REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

3M PHILIPPINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NOS. 9213 & 9214

Members:

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

Promulgated:

JAN 30 2019

1:30 p.m.

x- x

DECISION

CASTAÑEDA, JR., *J.*:

THE CASE

The Petition for Review filed by 3M Philippines, Inc. prays for the cancellation and setting aside of the assessments for basic deficiency income tax, value-added tax (VAT), expanded withholding tax (EWT), withholding tax on compensation (WTC), final withholding tax (FWT) and deficiency interest; and further asks for the refund of the amount of ₱5,795,915.59, allegedly representing petitioner's payment under protest on November 28, 2015.[1]

[1] Par. I, Pre-Trial Order, docket, vol. II, p. 547.

THE FACTS

Petitioner 3M Philippines, Inc. is a domestic corporation duly organized and registered under Philippine laws, with principal office at 9th Floor Three World Square Building, 22 Upper McKinley Road, McKinley Hill, Fort Bonifacio, Taguig City.[2] It is incorporated primarily to manufacture, fabricate, compound, mould, produce, purchase, sell, own, use, develop, experiment with, license and generally deal in with materials commonly known as plastics, glass, glass cloth, glassine, rubber and rubber products, cellulose acetate, cellulose nitrate and products produced out of said substances, glue wax, abrasive and adhesives, and any and all kinds of goods, wares, merchandise, manufactures, commodities, furniture, machinery, tools, supplies and products, and generally to engage in and conduct any form of manufacturing or mercantile enterprise, including the establishment and maintenance of 3M Customer Technical Center as the marketing and product development facility of the Company.[3] It is likewise a registered taxpayer under Certificate of Registration No. OCN8RC0000018856 dated January 1, 1996.[4]

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

On April 2, 2013, respondent issued a Letter of Authority (LOA) No. 116-2013-00000006,[5] authorizing revenue officers to examine petitioner's books of accounts and other accounting records for all internal revenue taxes covering January 1, 2011 to December 31, 2011. As such, respondent gave a List of Audit Requirements[6] to petitioner on April 8, 2013.

Afterwards, respondent issued a Preliminary Assessment Notice (PAN) on December 22, 2014, which was received by petitioner on

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2 Exhibit "P-1", docket, vol. IV, p. 1503.
3 Exhibit "P-2", docket, vol. IV, p. 1505.
4 Exhibit "P-3", docket, vol. II, p. 596.
5 Exhibit "P-4", docket, vol. II, p. 597; Exhibit "R-1", BIR records, p. 3.
6 Exhibit "P-5", docket, vol. II, pp. 598 to 599.

December 23, 2014, assessing the latter for deficiency income tax - ₱936,492,033.97, deficiency VAT - ₱891,046,448.06, deficiency EWT - ₱18,922,192.29, deficiency WTC - ₱38,283,205.98, deficiency FWT - ₱5,115,122.62, deficiency final withholding VAT (FWVAT) - ₱1,816,108.20, deficiency documentary stamp tax (DST) - ₱385,323.28, and administrative penalty - ₱50,000.00.[7] Petitioner replied to the PAN through a Letter dated January 6, 2015.[8]

Respondent then issued a Formal Letter of Demand[9] (FLD) assessing petitioner for deficiency income tax - ₱556,410,512.84, deficiency VAT - ₱686,372,548.41, deficiency EWT - ₱19,123,433.43, deficiency WTC - ₱38,690,627.62, deficiency FWT - ₱5,144,062.41, deficiency FWVAT - ₱1,844,558.49, deficiency DST - ₱388,718.35, and administrative penalty - ₱50,000.00.

On November 5, 2015, petitioner received the undated Final Decision on Disputed Assessment[10] (FDDA) with attached Details of Discrepancies and Assessment Notices that reduced the amount of the deficiency taxes and cancelled the deficiency FWVAT assessment. Petitioner was issued an assessment for deficiency income tax - ₱1,589,183.30, deficiency VAT - ₱34,851,900.69, deficiency EWT - ₱2,670,656.75, deficiency WTC - ₱4,675,924.46, deficiency FWT - ₱620,167.17, and deficiency DST - ₱400,974.08 or in the aggregated amount of ₱44,808,806.46. Afterwards, petitioner paid under protest some of the deficiency taxes on November 28, 2015[11] and informed respondent on December 3, 2015[12] of such payment.

Petitioner filed the instant Petition for Review before this Court on December 4, 2015.

Respondent interposed the following special and affirmative defenses in the Answer[13] filed through registered mail on February 19, 2016 and received by the Court on February 24, 2016:

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[7] Exhibits "P-6" and "R-3", BIR records, pp. 865 to 867.
[8] Exhibit "P-7", BIR records, pp. 1021 to 1031.
[9] Exhibit "P-8", BIR records, pp. 1188 to 1190; Exhibit "R-5", BIR records, pp. 1084 to 1086.
[10] Par. A(2), JSFI, docket, vol. II, p. 533; Exhibit "P-11", docket, vol. I, pp. 61 to 79; Exhibits "R-7", BIR records, pp. 1127 to 1131.
[11] Exhibit "P-12", docket, vol. II, pp. 681 to 683.
[12] Exhibit "P-23", docket, vol. pp. 723 to 726.
[13] Docket, vol. II, pp. 446 to 457.

"4. Respondent reiterates and re-pleads the preceding paragraphs of this Answer as part of her Special and Affirmative Defense.

Petitioner is liable for deficiency Income Tax.

A. Sales Discrepancy.

5. Petitioner posits that respondent failed to provide the basis of the assessment since it allegedly failed to provide identify each sales transaction and identify the vendees of its Additional Sales.

6. Petitioner is clearly mistaken.

7. Section 228 of the National Internal Revenue Code (Tax Code) provides:

> **SEC. 228. Protesting of Assessment. –**
>
> When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings:
>
> **-xxx-**
>
> **The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.**
>
> **-xxx-**
>
> **(Emphasis supplied)**.

8. This Honorable Court has explained in the case of CIR v. Liquigas that Section 228 does not require a full

explanation of every legal and factual basis as posited by petitioner, specifically:

> Liquigaz Philippines' witness, Juliet A. Abano, cannot feign ignorance of the factual and legal bases of the BIR's assessments. Nor can her observation that 'there was no explanation whatsoever on every item of the assessment' be given decisive weight, for all that Section 228 of the NIRC requires is that 'the taxpayer shall be informed in writing of the law and the fact on which the assessment is made.' **It is sufficient to identify the law and recite the facts: Section 228, which is applicable to assessments, does not demand a full explanation of every legal and factual basis. Nor is a full explanation required by Section 3.1.6 of RR No. 12-99; it is sufficient for the FDDA, as the decision of the CIR or his duly authorized representative, to state the facts, applicable laws, rules and regulations, or jurisprudence on which such decision is based.**
>
> **(Emphasis supplied).**

9. In the instant case, the Formal Letter of Demand has sufficiently complied with the requirements of the law.

10. Moreover, petitioner was able to intelligently protest the same which in fact resulted to the reduction of the assessment.

11. Hence, it cannot feign ignorance now and assert that it did not understand fully the assessment just because it was not satisfied with the decision which did not result to a full elimination of the assessment. *9e*

B. Disallowed Expenses.

12. Petitioner argues that the expenses that were disallowed during the audit were allegedly supported by documents which were submitted to respondent.

13. Respondent disagrees.

14. All the documents submitted by petitioner were considered by respondent. The Final Decision on Disputed Assessment states:

> Verification of the following expense/cost accounts revealed these are either overclaimed or unsupported, hence disallowed pursuant to Section 34 (A) (1) (b) of the NIRC, as amended.
>
> a. Accounts pertaining to 2010 Charges - ₱776,721.62
>
> Verification of your protest revealed that there is still an unreconciled discrepancy of Accounts pertaining to 2010 as per table below:

Discrepancy per FLD	4,853,561.69
Expenses already accrued or recorded	4,076,840.07
Net Adjustment	776,721.62

> b. Reimbursement of Employee expenses with Vendor Names - ₱795,153.13
>
> Verification of your protest revealed that there is still an unreconciled discrepancy of Accounts pertaining to 2010 as per table below:

Discrepancy per FLD	11,810,288.94
Protested and Reconsidered	11,015,135.80

gr

Net Adjustment	795,753.14

C. Interest on Additional Taxable Income.

15. Petitioner further posits that it is not liable for interest since there was no taxable income in the first place.

16. Respondent disagrees.

17. It is noteworthy that the imposition of interest arose from petitioner's filing of an amended return. Hence, its original return was incorrect and contained deficiency Income Tax until it was corrected by the amended return.

18. Thus, the imposition of interest, as sanctioned by Section 249 of the Tax Code, was proper.

Petitioner is liable for deficiency Value Added Tax.

A. Vatable Sales.

19. Petitioner contends that it is not liable for deficiency Value Added Tax (VAT).

20. Petitioner's contention is bereft of merit.

21. Assessments made by the Bureau of Internal Revenue are presumed correct and made in good faith and taxpayers have the duty to prove otherwise.

22. In the case at hand, petitioner failed to provide proof positive that it has declared, for VAT purposes the proceeds it earned for its sale of its property, plant and equipment and that Miscellaneous Income were indeed already subjected to VAT. *gr*

23. Thus, for petitioner's failure, despite all the opportunity given to it, the assessment for deficiency VAT must stand.

B. Input Tax Disallowance.

24. Petitioner again claims that the assessment pertaining to the disallowance of input tax were void for failure to state the law and facts on which it is based.

25. To emphasize, the assessment has clearly stated the facts and law upon which it is based in full compliance with Section 228 of the Tax Code and implementing rules and regulations.

26. The Formal Letter of Demand states:

INPUT TAX DISALLOWANCE

The following input taxes are disallowed pursuant to Section 110 in relation to Section 113 of the NIRC, as amended:

1. Input Tax on Unsupported Importation - ₱183,607,845.00

Verification disclosed that Input Tax on importation claimed per VAT Returns amounted to ₱183,607,845.00. However, subject taxpayer failed to submit documentation particularly import entry declarations, hence, the disallowance of said Input Tax.

2. Input Tax on Over-claimed Purchases - ₱10,514,292.73.

Verification of 3M's SLP revealed excess discrepancies when matched against SLS of third parties shown per worksheet attached herewith as ANNEX A-6. Such is deemed unsupported. The input tax thereon is also deemed unsupported. The input tax thereon is also deemed unsupported.

3. Input Tax in violation of Invoicing Requirements - ₱16,903,292.73

Verification of supplier's invoices disclosed that some invoices failed to comply with the invoicing requirements as prescribed under Section 110 of the Tax Code in relation with Section 4.113-1 (B) (3) and 4.113-4 (A) (2) both of Revenue Regulation No. 16-2005, as amended. Input Tax disallowed on such improper invoicing amounted to ₱16,903,230.64, please see Annex A-13.

4. Input Tax on Reimbursements of Employee Expenses with no Vendor Names - ₱1,417,234.67 – Annex A-8

Please see item B.1.c on Expense/Cost Accounts – Disallowances under I. Income Tax

5. Input Tax – Others - ₱505,602.77

Verification of VAT Returns disclosed the amount of ₱505,602.77 was claimed as Input Others. However, 3M failed to substantiate said input tax, hence disallowed.

6. Various Input tax disallowances per verification with ITS - ₱13,041,877.87

Verification made at our ITS revealed that some supplier's TINs were either invalid, wrong tin or non-vat registered. (pls. see Annex A-14)

7. Excess Input Tax on Capital Goods exceeding 1 Million - ₱987,763.99 *ps*

> Verification disclosed that claimed input tax on capital goods exceeding 1 million amounted to ₱2,337,763.99. However, per Note 26 (a) (ii) of Audited Financial Statements, page 42, the amount is only ₱1,350,000.00, hence the discrepancy of ₱987,763.99 is disallowed.
>
> Additional Input Tax Disallowance
>
> 1. Discrepancy of beginning and ending balances of Deferred Input Tax - ₱2,694,853.74 as show per table next page.
>
> -xxx-

27. A simple reading of the assessment would clearly inform petitioner as to why the assessment came about.

28. In fact, petitioner itself was able to protest the same which, again, resulted to a decreased assessment. The FDDA states:

> **1. Input Tax in Violation of Invoicing Requirements - ₱16,903,230.64**
>
> Verification of supplier's invoices disclosed that some invoices failed to comply with the invoicing requirements as prescribed under Section 110 of the Tax Code in Relation with Section 4.113-1 (B) (3) and 4.113-4 (A) (2) both of Revenue Regulation No. 16-2005, as amended. Input Tax disallowed on such improper invoicing amounted to ₱16,903,230.64, please see Annex A-1.
>
> **2. Discrepancy of beginning and ending balances of Deferred Input Tax - ₱2,694,853.74 as show per table next page.**
>
> -xxx-

29. Again, it must be stressed that an unfavorable decision from respondent cannot and should not be used by petitioner to assail the assessment just because the assessment for deficiency was not fully eliminated.

