21
"P-17-PH-ICPA"	19-Nov-09	Globe Telecom, Inc.	91.34
"P-17-PI-ICPA"	19-Nov-09	Globe Telecom, Inc.	148.61
"P-17-PJ-ICPA"	19-Nov-09	Globe Telecom, Inc.	359.96
"P-17-PK-ICPA"	19-Nov-09	Globe Telecom, Inc.	136.73
"P-17-PL-ICPA"	21-Dec-09	Globe Telecom, Inc.	91.07
"P-17-PM-ICPA"	21-Dec-09	Globe Telecom, Inc.	221.96
"P-17-PN-ICPA"	21-Dec-09	Globe Telecom, Inc.	186.44
"P-17-PO-ICPA"	21-Dec-09	Globe Telecom, Inc.	91.07
"P-17-PP-ICPA"	21-Dec-09	Globe Telecom, Inc.	187.12
"P-17-PQ-ICPA"	21-Dec-09	Globe Telecom, Inc.	206.05
"P-17-PR-ICPA"	21-Dec-09	Globe Telecom, Inc.	123.21
"P-17-PS-ICPA"	21-Dec-09	Globe Telecom, Inc.	128.38
"P-17-PT-ICPA"	21-Dec-09	Globe Telecom, Inc.	128.52
"P-17-PU-ICPA"	31-Dec-09	Globe Telecom, Inc.	91.63
"P-17-PV-ICPA"	31-Dec-09	Globe Telecom, Inc.	156.35
"P-17-PW-ICPA"	31-Dec-09	Globe Telecom, Inc.	382.87
"P-17-PX-ICPA"	31-Dec-09	Globe Telecom, Inc.	91.07
"P-17-PY-ICPA"	31-Dec-09	Globe Telecom, Inc.	242.02
"P-17-PZ-ICPA"	31-Dec-09	Globe Telecom, Inc.	123.21
"P-17-QA-ICPA"	31-Dec-09	Globe Telecom, Inc.	142.71
"P-17-QB-ICPA"	31-Dec-09	Globe Telecom, Inc.	97.5
"P-17-QU-ICPA"	30-Oct-09	Hi Eles Industrial Corporation	2,398.28
"P-17-QV-ICPA"	30-Oct-09	Hi Eles Industrial Corporation	310.71
"P-17-QW-ICPA"	30-Oct-09	Hi Eles Industrial Corporation	332.14
"P-17-SA-ICPA"	18-Nov-09	Hundred Islands Service Station	498.17
"P-17-ZY-ICPA"	28-Dec-09	Jesus Gabriel N. Bufet (Liquidation)	357.75
"P-17-ADE-ICPA"	26-Oct-09	Katong Lights General Mdse. & Hardware	57.32
"P-17-ADF-ICPA"	26-Oct-09	Katong Lights General Mdse. & Hardware	58.07
"P-17-ADG-ICPA"	26-Oct-09	Katong Lights General Mdse. & Hardware	103.39
"P-17-ADH-ICPA"	26-Oct-09	Katong Lights General Mdse. & Hardware	80.46
"P-17-ADI-ICPA"	10-Nov-09	Katong Lights General Mdse. & Hardware	81
"P-17-ADJ-ICPA"	10-Nov-09	Katong Lights General Mdse. & Hardware	137.57
"P-17-ADK-ICPA"	10-Nov-09	Katong Lights General Mdse. & Hardware	37.18
"P-17-ADL-ICPA"	10-Nov-09	Katong Lights General Mdse. & Hardware	81.21
"P-17-ADM-ICPA"	10-Nov-09	Katong Lights General Mdse. & Hardware	233.46
"P-17-ADN-ICPA"	10-Nov-09	Katong Lights General Mdse. & Hardware	20.14
"P-17-ADO-ICPA"	31-Dec-09	Katong Lights General Mdse. & Hardware	38.57
"P-17-ADP-ICPA"	31-Dec-09	Katong Lights General Mdse. & Hardware	71.04
"P-17-ADQ-ICPA"	31-Dec-09	Katong Lights General Mdse. & Hardware	64.07