Petitioner is liable for deficiency Withholding Taxes.

30. Petitioner claims that it is not liable for deficiency Expanded Withholding Tax (EWT) since: (a) depreciation expense is no subject to EWT; (b) the purchases were not made to regular supplier of goods; and (c) it has reconciled its EWT deficiency for its purchase of services.

31. Petitioner further avers that the discrepancy noted by respondent as regards its compensation which resulted to deficiency Withholding Tax on Compensation (WTC) pertains to SSS employer contributions share, employee food, meals and other expenses, payments for employee medical and dental coverage, Philhealth and Pag-ibig employer contributions share, as well as de minimis benefits.

32. Petitioner's bare contentions without proof are bereft of merit.

33. The Honorable Supreme Court has thoroughly explained in the case of CIR v. Hantex the presumption in favor of the correctness of tax assessments, specifically:

> As a general rule, tax assessments by tax examiners are presumed correct and made in good faith. **All presumptions are in favor of the correctness of a tax assessment. It is to be presumed, however, that such assessment was based on sufficient evidence.** Upon the introduction of the assessment in evidence, a prima facie of liability on the part of the taxpayer is made. If a taxpayer files a petition for review in the CTA and assails the assessment, the prima facie presumption is that the assessment made by

> the BIR is correct, and that in preparing the same, the BIR personnel regularly performed their duties. **This rule for tax initiated suits is premised on several factors other than the normal evidentiary rule imposing proof obligation on the petitioner-taxpayer:** the presumption of administrative regularity; the likelihood that the taxpayer will have access to the relevant information; and the desirability of bolstering the record-keeping requirements of the NIRC.
>
> **(Emphasis supplied).**

34. In the case at hand, the revenue officers have painstakingly examined all records of petitioner made available to them as regards petitioner's sales and purchases.

35. Moreover, audit procedures adopted include analysis of petitioner's accounting system, reconciliation of petitioner's books of accounts against the returns it filed, third party matching of data, sampling and verification of revenue as to whether the income it reported truly reflects the actual results of petitioner's business operation.

36. Petitioner was given all the opportunity to present its side. However, it failed to present credible evidence to refute the assessment.

37. Thus, the assessment for deficiency EWT and WTC must stand.

Petitioner is liable for deficiency Final Tax.

38. Petitioner asserts that it is not liable for deficiency Final Tax.

39. However, it was not able to refute the findings in the Formal Letter of Demand as regards the Royalty Expenses which states:

FINAL TAX

Royalty Expense not subjected to Final Tax - ₱3,536,890.89

Verification disclosed that royalty expense per FSS duly subjected to Final Vat Withholding at 12% amounted to ₱78,384,76.45 but the amount subjected to Final Tax at 10% was only ₱74,847,835.56. Hence, the difference of 3,536,890.89 is assessed pursuant to Section 28 (B) (1) of the NIRC, as amended.

40. Thus, for failure to provide proof as basis for its assertion, the assessment for deficiency Final Tax must be upheld.

41. It is noteworthy that petitioner has failed to contest the imposition on deficiency Documentary Stamp Tax in the amount of ₱400,974.08.

42. Notably, petitioner, in the instant Petition for Review, failed to refute respondent's assessment for deficiency Documentary Stamp.

43. All told, it is very clear that petitioner is indeed liable for deficiency taxes in aggregate amount of ₱44,808,806.46.

44. Thus, petitioner's claim for refund for allegedly erroneously paid or illegally collected taxes has no leg to stand on."

Thereafter, petitioner filed its Pre-Trial Brief[14] on April 25, 2016, while Respondent's Pre-Trial Brief[15] was filed on April 27, 2016.

The Court received the parties' Joint Stipulation of Facts and Issues[16] on June 2, 2016. Consequently, the Court issued the Pre-Trial Order[17] on June 22, 2016, and terminated the pre-trial.

Upon motion of petitioner,[18] the Court commissioned Mr. George V. Villaruz as Independent Certified Public Accountant (ICPA) on July 7, 2016.[19]

During trial, petitioner presented Ms. Darlene Clarin-San Manuel, Mr. Anthony A. Chan, and Mr. George V. Villaruz as its witnesses. Petitioner then formally offered its testimonial and documentary evidence, which the Court admitted, except for Exhibits "P-9", "P-10", "P-32", "P-33", "P-37", "P-38", "P-42", "P-43", "P-47", "P-48", "P-100", "P-101", "P-102", "P-104", "P-108", "P-108-a", "P-108-a", "P-108-c", "P-108-d", "P-108-h", "P-108-i", "P-108-j", "P-108-j", "P-108-o", "P-108-p", "P-108-q", "P-108-v", "P-108-w", "P-108-x", "P-108-bb", "P-108-ee", "P-108-ff", "P-108-kk", "P-4.36-ICPA", "P-4.37-ICPA", "P-4.182-ICPA", and "P-5.4-ICPA".[20]

On the other hand, respondent presented Revenue Officer Tito Monforte as his sole witness. Afterwards, respondent formally offered his testimonial and documentary evidence and the Court admitted the same.[21]

The Court declared the case submitted for decision on January 30, 2018,[22] in view of the filing of petitioner's Memorandum[23] on January 16, 2018 and the Verification Report issued by the Court's Judicial Records Division dated January 23, 2018, stating that respondent failed to file a memorandum.

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14 Docket, vol. II, pp. 479 to 489.
15 Docket, vol. II, pp. 508 to 512.
16 Docket, vol. II, pp. 533 to 541.
17 Docket, vol. II, pp. 547 to 554.
18 Motion for Commissioning of Independent CPA, docket, vol. II, pp. 990 to 992.
19 Oath of Commission and Order, docket, vol. II, p. 989 and p. 1024, respectively.
20 Resolution dated April 25, 2017, docket, vol. III, pp. 1291 to 1294 and Resolution dated August 1, 2017, docket, vol. IV, pp. 1529 to 1533.
21 Resolution dated November 28, 2017, docket, vol. IV, pp. 1570 to 1571.
22 Resolution, docket, vol. IV, p. 1636.
23 Docket, vol. IV, pp. 1578 to 1633.

THE ISSUES

The parties presented the following issues[24] for the Court's determination:

> 1. Whether or not petitioner is liable for the deficiency internal revenue taxes and related interest and penalties for taxable year ended December 31, 2011 assessed under the undated FDDA in the aggregate amount of ₱45,023,806.45; and
>
> 2. Whether or not petitioner is entitled to the refund of the ₱5,795,915.59 it paid under protest for the assessments on deficiency income tax, withholding tax-expanded, withholding tax-compensation under the FDDA, inclusive of interest computed until November 30, 2015.

THE COURT'S RULING

The Court shall first determine the timeliness of the filing of the present Petition for Review in accordance with Section 228 of the NIRC of 1997, as amended, which provides:

> "SEC. 228. *Protesting of Assessment.* – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however,* That a preassessment notice shall not be required in the following cases:
>
> xxx xxx xxx
>
> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to

[24] Issued to be Resolved, JSFI, docket, vol. II, pp. 533 to 534.

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

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

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

Based on the foregoing, petitioner has thirty days from receipt of respondent's final decision within which to appeal the said decision.

Since petitioner received the FDDA on November 5, 2015, it had thirty days therefrom or until December 5, 2015 within which to appeal the said FDDA. Thus, the instant Petition for Review filed on December 4, 2015 was timely filed.

The Court shall now determine whether petitioner is liable for the assessed deficiency taxes.

Respondent assessed petitioner for deficiency internal revenue taxes for taxable year (TY) 2011 in the aggregate amount of ₱1,892,110,434.40, broken down below:[25]

KIND OF TAX	**AMOUNT**
Income Tax	₱ 936,492,033.97
VAT	891,046,448.06

[25] Exhibits "P-6" and "R-3", BIR records, pp. 865 to 867.

EWT	18,922,192.29
WTC	38,283,205.98
FWT	5,115,122.62
FWVAT	1,816,108.20
DST	385,323.28
Administrative Penalty	50,000.00
TOTAL	**₱1,892,110,434.40**

Respondent subsequently issued the FLD after taking into consideration the protest letter of petitioner, still assessing petitioner of deficiency internal revenue taxes for TY 2011 in a reduced amount of ₱1,308,024,461.55, as shown below:[26]

KIND OF TAX	AMOUNT
Income Tax	₱ 556,410,512.84
VAT	686,372,548.41
EWT	19,123,433.43
WTC	38,690,627.62
FWT	5,144,062.41
FWVAT	1,844,558.49
DST	388,718.35
Administrative Penalty	50,000.00
Total	**₱1,308,024,461.55**

In the FDDA, respondent still found petitioner liable to pay deficiency income tax, VAT, EWT, WTC, FWT, and DST, inclusive of surcharge and interests, and administrative penalties for TY 2011, in the aggregate amount of ₱45,023,806.45, as computed below:

	Basic	Surcharge	Interest	Penalty	Total
Income Tax	₱ 684,788.25		₱ 904,395.05		₱ 1,589,183.30
VAT	19,970,084.38		14,881,816.31		34,851,900.69
EWT	1,523,108.93		1,147,547.82		2,670,656.75
WTC	2,666,738.17		2,009,186.29		4,675,924.46
FWT	353,689.09		266,478.08		620,167.17
DST	199,871.00	₱ 49,967.75	151,135.33		400,974.08
Administrative Penalties				₱ 215,000.00	215,000.00
Total	**₱25,398,279.82**	**₱49,967.75**	**₱19,360,558.88**	**₱215,000.00**	**₱45,023,806.45**

On November 28, 2015, petitioner paid the following deficiency taxes in the total amount of ₱6,416,818.00:

[26] Exhibit "P-8", BIR records, pp. 1188 to 1190; Exhibit "R-5", BIR records, pp. 1084 to 1086.

Tax Type	Exhibit Nos.		Taxes paid
	BIR Form No. 0605 /Filing Ref. No.[27]	eFPS payment confirmation[28]	
IT (inclusive of interest 'til 11/30/2015)	"P-17" to "P-18"	Annex B *("P-23")*	₱ 1,606,068.49
EWT	"P-15" to "P-16"	Annex D *("P-23")*	1,523,108.93
WTC	"P-21" to "P-22"	Annex F *("P-23")*	2,666,738.17
DST (inclusive of surcharge and interest 'til 11/20/2015)	"P-13" to "P-14"	Annex H *("P-23")*	405,902.41
Administrative Penalties	"P-19" to "P-20"	Annex J *("P-23")*	215,000.00
Total			**₱6,416,818.00**

On December 3, 2015, petitioner informed respondent through a Letter[29] that the former paid the deficiency DST and administrative penalties without qualification, but paid the deficiency income tax, EWT, and WTC under protest.

Based on the foregoing, only the assessments for deficiency income tax, VAT, EWT, WTC, and FWT in the aggregate amount of ₱44,407,832.37[30] remain as subject of the present Petitions for Review.

Petitioner avers that the right of respondent to assess petitioner has already lapsed for deficiency VAT covering the first to third quarters of TY 2011 and deficiency EWT, WTC, and FWT for January to November 2011.

Section 203 of the NIRC of 1997, as amended, mandates that internal revenue taxes must be assessed within three (3) years reckoned from the period fixed by law for the filing of the tax return or the actual date of filing, whichever comes later, to wit:

> "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)-

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[27] Docket, vol. II, pp. 707 and 714 to 722.
[28] Docket, vol. II, pp. 729, 732, 735, 738, and 741.
[29] Exhibit "P-23", docket, vol. II, pp. 723 to 726.
[30] Total of ₱1,589,183.30 (income tax), ₱34,851,900.69 (VAT), ₱2,670,656.75 (EWT), ₱4,675,924.46 (WTC), and ₱620,167.17 (FWT).

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."

In relation thereto, Sections 77 and 114 of the NIRC of 1997, as amended, provide for the time of filing of the income tax and VAT returns, which are all quoted hereunder for easy reference:

"SEC. 77. *Place and Time of Filing and Payment of Quarterly Corporate Income Tax.* –

xxx xxx xxx

(B) *Time of Filing the Income Tax Return.* – The corporate quarterly declaration shall be filed within sixty (60) days following the close of each of the first three (3) quarters of the taxable year. The final adjustment return shall be filed **on or before the fifteenth (15th) day of April**, or on or before the fifteenth (15th) day of the fourth (4th) month following the close of the fiscal year, as the case may be." *(Emphasis supplied)*

"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: *Provided*, however, That VAT-registered persons shall pay the value-added tax on a monthly basis." *(Emphasis supplied)*

Further, pursuant to Revenue Regulations (RR) No. 26-2002[31], taxpayers classified under group B, such as herein petitioner, are required to file the Monthly Withholding Tax Returns within fourteen (14) days following the end of the month.