"P-17-ADR-ICPA"	31-Dec-09	Katong Lights General Mdse. & Hardware	60.54
"P-17-ADS-ICPA"	31-Dec-09	Katong Lights General Mdse. & Hardware	17.46
"P-17-ADT-ICPA"	31-Dec-09	Katong Lights General Mdse. & Hardware	10.07
"P-17-ADU-ICPA"	31-Dec-09	Katong Lights General Mdse. & Hardware	66.11
"P-17-ADV-ICPA"	31-Dec-09	Katong Lights General Mdse. & Hardware	70.39
"P-17-ADW-ICPA"	31-Dec-09	Katong Lights General Mdse. & Hardware	6.21
"P-17-ADX-ICPA"	31-Dec-09	Katong Lights General Mdse. & Hardware	121.39
"P-17-ADY-ICPA"	31-Dec-09	Katong Lights General Mdse. & Hardware	103.18
"P-17-ADZ-ICPA"	31-Dec-09	Katong Lights General Mdse. & Hardware	27.96
"P-17-AEA-ICPA"	31-Dec-09	Katong Lights General Mdse. & Hardware	52.07
"P-17-AEB-ICPA"	31-Dec-09	Katong Lights General Mdse. & Hardware	138.32
"P-17-AEC-ICPA"	31-Dec-09	Katong Lights General Mdse. & Hardware	69.32
"P-17-AED-ICPA"	31-Dec-09	Katong Lights General Mdse. & Hardware	71.25
"P-17-AEE-ICPA"	31-Dec-09	Katong Lights General Mdse. & Hardware	51.64
"P-17-AEW-ICPA"	14-Oct-09	Kings JR Security Agency & Gen. Services	2,457.14
"P-17-AEX-ICPA"	29-Oct-09	Kings JR Security Agency & Gen. Services	2,428.57
"P-17-AEY-ICPA"	26-Nov-09	Kings JR Security Agency & Gen. Services	2,171.21
"P-17-AEZ-ICPA"	26-Nov-09	Kings JR Security Agency & Gen. Services	2,171.43
"P-17-AFA-ICPA"	18-Dec-09	Kings JR Security Agency & Gen. Services	1,828.57
"P-17-AFB-ICPA"	31-Dec-09	Kings JR Security Agency & Gen. Services	2,457.14
"P-17-AHJ-ICPA"	30-Oct-09	Macro Vision Management & Gen. Services Co.	7,110.01
"P-17-AHK-ICPA"	30-Oct-09	Macro Vision Management & Gen. Services Co.	813.38
"P-17-AHL-ICPA"	11-Nov-09	Macro Vision Management & Gen. Services Co.	745.13
"P-17-AHM-ICPA"	17-Dec-09	Macro Vision Management & Gen. Services Co.	6,211.50
"P-17-AHO-ICPA"	19-Oct-09	Gap Graphix and Print Corp.	83.57
"P-17-AHQ-ICPA"	31-Oct-09	C Dot Nova Enterprises	474.86
"P-17-AHR-ICPA"	13-Nov-09	Gap Graphix and Print Corp.	116.14
"P-17-AJE-ICPA"	30-Nov-09	MERALCO	31,762.39
"P-17-AKP-ICPA"	18-Dec-09	Metro Construction, Inc.	14,095.26
"P-17-AKY-ICPA"	12-Oct-09	Nestor Viceral	308.57
"P-17-AKZ-ICPA"	12-Oct-09	Nestor Viceral	308.57
"P-17-ALA-ICPA"	6-Nov-09	Nestor Viceral	308.57
"P-17-ALB-ICPA"	7-Dec-09	Nestor Viceral	308.57
"P-17-ALZ-ICPA"	30-Oct-09	Noel Acullador	668.57
"P-17-AMA-ICPA"	11-Nov-09	Noel Acullador	36.43
"P-17-AMB-ICPA"	8-Dec-09	Noel Acullador	29.57
"P-17-APH-ICPA"	30-Oct-09	PLDT	631.09
"P-17-AQO-ICPA"	12-Oct-09	RJC Security & Investigation Agency	5,072.57
"P-17-AQP-ICPA"	26-Oct-09	RJC Security & Investigation Agency	5,091.43
"P-17-AQQ-ICPA"	12-Nov-09	RJC Security & Investigation Agency	5,430.86
"P-17-AQR-ICPA"	27-Nov-09	RJC Security & Investigation Agency	5,091.43
"P-17-AQS-ICPA"	11-Dec-09	RJC Security & Investigation Agency	5,006.57
"P-17-ARO-ICPA"	23-Nov-09	YUSC Commercial	181.07
"P-17-ARP-ICPA"	23-Nov-09	YUSC Commercial	163.93
"P-17-ARQ-ICPA"	23-Nov-09	YUSC Commercial	264.54
		subtotal	**₱ 276,834.00**
5. Input VAT supported by VAT Official Receipts/Invoices but issued not in the name of the Petitioner and the amount of Input VAT is not separately indicated			
"P-17-O-ICPA"	14-Oct-09	Alex's Construction and Supply	₱ 857.14
"P-17-P-ICPA"	14-Oct-09	Alex's Construction and Supply	857.14
"P-17-UZ-ICPA"	3-Dec-09	Jeciadryl Trading	171.43
		subtotal	**₱ 1,885.71**

6. Input VAT supported by Sworn Statements executed by the Supplier			
"P-17-CG-ICPA" to "P-17-DV-ICPA"	Various Dates	Various Suppliers	₱ 1,299,920.46
"P-17-ARM-ICPA"	11-Nov-09	Toyota Shaw, Inc.	93,535.71
"P-17-ARN-ICPA"	18-Nov-09	Toyota Shaw, Inc.	918.92
		subtotal	**₱ 1,394,375.09**
7. Input VAT supported by documents not found in the records			
	12-Oct-09	Dinlys Industrial Sale	₱ 96.11
	6-Nov-09	Dinlys Industrial Sale	209.14
	7-Dec-09	Dinlys Industrial Sale	90.21
	19-Oct-09	EFF Builders Corporation	5,280.53
		subtotal	**₱ 5,675.99**
		TOTAL	₱ 1,737,507.42
GRAND TOTAL			**₱ 1,990,855.56**

Consequently, for petitioner's failure to meet the substantiation requirements provided by law, the input VAT of ₱1,899,993.29, as computed below, shall be disallowed as input tax credits:

Without supporting documents (representing the difference between the amount declared in the quarterly VAT Return and per Schedule of Input VAT)		₱ 149,818.46
Input VAT on purchases of goods other than capital goods		1,737,507.42
Input VAT on purchases of capital goods exceeding ₱1Million	₱ 253,348.14	
Less: Unamortized input VAT on purchases of capital goods exceeding ₱1Million (₱253,348.14/60 months x 57 months)	240,680.73	12,667.41
Total		**₱ 1,899,993.29**

4. Excess Input Tax carried over to the next quarter – ₱690,857.89

Respondent disallowed petitioner's excess input tax carried over to succeeding quarter of ₱690,857.89 considering that the said amount has been credited against the estimated quarterly tax liabilities for the taxable quarter of the succeeding taxable years pursuant to Section 110(B) of the NIRC of 1997, as amended.

However, the Court finds that it is improper for respondent to disallow the excess input tax carried over to the next quarter, because said amount has been credited against the estimated quarterly tax liabilities for the taxable quarter of the succeeding taxable years. As such, it is beyond the scope of the present assessment. Since the tax benefit will be in the succeeding year, at most, petitioner may only be assessed in the succeeding year. Thus, said amount should be removed from the computation of deficiency VAT.

In sum, petitioner shall be held liable for basic deficiency VAT in the amount of ₱1,209,135.40, computed as follows:

Sales subject to VAT per VAT Returns		₱ 81,380,273.72
Output Tax		₱ 9,765,632.85
Less: Input Tax Credits		
Input Tax Carry Over	₱ 20,024.56	
Claimed Input Tax	5,755,340.99	
Total	5,775,365.55	
Less: Disallowed Input Tax	1,899,993.29	3,875,372.26
VAT Payable		5,890,260.59
Less: Payments per Return		4,681,125.19
Basic Deficiency VAT		**₱ 1,209,135.40**

C. **DEFICIENCY EXPANDED WITHHOLDING TAX – ₱867,496.87**

As discussed in the applicability of the 10-year prescriptive period *vis-a-vis* the EWT deficiency assessment, the Court finds it proper to disallow the above income payments as deduction from petitioner's gross income for its failure to withhold taxes thereon. Consequently, the deficiency EWT assessment of respondent against petitioner shall be sustained.