[31] SUBJECT: Amending Further Revenue Regulations No. 9-2001, as amended by Revenue Regulations No. 2-2002 and Revenue Regulations No. 9-2002, Providing for the Staggered Filing of Returns of Taxpayers Enrolled in the Electronic Filing and Payment System (EFPS) Based on Industry Classification.

Applying the afore-quoted provisions of law and regulations, the following are the dates pertinent to the subject deficiency tax assessments:

Exhibit	Period	Date filed	Last Day to File Return	Last day to Assess	Date of Receipt of FLD/FANs[32]
Annual Income Tax Return [33]					
P-27	CY 2011	Apr. 16, 2012	Apr. 16, 2012	Apr. 16, 2015	Jan. 12, 2015
Quarterly VAT Returns [34]					
P-31	1st Qtr of 2011	Apr. 25, 2011	Apr. 25, 2011	Apr. 25, 2014	Jan. 12, 2015
P-36	2nd Qtr of 2011	Jul. 25, 2011	Jul. 25, 2011	Jul. 25, 2014	
P-41	3rd Qtr of 2011	Oct. 24, 2011	Oct. 25, 2011	Oct. 25, 2014	
P-46	4th Qtr of 2011	Jan. 25, 2012	Jan. 25, 2012	Jan. 25, 2015	
EWT Returns [35]					
P-49	January 2011	Feb. 14, 2011	Feb. 14, 2011	Feb. 14, 2014	Jan. 12, 2015
P-50	February 2011	Mar. 14, 2011	Mar. 14, 2011	Mar. 14, 2014	
P-51	March 2011	Apr. 14, 2011	Apr. 14, 2011	Apr. 14, 2014	
P-52	April 2011	May 14, 2011	May 16, 2011	May 16, 2014	
P-53	May 2011	Jun. 14, 2011	Jun. 14, 2011	Jun. 14, 2014	
P-54	June 2011	Jul. 14, 2011	Jul. 14, 2011	Jul. 14, 2014	
P-55	July 2011	Aug. 14, 2011	Aug. 15, 2011	Aug. 15, 2014	
P-56	August 2011	Sept. 14, 2011	Sept. 14, 2011	Sept. 14, 2014	
P-57	September 2011	Oct. 14, 2011	Oct. 14, 2011	Oct. 14, 2014	
P-58	October 2011	Nov. 14, 2011	Nov. 14, 2011	Nov. 14, 2014	
P-59	November 2011	Dec. 15, 2011	Dec. 14, 2011	Dec. 15, 2014	
P-60	December 2011	Jan. 16, 2012	Jan. 16, 2012	Jan. 16, 2015	
WTC Returns [36]					
P-61	January 2011	Feb. 14, 2011	Feb. 14, 2011	Feb. 14, 2014	Jan. 12, 2015
P-62	February 2011	Mar. 14, 2011	Mar. 14, 2011	Mar. 14, 2014	
P-63	March 2011	Apr. 13, 2011	Apr. 14, 2011	Apr. 14, 2014	
P-64	April 2011	May. 13, 2011	May 16, 2011	May 16, 2014	
P-65	May 2011	Jun. 14, 2011	Jun. 14, 2011	Jun. 14, 2014	
P-66	June 2011	Jul. 13, 2011	Jul. 14, 2011	Jul. 14, 2014	
P-67	July 2011	Aug. 12, 2011	Aug. 15, 2011	Aug. 15, 2014	
P-68	August 2011	Sept. 14, 2011	Sept. 14, 2011	Sept. 14, 2014	
P-69	September 2011	Oct. 14, 2011	Oct. 14, 2011	Oct. 14, 2014	
P-70	October 2011	Nov. 14, 2011	Nov. 14, 2011	Nov. 14, 2014	
P-71	November 2011	Dec. 14, 2011	Dec. 14, 2011	Dec. 14, 2014	
P-72	December 2011	Jan. 13, 2012	Jan. 16, 2012	Jan. 16, 2015	

[32] Exhibit "R-5", BIR records, p. 1086.
[33] Exhibit "P-27", docket, vol. II, pp. 772 to 773.
[34] Exhibits "P-31", "P-36", "P-41", and "P-46", docket vol. III, pp. 1312 to 1313, 1322 to 1323, 1333 to 1335, and 1342 to 1344, respectively.
[35] Exhibits "P-49", "P-50", "P-51", "P-52", "P-53", "P-54", "P-55", "P-56", "P-57", "P-58", "P-59", and "P-60", docket, vol. III, pp. 1345 to 1377 .
[36] Exhibits "P-61", "P-62", "P-63", "P-64", "P-65", "P-66", "P-67", "P-68", "P-69", "P-70", "P-71", "P-72", docket, vol. III, pp. 1378 to 1401.

FWT Returns[37]					
P-73	January 2011	Feb. 14, 2011	Feb. 14, 2011	Feb. 14, 2014	
P-74	February 2011	Mar. 14, 2011	Mar. 14, 2011	Mar. 14, 2014	
P-75	March 2011	Apr. 13, 2011	Apr. 14, 2011	Apr. 14, 2014	
P-76	April 2011	May 13, 2011	May 16, 2011	May 16, 2014	Jan. 12, 2015
P-77	May 2011	Jun. 14, 2011	Jun. 14, 2011	Jun. 14, 2014	
P-78	June 2011	Jul. 13, 2011	Jul. 14, 2011	Jul. 14, 2014	
P-79	July 2011	Aug. 13, 2011	Aug. 15, 2011	Aug. 15, 2014	
P-80	August 2011	Sept. 14, 2011	Sept. 14, 2011	Sept. 14, 2014	
P-81	September 2011	Oct. 14, 2011	Oct. 14, 2011	Oct. 14, 2014	
P-82	October 2011	Nov. 14, 2011	Nov. 14, 2011	Nov. 14, 2014	
P-83	November 2011	Dec. 14, 2011	Dec. 14, 2011	Dec. 14, 2014	
P-84	December 2011	Jan. 13, 2012	Jan. 16, 2012	Jan. 16, 2015	

Based on the above table, the right of respondent to assess petitioner for deficiency VAT covering the first to third quarters of TY 2011 and deficiency EWT, WTC, and FWT for January to November 2011 has already prescribed in accordance with Section 203 of the NIRC of 1997, as amended. Thus, this Court shall decide these cases involving only the assessments for deficiency income tax for TY 2011, deficiency VAT covering the fourth quarter of TY 2011, and deficiency EWT, WTC, and FWT for the month of December 2011.

The Court shall now proceed to determine the merits of the subject assessments.

I. Deficiency Income Tax – ₱2,171,774.37

In the FDDA, respondent assessed petitioner for deficiency income tax for TY 2011 in the amount of ₱1,589,183.30, computed as follows:[38]

Taxable Income per Original ITR		₱363,487,919.93
Add: Adjustment per Audit		
Sales Discrepancy per Audit	₱ 710,752.80	
Disallowed Cost and Deductions		
Payments of Accounts pertaining to 2010 Charges per Purchase Journal Book-AP	776,721.62	
Reimbursements of Employee Expenses with no Vendor Names per Purchase Journal Book	795,153.14	2,282,627.56
Taxable Income per Audit		₱365,770,547.49
Income Tax Due at 30%		₱109,731,164.25
Less: Creditable Withholding Tax per Original Returns		16,555,536.65

[37] Exhibits "P-73", "P-74", "P-75", "P-76", "P-77", "P-78", "P-79", "P-80", "P-81", "P-82", "P-83", "P-84", docket, vol. III, pp. 1402 to 1413.
[38] Exhibit "P-11", docket, vol. I, p. 61; Exhibits "R-7", BIR records, pp. 1127 to 1131.

Income Tax Due per Audit		₱ 93,175,627.60
Less: Income Tax paid per Return		
Quarterly Income Tax Payments	₱71,049,265.00	
Original ITR	21,441,574.35	92,490,839.35
Basic Deficiency Income Tax		₱ 684,788.25
Add: Interest (until Oct. 16, 2015)	₱ 479,914.61	
Interest on Additional Taxable Income per Amended Returns	424,480.44	904,395.05
Total Income Tax Deficiency		**₱1,589,183.30**

The deficiency income tax assessment arose from the following items, which shall be discussed one by one:

a. Sales discrepancy per audit	₱710,752.80
b. Disallowed Cost and Deductions:	
b.1 Payments of accounts pertaining to 2010 charges	776,721.62
b.2 Reimbursements of employee expenses with no vendor names	795,153.14
c. Interest on additional taxable income per amended returns	₱424,480.44

a. Sales discrepancy per audit

Based on the Details of Discrepancy[39], attached to the FDDA, after respondent's verification of petitioner's protest, there was still an unreconciled discrepancy on petitioner's sales in the amount of ₱710,752.80, as shown below. Hence, pursuant to Section 32 of the NIRC of 1997, as amended, respondent assessed petitioner of the corresponding deficiency income tax.

Discrepancy per FLD		₱33,650,562.36
July Sales per FLD	₱279,267,155.70	
July Sales per protest	246,327,346.14	32,939,809.56
Net Adjustment to Income per FDDA		**₱ 710,752.80**

Petitioner argues that respondent failed to provide the details/basis of the 2011 Sales Register that it used to arrive at this assessment item, hence, must be declared void pursuant to Section 228 of the NIRC of 1997, as amended. A breakdown of the gross figures used by respondent is allegedly necessary to allow petitioner to compare the same with its financial records and books of accounts on a transaction-by-transaction basis, so that petitioner can determine whether these transactions are in fact its sales. The absence of this essential information allegedly violates petitioner's right to due process

[39] Exhibit "P-11", docket, vol. I, p. 66.

in being informed of the factual and legal bases of the deficiency tax assessment.

Contrary to its assertion, petitioner was informed of the subject assessment as the Details of Discrepancies attached to the PAN[40] and FLD[41] show how respondent arrived at the alleged discrepancy. In fact, petitioner was able to refute the said finding and explain its side thereon. As can be gleaned from its protest to the PAN[42], petitioner even mentioned that "The Sales Register which was relied upon by the BIR only reflects the original invoice amounts" and particularly disputed the sales amount only for July. Having been able to intelligently protest the assessment, petitioner had substantial understanding of the factual and legal bases of the same.

In the case of *Commissioner of Internal Revenue vs. Asalus Corporation,*[43] the Supreme Court ruled that substantial compliance with the requirement as laid down under Section 228 of the NIRC suffices, for what is important is that the taxpayer has been sufficiently informed of the factual and legal bases of the assessment so that it may file an effective protest against the assessment.

Petitioner alleges that it submitted to the BIR positive proof on the actual 2011 Sales Register figures showing the correct sales figures. However, the Sales Register[44] presented by petitioner pertains only to the month of July, which was already considered and excluded by respondent in arriving at the remaining amount of discrepancy per FDDA. No other document was presented to controvert the assessed remaining discrepancy per FDDA.

For petitioner's failure to adduce evidence to reconcile or justify the alleged sales discrepancy of ₱710,752.80, the deficiency income tax assessment thereon is upheld.

b. Disallowed Cost and Deductions

Respondent's verification disclosed that the following expense/cost accounts were either over-claimed or unsupported,

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[40] Exhibit "P-6", BIR Records, pp. 863 to 864.
[41] Exhibit "P-8", BIR Records, pp. 1186 to 1187.
[42] Exhibit "P-7", BIR Records, p. 1029.
[43] G.R. No. 221590, February 22, 2017.
[44] Exhibit "P-99".

hence, disallowed pursuant to Section 34(A)(1)(b) of the NIRC of 1997, as amended:

b.1 Payments of accounts pertaining to 2010 charges	₱776,721.62
b.2 Reimbursements of employee expenses with no vendor names	₱795,153.14

With regard to the disallowance of ₱776,721.62, petitioner argues that this pertains to payments of accounts payable where the corresponding expenses were already accrued or recorded in taxable year 2010 and that the accrual was reversed in 2011 upon payment of the same. In other words, these payments were not claimed as expenses in 2011.

However, bare and unsubstantiated allegations do not constitute substantial evidence and have no probative value.[45] As such, petitioner's bare allegations, unsubstantiated by sufficient documentary evidence, cannot be given credence by the Court.

Tax assessments by tax examiners are presumed correct and made in good faith, and all presumptions are in favor of the correctness of a tax assessment unless proven otherwise.[46] The burden of proof is upon the complaining party to show clearly that the assessment is erroneous. Failure to present proof of error in the assessment will justify the judicial affirmance of said assessment.[47] Apparently, the disallowance in the amount of ₱776,721.62 shall remain.

c. Disallowed reimbursements of employee expenses with no vendor names

In the FLD, respondent disallowed petitioner's reimbursements of employee expenses with no vendor names per Purchase Journal Book in the amount of ₱11,810,288.94. After verification of petitioner's protest, respondent reconsidered the amount of ₱11,015,135.80 but still disallowed the amount of ₱795,153.14 in the FDDA.[48]

Petitioner avers that this item of assessment was (a) void for failure of the BIR to provide the factual basis, and (b) should also be

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[45] *LNS International Manpower Services vs. Padua, Jr.*, G.R. No. 179792, March 5, 2010.
[46] *Commissioner of Internal Revenue vs. Gonzalez*, G.R. No. 177279, October 13, 2010.
[47] *Marcos II vs. Court of Appeals, et al.*, G.R. No. 120880, June 5, 1997.
[48] Details of Discrepancies attached to Exhibit "P-11", docket, vol. I, p. 66.

set aside for being based on grossly over-stated figures. Petitioner alleges expresses that respondent did not provide the details of the alleged reimbursements to allow the former to refute properly the discrepancy. Petitioner is allegedly at loss as to how the BIR arrived at the amount of ₱11,015,135.80 for a single transaction under employee reimbursement, which clearly indicated the erroneous nature of the schedules used by the BIR in generating the said assessment.

The Court does not agree.

In the Details of Discrepancies attached to the FLD, respondent clearly states the factual and legal bases of the assessment in the amount of ₱11,810,288.94, to wit:

"B. EXPENSE/COST ACCOUNTS – DISALLOWANCES

1. Verification of the following expense/cost accounts revealed these are either overclaimed or unsupported, hence disallowed pursuant to Section 34 (A)(1)(b) of the NIRC, as amended.

xxx xxx xxx

c. Reimbursement of Employee expenses with no Vendor Names - ₱11,810,288.94

Verification of Purchase Journal Book – EP revealed payment of charges but with no Vendor names as per worksheet attached herewith as **ANNEX A-8**."

The worksheet referred to by respondent as Annex A-8[49] contains the details of the original disallowed amount of ₱11,810,288.94. Clearly, petitioner was properly informed about the assessment. In fact, in its protest letter to the FLD/FANs, petitioner noted "that out of the total amount being disallowed, one line item amounted to ₱11,016,135.80". This shows that petitioner was

[49] BIR Records, pp. 817 to 820.

furnished a copy of Annex A-8 wherein the details/breakdown of the total disallowed amount of ₱11,810,288.94 is shown. Evidently, petitioner was able to effectively contest the subject disallowance. However, as found by respondent, there remained an unsupported or unreconciled amount of ₱795,153.14 out of the total disallowance of ₱11,810,288.94.

Further, petitioner's argument that the disallowed amount of ₱795,153.14 was based on grossly over-stated figures is not supported by evidence. Basic is the rule that he who alleges a fact has the burden of proving it and a mere allegation is not evidence.[50]

Considering that petitioner failed to refute the disallowance of ₱795,153.14, the same must be sustained.

d. Interest on additional taxable income per Amended Return

Since the basis of respondent's audit was the Annual Income Tax Return (AITR), the adjustment made by petitioner in its Amended AITR was considered by respondent as part of the adjustments to taxable income based on the FLD,[51] hence, respondent assessed petitioner for the additional taxable income in the amount of ₱7,017,000.00.

In the FDDA, respondent excluded the amount of ₱7,017,000.00 as adjustment to taxable income, but imposed deficiency interest on the related income tax due of ₱2,105,100.00 from April 15, 2012 up to the filing of the Amended AITR on April 18, 2013 in the amount of ₱424,480.44, computed as follows:

Additional Taxable Income per Amended Annual ITR	₱7,017,000.00
Multiply by	0.30
Income Tax Due	₱2,105,100.00
Interest rate from April 15, 2012 to date of Amended Annual ITR on April 18, 2013	0.20
Amount of Interest	**₱424,480.44**

Pursuant to Section 77(B) and (C) of the NIRC of 1997, as amended, the last day for the filing of petitioner's Annual ITR for CY 2011 and payment of the corresponding income tax was on April 16, *rr*

[50] *Luxuria Homes, Inc., et al. vs. Honorable Court of Appeals, et al.*, G.R. No. 125986, January 28, 1999.
[51] Details of Discrepancy attached to Exhibit "P-8", BIR records, p. 1186.

2012 (April 15, 2012, being a Sunday). While petitioner timely filed its Original Annual ITR on April 16, 2012[52], however, it filed an Amended Annual ITR on April 18, 2013[53], reporting an additional taxable income of ₱7,017,000.00[54]. Thus, petitioner's belated payment of the ₱2,105,100.00 income tax due on the additional taxable income of ₱7,017,000.00 must be subjected to twenty percent (20%) deficiency interest pursuant to Section 249(A) of the NIRC of 1997, as amended, which provides as follows:

> "SEC. 249. *Interest.* –
>
> (A) *In General.* – There shall be assessed and collected on any unpaid amount of tax, interest at the rate of twenty percent (20%) per annum, or such higher rate as may be prescribed by rules and regulations, from the date prescribed for payment until the amount is fully paid."

Hence, respondent's assessment for deficiency interest is upheld but in the adjusted amount of ₱423,326.96, computed as follows:

Additional Taxable Income per Amended Annual ITR	₱7,017,000.00
Multiply by Income Tax Rate	x 30%
Income Tax Due	₱2,105,100.00
Multiply by 20% Deficiency Interest/annum (20% x 367/365 days)	20.109589%
Amount of Deficiency Interest	**₱423,326.96**

In sum, petitioner is liable to pay basic deficiency income tax for TY 2011 in the amount of ₱684,788.25 as assessed by respondent and deficiency interest of ₱423,326.96, as computed above, on belated payment of ₱2,105,100.00 income tax due.

II. Deficiency VAT – ₱34,851,900.69

Petitioner was assessed of deficiency VAT for TY 2011 in the amount of ₱34,851,900.69, computed as follows:[55]

Vatable Sales per Vat Returns		₱3,057,966,501.75

[52] Exhibit "P-27", docket, vol. II, p. 774.
[53] Exhibit "P-27-a", docket, vol. II, p. 760.
[54] Exhibit "P-2-ICPA", Notes to Financial Statements, Note 26(b)(iii) and Exhibit "P-27-a", line 19C, docket, vol. II, p. 760.
[55] Exhibit "P-11", docket, vol. I, pp. 61 to 62.

Add: Adjustment per Audit		
Additional Taxable Income per Amended ITR		3,100,000.00
Vatable Sales per Audit		₱3,061,066,501.75
Output Tax Due per Audit		₱ 367,327,980.21
Less: Allowable Input Tax per Audit		
Input Tax per Vat Returns:		
Input Tax on Capital Goods exceeding 1M deferred fr previous period	₱ 1,829,563.69	
Current Transactions	261,294,512.18	
Total Available Input Tax per Vat Returns	₱263,124,075.87	
Less: Input Tax on Capital Goods exceeding 1M deferred to succeeding period	3,322,814.04	
Net Available Input Tax per Vat Return	₱259,801,261.83	
Less: Disallowances per Audit		
Due to Invoicing Requirements Violation	16,903,230.64	
Discrepancy on beginning and ending balances of Deferred Input Tax per 2550Q vs FS	2,694,853.74	240,203,177.45
Vat Payable per Audit		₱ 127,124,802.76
Vat Paid per Returns		107,154,718.38
Vat Deficiency		₱ 19,970,084.38
Add: Interest (until Oct. 16, 2015)		14,881,816.31
Total Vat Deficiency		**₱ 34,851,900.69**

The following components of the deficiency VAT assessment shall be discussed *in seriatim*:

a. Additional taxable income per Amended ITR	₱ 3,100,000.00
b. Disallowed input tax due to invoicing requirements violation	16,903,230.64
c. Disallowed discrepancy on beginning and ending balances of deferred input tax per 2550Q vs. FS	₱ 2,694,853.74

a. Additional taxable income per amended ITR

Respondent's verification revealed that there was still an unreconciled discrepancy of additional VATable income per Amended ITR, in the amount of ₱3,100,000.00, as shown below, hence, assessed pursuant to Section 106(A) of the NIRC of 1997, as amended:

Discrepancy per FLD	₱ 5,200,000.00
Restatement of Available for Sale Financial Assets not subject to VAT	2,100,000.00
Net Additional Vatable Income for FDDA	**₱3,100,000.00**

Jr

The Court-commissioned ICPA provided a breakdown of the assessed amount of ₱3,100,000.00 as follows:[56]

Proceeds from retirement of Property and equipment	₱ 240,000.00
Others: Miscellaneous income, net	2,860,000.00
Net Additional Vatable Income for FDDA	**₱3,100,000.00**

Petitioner argues that the transactions pertaining to the amount of ₱3,100,000.00 are not subject to VAT. However, as correctly noted by the ICPA, petitioner did not provide documents in support of the assessed amount of ₱3,100,000.00. Hence, the Court cannot verify the nature of the same and ascertain the proper tax implication. Consequently, the Court is constrained to uphold the deficiency VAT assessment on this item.

b. Disallowed input tax due to invoicing requirements violation

Respondent disallowed petitioner's claimed input taxes in the total amount of ₱16,903,230.64, broken down below, for failure to meet the invoicing requirements prescribed under Sections 4.113-1(B)(3) and 4.113-4(A)(2) of Revenue Regulations (RR) No. 16-05, as amended:[57]

Registered Name	TIN	Input Tax	Reason for disallowance
Philscan Travel and Tours Inc.		₱ 60,178.85	3M's TIN not indicated; Uses BILL document instead of invoice/official receipt
Angara Abello Concepcion Regal	434145	24,942.64	3M's TIN not indicated; Uses STATEMENT OF ACCOUNT document instead of invoice/official receipt
Showcase Display Concepts Inc.	6926590	839,381.22	3M's TIN not indicated
Pacubas General Services		18,129.60	3M's TIN not indicated; VAT not separately billed, Official Receipt should be used instead of invoice
Jodan General Merchandise	250002063	178,300.64	3M's TIN not indicated
Graphics Library Incorporated	5024326	322,514.15	3M's TIN not indicated
Desmond A Malic Trucking Service		1,588,536.29	3M's TIN not indicated in both Official Receipt & invoice
IDS Marketing Phils Inc.	232434950	2,210,512.90	3M's TIN not indicated in both Official Receipt; VAT not separately billed

k

[56] Exhibit "P-36", p. 9.
[57] Exhibit "P-11", Annex A-1, docket, vol. I, p. 70.

Megaworld Corporation		2,774,044.91	3M's TIN not indicated in both Official Receipt; VAT not separately billed
3Glovision Inc.	207359381	6,932,942.72	3M's TIN not indicated in both Official Receipt; VAT not separately billed
Excellence Freight Inc.	190527014	1,953,746.72	3M's TIN not indicated in both Official Receipt; VAT not separately billed
Total		**₱16,903,230.64**	

Petitioner contends that the assessment is void since it was not informed of the factual basis thereof. The PAN and the FAN referred to a disallowed input VAT of ₱16,903,230.64 under an "Annex A-13" but, allegedly, petitioner was not furnished a copy of said Annex. The details of the disallowed input VAT only came out in Annex A-1 of the FDDA but only contained gross figures per identified supplier, without identifying the specific purchases in relation thereto.

Petitioner further asserts that the assessment is without factual basis as it was based merely on a sampling of invoices/ORs. After examining a single non-compliant invoice/OR from a vendor, the BIR automatically assumed that all of the invoices/ORs from the same vendor are non-compliant, and disallowed all of the input VAT for that vendor. According to petitioner, the invoices/ORs actually examined by the BIR per records pertain to only ₱2,158,858.62 out of the total disallowed input VAT of ₱16,903,230.64. Hence, the assessment, if any, must be limited to the input VAT represented by the invoices/ORs actually examined by the BIR and not on the amount of ₱16,903,230.64, which is based on mere assumptions.

Moreover, petitioner avers that the VAT invoicing requirements, as implemented by RR No. 16-05, as amended, is less strictly enforced in deficiency VAT assessments as compared to VAT refunds citing the case of *Commissioner of Internal Revenue vs. Euro-Philippines Airline Services, Inc.*[58].

The Court partially upholds the disallowance.