In view thereof, the Petition for Review is **PARTIALLY GRANTED**. Accordingly, petitioner is liable to **PAY** the adjusted total amount of ₱6,406,869.78, inclusive of the 25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, computed as follows:

Tax Type	Basic	25% Surcharge	Total
Income Tax	₱ 3,048,863.55	₱ 762,215.89	₱ 3,811,079.44
Value Added Tax	1,209,135.40	302,283.85	1,511,419.25
Expanded Withholding Tax	867,496.87	216,874.22	1,084,371.09
TOTAL	**₱ 5,125,495.82**	**₱ 1,281,373.96**	**₱ 6,406,869.78**

In addition, petitioner is liable to pay:

a) Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency taxes computed from the dates

indicated below until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended:

Tax Type	Basic Tax Due	20% Deficiency Interest Computed from:
Income Tax	₱ 3,048,863.55	15-Apr-2010
Value-Added Tax	1,209,135.40	25-Jan-2010
Expanded Withholding Tax	867,496.87	13-Jan-2010

b) Delinquency interest at the rate of twenty percent (20%) per annum on the total deficiency taxes of ₱6,406,869.78 and on the deficiency interest which have accrued as aforementioned in (a), computed from August 26, 2014 until full payment thereof pursuant to Section 249(C)(3) of the NIRC of 1997, as amended.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

(With Concurring and Dissenting Opinion)
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

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

ITHIEL CORPORATION,
Petitioner,

CTA Case No. 8872

-versus-

Members:

CASTAÑEDA, JR., *Chairperson*
CASANOVA, *and*
MANAHAN, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
FEB 23 2017
1:00 p.m.

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Court of Tax Appeals (Aznar)[1]. In Aznar, the taxpayer was assessed with deficiency income tax for six consecutive taxable years due to his gross under-declaration of taxable income. These substantial under-declarations were noted by the Supreme Court and were made the *indicia* of the falsity of income tax returns. The Supreme Court went on to state that the "very substantial under-declarations of income for six consecutive years eloquently demonstrate the falsity or fraudulence of the income tax returns with an intent to evade the payment of tax." Furthermore, the Supreme Court expounded on the concept of false returns as being distinct from fraudulent returns with intent to evade taxes, as follows:

> We believe that the proper and reasonable interpretation of said provision should be that in the three different cases of (1) false return, (2) fraudulent return with intent to evade tax, (3) failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within ten years after the discovery of the (1) falsity, (2) fraud, (3) omission. Our stand that the law should be interpreted to mean a separation of the three different situations of false return, fraudulent return with intent to evade tax, and failure to file a return is strengthened immeasurably by the last portion of the provision which segregates the situations into three different classes, namely – 'falsity,' 'fraud[,]' and 'omission.' That there is a difference between 'false return' and 'fraudulent return' cannot be denied. While the first merely implies deviation from the truth, whether intentional or not, the second implies intentional or deceitful entry with intent to evade the taxes due. (Underscoring supplied)

Based on this decision, the Supreme Court and the Court of Tax Appeals (CTA) has categorized wrongful entries, intentional or unintentional, or mistakes made, whether in good faith or in bad faith, appearing on the face of tax returns, as "falsity" which constitutes a legal ground for the imposition of the ten-year period of prescription.

Almost 25 years later, the Supreme Court promulgated Commissioner of Internal Revenue v. B.F. Goodrich Phils. Inc. (Goodrich)[2], which shows a softening of the Supreme Court's

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[1] G.R. No. L-20569, August 23, 1974.
[2] G.R. No. 104171, February 24, 1999.

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stance on the scope and coverage of "false return" as compared to the position in Aznar.

In Goodrich, the taxpayer sold a piece of real property at a price which was lower than its declared fair market value. The Bureau of Internal Revenue (BIR) insisted that "falsity" was committed thereby justifying the issuance of the assessment beyond the normal three-year prescriptive period. In finding that the assessment had prescribed, the Supreme Court commented on the issue of falsity, as follows:

> Petitioner insists that private respondent committed "falsity" when it sold the property for a price lesser than its declared fair market value. This fact alone did not constitute a false return which contains wrong information due to mistake, carelessness or ignorance. It is possible that real property may be sold for less than adequate consideration for a *bona fide* business purpose; in such event, the sale remains an "arm's length" transaction. In the present case, the private respondent was compelled to sell the property even at a price less than its fair market value, because it would have lost all ownership rights over it upon the expiration of the parity amendment. xxx
>
> Furthermore, the fact that private respondent sold its real property for a price less than its declared fair market value did not by itself justify a finding of false return. Indeed, private respondent declared the sale in its 1974 return submitted to the BIR. Within the five-year prescriptive period [now, three-year prescriptive period], the BIR could have issued the questioned assessment, because the declared fair market value of the said property was of public record. This it did not do, however, during all those five years. Moreover, the BIR failed to prove that respondent's 1974 return had been filed fraudulently. Equally significant was its failure to prove respondent's intent to evade the payment of the correct amount of tax. (Underscoring supplied)

While Aznar and Goodrich have radically different factual milieus, both these cases impacted on how "false returns" are defined. From the broad Aznar definition that a false return is any deviation from the truth, Goodrich provided an instance wherein a "deviation" from the truth as found by the BIR, did not automatically render the return as a "false return" which would justify the application of the ten-year prescriptive period.

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Furthermore, in Goodrich, the Supreme Court required that the BIR prove the presence of fraudulent intent or intent to evade payment of the correct amount of tax on the part of the taxpayer. The Supreme Court also found that the BIR could have issued the assessment within the ordinary prescriptive period considering that the declared fair market value was in the public record. In Goodrich, the "deviation" did not put the BIR at a disadvantage in issuing its assessment, as opposed to the situation in Aznar which involved exorbitant under-declarations for six consecutive years which could not have been easily traced from the returns itself.

This is consistent with the statement in Aznar:

> The ordinary period of prescription of 5 years within which to assess tax liabilities under Sec. 331 of the NIRC should be applicable in normal circumstances, but <u>whenever the government is placed at a disadvantage so as to prevent its lawful agents from proper assessment of tax liabilities due to false returns, fraudulent return intended to evade payment of tax or failure to file returns, the period of ten years...from the time of the discovery of the falsity, fraud or omission...should be the one enforced</u>. (Underscoring supplied)

Thus, as early as Aznar, a qualification had been made that there should be a disadvantage to the government agents resulting from falsity, fraud or omission, which would prevent said agents from assessing the tax within the ordinary period of prescription. Without such disadvantage, the normal three-year prescriptive period should apply.

It is interesting to note that even prior to Goodrich, the CTA, in 1995, had also recognized this limitation in Aznar, to wit:

> Respondent also contends in the alternative, that petitioner's omission of its sales of bottled and tetra-packed milk from its sales tax return rendered said returns "false" within the meaning of Section 223 of the Tax Code. In support of this, reliance is placed on the ruling in the case of Aznar vs. Court of Tax Appeals (58 SCRA 519), wherein it was held that the term "false return" merely implied a deviation from truth, irrespective of whether such omission is intentional or not. Thus, respondent argues, since petitioner's sales tax returns did not disclose the "truth" regarding its sales of

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> bottled and tetra-packed milk to outlets other than the Armed Forces of the Philippines Commissary and Exchange Services (AFPCES) and the US Military Installations (USMI), such omission rendered said returns "false" within the contemplation of Section 223 of the Tax Code.
>
> We find respondent's reliance on Aznar misplaced. There is nothing in the said case which establishes a hard and fast rule that every "deviation" from the truth necessarily brings a particular return under the coverage of Section 223 of the Tax Code. As pointed out by the petitioner, it is only where the falsity or "deviation" would place the government at a disadvantage so as to prevent the assessment and collection of the correct amount of taxes that the ordinary prescriptive period...should not be applied.[3] (Underscoring supplied)

The application of Aznar and Goodrich must always be in light of the purpose and rationale for providing a prescriptive period.

> It must be kept in mind that the very reason why the law provided for prescription is to give taxpayers peace of mind, that is, to safeguard them from unreasonable examination, investigation, or assessment. The law on prescription, being a remedial measure, should be liberally construed in order to afford such protection. As a corollary, the exceptions to the law on prescription should perforce be strictly construed.[4]

Guided by the foregoing, the application of Aznar should not be one of unbridled discretion.[5] This is especially true considering that taxes are self-assessed, as discussed by the Supreme Court:

> Taxes are generally self-assessed. They are initially computed and voluntarily paid by the taxpayer. The government does not have to demand it. If the tax payments are correct, the BIR need not make an assessment.