In *Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc.*,[59] the Supreme Court considered a Detailed Notice of Discrepancy or a justification on how the deficiency taxes

[58] CTA EB No. 1106, July 14, 2015.
[59] G.R. No. 197515, July 2, 2014.

were arrived at as sufficient to prove the factual and legal bases in a BIR assessment, to wit:

> "In the present case, a mere perusal of the FAN for the deficiency EWT for taxable year 1994 will show that other than a tabulation of the alleged deficiency taxes due, no further detail regarding the assessment was provided by petitioner. Only the resulting interest, surcharge and penalty were anchored with legal basis. Petitioner should have at least **attached a detailed notice of discrepancy or stated an explanation why the amount of P48,461.76 is collectible against respondent and how the same was arrived at.** xxx" (*Emphasis supplied*)

Records show that respondent's FLD/FAN was accompanied by Details of Discrepancies, which states that:[60]

> **"3. Input tax in violation of Invoicing Requirements – ₱16,903,230.64**
>
> Verification of supplier's invoices disclosed that some invoices failed to comply with the invoicing requirements as prescribed under Section 110 of the 1997 Tax Code in relation with Section 4.113-1 (B) (3) and 4.113-4 (A) (2) both of Revenue Regulation No. 16-2005 as amended. Input tax disallowed on such improper invoicing amounted to ₱16,903,230.65, please **ANNEX A-13**."

Petitioner's enumeration of the details of the ₱16,903,230.65 disallowed input taxes in its protest letter[61] to the FLD/FAN belies its claim that it was not given a copy of Annex A-13. Having laid down the legal and factual bases for the disallowed input tax of ₱16,903,230.65, respondent observed the due process requirement on assessment under Section 228 of the NIRC of 1997, as amended.

Verily, the input VAT disallowances made by respondent were based on the documents presented by petitioner during respondent's investigation. While the invoices/ORs found in the BIR records only

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[60] Exhibit "R-5", BIR Records, p. 1078.
[61] Petition for Review, Annex Q, docket, vol. I, pp. 354 to 355.

pertain to ₱2,158,858.62 input VAT as alleged by petitioner, it does not necessarily mean that these were the only documents actually examined by respondent.

Nonetheless, Sections 110(A) and 113(A) and (B) of the NIRC of 1997, as amended, and as implemented by Sections 4.110-1, 4.110-8 and 4.113-1(A) and (B) of RR No. 16-05, explicitly state that any input tax may be creditable against the output tax provided that the same is supported by VAT invoice (for purchase of goods or properties) or VAT official receipt (for purchase of services) containing the required information, to wit:

> "SEC. 110. *Tax Credits.* –
>
> (A) *Creditable Input Tax.* –
>
> (1) Any **input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113** hereof on the following transactions **shall be creditable against the output tax**: xxx" *(Emphasis supplied)*
>
> "SEC. 113. *Invoicing and Accounting Requirements for VAT-Registered Persons.* –
>
> (A) *Invoicing Requirements.* – A VAT-registered person shall issue:
>
> (1) A **VAT invoice for every sale, barter or exchange of goods or properties**; and
>
> (2) A **VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.**
>
> (B) *Information Contained in the VAT Invoice or VAT Official Receipt.* – **The following information shall be indicated in the VAT invoice or VAT official receipt**: *ju*

xxx xxx xxx

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax: *Provided,* That:

(a) The amount of the tax shall be shown as a separate item in the invoice or receipt;

xxx xxx xxx

(3) The date of transaction, quantity, unit cost and description of the goods or properties or nature of the service; and

(4) In the case of sales in the amount of One thousand pesos (₱1,000) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and Taxpayer Identification Number (TIN) of the purchaser, customer or client."

To support the input VAT of ₱16,903,230.64, petitioner submitted various documents which were examined by the ICPA. The results of the ICPA's examination are summarized hereunder:[62]

	Annex	**Amount of Input VAT**
Duly Substantiated Input Tax	B2	**₱ 109,314.02**
With Exceptions Noted:		
Official Receipts/ Invoices with alterations and appended information with countersignature	B1.1	₱ 11,408,607.91
Certified true copy of Official Receipts/ Invoices with alterations and appended information with countersignature	B1.2	1,862,393.27
Official Receipts/ Invoices already out-of-period	B1.3	1,841,058.33
Official Receipts/ Invoices with appended information	B1.4	355,949.17
Official Receipts/ Invoices with alterations and appended information	B1.5	310,735.29
Official Receipts/Invoices not part of SLP declared	B1.6	142,632.98
Official Receipts/Invoices with alterations	B1.7	53,458.25
Official Receipts/Invoices with invalid support	B1.8	11,396.22
Official Receipts/Invoices with incomplete details	B1.9	36,173.73

[62] Exhibit "P-107", ICPA Report, p. 11

Total Exceptions Noted	B1	**₱16,022,405.15**
No supporting documents provided for examination		**₱ 771,511.48**
Total		***₱16,903,230.65**

*the difference of 0.01 may be due to rounding off.

At the outset, the input VAT of ₱771,511.48 shall be disallowed for being unsupported and shall be considered as pertaining to the unprescribed fourth quarter of TY 2011.

Further, note that the input VAT of ₱142,632.98 classified as "official receipts/invoices not part of SLP declared" shall be disregarded as this was not reported in petitioner's SLP (Summary List of Purchases). However, in effect, there is an input VAT of the same amount which remained unaccounted, hence, shall still be included in the disallowance and considered as belonging to the fourth quarter of TY 2011.

Out of the ₱15,989,086.19 (₱16,903,230.65 less ₱771,511.48 less ₱142,632.98) remaining input VAT accounted by the ICPA, only the amount of ₱5,295,538.87 pertains to the unprescribed fourth quarter of TY 2011, to wit:

Month filed per SLP	Name of Supplier	Input VAT Amount
Duly Substantiated Input Tax (From Annex B2 of ICPA Report)		
10/31/2011	3GLOVISION, INC.	₱ 337.92
10/31/2011	3GLOVISION, INC.	3,283.20
12/31/2011	3GLOVISION, INC.	462.72
12/31/2011	3GLOVISION, INC.	1,350.00
12/31/2011	3GLOVISION, INC.	3,286.80
10/31/2011	SHOWCASE DISPLAY CONCEPTS INC.	3,600.00
10/31/2011	SHOWCASE DISPLAY CONCEPTS INC.	6,480.00
10/31/2011	SHOWCASE DISPLAY CONCEPTS INC.	3,024.00
10/31/2011	SHOWCASE DISPLAY CONCEPTS INC.	11,664.00
10/31/2011	SHOWCASE DISPLAY CONCEPTS INC.	2,590.16
10/31/2011	SHOWCASE DISPLAY CONCEPTS INC.	792.00
10/31/2011	SHOWCASE DISPLAY CONCEPTS INC.	19,620.00
10/31/2011	SHOWCASE DISPLAY CONCEPTS INC.	3,924.00
10/31/2011	SHOWCASE DISPLAY CONCEPTS INC.	1,372.80
	subtotal	***₱ 61,787.60***
With Exceptions Noted:		
Official Receipts/ Invoices with alterations and appended information with countersignature (from Annex B1.1 of ICPA Report)		

ℛ

10/31/2011	IDS MARKETING PHILS INC	₱ 116,580.53
10/31/2011	IDS MARKETING PHILS INC	51,354.81
11/30/2011	IDS MARKETING PHILS INC	774,463.46
11/30/2011	IDS MARKETING PHILS INC	83,674.53
12/31/2011	IDS MARKETING PHILS INC	525,539.90
10/31/2011	3GLOVISION, INC.	524,724.07
10/31/2011	3GLOVISION, INC.	65,292.59
10/31/2011	GRAPHICS LIBRARY INCORPORATED	10,560.00
10/31/2011	GRAPHICS LIBRARY INCORPORATED	4,320.00
10/31/2011	DESMOND A. MALIC TRUCKING SERVICES INC.	143,628.00
#N/A	DESMOND A. MALIC TRUCKING SERVICES INC.	26,184.00
10/31/2011	JOSE DANILO M. ZUÑIGA, JR.	8,926.80
11/30/2011	JOSE DANILO M. ZUÑIGA, JR.	3,080.93
11/30/2011	JOSE DANILO M. ZUÑIGA, JR.	583.20
11/30/2011	JOSE DANILO M. ZUÑIGA, JR.	6,397.06
11/30/2011	JOSE DANILO M. ZUÑIGA, JR.	361.15
11/30/2011	JOSE DANILO M. ZUÑIGA, JR.	877.92
11/30/2011	JOSE DANILO M. ZUÑIGA, JR.	3,792.00
11/30/2011	JOSE DANILO M. ZUÑIGA, JR.	3,888.00
11/30/2011	JOSE DANILO M. ZUÑIGA, JR.	2,158.20
11/30/2011	JOSE DANILO M. ZUÑIGA, JR.	2,313.12
11/30/2011	JOSE DANILO M. ZUÑIGA, JR.	1,266.72
11/30/2011	JOSE DANILO M. ZUÑIGA, JR.	3,128.63
11/30/2011	JOSE DANILO M. ZUÑIGA, JR.	2,099.52
12/31/2011	JOSE DANILO M. ZUÑIGA, JR.	10,090.80
12/31/2011	JOSE DANILO M. ZUÑIGA, JR.	3,888.00
12/31/2011	JOSE DANILO M. ZUÑIGA, JR.	5,184.00
12/31/2011	JOSE DANILO M. ZUÑIGA, JR.	4,090.14
10/31/2011	MEGAWORLD CORPORATION	109,385.01
10/31/2011	MEGAWORLD CORPORATION	109,385.01
10/31/2011	MEGAWORLD CORPORATION	31,752.00
10/31/2011	MEGAWORLD CORPORATION	109,385.01
10/31/2011	MEGAWORLD CORPORATION	109,385.01
10/31/2011	PHILSCAN TRAVEL & TRAVEL TOURS, INC.	1,772.78
10/31/2011	PHILSCAN TRAVEL & TRAVEL TOURS, INC.	2,579.89
Certified true copy of Official Receipts/ Invoices with alterations and appended information with countersignature (from Annex B1.2 of ICPA Report)		
10/31/2011	EXCELLENCE FREIGHT INC.	179,389.05
11/30/2011	EXCELLENCE FREIGHT INC.	88,579.33
11/30/2011	EXCELLENCE FREIGHT INC.	100,686.31
12/31/2011	EXCELLENCE FREIGHT INC.	106,057.58
Official Receipts/ Invoices already out-of-period (from Annex B1.3 of ICPA Report)		
11/30/2011	GRAPHICS LIBRARY INCORPORATED	25,603.05
11/30/2011	GRAPHICS LIBRARY INCORPORATED	6,640.56
12/31/2011	GRAPHICS LIBRARY INCORPORATED	38,632.80

12/31/2011	GRAPHICS LIBRARY INCORPORATED	11,689.78
11/30/2011	MEGAWORLD CORPORATION	109,385.01
11/30/2011	MEGAWORLD CORPORATION	109,385.01
11/30/2011	SHOWCASE DISPLAY CONCEPTS INC.	232,265.09
11/30/2011	SHOWCASE DISPLAY CONCEPTS INC.	37,920.00
11/30/2011	SHOWCASE DISPLAY CONCEPTS INC.	63,682.92
11/30/2011	SHOWCASE DISPLAY CONCEPTS INC.	67,909.40
11/30/2011	PHILSCAN TRAVEL & TRAVEL TOURS, INC.	512.68
11/30/2011	PHILSCAN TRAVEL & TRAVEL TOURS, INC.	1,225.76
11/30/2011	3GLOVISION, INC.	186,029.71
11/30/2011	3GLOVISION, INC.	248,676.67
12/31/2011	3GLOVISION, INC.	441,147.10
12/31/2011	3GLOVISION, INC.	259,021.77
Official Receipts/ Invoices with appended information (from Annex B1.4 of ICPA Report)		
10/31/2011	DESMOND A. MALIC TRUCKING SERVICES INC.	37,932.00
10/31/2011	SHOWCASE DISPLAY CONCEPTS INC.	177.94
10/31/2011	SHOWCASE DISPLAY CONCEPTS INC.	283.14
10/31/2011	SHOWCASE DISPLAY CONCEPTS INC.	6,000.00
10/31/2011	SHOWCASE DISPLAY CONCEPTS INC.	2,370.00
10/31/2011	SHOWCASE DISPLAY CONCEPTS INC.	1,296.00
10/31/2011	SHOWCASE DISPLAY CONCEPTS INC.	3,960.00
10/31/2011	ANGARA ABELLO CONCEPCION REGALA & CRUZ LAW OFFICES	600.00
11/30/2011	ANGARA ABELLO CONCEPCION REGALA & CRUZ LAW OFFICES	1,200.00
Official Receipts/Invoices with incomplete details (from Annex B1.9 of ICPA Report)		
10/31/2011	PACUBAS GENERAL SERVICES, INC.	3,399.82
	subtotal	***₱5,233,751.27***
	Total	**₱5,295,538.87**