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[3] San Miguel Corporation v. Commissioner of Internal Revenue, CTA Case No. 4675, January 6, 1995.
[4] Commissioner of Internal Revenue v. Standard Chartered Bank, G.R. No. 192173, July 29, 2015, citing CIR v. B.F. Goodrich Phils., Inc.
[5] Ayala Hotels, Inc. v. Commissioner of Internal Revenue, CTA Case No. 6002, January 10, 2002.

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> The self-assessing and voluntarily paying taxpayer, however, may later find that he or she has erroneously paid taxes.[6]

Upon finding that a tax has been paid erroneously, the taxpayer is allowed to file a claim for refund. On the reverse side, should the taxpayer find that there is an error on its return, the taxpayer may file an amended return, or should the BIR be the one to detect the error, then an assessment shall be issued.

The very meaning of deficiency assessment is that there was an error or omission on the part of the taxpayer in the preparation of its return or the payment of its tax. But each and every error, as discussed previously, does not and should not result to the operation of the ten-year prescriptive period. Otherwise, on the strength of the Aznar doctrine, BIR examiners conducting regular tax audits, who, logically as a matter of course, would always come up with tax findings of either under-declaration of income or over-declaration of deductions, or both, could mercilessly and arbitrarily raise the argument of false return giving rise to the ten-year prescriptive period. The result would be a lackadaisical implementation of the statutory principle that the statute of limitations is a remedial measure and should be strictly construed against the taxing authority and liberally in favor of the taxpayer. This situation was considered by the Court of Appeals in Commissioner of Internal Revenue v. Ayala Hotels, Inc.[7], where it described the effect of a sweeping application of Aznar, as follows:

> Reliance on the Aznar Case with regard to the issue of prescription is misplaced. Although in the said case, the Supreme Court ruled that a "false return" merely implies a deviation from the truth, whether intentional or not, <u>such pronouncement should not be given a sweeping application in all cases where a mistake in ITR entries are made by taxpayers</u>. <u>Otherwise, any mistake, however slight, in a return filed by a taxpayer in good faith would justify the application of the ten-year prescriptive period for assessment</u>. Consequently, the protection provided for under Section 203 of the 1997 NIRC is rendered nugatory. <u>Logically therefore, not all "false returns" would call for an application of Section 222 of the 1997 NIRC. Only "false returns" which are filed by a taxpayer with</u>

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[6] SMI-ED Phils. Technology, Inc. v. Commissioner of Internal Revenue, G.R. No. 175410, November 12, 2014.
[7] CA-G.R. SP No. 70025, April 19, 2004.

> intent to evade tax should warrant an application of the ten-year prescriptive period.
>
> In order to render a return made by a taxpayer a "false return" within the meaning of Section 222, of the Tax Code, there must appear, a design to mislead or deceive on the part of the taxpayer, or at least culpable negligence. A mistake, not culpable in respect of its value would not constitute a false return. (Underscoring supplied)

Notwithstanding, there is sufficient basis provided by Aznar and Goodrich to limit the application of the ten-year period to certain factual circumstances.

Thus, in the instant case (1) there was no design to mislead or deceive on the part of petitioner, since it argues that respondent failed to consider that the basis of the assessment for deficiency EWT included income payments for other services and that respondent failed to account for timing differences[8]; (2) that the alleged deviation was not an intentional mistake or omission so as to put the BIR at a disadvantage in the investigation since the BIR was not prevented from issuing a deficiency EWT assessment based on the comparison of petitioner's Audited Financial Statements (AFS), BIR Form 1604-E, and Annual Income Tax Return (ITR); and (3) there was no fraudulent intent or intent to evade the payment of the correct amount of tax. Since the foregoing circumstances did not place the government at a disadvantage so as to prevent it from assessing the correct taxes within the three-year prescriptive period, hence, the application of the ten-year prescriptive period is devoid of legal basis.

Considering the foregoing, the assessment for deficiency income tax should also be modified accordingly.

Wherefore, I concur with the decision to partially grant the petition for review, but with the modification that the assessment for deficiency EWT for January to October 2009 has likewise prescribed.

CATHERINE T. MANAHAN
Associate Justice

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[8] Docket, Vol. 1, Petition for Review, pp. 13-14; Vol. 2, Petitioner's Memorandum, pp. 667-669.