Since the VAT assessment covering the first to third quarters of TY 2011 had already prescribed, the input VAT disallowance of ₱10,693,547.31, as computed below, pertaining to the first to third quarters of TY 2011 shall be cancelled:

Input VAT disallowance per FDDA	₱ 16,903,230.64
Less: Unsupported input VAT	771,511.48
Unaccounted input VAT	142,632.98
Input VAT pertaining to 4th Qtr of CY 2011	5,295,538.87
Input VAT disallowance pertaining to 1st to 3rd Qtrs of CY 2011	**₱10,693,547.31**

[initial]

Meanwhile, the Court agrees with the exceptions noted by the ICPA save for the input VAT in the amount of ₱1,710,121.23 (from Annex B1.1 of the ICPA Report), broken down below, which were supported by ORs/invoices with alterations and/or appended information and the countersignature is the same with that of the signatory appearing on said documents:

Exhibit	Name of Supplier	Input VAT Amount
P-4.114-ICPA	IDS MARKETING PHILS INC	₱ 116,580.53
P-4.115-ICPA	IDS MARKETING PHILS INC	51,354.81
P-4.116-ICPA	IDS MARKETING PHILS INC	774,463.46
P-4.117-ICPA	IDS MARKETING PHILS INC	83,674.53
P-4.118-ICPA	IDS MARKETING PHILS INC	525,539.90
P-4.100-ICPA	GRAPHICS LIBRARY INCORPORATED	10,560.00
P-4.101-ICPA	GRAPHICS LIBRARY INCORPORATED	4,320.00
P-4.63-ICPA	DESMOND A. MALIC TRUCKING SERVICES INC.	143,628.00
	Total	**₱1,710,121.23**

Hence, the ICPA's input VAT exceptions in the amount of ₱3,523,630.04 (₱5,233,751.27 less ₱1,710,121.23) are proper disallowances for failure to meet the substantiation requirements as required under Sections 110(A) and 113(A) and (B) of the NIRC of 1997, as amended, in relation to Sections 4.110-1, 4.110-8 and 4.113-1 of Revenue Regulations (RR) No. 16-05.

Moreover, the input VAT of ₱61,787.60 found by the ICPA to be valid should be reduced by ₱40,030.16 for the following reasons:

Exhibit No.	Name of Supplier	Invoice/ OR No.	Input VAT Amount	Reason for disallowance
P-4.225	SHOWCASE DISPLAY CONCEPTS INC.	1190	₱ 3,600.00	VAT OR with notation "NOT VALID SOURCE OF INPUT TAX"
P-4.225	SHOWCASE DISPLAY CONCEPTS INC.	1190	6,480.00	VAT OR with notation "NOT VALID SOURCE OF INPUT TAX"
P-4.225	SHOWCASE DISPLAY CONCEPTS INC.	1190	3,024.00	VAT OR with notation "NOT VALID SOURCE OF INPUT TAX"
P-4.225	SHOWCASE DISPLAY CONCEPTS INC.	1190	2,590.16	VAT OR with notation "NOT VALID SOURCE OF INPUT TAX"

P-4.225	SHOWCASE DISPLAY CONCEPTS INC.	1190	792.00	VAT OR with notation "NOT VALID SOURCE OF INPUT TAX"
P-4.225	SHOWCASE DISPLAY CONCEPTS INC.	1190	19,620.00	VAT OR with notation "NOT VALID SOURCE OF INPUT TAX"
P-4.225	SHOWCASE DISPLAY CONCEPTS INC.	1190	3,924.00	VAT OR with notation "NOT VALID SOURCE OF INPUT TAX"
	Total		**₱40,030.16**	

Consequently, only the input VAT of ₱21,757.44 (₱61,787.60 less ₱40,030.16) was duly substantiated. Thus, out of the assessed input VAT disallowance of ₱16,903,230.64, only the amount of ₱4,477,804.66, as computed below, shall remain:

Disallowance per FDDA	₱ 16,903,230.64
Less: Input VAT pertaining to 1st to 3rd Qtr of CY 2011	10,693,547.31
Allowed input from ICPA exceptions	1,710,121.23
Duly substantiated input per Court's further verification	21,757.44
Total Disallowed Input VAT	**₱4,477,804.66**

d. Disallowed discrepancy on beginning and ending balances of deferred input tax per 2550Q vs. FS

Per the FDDA, respondent disallowed the discrepancy on beginning and ending balances of Deferred Input Tax, in the amount of ₱2,694,853.74, computed as follows:[63]

Details			**Discrepancy**
4th Qtr 2011 (Deduction from Available Input Tax) Deferred Input VAT on Purchases of Capital Goods >1M		₱3,322,814.04	
Ending Balance Deferred input VAT per Note 7 of Audited FS, page 441		4,174,000.00	₱ 851,185.96
1st Qtr 2011 Input VAT on Purchases of Capital Goods >1M carried deferred from 2010	₱1,829,563.69		
4th Qtr 2010 (Deduction from Available Input Tax) Deferred Input VAT on Purchases of Capital Goods >1M (page 855)	1,843,667.78		
Value taken for comparison as per approved PAN		₱1,843,667.78	
Beginning Balance Deferred input VAT per Note 7 of Audited FS, page 441		-	1,843,667.78
Discrepancy (Excessive Deferred Input Tax)			**₱2,694,853.74**

[63] Exhibit "P-11", docket, vol. I, p. 67.

Upon comparison of the amounts of input VAT on purchases of capital goods exceeding ₱1M deferred for the succeeding period reflected in the 4th Quarterly VAT Returns for CY 2010 and 2011 *vis-a-vis* the beginning and ending balances of deferred input VAT per 2011 Audited Financial Statements (FS), respondent found discrepancies in the amounts of ₱1,843,667.78 and ₱851,185.96, respectively, and considered both as excessive deferred input tax.

Apparently, petitioner reported the amount of ₱1,843,667.78 as input VAT on purchases of capital goods exceeding ₱1M deferred for the succeeding period in the 4th quarter of 2010 but carried over only the amount of ₱1,829,563.69 in the 1st quarter and for the month of January of CY 2011[64]. Since petitioner reported a lesser amount of deferred input VAT as carry-over in its 2011 VAT Returns, the disallowance, if any, should be based only on the amount of ₱1,829,563.69.

However, even if respondent used the amount of ₱1,829,563.69, the disallowance of the same cannot be sustained.

Pursuant to Section 110(A) of the NIRC of 1997, as amended, as implemented by Section 4.110-3 of RR No. 16-2005, the input VAT on purchases of capital goods exceeding ₱1M should be spread over 60 months or the estimated useful life of the capital goods, whichever is shorter. This means that a portion of the ₱1,829,563.69 deferred input taxes on purchases of capital goods carried over from previous period was amortized during the taxable year 2011 based on the useful life of the said capital goods, while a portion of the same may still be part of the ₱3,322,814.04 deferred to the succeeding taxable quarters. Hence, respondent cannot disallow the entire amount of ₱1,829,563.69 since a portion thereof did not form part of the allowable input tax claimed by petitioner during 2011.

Likewise, the disallowance of ₱851,185.96 cannot prosper. Albeit no explanation was provided by respondent, in attempting to disallow input taxes based on the value of discrepancy on the ending balance of deferred input VAT, respondent may have wanted to show that by deducting a lower amount of input VAT deferred to succeeding period in petitioner's 4th Quarterly VAT Return for 2011, petitioner benefitted from the input taxes, equivalent to the amount of the discrepancy, which should still be deferred. If so, the discrepancy does

[64] Exhibit "P-29", docket, vol. III, p. 1306, Line 17B; Exhibit "P-31", docket, vol. III, p. 1312, Line 20B.

not refer to excessive deferred input tax. Moreover, even if there is indeed an excessive deferred input tax, disallowing the same results in double deduction from allowable input tax since the deduction of a higher amount of deferred input tax per return already reduced the amount of amortized input tax claimed during the period.

If at all, to warrant the disallowance of input tax credits, respondent should have focused his investigation on the input VAT actually amortized during the taxable year 2011 as the same accounts for a portion of the allowable input tax claimed and credited against the output tax for the same period.

Nonetheless, a perusal of the 2011 Quarterly VAT Returns[65] reveals that, among others, petitioner claimed input VAT-others of ₱505,602.77 and input VAT amortization of ₱844,513.60 or a total of ₱1,350,116.37 input VAT related to capital goods exceeding ₱1M during the period, as shown below:

	1st Qtr (Exh. P-31)	**2nd Qtr (Exh. P-36)**	**3rd Qtr (Exh. P-41)**	**4th Qtr (Exh. P-46)**	**Total**
Others *(Line 20E)*	₱ 129,972.12	₱ 129,972.12	₱ 129,972.12	₱ 115,686.41	**₱ 505,602.77**
Input Tax deferred on capital goods exceeding ₱1M from previous quarter *(Line 20B)*	1,829,563.69	3,656,453.33	3,759,016.27	3,540,915.15	12,785,948.44
Add: Input Tax on purchases of capital goods exceeding ₱1M *(Line 21D)*	2,027,443.95	310,320.00	-	-	2,337,763.95
Total	₱3,857,007.64	₱3,966,773.33	₱3,759,016.27	₱3,540,915.15	₱ 15,123,712.39
Less: Input Tax on purchases of capital goods exceeding ₱1M deferred for the succeeding period *(Line 23A)*	3,656,453.33	3,759,016.27	3,540,915.15	3,322,814.04	14,279,198.79
Amortization of input tax on purchases of capital goods exceeding ₱1M	**₱200,554.31**	**₱207,757.06**	**₱218,101.12**	**₱218,101.11**	**₱ 844,513.60**
Total	**₱330,526.43**	**₱337,729.18**	**₱348,073.24**	**₱333,787.52**	**₱1,350,116.37**

Meanwhile, based on Note 26(a)(ii) of the Audited FS[66], petitioner's input VAT on purchases/payments for 2011 amounted to ₱259,801,000.00, which includes the input VAT related to the capital goods exceeding ₱1M of ₱1,350,000.00 (rounded off). *gr*

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[65] Exhibits "P-31", "P-36", "P-41", and "P-46", docket, vol. III, pp. 1312 to 1313, 1322 to 1323, 1333 to 1335, and 1342 to 1344, respectively.

[66] Exhibit "P-28", docket, vol. II, p. 834.

From the foregoing, petitioner's claimed amortized input VAT on capital goods exceeding ₱1M in its Quarterly VAT Returns for TY 2011 is the same as that reflected per its Audited FS for the same year.

Thus, the assessed input tax disallowance of ₱2,694,853.74 should be cancelled for lack of factual and legal bases.

In sum, petitioner is still liable to pay basic deficiency VAT for the 4th quarter of TY 2011 in the amount of ₱4,849,804.66, computed as follows:

VATable Sales/Receipts per VAT Return[67]		₱748,741,042.35
Add: Adjustment per Audit		
Additional Taxable Income per Audit		3,100,000.00
Vatable Sales/Receipts per Audit		₱751,841,042.35
Output Tax Due per Audit		₱ 90,220,925.08
Less: Allowable Input Tax per Audit		
Input Tax per VAT Return		
Input Tax Deferred on Capital Goods exceeding ₱1Million from Previous Quarter	₱ 3,540,915.15	
Others	115,686.41	
Current Transactions	65,032,570.18	
Total Available Input Tax per VAT Return	₱68,689,171.74	
Less: Input Tax on Capital Goods exceeding ₱1Million deferred to the succeeding period	3,322,814.04	
Net Available Input Tax per VAT Return	₱65,366,357.70	
Less: Disallowances per Audit		
Due to invoicing requirements violation	4,477,804.66	60,888,553.04
Net VAT Payable		₱ 29,332,372.04
Less: Monthly VAT Payments - previous two months		18,048,787.95
Tax Paid per Quarterly VAT Return		6,433,779.43
Basic Deficiency VAT		**₱4,849,804.66**

III. Deficiency EWT – ₱2,670,656.75

Finding that petitioner's purchases amounting to ₱93,166,554.21 were not subjected to EWT, respondent assessed petitioner of deficiency EWT thereon in the amount of ₱2,670,656.75, as computed below, pursuant to Section 57 of the NIRC of 1997, as amended, and RR No. 12-01:[68]

[67] Exhibit "P-46", docket, vol. III, pp. 1342 to 1344.
[68] Exhibit "P-11", docket, vol. I, pp. 62, 68, and 71.

Amount without EWT at 1%	₱ 34,022,215.08
Amount without EWT at 2%	59,144,339.13
Total	**₱93,166,554.21**
EWT Deficiency at 1%	₱ 340,222.15
EWT Deficiency at 2%	1,182,886.78
Total	**₱ 1,523,108.93**
Interest (until Oct. 16, 2015)	1,147,547.82
Total EWT Deficiency	**₱ 2,670,656.75**

As discussed earlier, the assessment covering the months of January to November of CY 2011 had already prescribed. However, since petitioner was unable to point out which portion of the assessment pertains to the months of January to November of CY 2011, the entire EWT assessment shall be considered as pertaining to the month of December 2011.

Based on Annex A-2[69] which was attached to the FDDA, the assessed amounts of ₱34,022,215.08 and ₱59,144,339.13 allegedly not subjected to 1% and 2% EWT, respectively, were computed by respondent as follows:

EWT base at 1%:		
Cost of Sales-Purchases		₱ 215,970,164.00
Add: Office Supplies-Cost of Sales	₱ 2,028,109.83	
Office Supplies-Selling and Administrative	9,518,518.67	
Additions to PPE during the year	10,622,000.00	22,168,628.50
Total adjusted amount subject to withholding tax per audit		₱ 238,138,792.50
Less: Amount subjected to withholding tax per returns		116,637,812.42
Amounts not subjected to withholding tax per FLD		₱ 121,500,980.08
Less: Adjustments per protest		87,478,765.00
Net amounts not subjected to withholding tax for FDDA		**₱ 34,022,215.08**

EWT base at 2%:	
Adjustments to 15%	₱ 62,704,971.37
Less: Paid to General Professional Partnership	3,560,632.24
Subject to 2% EWT	**₱59,144,339.13**

Anent the purchases allegedly not subjected to 1% EWT, petitioner posits that these purchases were not made to regular suppliers of goods, hence, not subject to the 1% EWT. However,

[69] Exhibit "P-11", docket, vol. I, p. 71.

petitioner failed to provide documentary evidence to support its position.

With regard to the amount purportedly subject to 2% EWT, petitioner maintains that Annex A-2 of the BIR's schedule shows that it had no income payments on which it failed to withhold the required 2% EWT on regular suppliers of services.

While the "amount not subjected to withholding tax per FLD'" under the 2% column of Annex A-2 reflected a zero amount, it is clear that the EWT assessment did not arose therefrom as the same schedule shows that the said assessment was derived from the amount of Outside Services initially assessed as subject to 15% EWT in the FLD, which were then reconsidered by respondent as subject to 2% EWT in the FDDA.

Aside from its Monthly Remittance Returns of Creditable Income Taxes Withheld (Expanded) [BIR Forms No. 1601-E] [70] and Annual Information Return of Creditable Income Taxes Withheld (Expanded)/Income Payments Exempt from Withholding Tax [BIR Form No. 1604-E][71], no other document was provided by petitioner in relation to the EWT deficiency. Neither did the latter provide other justification to overturn the said assessment.

Thus, the Court upholds the basic deficiency 1% and 2% EWT assessments of ₱340,222.15 and ₱1,182,886.78, respectively, totaling ₱1,523,108.93.

IV. Deficiency WTC – ₱4,675,924.46

Pursuant to Sections 24, 79 and 80 of the NIRC of 1997, as amended, and RR No. 2-98, respondent assessed petitioner of deficiency WTC in the total amount of ₱4,675,924.46 due to the non-withholding of WTC on compensation amounting to ₱8,333,557.02. Below is the detailed computation of the amount of ₱4,675,924.46:

Cost of Sales:		
Salaries and Allowances		₱ 29,201,645.08
Selling and Administrative:		
Salaries and Allowances		284,121,228.00

[70] Exhibits "P-49" to "P-60", docket, vol. III, pp. 1345 to 1377.
[71] Exhibit "P-98", docket, vol. III, p. 1440.

Share-based compensation		11,856,000.00
Total Compensation Amount subject to Withholding Tax per Audit		₱ 325,178,873.08
Less: Amounts subjected to Withholding tax per Returns		250,224,791.66
Amount not subjected to Withholding Tax per FAN		**₱74,954,081.42**
Less: Adjustments per Protest		
Subjected to FBT	₱ 6,991,550.86	
SSS Contribution	2,752,785.02	
Employees Benefits-Others	1,916,848.02	
Meal and Beverages	1,312,875.00	
Medical Exp.	13,261,272.13	
Medicare Premium	931,166.35	
Pag-ibig Fund	260,800.00	
State Insurance Premium	76,280.00	
Share-based Compensation	11,856,000.00	
Retirement Expense	27,260,947.02	66,620,524.40
Net Amount Not subjected to Withholding Tax per FDDA		**₱ 8,333,557.02**
Multiply by Rate of Withholding		32%
Basic Deficiency Withholding Tax on Compensation[72]		**₱ 2,666,738.25**
Add: Interest (until Oct. 16, 2015)		2,009,186.29
Total Compensation Withholding Tax Deficiency[73]		**₱ 4,675,924.54**

Petitioner avers that the charges to salaries and allowances account under the 2011 Audited FS figures used by respondent in generating this item of assessment include the aggregate amount of ₱20,512,026.70 pertaining to SSS employer contributions share, employees' food, meals and other expenses, payments for employees medical and dental coverage, PhilHealth and Pag-ibig employer contributions share, as well as *de minimis* benefits, which are not subject to WTC.

As can be seen from respondent's computation, the amount of ₱20,512,026.70 consisting of the items highlighted above, was already excluded in the ₱8,333,557.02 net amount not subjected to WTC per FDDA.

Considering that petitioner neither presented any supporting documents, nor provided any other explanation to overturn the assessed amount of ₱8,333,557.02, the same shall be sustained. And since petitioner was unable to point out which portion of the assessment pertains to the prescribed months of January to November

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[72] With 0.08 difference due to mathematical error per FDDA.
[73] With 0.08 difference due to mathematical error on Basic Deficiency WTC.

of CY 2011, the entire assessment shall be considered as pertaining to the month of December 2011.

Meanwhile, the assessed amount of ₱8,333,557.02 should be subject to WTC based on the graduated rates of 5% to 32%. However, in the above computation, respondent used the highest rate of 32% in computing the deficiency WTC. Since the employees to whom the compensation pertained to were not individually identified, the appropriate tax rate to be used should be the effective rate computed based on the total WTC paid divided by the total amount of taxable gross compensation reported during CY 2011, as shown below:

Total WTC paid per 1604-CF[74]				₱ 62,682,650.16
Total Taxable Income (see details below)				÷ 249,432,775.65
Effective Tax Rate				**25.1300776%**
Exhibit No.	**Month**	**Tax Base**	**Taxes Withheld**	
P-61	January	13,305,820.32	3,216,058.97	
P-62	February	18,432,278.69	4,801,969.63	
P-63	March	27,866,722.87	7,748,330.18	
P-64	April	28,257,609.79	5,999,288.82	
P-65	May	19,654,898.99	5,061,473.73	
P-66	June	18,469,386.16	4,620,874.56	
P-67	July	16,107,672.25	3,743,650.63	
P-68	August	19,804,416.67	5,110,490.90	
P-69	September	17,555,763.42	4,318,392.76	
P-70	October	16,710,999.59	3,872,839.69	
P-71	November	33,447,087.04	9,083,479.14	
P-72	December	19,820,119.86	5,105,801.15	
	Total	**249,432,775.65**	**62,682,650.16**	

Thus, petitioner is liable to pay basic deficiency WTC for CY 2011 in the amount of ₱2,094,229.35 (₱8,333,557.02 x 25.1300776%).

V. Deficiency FWT – ₱620,167.17

Respondent's verification disclosed that petitioner's royalty expense per FS duly subjected to Final Withholding VAT at 12%

[74] Exhibit "P-97", docket, vol. III, p. 1438

amounted to ₱78,384,726.45 but the amount subjected to FWT at 10% was only ₱74,847,835.56. Hence, pursuant to Section 28(B)(1) of the NIRC of 1997, as amended, respondent assessed petitioner of the corresponding deficiency FWT in the amount of ₱620,167.17, computed as follows:[75]

Basic Deficiency Final Tax on Royalty Expense (₱3,536,890.89 x 10%)	₱ 353,689.09
Add: Interest (until October 16, 2015)	266,478.08
Total Final Withholding Tax Deficiency	**₱620,167.17**

Petitioner asserts that respondent's right to assess deficiency FWT on this transaction has already prescribed as the alleged discrepancy of ₱3,536,890.89 pertains to the taxable period of October 2011.

Petitioner's assertion deserves consideration.

Based on its Monthly Remittance Returns of Final Income Taxes Withheld (BIR Forms No. 1601-F), petitioner subjected to FWT expenses in the total amount of ₱425,520,191.50 and withheld the corresponding taxes worth ₱42,552,019.15, broken down below:

Month	Exhibit No.	Tax Base	Taxes Withheld
January	P-73	₱ 5,842,766.00	₱ 584,276.60
February	P-74	50,970,539.50	5,097,053.95
March	P-75	7,941,341.10	794,134.11
April	P-76	5,113,594.10	511,359.41
May	P-77	7,318,661.30	731,866.13
June	P-78	50,609,425.90	5,060,942.59
July	P-79	6,453,160.80	645,316.08
August	P-80	49,209,196.30	4,920,919.63
September	P-81	7,568,353.70	756,835.37
October	P-82	2,126,524.40	212,652.44
November	P-83	7,490,809.10	749,080.91
December	P-84	224,875,819.30	22,487,581.93
Total		**₱425,520,191.50**	**₱42,552,019.15**

Records[76] show that out of the ₱425,520,191.50 expenses subjected to FWT, ₱74,847,835.56 actually refers to royalties, with the corresponding withholding taxes of ₱7,484,783.56. Presented

[75] Exhibit "P-11', docket, vol. I, pp. 62 and 68.
[76] BIR Records, pp. 696 to 697

hereunder is a comparison of the amounts of royalties subjected to FWVAT per BIR Forms No. 1600 as against the amounts subjected to FWT per BIR Forms No. 1601-F, which reveals a net difference of ₱3,536,891.01:

Month	Per BIR Form No. 1600		Tax Base per BIR Form No. 1601-F[77]	Difference
	Exhibit No.	**Tax Base**		
	P-85	₱ 5,842,766.03	₱ 5,842,766.03	-
February	P-86	6,720,866.25	6,720,866.25	-
March	P-87	7,941,341.08	7,941,341.08	-
April	P-88	5,113,594.05	5,113,594.05	-
May	P-89	7,318,661.31	7,318,661.31	-
June	P-90	6,832,297.29	6,832,297.29	-
July	P-91	6,453,160.83	6,453,160.83	-
August	P-92	6,563,642.30	6,563,642.20	₱ 0.10
September	P-93	7,568,353.72	7,568,353.72	-
October	P-94	5,664,413.35	2,126,524.42	3,537,888.93
November	P-95	7,490,809.08	7,490,809.08	-
December	P-96	4,874,821.28	4,875,819.30	(998.02)
Total		**₱78,384,726.57**	**₱74,847,835.56**	**₱3,536,891.01**

From the table above, it can be deduced that the assessed amount of ₱3,536,890.89 arose from petitioner's expense for the month of October 2011.

As previously discussed, only the FWT assessment covering the month of December 2011 is considered valid. Hence, the assessed amount pertaining to the month of October is already outside respondent's three-year prescriptive period to assess as mandated in Section 203 of the NIRC of 1997, as amended.

Accordingly, the assessed basic deficiency FWT in the amount of ₱353,689.09 must be deleted.

Deficiency Interest

Petitioner contends that the imposition of 20% per annum deficiency interest on the assessed deficiency VAT, EWT and WTC for 2011 are without legal basis, hence, invalid as the 20% deficiency interest imposed under Section 249(B) of the NIRC of 1997, as

[77] BIR Records, p. 697

amended, is limited only to assessments for income tax, estate tax, and donor's tax.

Petitioner's contention is untenable.

The ruling of the Court in the case of *Takenaka Corporation Philippine Branch vs. Commissioner of Internal Revenue,*[78] as regards the imposition of deficiency interest, is instructive:

> "The issue is no longer novel as the same was sufficiently discussed by the Supreme Court in *Paper Industries Corporation Philippines (PICOP) v. Court of Tax Appeals, et al.*[79] The Supreme Court held that Section 247(a) of the NIRC of 1997, as amended [now Section 247(a) of the NIRC of 1997, as amended] 'very clearly embraces failure *to pay all taxes imposed in the Tax Code*, without any regard to the Title of the Code where provisions imposing particular taxes are textually located.' xxx
>
> xxx xxx xxx
>
> Thus, xxx the imposition of deficiency interest under Section 249(B) of the NIRC of 1997, as amended, clearly applies to all internal revenue taxes imposed by the present Tax Code xxx"

Therefore, the deficiency interest is correctly imposed not only on the deficiency income tax but also on the deficiency VAT, EWT, and WTC.

Claim for refund of the payments made under protest

Believing that there are no valid deficiency tax assessments against which the payments under protest of ₱5,795,915.59 may be applied against, petitioner seeks to refund the same under Section 229 of the NIRC of 1997, as amended.

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[78] CTA EB No. 745, September 4, 2012.
[79] G.R. Nos. 106949-50, December 1, 1995.

Pursuant to Section 204(C)[80] and 229[81] of the NIRC of 1997, as amended, to be entitled to a refund of erroneously or illegally collected tax, the following requisites must be present: (1) the tax has been erroneously or illegally collected, or the penalty has been collected without authority, and/or any sum has been excessively or in any manner wrongfully collected; and (2) the claim for refund or credit has been filed within two years from the date of payment of tax, or penalty, regardless of any supervening cause that may arise after payment.

Records show that petitioner's administrative claim[82] for refund filed on December 1, 2015 and its judicial claim filed before this Court on December 4, 2015 are well within the two-year prescriptive period in compliance with Sections 204(C) and 229 of the NIRC of 1997, as amended.

As to whether or not there were excess/erroneous tax payments, it can be recalled that petitioner paid under protest the following deficiency tax assessments totaling ₱5,795,915.59:

	Exhibit Nos.		**Taxes paid**		
Tax Type	**BIR Form No. 0605 /Filing Ref. No.[83]**	**EFPS payment confirmation[84]**	**Basic**	**Interest**	**Total**
Income Tax	P-17 to P-18	Annex B *(P-23)*	₱ 684,788.25	₱ 921,280.24	₱ 1,606,068.49
EWT	P-15 to P-16	Annex D *(P-23)*	1,523,108.93		1,523,108.93
WTC	P-21 to P-22	Annex F *(P-23)*	2,666,738.17		2,666,738.17

gc

[80] SEC. 204. *Authority of the Commissioner to Compromise, Abate, and Refund or Credit Taxes.* - The Commissioner may -
xxx
(C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: *Provided, however,* That a return filed showing an overpayment shall be considered as a written claim for credit or refund.

[81] SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* - No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however,* That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

[82] Exhibit "P-23", docket, vol. II, pp. 723 to 726.

[83] Docket, vol. II, pp. 707, and 714 to 722.

[84] Docket, vol. II, pp. 729, 732, 735, 738, and 741.

			₱4,874,635.35	**₱921,280.24**	**₱5,795,915.59**

To determine whether petitioner is entitled to refund of any amount from the payments made under protest, such payments shall first be offset against the remaining deficiency tax liabilities of petitioner for TY 2011 as found by the Court.

In recapitulation, petitioner is liable to pay internal revenue taxes for CY 2011, particularly, deficiency income tax, VAT, EWT, and WTC, in the aggregate amount of ₱19,122,577.05, inclusive of the 25% surcharge imposed under Section 248(A)(3)of the NIRC of 1997, as amended, and deficiency and delinquency interests imposed under Sections 249(B) and (C) of the same Code, computed until November 28, 2015, the date when petitioner made the payments[85] under protest for deficiency income tax, EWT and WTC. After applying the said payments to the total amount due, the net amount still due for deficiency income tax, VAT, EWT and WTC as of November 28, 2015 amounted to ₱191,178.83, ₱9,913,244.63, ₱1,597,808.21 and ₱1,624,429.81, respectively, or in the aggregate amount of ₱13,326,661.48. The detailed computations thereof are tabulated below:

	Income Tax (IT)	**VAT**	**EWT**	**WTC**	**Total**
Basic Tax	₱ 684,788.25	₱ 4,849,804.66	₱ 1,523,108.93	₱ 2,094,229.35	₱ 9,151,931.19
Add: 25% Surcharge	171,197.06	1,212,451.17	380,777.23	523,557.34	2,287,982.80
20% Deficiency Interest					
IT: From Apr. 16,2012 to Nov. 5, 2015 [*₱684,788.25 X 20% X 1298/365 days]*	487,043.91				487,043.91
Deficiency Interest on belated payment of ₱2,105,100.00 income tax due	423,326.96				423,326.96
VAT: From Jan. 26, 2012 to Nov. 5, 2015 *[₱4,849,804.66 x 20% x 1380/365 days]*		3,667,249.55			3,667,249.55
EWT: From Jan. 17, 2012 to Nov. 5, 2015 *[₱1,523,108.93 x 20% x 1389/365 days]*			1,159,231.95		1,159,231.95
WTC: From Jan. 17, 2012 to Nov. 5, 2015 *[₱2,094,229.35 x 20% x 1389/365 days]*				1,593,909.35	1,593,909.35
Total Amount Due, Nov. 5, 2015	**₱1,766,356.18**	**₱9,729,505.38**	**₱3,063,118.11**	**₱4,211,696.04**	**₱18,770,675.71**

[85] Exhibits "P-15" to "P-18", "P-21" to "P-22", "P-23", docket, vol. II, pp. 715 to 718, 721 to 722, 729, 732, and 734.

Add: 20% Deficiency Interest from Nov. 6, 2015 to Nov. 28, 2015					
IT: *[₱684,788.25 x 20% x 23/365 days]*	₱ 8,630.21				₱ 8,630.21
VAT:*[₱ 4,849,804.66 x 20% x 23/365 days]*		₱ 61,120.83			61,120.83
EWT: *[₱1,523,108.93 x 20% x 23/365 days]*			₱ 19,195.35		19,195.35
WTC: *[₱2,094,229.35 x 20% x 23/365 days]*				₱ 26,393.03	26,393.03
20% Delinquency interest from Nov. 6, 2015 to Nov. 28, 2015					
IT: *[₱1,766,356.18 x 20% x 23/365 days]*	22,260.93				22,260.93
VAT: *[₱9,729,505.38x 20% x 23/365 days]*		122,618.42			122,618.42
EWT: *[₱3,063,118.11 x 20% x 23/365 days]*			38,603.68		38,603.68
WTC: *[₱4,211,696.04 x 20% x 23/365 days]*				53,078.91	53,078.91
Total Amount Due, Nov. 28, 2015	**₱1,797,247.32**	**₱9,913,244.63**	**₱3,120,917.14**	**₱4,291,167.98**	**₱19,122,577.07**
Less: Payments made under protest	1,606,068.49		1,523,108.93	2,666,738.17	5,795,915.59
Amount Still Due, Nov. 28, 2015	**₱ 191,178.83**	**₱9,913,244.63**	**₱1,597,808.21**	**₱1,624,429.81**	**₱13,326,661.48**

Considering that the payments made by petitioner under protest were lower than the amounts computed by the Court for deficiency income tax, EWT and WTC, there is no erroneously paid tax that may be refunded to petitioner.

WHEREFORE, premises considered, the instant Petitions for Review are **PARTIALLY GRANTED**. The assessment issued by respondent against petitioner covering deficiency FWT for TY 2011 in the amount of ₱620,167.17 is **CANCELLED AND WITHDRAWN**. However, petitioner's claim for refund in the amount of ₱5,795,915.59 is **DENIED** and the assessments for deficiency income tax, VAT, EWT, and WTC for TY 2011 are **UPHELD IN PART**. Accordingly, petitioner is **ORDERED TO PAY** respondent the aggregate amount of **TWENTY MILLION SEVEN HUNDRED EIGHTY-EIGHT THOUSAND FIVE HUNDRED SIXTY-ONE PESOS AND FORTY-SEVEN CENTAVOS (₱20,788,561.47)**, inclusive of the 25% surcharge, 20% deficiency interest and 20% delinquency interest imposed under Sections 248(A)(3), 249(B) and (C) of the NIRC of 1997, as amended, respectively, computed until December 31, 2017, as follows:

	Income Tax (IT)	VAT	EWT	WTC	Total
Basic Tax	₱ 684,788.25	₱ 4,849,804.66	₱ 1,523,108.93	₱ 2,094,229.35	₱ 9,151,931.19
Add: 25% Surcharge	171,197.06	1,212,451.17	380,777.23	523,557.34	2,287,982.80
20% Deficiency Interest					
IT: From Apr. 16,2012 to Nov. 5, 2015 *[₱684,788.25 X 20% X 1298/365 days]*	487,043.91				487,043.91
Deficiency Interest on belated payment of ₱2,105,100.00 income tax due	423,326.96				423,326.96
VAT: From Jan. 26, 2012 to Nov. 5, 2015 *[₱4,849,804.66 x 20% x 1380/365 days]*		3,667,249.55			3,667,249.55
EWT: From Jan. 17, 2012 to Nov. 5, 2015 *[₱1,523,108.93 x 20% x 1389/365 days]*			1,159,231.95		1,159,231.95
WTC: From Jan. 17, 2012 to Nov. 5, 2015 *[₱2,094,229.35 x 20% x 1389/365 days]*				1,593,909.35	1,593,909.35
Total Amount Due, Nov. 5, 2015	**₱1,766,356.18**	**₱ 9,729,505.38**	**₱3,063,118.11**	**₱4,211,696.04**	**₱18,770,675.71**
Add: 20% Deficiency Interest from Nov. 6, 2015 to Nov. 28, 2015					
IT: *[₱684,788.25 x 20% x 23/365 days]*	₱ 8,630.21				₱ 8,630.21
VAT:*[₱ 4,849,804.66 x 20% x 23/365 days]*		₱ 61,120.83			61,120.83
EWT: *[₱1,523,108.93 x 20% x 23/365 days]*			₱ 19,195.35		19,195.35
WTC: *[₱2,094,229.35 x 20% x 23/365 days]*				₱ 26,393.03	26,393.03
20% Delinquency interest from Nov. 6, 2015 to Nov. 28, 2015					
IT: *[₱1,766,356.18 x 20% x 23/365 days]*	22,260.93				22,260.93
VAT: *[₱9,729,505.38x 20% x 23/365 days]*		122,618.42			122,618.42
EWT: *[₱3,063,118.11 x 20% x 23/365 days]*			38,603.68		38,603.68
WTC: *[₱4,211,696.04 x 20% x 23/365 days]*				53,078.91	53,078.91
Total Amount Due, Nov. 28, 2015	**₱1,797,247.32**	**₱ 9,913,244.63**	**₱3,120,917.14**	**₱4,291,167.98**	**₱19,122,577.07**
Less: Payments made under protest	1,606,068.49		1,523,108.93	2,666,738.17	5,795,915.59
Amount Still Due, Nov. 28, 2015	**₱ 191,178.83**	**₱ 9,913,244.63**	**₱1,597,808.21**	**₱1,624,429.81**	**₱13,326,661.48**
Add: 20% Deficiency interest from Nov. 29, 2015 to Dec. 31, 2017 *[₱4,849,804.66 x 20% x 764/365 days]*		₱ 2,030,274.39			₱ 2,030,274.39

20% Delinquency interest from Nov. 29, 2015 to Dec. 31, 2017					
IT: *[(₱1,766,356.18-₱1,606,068.49) x 20% x 764/365]*	₱ 67,101.26				67,101.26
VAT: *[₱9,729,505.38 x 20% x 764/365 days]*		4,073,064.17			4,073,064.17
EWT: *[(₱3,063,118.11-₱1,523,108.93) x 20% x 764/365 days]*			₱ 644,694.25		644,694.25
WTC: *[(₱4,211,696.04-₱2,666,738.17) x 20% x 764/365 days]*				₱ 646,765.92	646,765.92
Total Amount Still Due as of Dec. 31, 2017	**₱ 258,280.09**	**₱16,016,583.19**	**₱2,242,502.46**	**₱2,271,195.73**	**₱20,788,561.47**

In addition, petitioner is **ORDERED TO PAY** respondent delinquency interest at the rate of twelve percent (12%) on the total unpaid amount of **₱12,974,760.12**[86] representing basic deficiency income tax, VAT, EWT and WTC plus the corresponding 25% surcharge and deficiency interest for deficiency VAT, EWT and WTC as of November 5, 2015, as determined above, computed from January 1, 2018 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended by Republic Act No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN), as implemented by RR No. 21-2018.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

I CONCUR:

CATHERINE T. MANAHAN
Associate Justice

[86] Total amount due as of November 5, 2015 of ₱18,770,675.71 less Payments of ₱5,795,915.59.

ATTESTATION

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

Juanito C. Castañeda, Jr.
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 cases were assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice