REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

ABACUS DISTRIBUTION SYSTEMS PHILS., INC., Petitioner,	**CTA CASE NO. 8678**
	Members:
- versus -	**CASTAÑEDA, JR.**, Chairperson, **CASANOVA**, and **MANAHAN**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUL 19 2017 1:50 p.m.

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DECISION

CASTAÑEDA, JR., *J.*:

THE CASE

In this Petition for Review, petitioner Abacus Distribution Systems Phils., Inc. seeks the cancellation of respondent's Final Decision on Disputed Assessment (FDDA) dated May 2, 2013, assessing petitioner of deficiency income tax, value-added tax (VAT), expanded withholding tax (EWT), withholding tax on compensation (WTC), final withholding tax (FWT), final withholding VAT (FWVAT) and documentary stamp tax (DST) for the taxable year 2009 in the aggregate amount of ₱94,405,463.27, inclusive of surcharges and interests, broken down as follows:

Tax Type	Basic	Surcharge	Interest	Total
Income Tax	₱ 28,324,809.39	-	₱ 15,132,432.42	₱ 43,457,241.81

VAT	21,576,991.51	-	12,473,274.55	34,050,266.06
EWT	509,731.84	-	296,063.42	805,795.26
WTC	102,575.34	-	59,578.00	162,153.34
FWT	6,213,282.86	₱ 1,553,320.72	3,608,810.87	11,375,414.45
FWVAT	2,485,313.15	621,328.29	1,443,524.35	4,550,165.78
DST	2,407.00	601.75	1,417.82	4,426.57
Total	**₱59,215,111.08**	**₱2,175,250.76**	**₱33,015,101.43**	**₱94,405,463.27**

THE FACTS

Petitioner is a corporation duly organized and existing under and by virtue of Philippine laws, with principal office address at 3F Trafalgar Plaza Building, H.V. Dela Costa Street, Salcedo Village, Makati City 1227. It is duly registered with the Bureau of Internal Revenue (BIR) under Revenue District No. 50 with Tax Identification Number 000103491000.[1]

Respondent is the duly appointed Commissioner of Internal Revenue who holds office at the BIR National Office Building located at Diliman, Quezon City.[2]

On May 31, 2010, petitioner received a Letter of Authority (LOA) dated May, 14, 2010 from the BIR authorizing the examination of its books of accounts and other financial records for the year ending December 31, 2009.[3] On March 9, 2012, petitioner received a Notice of Informal Conference dated February 21, 2012 with attached Summary Findings from the Large Taxpayers Service of the BIR.[4]

On March 27, 2012, petitioner through its president, Demetrio C. Silverio, executed a Waiver of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code (NIRC) and agreed to extend the period to conduct audit/investigation until December 31, 2012.[5]

On September 20, 2012, petitioner received a Preliminary Assessment Notice (PAN) dated July 31, 2012, for deficiency Income Tax, VAT, EWT, WTC, FWT, FWT-VAT and DST for the year ending

[1] Summary of Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), Docket, Vol. II, par. 1, p. 883.
[2] Summary of Admitted Facts, JSFI, Docket, Vol. II, par. 2, p. 883.
[3] Summary of Admitted Facts, JSFI, Docket, Vol. II, par. 3, p. 883.
[4] Summary of Admitted Facts, JSFI, Docket, Vol. II, par. 4, p. 884.
[5] Summary of Admitted Facts, JSFI, Docket, Vol. II, par. 5, p. 884.

December 31, 2009.[6] Petitioner protested the PAN in a letter dated October 3, 2012, which was received by the BIR on October 4, 2012.[7]

On November 29, 2012, petitioner received the Formal Letter of Demand (FLD) with Details of Discrepancies and Final Assessment Notice (FAN) Nos. LTEAD II-IT-09-0003, LTEAD II-VT-09-0002, LTEAD II-WG-09-0004, LTEAD II-WC-09-0004, LTEAD II-WE-09-0004, LTEAD II-WF-09-0001 and LTEAD II-DS-09-0001 dated November 12, 2012.[8]

On December 20, 2012, petitioner filed a protest against the FAN through a letter dated December 19, 2012.[9]

On June 27, 2013, petitioner received the Final Decision on Disputed Assessment (FDDA) dated May 2, 2013 which denied its protest for lack of factual and legal basis.[10] On July 26, 2013, petitioner filed a Petition for Review with the Court of Tax Appeals under Section 228 of the NIRC of 1997 to appeal the FDDA.[11]

On October, 3, 2013, respondent filed his Answer[12] with the following pertinent Special and Affirmative Defenses:

"**SPECIAL & AFFIRMATIVE DEFENSES**

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Income Tax

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11. In the instant case, petitioner's deduction for Forex Loss in the amount of Php2,431,607 was not shown to have been actually sustained and no considerable proof was introduced to buttress its claim.

12. Moreover, records bear that the sales figures derived from creditable taxes withheld by petitioner's customers when reconciled with the sales per Summary

[6] Summary of Admitted Facts, JSFI, Docket, Vol. II, par.6, p. 884.
[7] Summary of Admitted Facts, JSFI, Docket, Vol. II, par. 7, p. 884.
[8] Summary of Admitted Facts, JSFI, Docket, Vol. II, par. 8, p. 884.
[9] Summary of Admitted Facts, JSFI, Docket, Vol. II, par. 10, p. 884.
[10] Summary of Admitted Facts, JSFI, Docket, Vol. II, par. 11, pp. 884-885.
[11] Summary of Admitted Facts, JSFI, Docket, Vol. II, par. 12, p. 885.
[12] Docket, Vol. I, pp. 209-222.

List of Sales reveal a discrepancy amounting to Php570,130.98. Hence, petitioner's gross income based on Section 32 of the Tax Code was found to be understated.

13. Also, the computerized audit technique that reconciled petitioner's purchases as sources of input tax credits against the income payment subjected to expanded withholding tax unveil an understatement in purchases amounting to Php16,764,878.70, which is indicative of unaccounted source of cash.

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15. Upon further examination of the records, it was also revealed that, reconciliations to determine compliance with the additional requirements of deductibility required under section 34(K) of the Tax Code indicate that petitioner's deductions, in the amount of Php20,710,942.88, did not fully cover the required withholding on deductions subject to final withholding tax. Likewise, the Php2,989,649.32 which was subjected to expanded withholding tax and Php410,746.03 on deductions subject to withholding tax on compensation, did not as well comply with the required deductibility as provided for in Section 34(K).

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17. Records also disclose that there were unaccounted remittances. Petitioner's principal source of revenue was commissions from Abacus International Pte. Ltd. (AIPL), and related to the commissions earned by petitioner are expenses for communication and marketing. Under an offsetting agreement, only the net amount shall be remitted inwardly. The reconciliation of the net amount due against the inward remittances reveal that there were unaccounted remittances by the petitioner in the amount of Php50,538,076.40.

<u>Value-Added Tax</u>

18. Petitioner was assessed by the Bureau for deficiency VAT on its alleged zero rated sales in the amount of Php111,154,286.12. Petitioner contends that its purported zero rated sales represent revenues arising

from services rendered to AIPL, a non-resident foreign corporation, and that the consideration for which is paid for in foreign currency so much so that the said sales were supposedly subject to VAT at zero percent (0%).

19. However, the findings of no less than three examiners indicate otherwise. The revenues generated by petitioner consisting of rentals of equipment by the subscribers (travel agencies) and the fees paid through AIPL is subject to VAT at the rate of twelve percent (12%).

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22. In the instant case, however, there was no service(s) rendered to a non-resident. The fees were paid on bookings by the subscribers. Essentially, petitioner did not render any service to AIPL, since the fees were payable based on the number of access made by the travel agencies in the Philippines using the abacus system. Seeing that the transaction in this particular case does not comply with the requirement for zero-rating, therefore, the income of Php111,154,286.12 is subject to VAT.

Expanded Withholding Tax

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24. Respondent respectfully submits that the deficiency withholding tax was the result of reconciling the deductions claimed subject to EWT against the income payments per alpha list supporting 1604-E using the provisions of Revenue Regulations No. 2-98, and further amplified by Revenue Memorandum Circular 72-04 as well as the provisions of Revenue Regulations No. 12-01.

Withholding Tax on Compensation

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27. Accordingly, records reveal that the above-mentioned audit procedure yielded a deficiency in withholding tax on compensation since the withheld taxes on salaries and wages claimed by petitioner as deductions

are higher compared to the total based on the alpha list, then it is safe to conclude that, there were deductions made by petitioner which were not subjected to the required withholding tax.

Final Withholding VAT

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29. Petitioner in this case provides a computerized reservation in the Philippines, the Abacus System, a system that performs various functions, including real time airline seat reservations, schedule displays, booking for a variety of air, car and hotel services, automated ticketing and fare quote displays. The abacus system is an intellectual property owned by a non-resident foreign corporation (AIPL).

30. In connection with the use of the Abacus System in the Philippines, marketing fees and communication expenses are being charged by AIPL. Since the charges are income of a non-resident in connection with the use of its property and property rights in the country, the same is subject to final withholding of VAT as required under RR 16-05 as amended by Revenue Regulations No. 4-2007.

Final Withholding Tax

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32. Records disclose that the petitioner did not introduce any iota of evidence to prove that the foregoing services were rendered abroad. On the contrary, review of the documents supporting the communication expense showed that AIPL billed petitioner based on the bookings and number of access by travel agencies in the Philippines. Given that the source of income where the deductions were derived are from the database access by subscribing travel agencies in the Philippines, the same is therefore within the taxing authority of the BIR based on the situs of taxation theory. Thus, such income is subject to final withholding tax.

Documentary Stamp Tax

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35. Records disclose that, petitioner was properly assessed for deficiency documentary stamp tax, the same being derived from deductions made by petitioner for the lease of real property as found under Mktg-Rent and Mktg-Purchased Services account in the total amount of Php4,286.77, inclusive of penalties.

xxx xxx xxx"[13]

On September 29, 2014, the parties filed their Joint Stipulation of Facts and Issues.[14] On October 2, 2014, the Court issued a Pre-Trial Order.[15]

During the hearing, petitioner[16] and respondent[17] presented their pieces of evidence and their witnesses. On March 18, 2016,[18] the Court required the parties to submit their memoranda. On June 6, 2016, petitioner filed its Memorandum for the Petitioner[19] while on June 27, 2016, respondent filed through registered mail his Memorandum.[20]

On July 19, 2016,[21] the case was deemed submitted for decision. Hence, this Decision.

THE ISSUES

The issues to be resolved by the Court are: (1) Whether the FAN sufficiently informed the taxpayer of the assessments' factual and legal bases; and (2) Whether petitioner is liable for the subject deficiency assessments.

THE RULING

The Court partially grants the instant Petition.

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[13] Docket, Vol. I, pp. 210-216.
[14] See Note 1, pp. 883-895.
[15] Docket, Vol. II, pp. 896-902.
[16] Petitioner's Formal Offer of Evidence, Docket, Vol. III, pp. 1085-1125.
[17] Formal Offer of Evidence, Docket, Vol. III, pp. 1352-1361.
[18] Resolution, Docket, Vol. III, pp. 1370-1371.
[19] Docket, Vol. III, pp. 1392-1442.
[20] Docket, Vol. III, pp. 1443-1457.
[21] Resolution, Docket, Vol. III, p. 1460.

Petitioner was sufficiently informed of the bases of the subject assessments

Petitioner contends that the subject FANs violated their right to be informed of the facts and the law from which the deficiency assessments were based. However, the Court observes that the questioned FAN with attached Details of Discrepancies[22] contained the necessary bases from which the assessments were based. Hence, the Court finds petitioner's contention untenable.

The Court shall now proceed to determine the correctness of the subject assessments. For an orderly discussion, the following subject assessments shall be discussed in this sequence:

Deficiency Tax	Total Amount
I. EWT	₱ 805,795.25
II. WTC	162,153.34
III. FWVAT	4,550,165.79
IV. FWT	11,375,414.45
V. Income Tax	43,457,241.81
VI. VAT	34,050,266.06
VII. DST	4,426.57
	₱94,405,463.27

I. DEFICIENCY EWT – ₱805,795.25

Respondent assessed petitioner of deficiency EWT for taxable year 2009 in the amount of ₱805,795.25, computed as follows:[23]

Particular	Per FS	Per Withholding Tax Return	Discrepancy	Rate	Deficiency EWT
Services	₱ 7,698,787.96	₱ 8,022,767.56	₱ (323,979.60)	-	-
Goods	16,798,186.88	11,604,087.00	5,194,099.88	1%	₱ 51,941.00
Rental	23,007,769.62	14,526,206.31	8,481,563.31	5%	424,078.17
Professional Fees	1,998,400.00	1,773,648.87	224,751.13	15%	33,712.67
Total	**₱49,503,144.46**	**₱35,926,709.74**	**₱13,576,434.72**		**₱ 509,731.83**
Add: Interest					296,063.42
Total amount due					**₱ 805,795.25**

[22] Exhibit "P-10", Docket, Vol. I, pp. 466-483.
[23] Exhibit "P-10", Docket, Vol.I, pp. 471-472.

The assessment resulted from respondent's finding that there were income payments made by petitioner in the year 2009 comprising of purchases of goods in the amount of ₱5,194,099.88, rental payments in the amount of ₱8,481,563.31 and professional fees in the amount of ₱224,751.13 that were not subjected to 1%, 5% and 15% EWT, respectively, as required under Revenue Regulations (RR) No. 02-98, as amended.

A. Purchases of Goods

The deficiency EWT on purchases of goods of ₱51,941.00 was derived by respondent as follows:

Particular	Per FS	Per Withholding Tax Return	Discrepancy	Rate	Deficiency EWT
Petrol/Oil & Car Registration	₱ 740,834.85				
Stationery & Supplies	574,318.68				
Magazines/periodicals	23,527.01				
Social Activities	406,297.41				
Repairs & Maintenance	3,203,989.38				
Entertainment & Representation	938,454.55				
Acquisition of PPE	10,910,765.00				
Total	**₱16,798,186.88**	**₱11,604,087.00**	**₱ 5,194,099.88**	**1%**	**₱ 51,941.00**

The Court-commissioned Independent CPA (ICPA), Navarro Amper & Co., through its Partner, Atty. Fredieric B. Landicho, ascertained that out the amount of ₱16,798,186.88 classified by the BIR as income payment for goods purchases, the amounts of ₱8,782,945.30 and ₱1,628,357.73 were subjected to 1% and 2% EWT, respectively, in the year 2009. However, with regard to the amount of ₱3,829,804.77, the ICPA was not able to determine whether the same was subjected to or exempted from EWT, while the remaining amount of ₱2,577,079.08 could not be accounted for due to lack of supporting documents. The details of the ICPA findings are shown below:[24]

Particular	Per FAN	Purchases subjected to EWT		Total	Purchases not subjected to EWT	Unaccounted
		1%	2%			
Petrol/Oil & Car Registration	₱ 740,834.85	₱ -	₱ -	₱ -	₱ 708,728.03	₱ 32,106.82
Stationery & Supplies	574,318.68	286,200.70	-	286,200.70	26,252.64	261,865.34
Magazines/Periodicals	23,527.01	3,510.00	-	3,510.00	11,000.00	9,017.01
Social Activities	406,297.41	-	39,658.50	39,658.50	301,800.00	64,838.91

[24] Exhibit "P-64", p. 21, Docket, Vol. II, p. 998.

Repairs & Maintenance	3,203,989.38	965,523.05	430,159.23	1,395,682.28	575,191.83	1,233,115.27
Entertainment & Representation	938,454.55	13,749.57	-	13,749.57	20,000.00	904,704.98
Acquisition of PPE	10,910,765.00	7,513,961.98	1,158,540.00	8,672,501.98	2,186,832.27	51,430.75
Total	**₱16,798,186.88**	**₱8,782,945.30**	**₱1,628,357.73**	**₱10,411,303.03**	**₱3,829,804.77**	**₱2,557,079.08**

RR No. 02-98, as amended by RR No. 17-03, mandates the withholding of 1% and 2% EWT on purchases of goods and services as follows:

> "Sec. 2.57.2. Income payments subject to creditable withholding tax and rates prescribed thereon. — Except as herein otherwise provided, there shall be withheld a creditable income tax at the rates herein specified for each class of payee from the following items of income payments to persons residing in the Philippines:
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> xxx xxx xxx
>
> (M) Income payments made by the top ten thousand (10,000) private corporations to their local/resident supplier of goods and local/resident supplier of services other than those covered by other rates of withholding tax. — Income payments made by any of the top ten thousand (10,000) private corporations, as determined by the Commissioner, to their local/resident supplier of goods and local/resident supplier of services, including non-resident alien engaged in trade or business in the Philippines
>
> Supplier of goods — One percent (1%)
> Supplier of services — Two percent (2%)"

Based on the Court's examination of the reconciliation schedule[25] detailing the individual transactions covering the above purchases/income payments and the related check vouchers, journal vouchers, statements of accounts, invoices and official receipts[26] as well as petitioner's Summary List of Purchases (SLP)[27] and EWT Alphalist[28] for taxable year 2009, only the EWT corresponding to the following income payments totaling ₱8,349,080.00 was verified to

[25] Exhibit "P-64-d".
[26] Exhibit "P-62".
[27] Exhibits P-59 to P-59.17.
[28] Exhibits P-60 to P-60.11.

have been actually withheld and remitted to the BIR in accordance with Section 2.57.2(M) of RR No. 02-98, as amended:

CV No.	Date	Account Code	Income Payment	EWT Rate
STATIONERY AND SUPPLIES				
Minerva Printing Corporation				
5984	30-Jan-09	1740464	₱ 893.00	1%
5994	30-Jan-09	1740264	9,000.00	1%
6057	19-Feb-09	1740464	12,500.00	1%
		1740264	400.00	1%
6062	19-Feb-09	1740764	1,200.00	1%
		1740064	400.00	1%
		1740264	800.00	1%
		1740464	30,000.00	1%
6179	23-Mar-09	1740664	400.00	1%
6182	24-Mar-09	1740464	22,500.00	1%
		1740064	139.00	1%
		1740264	464.00	1%
		1740364	418.00	1%
6349	21-May-09	1740864	279.00	1%
		1740064	56.00	1%
		1740164	37.00	1%
		1740264	9,185.00	1%
		1740364	167.00	1%
		1740464	93.00	1%
		1740564	74.00	1%
		1740664	204.00	1%
		1740764	56.00	1%
		1740864	111.00	1%
6488	26-Jun-09	1740964	19.00	1%
6553	24-Jul-09	1740864	750.00	1%
6565	24-Jul-09	1740464	2,679.00	1%
		1740064	506.00	1%
		1740164	337.00	1%
		1740264	2,887.00	1%
		1740364	2,087.00	1%
		1740464	675.00	1%
		1740564	675.00	1%
		1740664	1,855.00	1%
		1740764	506.00	1%
		1740864	1,012.00	1%
6570	29-Jul-09	1740964	169.00	1%
		1740364	17,500.00	1%
		1740464	8,500.00	1%
6669	28-Aug-09	1740664	6,500.00	1%
6794	30-Sep-09	1740264	2,400.00	1%
6797	30-Sep-09	1740464	37,500.00	1%

		1740064	156.00	1%
		1740264	520.00	1%
		1740364	468.00	1%
6870	22-Oct-09	1740864	312.00	1%
6896	30-Oct-09	1740464	7,969.00	1%
6892	20-Nov-09	1740664	17,875.00	1%
6940	12-Nov-09	1740264	9,000.00	1%
		1740064	800.00	1%
		1740264	800.00	1%
		1740564	400.00	1%
		1740664	800.00	1%
6992	20-Nov-09	1740964	800.00	1%
		1740064	284.00	1%
		1740164	189.00	1%
		1740264	946.00	1%
		1740364	2,994.00	1%
		1740464	284.00	1%
		1740564	714.00	1%
		1740664	1,398.00	1%
		1740864	1,282.00	1%
7138	29-Dec-09	1740964	95.00	1%
Compucare				
6667	28-Aug-09	1740064	1,558.00	1%
360 System Solutions, Inc.				
6211	31-Mar-09	1740264	2,754.00	1%
Dan Daryl Phils., Inc.				
6568	29-Jul-09	1740664	1,188.00	1%
6695	14-Sep-09	1740664	1,781.00	1%
6885	28-Oct-09	1740664	5,938.00	1%
6996	24-Nov-09	1740264	5,938.00	1%
Minuteman Printers, Inc.				
6184	25-Mar-09	1740664	13,393.00	1%
P&L Gifts, Inc.				
6928	11-Nov-09	1740664	10,714.00	1%
PC Planet Corp.				
6352	21-May-09	1740664	3,280.00	1%
HP Philippines Corp.				
6269	24-Apr-09	1740764	773.00	1%
Zenshin Systems Corp.				
6495	02-Jun-09	1740664	1,875.00	1%
SUBTOTAL (1%)			***273,211.00***	
Copyhigh-V Digital System				
6579	31-Jul-09	1740464	6,250.00	2%
Lacercom Business Machine Trading				
6410	28-May-09	1740464	3,482.00	2%
Microcore System Technology				

		1740064	156.00	1%
		1740264	520.00	1%
		1740364	468.00	1%
6870	22-Oct-09	1740864	312.00	1%
6896	30-Oct-09	1740464	7,969.00	1%
6892	20-Nov-09	1740664	17,875.00	1%
6940	12-Nov-09	1740264	9,000.00	1%
		1740064	800.00	1%
		1740264	800.00	1%
		1740564	400.00	1%
		1740664	800.00	1%
6992	20-Nov-09	1740964	800.00	1%
		1740064	284.00	1%
		1740164	189.00	1%
		1740264	946.00	1%
		1740364	2,994.00	1%
		1740464	284.00	1%
		1740564	714.00	1%
		1740664	1,398.00	1%
		1740864	1,282.00	1%
7138	29-Dec-09	1740964	95.00	1%
Compucare				
6667	28-Aug-09	1740064	1,558.00	1%
360 System Solutions, Inc.				
6211	31-Mar-09	1740264	2,754.00	1%
Dan Daryl Phils., Inc.				
6568	29-Jul-09	1740664	1,188.00	1%
6695	14-Sep-09	1740664	1,781.00	1%
6885	28-Oct-09	1740664	5,938.00	1%
6996	24-Nov-09	1740264	5,938.00	1%
Minuteman Printers, Inc.				
6184	25-Mar-09	1740664	13,393.00	1%
P&L Gifts, Inc.				
6928	11-Nov-09	1740664	10,714.00	1%
PC Planet Corp.				
6352	21-May-09	1740664	3,280.00	1%
HP Philippines Corp.				
6269	24-Apr-09	1740764	773.00	1%
Zenshin Systems Corp.				
6495	02-Jun-09	1740664	1,875.00	1%
SUBTOTAL (1%)			***273,211.00***	
Copyhigh-V Digital System				
6579	31-Jul-09	1740464	6,250.00	2%
Lacercom Business Machine Trading				
6410	28-May-09	1740464	3,482.00	2%
Microcore System Technology				

6461	17-Jun-09	1740664	2,420.00	2%
SUBTOTAL (2%)			***12,152.00***	
TOTAL - STATIONERY AND SUPPLIES			**285,363.00**	
MAGAZINES AND PERIODICALS				
People's Independent Media, Inc.				
7045	01-Dec-09	1740141	3,510.00	1%
TOTAL - MAGAZINES AND PERIODICALS			**3,510.00**	
SOCIAL ACTIVITIES				
Gold Venture Lease Management & Services				
6999	25-Nov-09	1740465	33,036.00	2%
TOTAL - SOCIAL ACTIVITIES			**33,036.00**	
REPAIRS AND MAINTENANCE				
360 System Solutions, Inc.				
5988	30-Jan-09	1710150	10,192.00	1%
6059	19-Feb-09	1710150	13,196.00	1%
6067	24-Feb-09	1710150	12,196.00	1%
6118	27-Feb-09	1710150	4,674.00	1%
6202	27-Mar-09	1710150	7,527.00	1%
6266	24-Apr-09	1710150	29,241.00	1%
6285	29-Apr-09	1710150	17,093.00	1%
6273	24-Apr-09	1710150	25,446.00	1%
6353	21-May-09	1710150	45,384.00	1%
6554	24-Jul-09	1710150	16,714.00	1%
6556	24-Jul-09	1710150	24,174.00	1%
Casa De Moda, Inc.				
6521	13-May-09	1710150	1,786.00	1%
Checon Industries				
6311	12-May-09	1710150	28,571.00	1%
Columbia Technologies, Inc.				
6942	12-Nov-09	1710150	8,196.00	1%
Compucare				
6562	24-Jul-09	1710150	13,594.00	1%
6661	28-Aug-09	1710150	9,629.00	1%
Compumedics				
6061	19-Feb-09	1710150	15,379.00	1%
6286	29-Apr-09	1710150	2,009.00	1%
6561	24-Jul-09	1710150	1,764.00	1%
7136	29-Dec-09	1710150	2,009.00	1%
DCTech Mircro Service, Inc.				
6054	18-Feb-09	1710150	3,348.00	1%
DTYH Enterprises				
6580	31-Jul-09	1710150	5,848.00	1%
7130	29-Dec-09	1710150	18,214.00	1%
7137	29-Dec-09	1710150	29,777.00	1%

Emerson Network Power Phils., Inc.				
6663	28-Aug-09	1710150	14,068.00	1%
Gigahertz Computer System				
5983	30-Jan-09	1710150	10,179.00	1%
Ironfront, Inc.				
6943	12-Nov-09	1710150	3,571.00	1%
6990	20-Nov-09	1710150	30,357.00	1%
7128	29-Dec-09	1710150	59,241.00	1%
Joir Enterprises				
6166	18-Mar-09	1710150	10,714.00	1%
Maximum Solutions Corp				
6177	23-Mar-09	1710150	9,107.00	1%
6952	14-Nov-09	1710150	7,411.00	1%
Micro Pacific Technologies and Systems				
6559	24-Jul-09	1710150	26,339.00	1%
6871	22-Oct-09	1710150	12,500.00	1%
6937	12-Nov-09	1710150	6,696.00	1%
Microbase, Inc.				
7132	29-Dec-09	1710150	24,107.00	1%
Netmarks Philippines, Inc.				
6339	20-May-09	1710150	69,196.00	1%
PC Planet Corporation				
6203	27-Mar-09	1710150	9,576.00	1%
6271	24-Apr-09	1710150	2,232.00	1%
6275	24-Apr-09	1710150	9,723.00	1%
6350	21-May-09	1710150	9,300.00	1%
Power Shield Technologies, Inc.				
6309	07-May-09	1710150	5,964.00	1%
Thinking Tools				
6301	04-May-09	1710150	3,214.00	1%
6576	29-Jul-09	1710150	11,116.00	1%
6728	23-Sep-09	1710150	4,911.00	1%
6974	19-Nov-09	1710150	3,214.00	1%
7076	18-Dec-09	1710150	3,920.00	1%
Unisource Marketing				
6056	19-Feb-09	1710150	5,357.00	1%
6872	22-Oct-09	1710150	13,527.00	1%
Whole Works Enterprises				
6405	26-May-09	1710150	4,686.00	1%
Zenshin Systems Corporation				
5989	30-Jan-09	1710150	1,786.00	1%
6069	24-Feb-09	1710150	8,036.00	1%
6348	21-May-09	1710150	37,500.00	1%
6563	24-Jul-09	1710150	27,679.00	1%
6577	30-Jul-09	1710150	7,813.00	1%
6662	28-Aug-09	1710150	78,839.00	1%
6666	28-Aug-09	1710150	16,741.00	1%
6796	30-Sep-09	1710150	56,429.00	1%
6865	22-Oct-09	1710150	9,152.00	1%

6998	24-Nov-09	1710150	7,143.00	1%
SUBTOTAL (1%)			**967,305.00**	
128 Tech Consulting, Inc.				
5947	22-Jan-09	1710150	54,000.00	2%
Matco Computer Center				
6859	21-Oct-09	1710150	8,840.00	2%
6959	18-Nov-09	1710150	5,357.00	2%
7115	28-Dec-09	1710150	8,929.00	2%
MGE UPS Systems Philippines, Inc.				
7077	16-Dec-09	1710150	2,946.00	2%
Trends & Technologies, Inc				
6322	13-May-09	1710150	60,000.00	2%
6687	09-Sep-09	1710150	30,000.00	2%
Edgardo C. Garcia				
6539	17-Jul-09	1710150	12,500.00	2%
7108	22-Dec-09	1710150	11,000.00	2%
Emerson Network Power Phils., Inc.				
5906	07-Jan-09	1710150	6,667.00	2%
6235	15-Apr-09	1710150	10,003.00	2%
6493	30-Jun-09	1710150	10,003.00	2%
Microbase, Inc.				
6936	12-Nov-09	1710150	3,571.00	2%
Microcore System Technology				
6028	12-Feb-09	1710150	22,589.00	2%
6046	18-Feb-09	1710150	4,241.00	2%
6106	26-Feb-09	1710150	25,798.00	2%
6139	04-Mar-09	1710150	8,923.00	2%
6167	18-Mar-09	1710150	1,964.00	2%
6248	22-Apr-09	1710150	15,395.00	2%
6445	10-Jun-09	1710150	19,643.00	2%
6485	26-Jun-09	1710150	4,643.00	2%
6610	12-Aug-09	1710150	9,924.00	2%
6688	09-Sep-09	1710150	11,652.00	2%
6961	18-Nov-09	1710150	25,980.00	2%
7000	25-Nov-09	1710150	3,670.00	2%
Mystic Electronics Repair Center				
6342	20-May-09	1710150	1,786.00	2%
6691	09-Sep-09	1710150	3,125.00	2%
Nelsen System, Inc.				
6408	27-May-09	1710150	7,098.00	2%
6575	29-Jul-09	1710150	13,839.00	2%
6643	26-Aug-09	1710150	10,000.00	2%
6703	15-Sep-09	1710150	4,286.00	2%
6886	28-Oct-09	1710150	7,098.00	2%
7081	16-Dec-09	1710150	2,902.00	2%
SUBTOTAL (2%)			***428,372.00***	
TOTAL - REPAIRS AND MAINTENANCE			**1,395,677.00**	
EQUIPMENT & REPRESENTATION				

Je

Casa Flores, Inc.				
6099	26-Feb-09	1740123	5,179.00	1%
6448	10-Jun-09	1740123	2,366.00	1%
6690	09-Sep-09	1740123	2,232.00	1%
6854	21-Oct-09	1740123	3,973.00	1%
TOTAL - ENTERTAINMENT AND REPRESENTATION			**13,750.00**	
ACQUISITION OF PPE				
ACW Distribution Phils., Inc.				
6213	31-Mar-09	1120138	21,786.00	1%
Alpha Steel Office				
6490	30-Jun-09	1120160	25,357.00	1%
Columbia Technologies, Inc.				
6989	20-Nov-09	1120110	142,857.00	1%
7133	29-Dec-09	1120110	114,286.00	1%
7134	29-Dec-09	1120110	142,857.00	1%
Compucare				
6661	28-Aug-09	1120110	6,853.00	1%
Cosmotech Philippines, Inc.				
6799	30-Sep-09	1120110	12,946.00	1%
6868	22-Oct-09	1120170	2,031.00	1%
6555	24-Jul-09	1120170	26,777.00	1%
DTYH Enterprises				
6063	19-Feb-09	1120120	3,839.00	1%
6274	24-Apr-09	1120110	3,839.00	1%
6287	29-Apr-09	1120110	1,920.00	1%
6489	06-Jun-09	1120110	3,839.00	1%
Gigahertz Computer System				
6265	24-Apr-09	1120110	6,652.00	1%
6457	17-Jun-09	1120170	13,393.00	1%
HP Philippines Corp.				
5986	30-Jan-09	1120110	2,061,381.00	1%
6119	27-Feb-09	1120110	137,425.00	1%
6269	24-Apr-09	1120110	39,950.00	1%
6545	22-Jul-09	1120110	824,552.00	1%
6569	29-Jul-09	1120110	133,500.00	1%
6665	28-Aug-09	1120110	44,500.00	1%
6800	30-Sep-09	1120110	89,286.00	1%
7139	29-Dec-09	1120110	192,396.00	1%
6269	24-Apr-09	1120170	39,950.00	1%
Maximum Solutions Corp.				
6866	22-Oct-09	1120110	14,107.00	1%
6882	27-Oct-09	1120110	28,214.00	1%

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Micro Pacific Technologies and Systems				
6064	19-Feb-09	1120170	71,429.00	1%
6068	24-Feb-09	1120170	71,429.00	1%
7135	29-Dec-09	1120170	59,415.00	1%
6895	30-Oct-09	1120180	156,250.00	1%
Microbase, Inc.				
6557	24-Jul-09	1120110	125,446.00	1%
Office Republic Multi-Ventures, Inc.				
6141	09-Mar-09	1120141	7,923.00	1%
6186	25-Mar-09	1120141	2,732.00	1%
PC Chain Superstore				
5987	30-Jan-09	1120120	217,054.00	1%
6058	19-Feb-09	1120120	6,384.00	1%
6212	21-Mar-09	1120110	6,964.00	1%
6270	24-Apr-09	1120110	6,964.00	1%
Phil-Data Business Systems, Inc.				
6615	12-Aug-09	1120110	261,607.00	1%
7035	27-Nov-09	1120131	252,679.00	1%
Precept Commercial Corporation				
6343	20-May-09	1120141	28,571.00	1%
Technicom Electronics Trading				
6901	05-Nov-09	1120180	9,911.00	1%
Ultra Modular Concepts, Inc.				
6316	13-May-09	1120160	29,107.00	1%
Zenshin Systems Corporation				
6796	30-Sep-09	1120110	4,223.00	1%
SUBTOTAL (1%)			***5,452,581.00***	
Ana Luzzette L. Lareza				
6065	20-Feb-09	1112130	50,000.00	2%
6149	11-Mar-09	1112130	50,000.00	2%
Jupiter Systems, Inc.				
6335	20-May-09	1120138	6,600.00	2%
7053	03-Dec-09	1120138	44,000.00	2%
Millenium Carpets and Interiors				
6037	18-Feb-09	1112130	15,402.00	2%
6112	26-Feb-09	1112130	15,402.00	2%
6036	18-Feb-09	1112130	111,607.00	2%
6113	26-Feb-09	1112130	111,607.00	2%
6035	18-Feb-09	1112130	376,961.00	2%
6114	26-Feb-09	1112130	376,961.00	2%
SUBTOTAL (2%)			***1,158,540.00***	
TOTAL - ACQUISITION OF PPE			**6,611,121.00**	
GRAND TOTAL			**₱8,349,080.00**	

Hence, out of the amount of ₱16,798,186.88 classified by the BIR as income payments for goods purchases, petitioner failed to prove that the amount of ₱8,449,106.88, detailed below, was subjected to or is exempted from EWT:

Particular	Per FAN	Purchases subjected to EWT		Total Income Payments Subjected to EWT	Total Income Payments Not Subjected to EWT
		1%	2%		
Petrol/Oil & Car Registration	₱ 740,834.85			-	₱ 740,834.85
Stationery & Supplies	574,318.68	₱ 273,211.00	₱ 12,152.00	₱ 285,363.00	288,955.68
Magazines/Periodicals	23,527.01	3,510.00	-	3,510.00	20,017.01
Social Activities	406,297.41	-	39,659.00	39,659.00	366,638.41
Repairs & Maintenance	3,203,989.38	967,305.00	428,372.00	1,395,677.00	1,808,312.38
Entertainment & Representation	938,454.55	13,750.00	-	13,750.00	924,704.55
Acquisition of PPE	10,910,765.00	5,452,581.00	1,158,540.00	6,611,121.00	4,299,644.00
Total	**₱16,798,186.88**	**₱6,710,357.00**	**₱1,638,723.00**	**₱8,349,080.00**	**₱8,449,106.88**

Thus, the income payments of ₱8,449,106.88 shall be considered as subject to 1% EWT as prescribed under Section 2.57.2(M) of RR 2-98, as amended by RR 17-03.

However, the amount of ₱84,491.07 representing 1% EWT due on the above income payments of ₱8,449,106.88 is higher than the EWT of ₱51,941.00 assessed by respondent. In the consolidated cases of *Commissioner of Internal Revenue vs. Transnational Plans, Inc.* and *Transnational Plans, Inc. vs. Commissioner of Internal Revenue*[29], the CTA *En Banc* held that the Court cannot go beyond the contested assessment per FDDA, to wit:

> "In as much as this Court's jurisdiction is appellate in nature, it is essential that matters taken up in the appeal should be included in the contested assessment. It must be realized that with respect to the deficiency VAT of TPI, the appealed amount before this Court's jurisdiction is only with respect to the ₱67,446,873.00, as what is indicated in the FDDA. As stated in the case of *Commissioner of Internal Revenue vs. Guerrero, et al.*:
>
> > 'Although these charges and taxes are not included in the original and revised assessments made in this case, petitioner herein maintains that Guerrero may nevertheless be held liable therefor xxx
> >
> > Petitioner's contention is untenable. xxx In short, it refers to a point in issue. In the case at bar, the additional [amount] under consideration were not included in the

[29] CTA EB Nos. 1337 and 1339 (CTA Case No. 8291), March 27, 2017.

> contested assessments. Since the jurisdiction of the Court of Tax Appeals is purely appellate, said Court correctly declined to make an award thereon, for lack of jurisdiction over the same.'

Section 228 of the Tax Code clearly states that 'the taxpayer shall be informed in writing of the facts and the law on which the assessment is made; otherwise, the assessment shall be void.' As thus worded, the respondent has the bounden duty to inform the taxpayer not only of the law but more importantly, the surrounding circumstances supporting the assessment, for it is only through a detailed appraisal of its basis that the taxpayer may be able to dispute the imposition or agree with it.[30] The underlying reason of the law is the basic constitutional requirement that 'no person shall be deprived of his property without due process of law.'[31]

Thus, the amount to be collected from TPI should not go beyond what is stated in the assessment. In excess of such stated therein, TPI was not informed in writing of the facts and law on which the amount is made, thus, the taxpayer has no opportunity to dispute the said amount, in violation of due process.

Furthermore, as the said excess amount was not indicated in the FAN, it should be considered as not assessed by the CIR, hence, already beyond the prescriptive period for it to be included only at this time of judicial trial.

Consequently, the findings of the BIR as that stated in the assessment should be the basis for the deficiency VAT, i.e., only the amount of P67,446,873.00."

Considering that the power to assess is lodged in the respondent and is not within the province of this Court, the Court is constrained to limit its findings based on respondent's assessment. Hence, petitioner is liable only to the extent of the assessment in the amount of ₱51,941.00.

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[30] *Ima Land Holdings, Inc. v. Commissioner Internal Revenue*, CTA Case No. 6389, October 7, 2004, citing *Abbott Laboratories, Inc. v. Commissioner of Internal Revenue*, CTA Case No. 5718, February 16, 2001.

[31] *Ibid.*, citing *Subic Power Corporation v. Commissioner of Internal Revenue*, CTA Case No. 6059, May 8, 2003.

B. Rental

Section 2.57.2(C)(1) and (2) of RR No. 02-98, as amended by RR No. 14-02, prescribes the withholding of 5% tax on rentals as follows:

> "**Sec. 2.57.2.** Except as herein otherwise provided, there shall be withheld a creditable income tax at the rates herein specified for each class of payee from the following items of income payments to persons residing in the Philippines:
>
> xxx xxx xxx
>
> (C) Rentals
>
> (1) Real properties. — On gross rental for the continued use or possession of real property used in business which the payor or obligor has not taken or is not taking title, or in which he has no equity — Five percent (5%);
>
> (2) Personal properties. — On gross rental or lease in excess of Ten Thousand Pesos (P10,000.00) per payment for the continued use or possession of personal property used in business which the payor or obligor has not taken or is not taking title, or in which he has no equity which include, but not limited to the following: land transport equipment, water transport equipment, air transport equipment, industrial equipment, commercial equipment, scientific equipment, agricultural machinery and equipment, construction/civil engineering machinery and equipment, telecommunication equipment, office furniture/machines/equipment, main frame computer and all other computer machines/equipment, materials handling equipment and auxiliary equipment -- Five percent (5%);
>
> However, the Ten Thousand Pesos (P10,000.00) threshold shall not apply when the accumulated gross rental or lease paid by the lessee to the same lessor exceeds or is reasonably expected to exceed P10,000.00 within the year. In

which case, the lessee shall withhold the five percent (5%) withholding tax on the entire amount."

Respondent assessed petitioner of 5% deficiency EWT in the amount of ₱424,078.17 on the following accounts:

Particular	Per FS	Per Withholding Tax Return	Discrepancy	Rate	Deficiency EWT
Communication Exp-Rentals of Equip	₱ 39,579,622.90				
Less: Comm. Exp. Subj to FWT (AIPL-SINGAPORE)	(18,976,877.84)				
Other-Rent	201,600.00				
Storage Rental	2,203,424.56				
Total	**₱23,007,769.62**	**₱14,526,206.31**	**₱8,481,563.31**	**5%**	**₱424,078.17**

1. Communication Expense, Rentals of Equipment - ₱20,602,745.06 (₱39,579,622.90 less ₱18,976,877.84)

Out of the assessed Communication Expense of ₱20,602,745.06, only the amount of ₱16,301,831.19 which pertains to service charges for leased lines and telephone lines was verified by the ICPA to have been subjected to 5% and 2% EWT, respectively. Further, the ICPA, found that the input VAT of ₱1,968,115.46 related to said transactions were also charged to the same expense account. Hence, it resulted to a discrepancy in the tax base reflected per EWT Alphalist and the purchased cost lodged in the Communication Expense account. Since petitioner was not able to provide proof for the remaining Communication Expense of ₱2,332,798.41, the ICPA was not able to verify whether the said amount was properly subjected to EWT, as summarized below:[32]

Supplier	Per ICPA's Communication Cost Account Analysis [A]	Per EWT Alphalist			Input VAT [E]	Income Payment Not Subjected to EWT F=[A-D-E]
		Amount subjected to 5% [B]	Amount subjected to 2% [C]	Total D=[B+C]		
Bayantel	₱ 3,011,309.55	₱ 2,718,292.61	-	₱ 2,718,292.61	₱ 338,233.22	₱(45,216.28)
Eastern Telecom	3,339,088.57	2,981,329.09	-	2,981,329.09	357,758.57	0.91
Innove Comm., Inc.	1,806,026.85	1,613,388.16	-	1,613,388.16	193,606.60	(967.91)
PLDT	11,164,784.18	7,942,173.66	-	7,942,173.66	953,060.90	2,269,549.62
PLDT	889,217.89	-	₱ 776,864.92	776,864.92	93,223.79	19,129.18
Bell Telecom Phils.	18,373.02	-	16,389.17	16,389.17	1,966.70	17.15
Mozcom, Inc.	283,800.00	-	253,393.58	253,393.58	30,265.68	140.74

[32] Exhibit "P-64", pp. 22-23, Docket, Vol. II, pp. 999-1000 and Exhibit "P-64-h".

Smart Broadband	90,145.00	-	-	-	-	90,145.00
Total	**₱20,602,745.06**	**₱15,255,183.52**	**₱1,046,647.67**	**₱16,301,831.19**	**₱1,968,115.46**	**₱2,332,798.41**

The Court finds the ICPA findings in order.

Without the related invoices and/or official receipts, the actual nature of the income payments of ₱2,332,798.41 and their appropriate tax implications cannot be ascertained. Consequently, these income payments of ₱2,332,798.41 shall be considered as rentals of communication equipment as found by respondent which are subject to 5% EWT as prescribed under Section 2.57.2(C)(2) of RR No. 02-98, as amended by RR No. 14-02.

It bears stressing that tax assessments by tax examiners are presumed correct and made in good faith, with the taxpayer having the burden of proving otherwise. Failure to present proof of error in the assessment will justify the judicial affirmance of said assessment.[33] Hence, respondent's deficiency 5% EWT assessment in the amount of ₱116,639.92 on the Communication Exp-Rentals of Equip in the amount of ₱2,332,798.41 is upheld.

2. Other Rent – ₱201,600.00

As aptly noted by the ICPA, the amount of ₱201,600.00 charged under the account "DVO-Rent" relates to payments made by petitioner to Plaza De Luisa Development, Inc. for the lease[34] of premises designated as Commercial B11 of the Plaza de Luisa Complex, which payments were verified to have been properly subjected to 5% EWT per alphalist[35] pursuant to Section 2.57.2(C)(1) of RR No. 02-98, as amended by RR No. 14-02. Below is the breakdown of the rental amount of ₱201,600.00:

Exhibit	CV No.	Date	Particular	Income Payment Subjected to EWT per Check Voucher and traced to EWT Alphalist
P-74	5910	07-Jan-09	Rental Fee- Jan. 2009	₱ 16,000.00

[33] *Marcos II vs. Court of Appeals, et at.*, G.R. No. 120880, June 5, 1997.
[34] Exhibits "P-87" to "P-87.12".
[35] Exhibit "P-64", p. 23, Docket, Vol. II, p. 1000.

P-74.3	5998	02-Feb-09	Rental Fee- Feb. 2009	16,000.00
P-74.6	6131	04-Mar-09	Rental Fee- Mar. 2009	16,000.00
P-74.9	6222	01-Apr-09	Rental Fee- Apr. 2009	16,000.00
P-74.12	6300	04-May-09	Rental Fee- May 2009	16,000.00
P-74.15	6434	03-Jun-09	Rental Fee- June 2009	16,000.00
P-74.18	6524	15-Jul-09	Rental Fee- July 2009	17,600.00
P-74.22	6601	06-Aug-09	Rental Fee- Aug. 2009	17,600.00
P-74.25	6671	02-Sep-09	Rental Fee- Sep. 2009	17,600.00
P-74.28	6819	08-Oct-09	Rental Fee- Oct. 2009	17,600.00
P-74.29	6902	05-Nov-09	Rental Fee- Nov. 2009	17,600.00
P-74.32	7048	01-Dec-09	Rental Fee- Dec. 2009	17,600.00
Total				**₱ 201,600.00**

Considering that petitioner's "Other-Rent" of ₱201,600.00 were properly subjected to EWT, the relevant assessment must be stricken down for lack of factual basis.

3. Storage Rental – ₱2,203,424.56

Based on the Court's validation and review of the ICPA's Supplemental Report[36] and petitioner's supporting documents[37], the assessed storage rental of ₱2,203,424.56 pertains to the transactions lodged under Outside Purchased Services, of which the amount of ₱1,118,823.94 refers to income payments for advertisement and to agencies on account of the agency fees and salaries of personnel for the janitorial services and liaison personnel. Considering that the income payments were made to contractors, the services amounting to ₱1,118,823.94 were properly subjected to 2% EWT pursuant to Section 2.57.2(E)(4) and (M) of RR No. 02-98, as amended by RR No. 30-03. The said income payments of ₱1,118,823.94 and the remittance of the related 2% EWT can be traced to the petitioner's EWT returns and alphalist, as follows:

Supplier	Particulars	CV No. / Reference	Exhibit	Amount subjected to 2% EWT per Return and Alphalist
Acct. Code: 1740354 - TSO-Purchase Services				
Nobility Collection Agency, Inc.	Services Rendered	Ref A	P-63.52 to P-63.88	₱ 4,478.40
Superior Maintenance Services, Inc.	Services Rendered	6264	P-63.24	1,190.43
Nobility Collection Agency, Inc.	Services Rendered	Ref K	P-63.312 to P-63.349.13	299,096.29

[36] Exhibit "P-64", pp. 23-24, Docket, Vol. II, pp. 1000-1001.
[37] Exhibits "P-59", "P-63", "P-75", and "P-76" .

Subtotal				*₱ 304,765.12*
Acct. Code: 1740454 - FAD-Purchase Services				
Star Special Corporate Security Mgt., Inc.	Security Guard Salaries	Ref G	P-63.218 to P-63.244; P-63.517 to P-63.535	₱ (7,493.08)
Superior Maintenance Services, Inc.	Janitorial Services	Ref C	P-63.100 to P-63.117	9,509.42
Nobility Collection Agency, Inc.	Messenger and Drivers	Ref B	P-63.89 to P-63.99	(2,247.62)
Nobility Collection Agency, Inc.	Driver's Fee	Ref M	P-63.368 to P-63.405.13	126,350.19
Star Special Corporate Security Mgt., Inc.	Security Guard Salaries	Ref N	P-63.406 to P-63.441.9	301,010.27
Superior Maintenance Services, Inc.	Janitorial Services	Ref O	P-63.442 to P-63.447.12	321,490.74
Subtotal				*₱ 748,619.92*
Acct. Code: 1740554 - CEBU-Purchase Services				
Pacubas General Services, Inc.	Janitorial Services	Ref H	P-63.245 to P-63.260; P-63.536 to P-63.550	₱ 109.42
Pacubas General Services, Inc.	Janitorial Services	Ref P	P-63.478 to P-63.513.3	56,819.48
Subtotal				*₱ 56,928.90*
Acct. Code: 1740654 - CST-Purchase Services				
Manila Bulletin	Classified Advertisement	5918	P-63.30	₱ 8,510.00
Subtotal				*₱ 8,510.00*
Total				**₱1,118,823.94**

The remaining amount of ₱1,084,600.62 (*₱2,203,424.56 less ₱1,118,823.94*), consisted of the following: (1) payments to Trafalgar Plaza Condominium Corporation (TPCC) for storage rental in the amount of ₱21,696.48; (2) payments to Alternative Network Resources Unlimited Multi-Purpose Cooperative (ANR Unlimited) for customer /technical support services rendered in the amount of ₱1,057,294.89; and (3) payment to Manila Bulletin in the amount of ₱6,129.30; 4) payment to Allied Banking Corporation for safety deposit box rental in the amount of ₱1,500.00 and 5) unaccounted difference of ₱(2,020.05), detailed as follows:

Supplier	Particulars	CV No. / Reference	Exhibit	Amount not subjected to EWT
Acct. Code: 1740354 - TSO-Purchase Services				
Trafalgar Plaza Condominium Corp.	Storage Rental-Jan.'09	5902	P-63.118	₱ 1,808.04
Trafalgar Plaza Condominium Corp.	Storage Rental-Feb.'09	5995	P-63.121	1,808.04
Trafalgar Plaza Condominium Corp.	Storage Rental-Mar.'09	6130	P-63.124	1,808.04

Trafalgar Plaza Condominium Corp.	Storage Rental-Apr.'09	6221	P-63.127	1,808.04
Trafalgar Plaza Condominium Corp.	Storage Rental-May '09	6299	P-63.130	1,808.04
Trafalgar Plaza Condominium Corp.	Storage Rental-Jun.'09	6423	P-63.133	1,808.04
Trafalgar Plaza Condominium Corp.	Storage Rental-Jul.'09	6497	P-63.136	1,808.04
Trafalgar Plaza Condominium Corp.	Storage Rental-Aug.'09	6602	P-63.140	1,808.04
Trafalgar Plaza Condominium Corp.	Storage Rental-Sep.'09	6672	P-63.144	1,808.04
Trafalgar Plaza Condominium Corp.	Storage Rental-Oct.'09	6802	P-63.147	1,808.04
Trafalgar Plaza Condominium Corp.	Storage Rental-Nov.'09	6900	P-63.150	1,808.04
Trafalgar Plaza Condominium Corp.	Storage Rental-Dec.'09	7049	P-63.153	1,808.04
Subtotal				₱ *21,696.48*
Acct. Code: 1740254 - SALES-Purchase Services				
Alternative Network Resources Unlimited Multi-Purpose Cooperative	Customer and technical support services rendered	6658	P-63	₱ 5,249.46
Alternative Network Resources Unlimited Multi-Purpose Cooperative	Customer and technical support services rendered	6708	P-63.3	(1,604.68)
Alternative Network Resources Unlimited Multi-Purpose Cooperative	Customer and technical support services rendered	6636	P-63.6	(1,416.00)
Alternative Network Resources Unlimited Multi-Purpose Cooperative	Customer and technical support services rendered	6572	P-63.9	2,108.85
Alternative Network Resources Unlimited Multi-Purpose Cooperative	Customer and technical support services rendered	6958	P-63.12	(11.96)
Alternative Network Resources Unlimited Multi-Purpose Cooperative	Customer and technical support services rendered	7119	P-63.15	(1,063.13)
Alternative Network Resources Unlimited Multi-Purpose Cooperative	Customer and technical support services rendered	6839	P-63.18	(2,158.17)
Alternative Network Resources Unlimited Multi-Purpose Cooperative	Customer and technical support services rendered	6932	P-63.21	(531.56)
Alternative Network Resources Unlimited Multi-Purpose Cooperative	Customer and technical support services rendered	Ref I	P-63.261	34,907.74
Acct. Code: 1740354 - TSO-Purchase Services				
Alternative Network Resources Unlimited Multi-Purpose Cooperative	Customer and technical support services rendered	Ref E	P-63.156 to P-63.202; P-63.200	253,201.91
Alternative Network Resources Unlimited Multi-Purpose Cooperative	Customer and technical support services rendered	Ref J	P-63.276 to P-63.111	593,346.90
Acct. Code: 1740454 - FAD-Purchase Services				
Alternative Network Resources Unlimited Multi-Purpose Cooperative	Customer and technical support services rendered	Ref F	P-63.203 to P-63.217	10,900.48
Alternative Network Resources	Customer and	Ref L	P-63.350 to	154,235.85

Unlimited Multi-Purpose Cooperative	technical support services rendered		P-63.367	
Acct. Code: 1740654 - CST-Purchase Services				
Alternative Network Resources Unlimited Multi-Purpose Cooperative	Customer and technical support services rendered	5972	P-63.46	6,337.51
Alternative Network Resources Unlimited Multi-Purpose Cooperative	Customer and technical support services rendered	5491	P-63.49	(15.69)
Alternative Network Resources Unlimited Multi-Purpose Cooperative	Customer and technical support services rendered	6123	P-63.37	3,807.38
Subtotal				₱ *1,057,294.89*
Acct. Code: 1740654 - CST-Purchase Services				
Manila Bulletin	-	Trial Balance	P-63.34 to P-63.36.6	₱ (15.69)
Manila Bulletin	-	Trial Balance	P-63.40 to P-63.42.6	6,611.28
Manila Bulletin	-	Trial Balance	P-63.43 to P63.45	(466.29)
Subtotal				₱ *6,129.30*
Acct. Code: 1740454 - FAD-Purchase Services				
Allied Banking Corporation	Safety deposit box rental	6126	P-63.27 to P-63.29	₱ 1,500.00
Subtotal				₱ *1,500.00*
Unaccounted Difference [38]				₱ (2,020.05)
Total				**₱ 1,084,600.62**

With regard to the payments for customer and technical support services rendered by ANR Unlimited in the total amount of ₱1,057,294.89, the same were validly not subjected to EWT. ANR Unlimited, being an entity registered with the Cooperative Development Authority,[39] is exempt from income tax and consequently from EWT pursuant to Republic Act No. 9520.[40]

[38] Exhibit "P-64-e".
[39] Exhibit "P-75".
[40] "ART. 61. *Tax and Other Exemptions.* — Cooperatives transacting business with both members and non-members shall not be subject to tax on their transactions with members. In relation to this, the transactions of members with the cooperative shall not be subject to any taxes and fees, including but not limited to final taxes on members' deposits and documentary tax. Notwithstanding the provisions of any law or regulation to the contrary, such cooperatives dealing with nonmembers shall enjoy the following tax exemptions:

"(1) Cooperatives with accumulated reserves and undivided net savings of not more than Ten million pesos (P10,000,000.00) shall be exempt from all national, city, provincial, municipal or barangay taxes of whatever name and nature. Such cooperatives shall be exempt from customs duties, advance sales or compensating taxes on their importation of machineries, equipment and spare parts used by them and which are not available locally as certified by the Department of Trade and Industry (DTI). All tax-free importations shall not be sold nor the beneficial ownership thereof be transferred to any person until

With regard to the storage rental fees paid to TPCC in the amount of ₱21,696.48, petitioner is liable to pay 5% deficiency EWT in accordance with Section 2.57.2(C)(1) of RR No. 02-98, as amended by RR No. 14-02.

As to the income payments made by petitioner to Manila Bulletin in the amount of ₱6,129.30 and Allied Banking Corporation in the amount of ₱1,500.00, petitioner is liable to pay 2% deficiency EWT thereon pursuant to Section 2.57.2(M) of RR No. 02-98, as amended by RR No. 17-03.

Thus, the deficiency tax assessment on Outside Purchased Services is upheld but in the reduced amount of ₱1,237.41, computed as follows:

Outside Purchased Services	₱ 2,203,424.56		
Less:			
(1) Purchase of Services subjected to EWT	1,118,823.94		
(2) Purchase of Services exempt from EWT	1,057,294.89		
(3) Unaccounted Difference	(2,020.05)		
Income Payments not subjected to EWT	**₱ 29,325.78**		
With Breakdown as follows:		**Rate**	**Deficiency EWT**
(1) Storage rental fees paid to TPCC	₱ 21,696.48	5%	₱ 1,084.82
(2) Purchase of Services from			
a.) Manila Bulletin	6,129.30	2%	122.59
b.) Allied Banking Corporation	1,500.00	2%	30.00
Income Payments not subjected to EWT	**₱ 29,325.78**		**₱ 1,237.41**

C. PROFESSIONAL FEES

Relative to the withholding EWT on professional fees, Section 2.57.2 of RR No. 2-98, as amended by RR No. 30-03, provides as follows:

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after five (5) years, otherwise, the cooperative and the transferee or assignee shall be solidarily liable to pay twice the amount of the imposed tax and/or duties.

"(2) Cooperatives with accumulated reserves and undivided net savings of more than Ten million pesos (P10,000,000.00) shall pay the following taxes at the full rate:

"(a) Income Tax — On the amount allocated for interest on capitals: Provided, That the same tax is not consequently imposed on interest individually received by members: Provided, further, That cooperatives, regardless of classification, are exempt from income tax from the date of registration with the Authority;

"Sec. 2.57.2. *Income payments subject to creditable withholding tax and rates prescribed thereon.* — xxx.

A) *Professional fees, talent fees, etc., for services rendered by individuals.* — On the gross professional, promotional and talent fees or any other form of remuneration for the services of the following individuals — Fifteen percent (15%), if the gross income for the current year exceeds P720,000; and Ten percent (10%), if otherwise;

xxx xxx xxx

(9) Fees of directors who are not employees of the company paying such fees, whose duties are confined to attendance at and participation in the meetings of the board of directors.

xxx xxx xxx

(B) *Professional fees, talent fees, etc., for services of taxable juridical persons.* — On the gross professional, promotional and talent fees, or any other form of remuneration enumerated in the preceding subparagraph for the services of taxable juridical persons — **Fifteen percent (15%), if the gross income for the current year exceeds P720,000**; and Ten percent (10%), if otherwise;

Furthermore, in order to determine the applicable tax rate (10% or 15%) to be applied/withheld by the withholding agent, every individual professional/talent/corporate directors herein enumerated, shall periodically disclose his gross income for the current year to the Bureau of Internal Revenue (BIR) by submitting a notarized sworn declaration attached as Annex "A" hereof in three (3) copies (two (2) copies for the BIR and one (1) copy for the taxpayer), copy furnished all the current payors of the declaration duly stamped received by the BIR (Collection Division of the Regional Office having jurisdiction over the place where the income earner is registered/Large Taxpayers Collection Division for large taxpayers in Metro Manila/LTDO for large taxpayers outside Metro-Manila). Sworn declaration may likewise be filed by the income payor on behalf of the professionals/talents/directors

whose services were being rendered exclusively to the aforesaid payor. The disclosure should be filed on June 30 of each year or within fifteen (15) days after the end of the month the professional/talent/director's income reaches P720,000, whichever comes earlier. In case his total gross income is less than P720,000 as of June 30, he/she shall submit a second disclosure within fifteen (15) days after the end of the month that his/her gross income for the current year to date reaches P720,000. The payee — professional/talent/director shall furnish each payor a copy of the BIR duly stamped received sworn declaration not later than five (5) days from the date of receipt by the BIR. **In case of failure to submit the June 30 annual declaration/disclosure to the BIR, and to furnish the payor/s a copy thereof, the payor shall withhold the tax at the rate of 15%.**" *(Emphasis supplied)*

Respondent's deficiency EWT assessment on professional fees was based on the following accounts:

Particular	Per FS	Per Withholding Tax Return	Discrepancy	Rate	Deficiency EWT
Joint Marketing fee	₱ 1,100,000.00				
Board Honorarium	556,000.00				
Mktg-Professional fees	342,400.00				
Director's Fees		₱ 746,203.87			
Professional Fees		1,027,445.00			
Total	**₱ 1,998,400.00**	**₱1,773,648.87**	**₱ 224,751.13**	**15%**	**₱ 33,712.67**

In light of Section 2.57.2(A) and (B) of RR No. 02-98, as amended, we shall now determine whether the above expenses are subject to EWT.

1. Joint Marketing Fee - ₱1,100,000.00

The ICPA's verification of the check voucher and supporting documents[41] and general ledger of the Joint Marketing Agreement account[42] showed that the entire amount of ₱1,100,000.00 pertains only to a single transaction with Philippine Airlines, Inc. (PAL) representing the extension of the Joint Marketing Agreement[43] dated

[41] Exhibit "P-77".
[42] Exhibit "P-78".
[43] Exhibits "P-77.1" to "P-77.5".

November 5, 2004 entered into by both entities. Pursuant to the said agreement, PAL agreed, among others, to promote the Abacus System to travel agencies. In consideration thereof, petitioner paid PAL a marketing fee of ₱1,000,000.00, net of all applicable taxes, charges, withholdings and other fees. Petitioner remitted to the BIR an amount of ₱100,000.00 EWT on the said transaction as can be traced to the petitioner's EWT return[44] and alphalist.[45]

However, considering that petitioner claimed the entire amount of ₱1,100,000.00 as deductible expense, petitioner should have withheld and remitted the corresponding 15% EWT in the amount of ₱165,000.00 instead of ₱100,000.00 as required under Section 2.57.2 of RR No. 02-98, as amended by RR No. 30-03.

Thus, petitioner is liable to pay deficiency EWT in the amount of ₱65,000.00 on the Joint Marketing Fees of ₱1,100,000.00.

2. Board Honorarium - ₱556,000.00

The ICPA found that out of the assessed amount of ₱556,000.00 board honorarium, the amount of ₱486,000.00 was subjected to 15% EWT, while the remaining ₱70,000.00 was paid to John Lim Cheng Chua, a non-resident alien representing AIPL Singapore, hence not subjected to EWT.

The assessment is partially upheld.

Indeed, the 15% EWT due on the amount of ₱486,000.00 board honorarium was withheld and remitted to the BIR as can be traced to the supporting check vouchers[46] and EWT alphalist of petitioner for the year 2009, detailed as follows:

Payee	Particular	C.V. No.	Amount Subjected to EWT	EWT Rate	Tax Withheld
Lucio C. Tan	Honorarium-Jan.'09	5922	₱ 5,000.00	15%	750.00
Henry So Uy	Honorarium-Jan.'09	5923	5,000.00	15%	750.00
Harry C. Tan	Honorarium-Jan.'09	5924	5,000.00	15%	750.00
Jose P. Magno	Honorarium-Jan.'09	5925	5,000.00	15%	750.00
Mariano Tanenglian	Honorarium-Jan.'09	5926	5,000.00	15%	750.00
Enrique Antonio J.	Honorarium-Jan.'09	2957	3,000.00	15%	450.00

[44] Exhibit "P-61".
[45] Exhibit "P-59".
[46] Exhibits P-82 to P-82.100.

Esquivel III					
Henry So Uy	Honorarium-Feb.'09	6005	5,000.00	15%	750.00
Harry C. Tan	Honorarium-Feb.'09	6006	5,000.00	15%	750.00
Mariano Tanenglian	Honorarium-Feb.'09	6007	5,000.00	15%	750.00
Jose P. Magno	Honorarium-Feb.'09	6008	5,000.00	15%	750.00
Enrique Antonio J. Esquivel III	Honorarium-Feb.'09	6009	3,000.00	15%	450.00
Lucio C. Tan	Honorarium-Feb.'09	6010	5,000.00	15%	750.00
Henry So Uy	Honorarium Excom Meeting-Feb.'09	6109	5,000.00	15%	750.00
Lucio C. Tan	Honorarium-Mar.'09	6132	5,000.00	15%	750.00
Henry So Uy	Honorarium-Mar.'09	6133	5,000.00	15%	750.00
Harry C. Tan	Honorarium-Mar.'09	6134	5,000.00	15%	750.00
Jose P. Magno	Honorarium-Mar.'09	6135	5,000.00	15%	750.00
Mariano Tanenglian	Honorarium-Mar.'09	6136	5,000.00	15%	750.00
Enrique Antonio J. Esquivel III	Honorarium-Mar.'09	6137	3,000.00	15%	450.00
Henry So Uy	Honorarium-Joint Regular BOD/Annual Stockholders MeetingMar.'09	6189	10,000.00	15%	1,500.00
Harry C. Tan	Honorarium-Joint Regular BOD/Annual Stockholders MeetingMar.'09	6190	10,000.00	15%	1,500.00
Jose P. Magno	Honorarium-Joint Regular BOD/Annual Stockholders MeetingMar.'09	6192	10,000.00	15%	1,500.00
Lucio C. Tan	Honorarium-Apr.'09	6215	5,000.00	15%	750.00
Henry So Uy	Honorarium-Apr.'09	6216	5,000.00	15%	750.00
Harry C. Tan	Honorarium-Apr.'09	6217	5,000.00	15%	750.00
Mariano Tanenglian	Honorarium-Apr.'09	6218	5,000.00	15%	750.00
Jose P. Magno	Honorarium-Apr.'09	6219	5,000.00	15%	750.00
Enrique Antonio J. Esquivel III	Honorarium-Apr.'09	6220	3,000.00	15%	450.00
Lucio K. Tan Jr.	Honorarium-Apr.'09	6225	5,000.00	15%	750.00
Michael G. Tan	Honorarium-Apr.'09	6226	5,000.00	15%	750.00
Lucio C. Tan	Honorarium-May'09	6291	5,000.00	15%	750.00
Henry So Uy	Honorarium-May'09	6292	5,000.00	15%	750.00
Harry C. Tan	Honorarium-May'09	6293	5,000.00	15%	750.00
Mariano Tanenglian	Honorarium-May'09	6294	5,000.00	15%	750.00
Jose P. Magno	Honorarium-May'09	6295	5,000.00	15%	750.00
Enrique Antonio J. Esquivel III	Honorarium-May'09	6296	3,000.00	15%	450.00
Lucio K. Tan Jr.	Honorarium-May'09	6297	5,000.00	15%	750.00
Michael G. Tan	Honorarium-May'09	6298	5,000.00	15%	750.00
Lucio C. Tan	Honorarium-Jun.'09	6426	5,000.00	15%	750.00
Henry So Uy	Honorarium-Jun.'09	6427	5,000.00	15%	750.00
Harry C. Tan	Honorarium-Jun.'09	6428	5,000.00	15%	750.00
Jose P. Magno	Honorarium-Jun.'09	6429	5,000.00	15%	750.00

Mariano Tanenglian	Honorarium-Jun.'09	6430	5,000.00	15%	750.00
Lucio K. Tan Jr.	Honorarium-Jun.'09	6431	5,000.00	15%	750.00
Michael G. Tan	Honorarium-Jun.'09	6432	5,000.00	15%	750.00
Enrique Antonio J. Esquivel III	Honorarium-Jun.'09	6433	3,000.00	15%	450.00
Harry C. Tan	Honorarium-Jul.'09	6499	5,000.00	15%	750.00
Mariano Tanenglian	Honorarium-Jul.'09	6500	5,000.00	15%	750.00
Jose P. Magno	Honorarium-Jul.'09	6503	5,000.00	15%	750.00
Enrique Antonio J. Esquivel III	Honorarium-Jul.'09	6504	3,000.00	15%	450.00
Lucio K. Tan Jr.	Honorarium-Jul.'09	6505	5,000.00	15%	750.00
Michael G. Tan	Honorarium-Jul.'09	6506	5,000.00	15%	750.00
Lucio C. Tan	Honorarium-Jul.'09	6507	5,000.00	15%	750.00
Henry So Uy	Honorarium-Jul.'09	6508	5,000.00	15%	750.00
Lucio C. Tan	Honorarium-Aug.'09	6587	5,000.00	15%	750.00
Henry So Uy	Honorarium-Aug.'09	6588	5,000.00	15%	750.00
Michael G. Tan	Honorarium-Aug.'09	6589	5,000.00	15%	750.00
Lucio K. Tan Jr.	Honorarium-Aug.'09	6590	5,000.00	15%	750.00
Jose P. Magno	Honorarium-Aug.'09	6591	5,000.00	15%	750.00
Enrique Antonio J. Esquivel III	Honorarium-Aug.'09	6592	3,000.00	15%	450.00
Mariano Tanenglian	Honorarium-Aug.'09	6593	5,000.00	15%	750.00
Harry C. Tan	Honorarium-Aug.'09	6594	5,000.00	15%	750.00
Lucio C. Tan	Honorarium-Sep.'09	6675	5,000.00	15%	750.00
Michael G. Tan	Honorarium-Sep.'09	6677	5,000.00	15%	750.00
Lucio K. Tan Jr.	Honorarium-Sep.'09	6678	5,000.00	15%	750.00
Jose P. Magno	Honorarium-Sep.'09	6679	5,000.00	15%	750.00
Enrique Antonio J. Esquivel III	Honorarium-Sep.'09	6680	3,000.00	15%	450.00
Mariano Tanenglian	Honorarium-Sep.'09	6681	5,000.00	15%	750.00
Harry C. Tan	Honorarium-Sep.'09	6682	5,000.00	15%	750.00
Henry So Uy	Honorarium-Sep.'09	6683	5,000.00	15%	750.00
Lucio C. Tan	Honorarium-Oct.'09	6807	5,000.00	15%	750.00
Henry So Uy	Honorarium-Oct.'09	6808	5,000.00	15%	750.00
Michael G. Tan	Honorarium-Oct.'09	6819	5,000.00	15%	750.00
Lucio K. Tan Jr.	Honorarium-Oct.'09	6811	5,000.00	15%	750.00
Jose P. Magno	Honorarium-Oct.'09	6812	5,000.00	15%	750.00
Enrique Antonio J. Esquivel III	Honorarium-Oct.'09	6813	3,000.00	15%	450.00
Mariano Tanenglian	Honorarium-Oct.'09	6814	5,000.00	15%	750.00
Harry C. Tan	Honorarium-Oct.'09	6815	5,000.00	15%	750.00
Lucio C. Tan	Honorarium-Nov.'09	6907	5,000.00	15%	750.00
Henry So Uy	Honorarium-Nov.'09	6908	5,000.00	15%	750.00
Michael G. Tan	Honorarium-Nov.'09	6909	5,000.00	15%	750.00
Lucio K. Tan Jr.	Honorarium-Nov.'09	6910	5,000.00	15%	750.00
Jose P. Magno	Honorarium-Nov.'09	6911	5,000.00	15%	750.00
Enrique Antonio J. Esquivel III	Honorarium-Nov.'09	6912	3,000.00	15%	450.00
Mariano Tanenglian	Honorarium-Nov.'09	6913	5,000.00	15%	750.00

Harry C. Tan	Honorarium-Nov.'09	6914	5,000.00	15%	750.00
Henry So Uy	Honorarium Execom Meeting-Nov.'09	6934	5,000.00	15%	750.00
Jose P. Magno	Honorarium BOD Meeting-Nov.'09	6981	5,000.00	15%	750.00
Henry So Uy	Honorarium BOD Meeting-Nov.'09	6982	5,000.00	15%	750.00
Harry C. Tan	Honorarium BOD Meeting-Nov.'09	6983	5,000.00	15%	750.00
Michael G. Tan	Honorarium BOD Meeting-Nov.'09	6985	5,000.00	15%	750.00
Lucio C. Tan	Honorarium-Dec.'09	7036	5,000.00	15%	750.00
Henry So Uy	Honorarium-Dec.'09	7037	5,000.00	15%	750.00
Michael G. Tan	Honorarium-Dec.'09	7038	5,000.00	15%	750.00
Lucio K. Tan Jr.	Honorarium-Dec.'09	7039	5,000.00	15%	750.00
Jose P. Magno	Honorarium-Dec.'09	7040	5,000.00	15%	750.00
Enrique Antonio J. Esquivel III	Honorarium-Dec.'09	7041	3,000.00	15%	450.00
Mariano Tanenglian	Honorarium-Dec.'09	7042	5,000.00	15%	750.00
Harry C. Tan	Honorarium-Dec.'09	7043	5,000.00	15%	750.00
Total			**₱486,000.00**		**₱72,900.00**

With regard to the remaining honorarium of ₱70,000.00 allegedly paid to a non-resident alien, petitioner submitted the related Credit Notes which show the following details:

Credit Note No.	Date	Particular	Amount	Exhibit
1351	25-Mar-09	Q1 2009 Honorarium (Jan -Mar 2009)	₱ 15,000.00	P-82.102
		Honorarium - Joint Regular Board of Directors & Annual Stockholders' Meeting	10,000.00	
1359	30-Jun-09	Q2 2009 Honorarium (April to June 2009)	15,000.00	P-82.103
1362	09-Oct-09	Q3 2009 Honorarium (July to September 2009)	15,000.00	P-82.104
1365	16-Dec-09	Q4 2009 Honorarium (October - December 2009)	15,000.00	P-82.105
Total			**₱ 70,000.00**	

While the EWT mandated under Section 2.57.2 in relation to Section 2.57.2(A)(9) of RR No. 02-98, as amended by RR No. 30-03, applies only to income payments to persons residing in the Philippines, the Court cannot ascertain whether the honorarium of ₱70,000.00 was actually paid to an alleged non-resident alien named John Lim Cheng Chua, notwithstanding that the Credit Notes supporting the said payment were addressed to AIPL, Singapore.

For lack of sufficient evidence, the deficiency 15% EWT assessment on the amount of ₱70,000.00 is sustained.

3. Mktg-Professional Fees – ₱342,400.00

Per the ICPA's verification, the assessed amount of ₱342,400.00 consisted of professional fees paid to the following:[47]

Supplier	Professional Fees	Professional Fees subjected to EWT
E.M. Zalamea Actuarial Services	₱ 50,000.00	₱ 27,445.00
SGV & Co.	292,400.00	
Total	**₱ 342,400.00**	

An examination of the supporting check vouchers and related official receipts, statements of account and billing statements[48] shows that the professional fees of ₱292,400.00 were paid for auditing services rendered by SGV & Co., a general professional partnership, as indicated in its Articles of Incorporation.[49] The remaining professional fees of ₱50,000.00 were paid to E.M. Zalamea Actuarial Services, Inc. for the actuarial valuation of petitioner's retirement plan.

Section 22(B) of the NIRC of 1997, as amended, defines general professional partnerships (GPPs) as partnerships formed by persons for the sole purpose of exercising their common profession, no part of the income of which is derived from engaging in any trade or business. Corollary thereto, Section 26 of the same NIRC provides that a general professional partnership shall not be subject to income tax. Its partners are the ones liable in their individual capacity for the payment of income tax.

Pertinent hereto is Section 2.57.5 of RR No. 2-98, as amended by RR No. 14-02, which states:

> "Sec. 2.57.5. *Exemption from Withholding.* — The withholding of creditable withholding tax prescribed in these Regulations shall not apply to income payments made to the following:
>
> xxx xxx xxx

[47] Exhibit "P-64", p. 25, Docket, Vol. II, p. 1002.
[48] Exhibits "P-84", "P-84.1" to "P-84.9".
[49] Exhibit "P-85".

(B) Persons enjoying exemption from payment of income taxes pursuant to the provisions of any law, general or special, such as but not limited to the following:

(4) General professional partnerships

xxx xxx xxx"

Petitioner has satisfactorily shown that it made payments to a GPP in the amount of ₱292,400.00. Hence, the deficiency EWT assessment on this item must be cancelled.

As to the ₱50,000.00 professional fees which were paid to E.M. Zalamea Actuarial Services, Inc., it was verified that the amount of ₱27,445.000 was subjected to 10% EWT. However, absent of proof that E.M. Zalamea's gross income for the year 2009 did not exceed ₱720,000.00, the said income payment of ₱27,445.00 shall be subjected to 15% EWT pursuant to Section 2.57.2(B) of RR No. 02-98, as amended by RR No. 17-03. Thus, petitioner is liable for the under-withholding of 5% EWT in the amount of ₱1,372.25 on its income payments to E.M. Zalamea of ₱27,445.00.

As to the remaining income payments to E.M. Zalamea of ₱22,555.00, petitioner shall likewise be liable to pay the corresponding 15% deficiency EWT in the amount of ₱3,383.25.

To recapitulate, petitioner is liable for basic deficiency EWT for taxable year 2009 in the amount of ₱250,073.83, computed as follows:

Particulars	**Amount not subjected to EWT**	**Rate**	**Deficiency EWT**
Purchases of Goods	₱ 5,194,099.88	1%	₱ 51,941.00
Rent			
Communication Exp-Rentals of Equip	2,332,798.41	5%	116,639.92
Storage Rental	21,696.48	5%	1,084.82
Outside Purchased Services			
Manila Bulletin	6,129.30	2%	122.59
Allied Banking Corporation	1,500.00	2%	30.00
Professional Fees			

Joint Marketing Fees	433,333.33[50]	15%	65,000.00
Board Honorarium	70,000.00	15%	10,500.00
Mktg-Professional Fees			
Underwitholding of 5% EWT on the ₱27,445.00 prof. fees paid to E.M. Zalamea	9,148.33[51]	15%	1,372.25
Non-withholding of 15% on the ₱22,555.00 prof. fees paid to E.M. Zalamea	22,555.00	15%	3,383.25
Total	**₱ 8,091,260.73**		**₱ 250,073.83**

II. DEFICIENCY WTC – ₱162,153.34[52]

Respondent assessed petitioner of deficiency WTC for taxable year 2009 in the amount of ₱162,153.34, computed as follows:

A-Under Remittance			
Total Per Alphalist			₱ 4,871,438.91
Less: Tax Remitted Per 1604-CF			4,871,438.91
Under Remittance			₱ -
B-Under Withholding			
Acct Code	Description		
1740006	MKTG-BOARD HONORARIUM		₱ 556,000.00
1740007	MKTG-BONUS/13TH MO PAY		3,443,284.24
1740011	MKTG-CAR LEASE		-
1740012	MKTG-CONFERENCE		-
1740022	MKTG-EMERGENCY/BENEFITS		406,085.00
1740026	MKTG-GROUP HOSPITALIZATION		980,698.29
1740031	MKTG-INCENTIVES		1,480,212.29
1740042	MKTG-MEDICAL		102,856.77
1740047	MKTG-OVERTIME		303,634.83
1740050	MKTG-PAG-IBIG FUND CONTRI		64,600.00
1740051	MKTG-PERSONNEL RECRUITMENT		18,000.00
1740058	MKTG-RETIREMENT		1,865,110.00

50

Claimed Joint Marketing Fees	₱1,100,000.00
Less: Amount subjected to ₱100,000.00 EWT	
(₱100,000.00 ÷ 15%)	666,666.67
Joint Marketing Fees not subjected to 15% EWT	**₱433,333.33**

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Professional fees paid to E.M. Zalamea	₱ 50,000.00
Less: Amount subjected to 10% EWT	
(₱2,744.50 ÷ 15%)	18,296.67
Professional fees paid to E.M. Zalamea not subjected to 15% EWT	**₱ 9,148.33**

52 Exhibit "P-10", Docket, Vol.I, pp. 469-470.

1740059	MKTG-RICE ALLOCATION		763,200.00
1740061	MKTG-SALARIES & WAGES		20,575,917.55
1740062	MKTG-SICK LEAVE		1,016,846.92
1740063	MKTG-SSS/MEDICARE PREMIUMS		852,292.20
1740081	MKTG-UNIFORMS		44,229.33
1740086	MKTG-VACATION LEAVE		556,846.70
Total Deductions per Books			₱ 33,029,814.12
Less: Non Taxable Items			
1740022	MKTG-EMERGENCY/BENEFITS		₱ 406,085.00
1740026	MKTG-GROUP HOSPITALIZATION		980,698.29
1740031	MKTG-INCENTIVES		1,480,212.29
1740042	MKTG-MEDICAL		102,856.77
1740050	MKTG-PAG-IBIG FUND CONTRI		64,600.00
1740051	MKTG-PERSONNEL RECRUITMENT		18,000.00
1740058	MKTG-RETIREMENT		1,865,110.00
1740059	MKTG-RICE ALLOCATION		763,200.00
1740063	MKTG-SSS/MEDICARE PREMIUMS		852,292.20
1740081	MKTG-UNIFORMS		44,229.33
1740086	MKTG-VACATION LEAVE		556,846.70
Total Non Taxable Items			₱ 7,134,130.58
Deductions Subject to WTC			₱ 25,895,683.54
Less: Gross Payments per Alphalist			25,484,937.51
Deductions Not subjected to WTC			₱ 410,746.03
Tax Rate:	Tax Due/alphalist	4,871,438.91	
	Taxable Compensation Less Exemption	19,506,874.08	0.2497
Deficiency WTC			₱ 102,575.34
Add: Interest (2010-01-20 to 2012-12-15)		0.58082	59,578.00
TOTAL AMOUNT DUE			**₱ 162,153.34**

In arriving at the deficiency withholding tax on compensation, respondent identified petitioner's claimed deductions for salaries and wages which are subject to WTC and then matched the figure total with the amount declared per alphalist. The total deductions not subjected to WTC as found by respondent amounted to ₱410,746.03.

The Court cancels the assessment.

As correctly observed by the ICPA[53], respondent's computation included the Mkltg – Board Honorarium amounting to ₱556,000.00 as compensation income subject to WTC. As earlier discussed under the deficiency EWT assessment, the amount of ₱486,000.00 of the transactions lodged under the Board Honorarium account was already subjected to EWT, while the remaining ₱70,000.00 was not

[53] Exhibit "P-64", p. 27, Docket, Vol. II, p. 1004.

subjected to EWT as the same was allegedly paid to a non-resident alien named John Lim Cheng Chuan.

Considering that the members of the board of directors of petitioner who were paid the honorarium of ₱486,000.00 were not, at the same time, employees of petitioner as can be seen from the Alphalist of Employees[54] supporting its Annual Information Return of Income Taxes Withheld on Compensation and Final Withholding Taxes (BIR Form No. 1604-CF)[55] for the year 2009, the 15% EWT was properly withheld thereon by petitioner as provided for under Section 2.57.2(A)(9) of RR No. 02-98, as amended by RR No. 30-03, to wit:

> "Sec. 2.57.2. *Income payments subject to creditable withholding tax and rates prescribed thereon.* — xxx
>
> (A) *Professional fees, talent fees, etc., for services rendered by individuals.* — Fifteen percent (15%), if the gross income for the current year exceeds P720,000; and Ten percent (10%), if otherwise;
>
> xxx xxx xxx
>
> (9) Fees of directors who are not employees of the company paying such fees, whose duties are confined to attendance at and participation in the meetings of the board of directors."

Obviously, the amount of ₱486,000.00 representing Board Honorarium will offset the alleged ₱410,746.03 deductions not subjected to WTC and will not result to any deficiency WTC, as shown below:

Deductions not subjected to WTC as found by respondent	₱ 410,746.03
Less: Deductions subjected to EWT	
Board Honorarium	486,000.00
Amount Not Subjected to WTC	**(₱ 75,253.97)**

Clearly, the subject assessment, being a mere result of respondent's erroneous computation, must be cancelled.

[54] BIR records, pp. 143-144.
[55] BIR records, p. 145.

III. DEFICIENCY FWVAT – ₱4,550,165.78
IV. DEFICIENCY FWT - ₱11,375,414.45

Respondent assessed petitioner of deficiency FWVAT and FWT on the amounts of ₱18,976,877.84 and ₱1,734,065.04 representing communication expense and marketing fees paid to the non-resident/Singapore-based AIPL. Respondent's computations of the assessments for deficiency FWVAT of ₱4,550,165.78 and deficiency FWT of ₱11,375,414.45 are reproduced as follows:

III. DEFICIENCY FWVAT		
Communication Expense payable to AIPL (Singapore)	₱	18,976,877.84
Marketing Fees		1,734,065.04
Total Deductions Payable to AIPL (Singapore)	₱	20,710,942.88
Tax Rate		0.12
Deficiency Final VAT Withheld	₱	2,485,313.15
Add: Surcharge		621,328.29
Interest (1/20/2010 to 12/15/2012)		1,443,524.35
TOTAL AMOUNT DUE	**₱**	**4,550,165.79**

IV. DEFICIENCY FWT		
Communication Expense payable to AIPL (Singapore)	₱	18,976,877.84
Marketing Fees		1,734,065.04
Total Deductions Payable to AIPL (Singapore)	₱	20,710,942.88
Tax Rate		0.30
FWT Due	₱	6,213,282.86
FWT Paid		-
Deficiency FWT	₱	6,213,282.86
Add: Surcharge		1,553,320.72
Interest (2010-01-20 to 2012-12-15)		3,608,810.87
TOTAL AMOUNT DUE	**₱**	**11,375,414.45**

According to respondent, petitioner provides computerized reservation system in the Philippines, the Abacus System, a system that performs various functions, including real time airline seat reservations, schedule displays, booking for a variety of air, car and hotel services, automated ticketing and fare quote displays. The Abacus System is an intellectual property owned by AIPL, a non-resident foreign corporation.

Respondent further states that in connection with the use of the Abacus System in the Philippines, marketing fees and communication expenses are being charged by AIPL. Respondent

posits that since the charges are income of a non-resident in connection with the use of its property and property rights in the country, the same are subject to final withholding VAT as required under RR No. 16-05 as amended by RR No. 04-07. Respondent likewise argues that in the absence of an ITAD Ruling, such income is subject to 30% FWT pursuant to Section 28(B)(1) of the NIRC of 1997, as amended.

Petitioner counter-argues that the payments are mere reimbursement of expenses incurred by AIPL, which in turn were charged by Sabre Holdings, a foreign corporation based in the USA and the licensor of the Abacus System. As such, the payments it made to AIPL did not arise from an activity, the income of which is derived from the operation of the Abacus System, hence, is not subject to FWVAT and FWT.

The Court rules in favor of respondent.

To determine whether the payments are subject to FWVAT, Section 114(C) of the NIRC of 1997, as amended, provides:

> "**SEC. 114. Return and Payment of Value-Added Tax.** –
>
> xxx xxx xxx
>
> **(C) Withholding of Value-added Tax.** - The Government or any of its political subdivisions, instrumentalities or agencies, including government-owned or -controlled corporations (GOCCs) shall, before making payment on account of each purchase of goods and services which are subject to the value-added tax imposed in Sections 106 and 108 of this Code, , deduct and withhold a final value-added tax at the rate of five percent (5%) of the gross payment thereof: Provided, That the payment for lease or use of properties or property rights to nonresident owners shall be subject to ten percent (10%) withholding tax at the time of payment. For purposes of this Section, the payor or person in control of the payment shall be considered as the withholding agent."

In relation thereto, Section 4.114-2 of RR No. 16-05 prescribes the withholding of 12% final VAT on the lease or use of properties or property rights owned by non-residents.

Verily, before subjecting the subject payments to FWVAT, the source of such payments must proceed from a VATable transaction. In this regard, Section 105 of the same Code provides:

> "**SEC. 105. Persons Liable.** - Any person who, in the course of trade or business, sells barters, exchanges, leases goods or properties, renders services, and any person who imports goods shall be subject to the value-added tax (VAT) imposed in Sections 106 to 108 of this Code.
>
> The value-added tax is an indirect tax and the amount of tax may be shifted or passed on to the buyer, transferee or lessee of the goods, properties or services. This rule shall likewise apply to existing contracts of sale or lease of goods, properties or services at the time of the effectivity of Republic Act No. 7716.
>
> The phrase '***in the course of trade or business***' means the regular conduct or pursuit of a commercial or an economic activity, including transactions incidental thereto, by any person regardless of whether or not the person engaged therein is a non-stock, nonprofit private organization (irrespective of the disposition of its net income and whether or not it sells exclusively to members or their guests), or government entity.
>
> The rule of regularity, to the contrary notwithstanding, services as defined in this Code rendered in the Philippines by nonresident foreign persons shall be considered as being rendered in the course of trade or business."

Corollary thereto, Section 108(A)(1) states:

> **SEC. 108. Value-added Tax on Sale of Services and Use or Lease of Properties.** –
>
> **(A) Rate and Base of Tax.** - There shall be levied, assessed and collected, a value-added tax

> equivalent to ten percent (10%) of gross receipts derived from the sale or exchange of services, including the use or lease of properties: Provided, That the President, upon the recommendation of the Secretary of Finance, shall, effective January 1, 2006,raise the value-added tax to twelve percent (12%), after any of the following conditions has been satisfied:
>
> xxx xxx xxx
>
> xxx The phrase "sale or exchange of services" shall likewise include:
>
> (1) The lease or the use of or the right or privilege to use any copyright, patent, design or model, plan secret formula or process, goodwill, trademark, trade brand or other like property or right;"

The Court finds, however, that petitioner failed to adduce sufficient evidence to overturn the presumption of correctness of respondent's treatment of the subject payments as income on the part of AIPL.

While the amounts of ₱18,976,877.84 and ₱1,734,065.04 representing communication expense and marketing fees were traced to the Tax Invoices[56] issued by AIPL to petitioner, there were no indications even in the schedules attached to the said invoices that the said expenses were initially billed by Sabre Holdings and paid by AIPL in behalf of the petitioner. In other words, petitioner failed to convince the Court through sufficient evidence that the subject expenses were mere reimbursements.

Verily, the Court is constrained to uphold respondent's assessment in treating the subject payments remitted to AIPL as income pertaining to the operation of Abacus System in the Philippines. Since it is an income arising from the privilege to use the computer system in the Philippines, it necessarily follows that there is a sale of service by AIPL in the course of trade or business, hence, subject to VAT under Section 105 in relation to Section 108(A)(1) of the NIRC of 1997, as amended. Consequently, the supposed withholding of the VAT is in order pursuant to Section 114(C) of the same Code.

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[56] Exhibit "P-50".

Also, considering that the subject payments represent income derived by AIPL in the Philippines, the same are subject to 30% FWT pursuant to Section 28(B)(1) of the NIRC of 1997, as amended.

Therefore, petitioner is liable for the basic deficiency FWVAT in the amount of ₱2,485,313.15 and deficiency FWT in the amount of ₱6,213,282.86 for taxable year 2009.

V. DEFICIENCY INCOME TAX – ₱43,457,241.81

Respondent found petitioner liable for deficiency income tax for taxable year 2009 in the amount of ₱43,457,241.81, computed as follows:[57]

Taxable Income per return		₱ 11,194,801.00
Adjustments:		
(1) Unaccounted AIPL remittances:		
Due from AIPL-Beg	₱ 1,148,664.00	
Add/Deduct Transactions for the year		
Booking Commission	₱ 111,154,286.00	
Communication Expense	(18,976,877.84)	
Marketing Fee	(1,734,085.04)	
Net Transactions for the year	₱ 90,443,323.12	
Total Due from AIPL	₱ 91,591,987.12	
Less: Due from AIPL-End	348,856.00	
Remittances per FS	₱ 91,243,131.12	
Actual Remittances per Bank Certification	141,781,207.52	₱ 50,538,076.40
(2) Forex Loss claimed/ITR-Substantiation Requirement		
Forex loss/Trial Balance	₱ 3,064,340.00	
Unrealized Forex Loss 2009	(896,963.00)	
Forex Loss in 2008 realized in 2009	264,230.00	2,431,607.00
(3) Undeclared income (SLS<SAWT) - RMO 14-2011		570,130.98
(4) Unaccounted Source (SLP<EWT) - RMO 14-2011		16,764,878.70
(5) Expenses Failing Additional Requirement of Deductibility		
Final Withholding Tax	₱ 20,710,942.88	
Expanded Withholding Tax (Less Capital Goods-₱10,910,765)	2,989,649.32	
Withholding Tax on Compensation	410,746.03	24,111,338.23
Total Adjustments		₱ 94,416,031.31

[57] Exhibit "P-10", Docket, Vol. I, p.466-467.

Taxable Income per Audit			₱ 105,610,832.31
Computation of Tax Due			
(A) Regular-30%		₱ 31,683,249.69	
(B) MCIT			
Gross Income per ITR	₱ 23,765,248.00		
Add: Adjustments			
Unaccounted Remittance	50,538,076.40		
Undeclared Income	570,130.98		
Unaccounted Source	16,764,878.70		
Gross Income per Audit	₱ 91,638,334.08		
Tax Rate	0.02	₱ 1,832,766.68	
Income Tax Due per Audit			₱ 31,683,249.69
Less: Unexpired MCIT		₱ 974,575.00	
Tax Payments - 1st three qtrs.		254,004.00	
Tax Credits - 4th qtr		59,310.00	
Tax Payment - Final Return		2,070,551.30	3,358,440.30
Deficiency Income Tax			₱ 28,324,809.39
Add: Interest (4/15/2010 to 12/15/2012)			15,132,432.42
TOTAL AMOUNT DUE			**₱43,457,241.81**

In order to determine whether or not the assessment is correct, we shall look into the propriety of each of the following items:

A.	Unaccounted Remittances		₱50,538,076.40
B.	Forex Loss Claimed		2,431,607.00
C.	Undeclared Income		570,130.98
D.	Unaccounted Source of Cash		16,764,878.70
E.	Disallowed Expenses Due to Non-withholding of FWT	₱20,710,942.88	
	Disallowed Expenses Due to Non-withholding of EWT	2,989,649.32	
	Disallowed Expenses Due to Non-withholdig of WTC	410,746.03	24,111,338.23

A. UNACCOUNTED REMITTANCES - ₱50,538,076.40

Respondent imputed against petitioner an alleged amount of ₱50,538,076.40 unaccounted foreign currency inward remittances received from AIPL, Singapore, computed as follows:[58]

Due from AIPL-Beg	₱ 1,148,664.00
Add/Deduct Transaction for the year	
Booking Commission	₱ 111,154,286.00
Communication Expense	(18,976,877.84)
Marketing Fee	(1,734,085.04)
Net Transaction for the year	₱ 90,443,323.12

[58] Exhibit "P-10", Docket, Vol. I, p. 466.

Total Due from AIPL	₱ 91,591,987.12
Less: Due from AIPL-End	348,856.00
Remittances per FS	₱ 91,243,131.12
Actual Remittances per Bank Certification	141,781,207.52
Unaccounted Remittances	**₱ 50,538,076.40**

As can be seen from the above computation, respondent compared the movement of petitioner's "Due from AIPL" accounts receivable account, together with the amount of "Booking Commission", net of related expenses, against the actual remittances made by AIPL to petitioner. The resulting difference was treated by respondent as unaccounted remittances of AIPL to petitioner.

Petitioner posits that based on the ICPA's reports, there were several inaccuracies in the figures picked-up by the respondent and that the actual remittances received by petitioner per Bank Certification were fully accounted for.

A perusal of petitioner's Audited Financial Statements (AFS)[59] as of and for the year ended December 31, 2009 and 2008 Lead Schedule,[60] shows that petitioner's Receivables comprised of the following:

Receivables		
Trade		₱ 13,324,773.42
AR Trade - Domestic	₱ 754,208.03	
AR Trade - AIPL (1112120)	12,570,565.39	
Due from Abacus International Pte. Ltd.		348,855.99
Claims - AIPL (1112150)	348,855.99	
Others		222,609.80
Total Receivables		**₱13,896,239.21**

Note 7[61] of the Notes to FS reveals that petitioner earned booking commissions from AIPL in the amount of ₱111,154,286.00 in 2009 and that Commission receivables were included as part of "Receivables-Trade" account in the balance sheet, which amounted to ₱12,570,565.00 and ₱9,962,099.00 as of December 31, 2009 and 2008, respectively while the amounts lodged in the "Due from AIPL" account were reimbursements due from AIPL.

[59] Exhibit "P-27", Docket, Vol. III, p. 1237.
[60] Exhibits "P-39.14", "P-39.16" & "P-39.17".
[61] Exhibit "P-27", Docket, Vol.III, p.1254.

The findings of the Court-commissioned ICPA[62] confirmed that the transactions lodged in the "Due from AIPL/Claims-AIPL" account pertain to reimbursements due from AIPL such as fares guarantee and promotional and advertising activities. Fares guarantee[63] pertains to payment made to travel agencies due to system errors on the use of the Abacus System while promotional and advertising expenses[64] pertain to expenses incurred by petitioner, being the marketing arm or national marketing company (NMC) of AIPL in the Philippines. The amounts in this account, being mere reimbursements, are not subject to income tax.

The Court agrees with the ICPA.

Based on petitioner's "AR Trade-AIPL", the booking commissions it received from AIPL during the year amounted to ₱108,545,820.00, as computed below:

AR Trade-AIPL, beg	₱ 9,962,099.00
Add: Booking Commissions during the year	111,154,286.00
Total	121,116,385.00
Less: AR Trade-AIPL, end	12,570,565.00
Booking Commissions collected/received from AIPL during the year per review	**₱ 108,545,820.00**

On the other hand, actual foreign currency inward remittances received by petitioner per Bank Certification[65] amounted to ₱141,781,207.52, broken down as follows:

Date	Amount (in USD)	Service charge (in USD)	Net amount (in USD)	BSP Exchange Rate	Peso equivalent
1/23/2009	133,359.78	20.00	133,339.78	47.363	6,315,372.00
2/25/2009	195,351.00	20.00	195,331.00	48.232	9,421,204.79
3/24/2009	224,121.27	20.00	224,101.27	48.210	10,803,922.23
4/27/2009	203,237.28	20.00	203,217.28	48.559	9,868,027.90
5/25/2009	503,505.04	20.00	503,485.04	47.054	23,690,985.07
6/23/2009	159,124.66	20.00	159,104.66	48.421	7,704,006.74
7/24/2009	127,691.15	20.00	127,671.15	48.095	6,140,343.96
8/24/2009	148,805.31	20.00	148,785.31	48.486	7,214,004.54
9/28/2009	481,061.92	20.00	481,041.92	47.393	22,798,019.71
10/27/2009	147,599.95	20.00	147,579.95	46.967	6,931,387.51
12/1/2009	409,828.62	20.00	409,808.62	47.132	19,315,099.88

[62] Exhibit "P-37", Docket, Vol.II, pp. 941-942.
[63] Exhibits "P-38" to "P-38.1", "P-40" to "P-40.329", "P-40.337" to "P-40.483".
[64] Exhibits "P-41.1" to "P-41.241".
[65] Exhibits "P-43.1" to "P-43.25".

12/23/2009	248,620.85	20.00	248,600.85	46.576	11,578,833.19
Total	**2,982,306.83**	**240.00**	**2,982,066.83**		**141,781,207.52**

The gross remittances (in USD) per Bank Certificate tally with the remittances (in USD) per the monthly electronic mail advice prepared and sent by AIPL to petitioner, as follows:

Exhibit[66]	Booking Commission	NMC (DN)	Fares Guarantee	Incentive	AIPL INV	Total
P-13	140,866.76	2,799.87	609.30	31,000.00	(41,916.15)	133,359.78
P-14	68,773.36	3,042.68	280.00	154,778.45	(31,523.49)	195,351.00
P-15	248,245.72	12,765.44	1,369.50	-	(38,259.39)	224,121.27
P-16	244,041.11	257.76	-	-	(41,061.59)	203,237.28
P-17	239,692.08	8,887.55	215.50	301,386.05	(46,676.14)	503,505.04
P-18	197,928.70	2,032.15	1,445.16	-	(42,281.35)	159,124.66
P-19	164,963.65	-	697.00	-	(37,969.50)	127,691.15
P-20	180,550.09	-	536.35	86.36	(32,367.49)	148,805.31
P-21	199,216.97	18,620.56	129.90	296,744.92	(33,650.43)	481,061.92
P-22	179,426.16	600.00	2,283.73		(34,709.94)	147,599.95
P-23	196,829.64	2,188.03	3,670.40	241,662.00	(34,521.45)	409,828.62
P-24	197,347.41	762.99	625.80	85,909.10	(36,024.45)	248,620.85
	2,257,881.65	**51,957.03**	**11,862.64**	**1,111,566.88**	**(450,961.37)**	**2,982,306.83**

The peso equivalent of the above amounts as booked by petitioner is shown hereunder:

Exhibit	Booking Commission	NMC	Fares Guarantee	Incentive	AIPL INV	Forex G(L)	Net Amount
P-42.487 to P-42.488	6,675,675.76	133,049.82	28,874.72	1,469,090.00	(1,991,855.45)	5,085.12	6,319,919.97
P-42.489 to P-42.490	3,259,169.53	144,192.61	13,664.00	7,553,188.36	(1,538,346.31)	100,284.62	9,532,152.81
P-42.491 to P-42.494	11,796,638.62	622,395.70	66,187.94	-	(1,849,076.32)	194,659.04	10,830,804.98
P-42.495 to P-42.498	11,794,506.85	12,457.34	-	-	(1,985,327.87)	3,919.18	9,825,555.50
P-42.499 to P-42.501	11,589,112.07	429,713.04	10,203.93	14,270,629.47	(2,210,115.23)	(249,526.63)	23,840,016.65
P-42.502 to P-42.504	9,371,923.94	96,222.30	69,555.56	-	(2,035,001.38)	155,006.87	7,657,707.29
P-42.505 to P-42.507	7,811,028.82	-	33,547.58	-	(1,825,953.26)	121,111.31	6,139,734.45
P-42.508 to P-42.510	8,689,875.83	-	26,173.88	-	(1,575,319.14)	119,992.56	7,260,723.13
P-42.511 to P-42.514	9,580,344.09	908,683.33	6,155.96	14,062,741.76	(1,594,693.88)	(165,706.87)	22,797,524.39
P-42.515	8,503,005.72	28,434.00	108,774.06	-	(1,653,234.44)		

[66] Docket, Vol.I, pp. 1174-1224.

to P-42.518						42,230.28	7,029,209.62
P-42.521 to P-42.523	9,295,308.71	101,086.99	169,572.48	11,164,784.40	(1,594,890.99)	(202,703.34)	18,933,158.25
P-42.521, P-42.524 to P-42.525	9,315,784.49	35,250.14	28,911.96	3,969,000.42	(1,664,329.59)	(199,258.15)	11,485,359.27
	107,682,374.43	**2,511,485.27**	**561,622.07**	**52,489,434.41**	**(21,518,143.86)**	**(74,906.01)**	**141,651,866.31**

A comparison between the net amount of ₱141,651,866.31 per petitioner's books and the net amount of ₱141,781,207.52 per Certificate of Inward Remittances reveals a difference of ₱129,341.21, which is due to the difference in rates used in converting the dollar remittances, particularly, BSP exchange rate per inward remittance as against the Philippine Dealing and Exchange (PDEX) closing rate[67] per books.

From the foregoing, the remittances received by petitioner from AIPL represent not only booking commissions but also other items, namely, promotional and advertising expenses or NMC expenses, fares guarantee, and incentives which are not income payments subject to income tax.

With regard to the booking commissions, there appears a difference of ₱863,445.57[68] between commission remittances per review of ₱108,545,820.00 and the remitted amount of ₱107,682,374.43. This difference pertains to the amount of restatement/revaluation of the "AR Trade-AIPL" as per the Journal Vouchers examined by the ICPA.[69]

As explained by the ICPA, the NMC and fare guarantees are in the nature of reimbursements due from AIPL. The incentives[70] or pass-through costs are, likewise, not income payments but advances payable to travel agencies either as quarterly bonus for reaching a certain quota on the use of the Abacus System or sign-on bonuses for first time users of the Abacus System. All of these reimbursements were accounted for by petitioner using the Claims AIPL account and no disbursements relating to the transactions were accounted using a nominal/expense account.[71]

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[67] Exhibits "P-44" to "P-44.16".
[68] With a discrepancy of ₱1.35 as against the ICPA's amount per report (₱863,444.22), this may be due to rounding-off.
[69] As summarized in Exhibit "P-37-b.1".
[70] Exhibits "P-45", "P-46" to "P-46.65", "P-46.67" to "P-46.631".
[71] Exhibits "P-40" and "P-42".

The ICPA's examination also revealed that the remittances made by AIPL were net of the Intercompany Payables (AIPL INV) lodged under the "ABACUS-AIPL"[72] account. The Tax Invoices[73] issued by AIPL disclosed that the latter billed petitioner for communication expenses and marketing fees.

Moreover, the foreign exchange gain/loss recognized was due to the change in the recognized peso valuation of the commission receivables, NMC and AIPL charges for communication expenses and marketing fees recorded in petitioner's books against the peso valuation of said transactions upon receipt of remittance.[74]

Thus, among the amounts remitted, only the booking commissions are subject to income tax. However, respondent cannot assess petitioner of income tax based merely upon the receipt of remittances.

Based on its Notes to FS[75], petitioner employs the accrual method of accounting wherein its commission income is recognized upon acceptance of bookings through the reservation system and not when cash is received. Thus, the remitted commissions, being part of its Trade Receivables, were already recorded as part of its income during or prior to the year 2009 but were only received in 2009.

Petitioner's commission income that should be subjected to income tax is that which was earned or recognized during the year 2009 in the amount of ₱111,154,286.00, and not the amount received as payment for receivables. Accordingly, petitioner reported its commission income of ₱111,154,286.00 in its Annual Income Tax Return for 2009[76], and, thus, was properly subjected to income tax.

In sum, the deficiency income tax assessment on the alleged unaccounted remittances of ₱50,538,076.40 is cancelled for lack of merit.

B. FOREX LOSS CLAIMED - ₱2,431,607.00

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[72] Exhibits "P-49" to "P-49.1".
[73] Exhibits "P-50" to "P-50.72.1".
[74] Exhibits "P-42.488", "P-42.490", "P-42.492", "P-42.496", "P-42.500", "P-42.503", "P-42.506", "P-42.509", "P-42.512", "P-42.516", "P-42.522", "P-42.524".
[75] Exhibit "P-27", Docket, Vol.III, p. 1249.
[76] Exhibit "P-56.3".

Respondent alleged that petitioner's foreign exchange (forex) loss in the amount of ₱2,431,607.00, as computed below, was not shown to have been actually sustained, thus, was disallowed as deduction from gross income.

2009 Forex Loss, net of gain	₱ 3,064,340.00
2009 Unrealized Forex Loss, net of gain	(896,963.00)
2008 Unrealized Forex Loss realized in 2009	264,230.00
Realized Forex Loss, net of gain	**₱2,431,607.00**

Pursuant to Section 34(D) of the NIRC of 1997, as amended, losses actually sustained during the taxable year and not compensated for by insurance or other forms of indemnity shall be allowed as deduction from gross income.

What is needed to be entitled to a loss deduction is for the taxpayer to prove that a closed and completed transaction sets the loss in the taxable year or in the year claimed and it is not compensated by insurance or otherwise. A closed and completed transaction is one in which the facts indicate the transaction sufficiently final to ascertain that a loss has occurred.[77]

To prove its claimed forex loss, petitioner submitted its General Ledgers[78], journal vouchers[79], and other related source documents, such as, NMC Debit Notes[80], bank books[81] and bank statements[82], which were all examined by the ICPA. Based on the ICPA's examination, it was found that the total forex loss actually sustained by petitioner was ₱474,353.24, broken down as follows:[83]

2009 Forex Loss, net of gain	₱ 3,081,548.37
2009 Unrealized Forex Loss, net of gain	(2,810,043.27)
2008 Unrealized Forex Loss realized in 2009	202,848.13
Realized Forex Loss, net of gain	**₱ 474,353.23**

According to the ICPA[84], the said realized forex gain or loss pertains to the change in peso valuation of the dollar denominated inter-company transactions from the time the cost was billed or

[77] *MERTENS Law of Federal Income Taxation*, Chapter 28, Page 3, as cited in CTA Case No. 5238, *The Coca-Cola Export Corporation vs Commissioner of Internal Revenue*, December 19, 1997.
[78] Exhibits "P-38" to "P-38.1", "P-47" & "P-49" to "P-49.1".
[79] Exhibits "P-42" to "P-42.1513".
[80] Exhibits "P-41.1" to "P-41.241".
[81] Exhibits "P-52" to "P-52.20".
[82] Exhibits "P-53" to "P-53.6".
[83] Exhibit "P-64", Docket, Vol.II, p. 993.
[84] Ibid.

recognized in the books, to the time the actual cash was received or paid. Realized forex gain or loss also includes change in peso valuation of dollar investments subsequently converted to peso and bank charges on remittances charged to forex loss. On the other hand, the unrealized forex loss relates to monthly revaluations of time deposits, Foreign Currency Deposit Units (FCDUs) or revaluation of accrued inter-company dollar denominated transactions. The details of the ICPA's findings are summarized below:

	Forex (Gain) Loss	**Realized Forex Gain**	**Realized Forex Loss**	**Unrealized Forex Gain**	**Unrealized Forex Loss**	**Exhibit**
Commissions from AIPL	₱ 899,285.62	₱ (532,150.60)	₱ 1,272,390.30		₱ 159,045.92	P-64-a.1
Disbursements	(44,357.51)	(44,357.53)	0.02			P-64-a.4; P-42.487 to P-42.525
NMC	31,401.28		31,401.28			P-64-a.2; P-64-a.5 to P-64-a.6
Bank Charges	11,542.40		11,542.40			P-64-a.3
Other Bank Transactions	(5,451.89)			₱ (5,451.89)		P-64-a.7; P-52 to P-52.18; P-53 to P-53.6
Money Placements	2,189,128.47	(467,320.77)			2,656,449.24	P-64-a.8 to P-64-a.10
Total	**₱3,081,548.37**	**₱(1,043,828.90)**	**₱1,315,334.00**	**₱(5,451.89)**	**₱2,815,495.16**	
Net Loss			271,505.10		**2,810,043.27**	
2008 unrealized forex Loss realized in 2009			202,848.13			P-64-a.1
Realized Forex Loss, net of gain			**₱ 474,353.23**			

In the present case, petitioner's foreign exchange loss was actually sustained, ascertained and determined in the subject taxable year 2009 when the transaction was closed and terminated by the payment/remittance of its receivables, net of disbursements (payable) and conversion of its dollar –denominated time deposits to Philippine Peso. Said loss was incurred due to the exchange rate differential of US dollar to Philippine Peso from booking to actual remittance or conversion thereof.

Meanwhile, further verification of the ICPA's report, together with the supporting documents, shows that the ₱474,353.23 forex loss found by the ICPA as actually sustained for the year 2009 should be increased by ₱42,180.20 for the reasons stated hereunder:

Reason for adjustment	**Amount**	**Exhibit**
Disbursements		
No loss incurred since amount booked per supporting JV is equal to the amount disbursed	₱ (0.01)	P-64-a.4; P-42.490
No loss incurred since amount booked per supporting JV is equal to the amount disbursed	(0.01)	P-64-a.4; P-42.503
No loss incurred since amount booked per supporting JV is equal to the amount disbursed	(0.01)	P-64-a.4; P-42.509

No resulting gain since amount booked is equal to amount disbursed per supporting JV	4,214.37	P-64-a.4; P-42.509
No resulting gain since the amount booked using 46.2 forex rate per supporting JV is equal to the amount disbursed	1,210.02	P-64-a.4; P-42.522
No resulting gain since the amount booked using 46.2 forex rate per supporting JV is equal to the amount disbursed	33,333.29	P-64-a.4; P-42.522
No resulting gain since the amount booked using 46.2 forex rate per supporting JV is equal to the amount disbursed	150.75	P-64-a.4; P-42.522
Bank Charges		
Difference of bank charge booked at 947.80 as against 976.00 as used by ICPA	(28.20)	P-64-a.7; P-42.526 to P-42.527
Money Placements		
Loss incurred by petitioner in the amount of ₱1,650.00 from conversion of USD to PHP was considered as gain by the ICPA, thus, should be added twice	3,300.00	P-64-a.; P-420.706 to P-42.710
Total	**₱ 42,180.20**	

Considering the foregoing, petitioner's net forex loss actually realized and sustained in taxable year 2009 that is to be allowed as deduction from gross income amounts to ₱516,533.43 (₱474,353.23 plus ₱42,180.20).

Consequently, for petitioner's failure to prove otherwise, the disallowance on the remaining forex loss claim of ₱1,915,073.57 (₱2,431,607.00 less ₱516,533.43) shall remain.

C. UNDECLARED INCOME - ₱570,130.98

Respondent's reconciliation of petitioner's Summary List of Sales (SLS) and Summary Alphalist of Withholding Taxes (SAWT) disclosed a variance of ₱570,130.98, thus, was assessed by respondent as understatement of petitioner's gross income pursuant to Section 32 of the NIRC of 1997, as amended.[85]

Per BIR Records,[86] the variance of ₱570,130.98 was determined by respondent in this manner:

SLS		SAWT		
Registered Name	**Taxable Sales**	**Registered Name**	**Income**	**SLS<SAWT**
Legendary Tours	₱ 24,000.00	Legend Hotel Int'l Corp.	₱ 25,000.00	₱ 1,000.00

[85] Exhibit "P-12", Docket, Vol. I, p.500.
[86] p. 517.

AT Phil., Inc	24,000.00	AT Phil., Inc	26,000.00	2,000.00
Refund DAB Class	(5,803.57)		-	5,803.57
Friendship tours and Resorts Corp	15,000.00	Friendship Tours and Resorts Corp	21,000.00	6,000.00
Tourlandia Inc.	16,000.00	Tourlandia Inc	30,000.00	14,000.00
La Consolacion College Manila	(18,000.00)		-	18,000.00
Smartravel and Tour Exchange Inc	24,000.00	Smartravel and Tour Exchange Inc	55,000.00	31,000.00
ITEX Integrated Solutions Inc	29,500.00	ITEX Integrated Solutions Inc	62,500.00	33,000.00
Hasslefree Philippines ITEX Integrates Solutions	24,000.00	Hasslefree Philippines ITEX Integrated Solutions	60,000.00	36,000.00
Mobilair Travel Inc	24,000.00	Mobilair Travel Inc	60,000.00	36,000.00
Universal Travel Corporation	41,580.00	Universal Travel Corporation	103,950.00	62,370.00
Voyager Travel & Tours	42,000.00	Voyager Travel & Tours	105,000.00	63,000.00
Far Eastern Travel Agency	106,085.09	Far Eastern Travel Agency	234,114.00	128,028.91
		La Sallian Educational Innovators Foundation	133,928.50	133,928.50
Total Variance				**₱570,130.98**

Based on the ICPA's reconciliation[87], some of the sales per SLS are higher or equal to the amount of sales per SAWT while the remaining discrepancy amounts to only ₱55,500.00, which consisted of the following:

Registered Name	TIN	Income payment per SAWT	Gross Sales per SLS	Difference SLS<SAWT
Blue Horizons Travel	211-996-533	₱ 430,500.00	₱426,000.00	₱ 4,500.00
Friendship Tours	000-120-082	21,000.00	15,000.00	6,000.00
Itex Integrated Solutions Inc	251-976-833	25,000.00	-	25,000.00
People Support Philippines Inc	205-394-448	20,000.00	-	20,000.00
Total				**₱ 55,500.00**

However, except for the discrepancies of ₱6,000.00 and ₱25,000.00 pertaining to sales to Friendship Tours and Itex Integrated Solutions, Inc., the other amounts shall be excluded in the reconciliation since these pertain to sales to clients, which were not included in respondent's basis of computation.

A review of the documents submitted by petitioner shows that there exists a discrepancy of ₱139,928.50 from its sales to certain clients per Certificates of Withholding Taxes (CWT) as against per SLS. The details of comparison are presented hereunder:

[87] Exhibits "P-64-b" to "P-64-b.1".

Per CWT Certificates			Per SLS[88]			
Payor's Name	**Income Payments**	**Exhibit**	**Name**	**Income Payments**	**SLS>SAWT**	**SLS<SAWT**
AT Phil., Inc	₱ 24,000.00	P-55 to P-55.11	Asia International Corp	₱ 65,700.00	₱ 41,700.00	
La Sallian Educational Innovators Foundation (DLS-CSB), Inc	133,928.50	P-55.52	not found in SLS			₱ (133,928.50)
Far Eastern Travel Agency	93,645.80	P-55.53 to P-55.64	FETA Travel	106,085.09	12,439.29	
Friendship Tours and Resorts Corp	21,000.00	P-55.76 to P-55.81	Friendship Tours	15,000.00		(6,000.00)
Hasslefree Philippines Inc	24,000.00	P-55.82 to P-55.83	Hasslefree Philippines	24,000.00	-	
ITEX Integrated Solutions Inc	25,000.00	P-55.84 to P-55.93	Intl Travel Exchange	29,500.00	4,500.00	
Legend Hotel Int'l Corporate	20,000.00	P-55.106 to P-55.109	Legendary Tours	24,000.00	4,000.00	
Mobilair Travel Inc	24,000.00	P-55.126 to P-55.129	Mobilair Travel	24,000.00	-	
Smartravel and Tours Exchange Inc	22,000.00	P-55.157	Smartravel and Tours	24,000.00	2,000.00	
Tourlandia Inc	12,000.00	P-55.163 to P-55.168	Tourlandia Inc	16,000.00	4,000.00	
Universal Travel Corporation	41,580.00	P-55.176 to P-55.179	Universal Travel Corporation	41,580.00	-	
Voyager Travel & Tours, Inc	42,000.00	P-55.180 to P-55.183	Voyager Travel	42,000.00	-	
Total	**₱483,154.30**			**₱411,865.09**	**₱68,639.29**	**₱(139,928.50)**

Based on the table above, only the sales to La Sallian Educational Innovators Foundation and Friendship Tours resulted to a higher amount per SAWT than per SLS, while all the other sales per CWT Certificates were declared per petitioner's SLS.

According to the ICPA[89], the amount of ₱133,928.50, was included in the amended SLS for the 4th quarter lumped amount of ₱234,000.00 under the registered name "Training Fees as of December 2009". The breakdown schedule[90] of and official receipts (ORs)[91] on training fees were presented in support thereof.

Although the ORs prove the existence of the ₱234,000.00 (inclusive of VAT) training fees, the said documents were not under the name of La Sallian Educational Innovators Foundation. Moreover, petitioner failed to prove that the entire amount was

[88] Exhibits "P-57" to "P-57.102".
[89] Exhibit "P-64", Docket, Vol.II, p. 994.
[90] Exhibit "P-64-f".
[91] Exhibits "P-66" to "P-66.12".

indeed included in its SLS. Per the SLS, only the amount of ₱84,000.00 (inclusive of VAT) was declared under the registered name "Training Fees as of December 2009".[92] Also, no amended SLS was provided indicating the alleged lumped amount of ₱234,000.00. Thus, the undeclared amount of ₱133,928.50[93] (exclusive of VAT) shall also be considered as part of the remaining discrepancy, together with the ₱6,000.00 difference pertaining to sales to Friendship Tours as properly found by the ICPA.

Since petitioner failed to reconcile the remaining discrepancy of ₱139,928.50, the same shall be treated as petitioner's undeclared income for 2009. Consequently, petitioner shall be held liable to pay the corresponding deficiency income tax.

D. UNACCOUNTED SOURCE OF CASH - ₱16,764,878.70

Respondent's reconciliation of petitioner's domestic purchases as sources of input tax credits (Summary List of Purchases "SLP") against the income payments which the petitioner subjected to expanded withholding tax (EWT Alphalist), disclosed an understatement in purchases amounting to ₱16,764,878.70, indicative of unaccounted source of cash. The breakdown of the said amount can be found in the BIR records[94] remarked as "ordinary and necessary expenses paid during the taxable year in carrying on and directly attributable in the operation or conduct of the business not subject to VAT", to wit:

Registered Name	Income Payment (Per EWT Alphalist)	Total Purchases (Per SLP)	Discrepancy
Bayantel	2,725,781.80	-	2,725,781.80
Bell Telecom Phils.	16,389.00	-	16,389.00
Eastern Telecom	2,981,329.60	-	2,981,329.60
Great Union Travel Services, Inc.	39,000.00	-	39,000.00
Innove	1,624,165.20	-	1,624,165.20
Mozcom, Inc.	253,394.00	-	253,394.00
PLDT	9,082,819.10	-	9,082,819.10
Shroff International Travel Care, Inc.	42,000.00	-	42,000.00
Total	**₱16,764,878.70**	**-**	**₱16,764,878.70**

[92] Exhibit "P-57.102".
[93] ₱133,928.50 = ₱150,000.00 / 1.12; ₱150,000.00 = ₱234,000.00 - ₱84,000.
[94] Page 1211.

Based on the ICPA's comparison of the EWT Alphalist and SLP, the ICPA was able to account for a discrepancy of ₱16,765,543.08, that is, the difference between the amount reflected per EWT Alphalist of ₱17,380,786.39 and the taxable amount under the SLP of ₱615,243.31, detailed as follows:

Registered Name	Per EWT Alphalist	Per SLP	Difference
Ana Luzzette L. Lareza	₱ 50,000.00		
Lareza, Ana Luzzette L.	50,000.00	-	₱ 100,000.00
Bayantel	483,780.23		
Bayantel	2,242,001.50		2,725,781.73
Bell Telecom Phils.	13,810.50		
Bell Telecom Phils.	2,578.67	-	16,389.17
Copyhigh V. Digital System	6,250.00	-	6,250.00
Crown Executive Travel	42,800.00	₱ 38,978.57	3,821.43
DHL Express Philippines Corp.	490.00	30.00	460.00
Eastern Telecom	510,516.43		
Eastern Telecom	2,470,813.10	-	2,981,329.53
Financial Executives Institute of the Phils.	2,500.00	-	2,500.00
Garcia, Edgardo C.	23,500.00	-	23,500.00
Great Union Travel Services, Inc.	33,000.00		
Great Union Travel Services, Inc.	6,000.00	-	39,000.00
Innove	326,802.01		
Innove	1,297,363.20	-	1,624,165.21
Nobility Collection Agency, Inc.	241,991.00		
Nobility Collection Agency, Inc.	79,640.13		
Nobility Services, Inc.	111,747.29	359,357.21	74,021.21
Pacubas General Services	17,649.87		
Pacubas General Services, Inc.	32,377.50		
Pacubas General Services, Inc.	9,330.59	50,375.50	8,982.46
Peoples Independent Media, Inc.	3,510.00	-	3,510.00
PLDT	7,513,442.73		
PLDT	1,569,376.50	-	9,082,819.23
Shroff International Travel Care, Inc.	42,000.00	-	42,000.00
Star Special Watchman	15,476.50		
Star Special Watchman & Detective Agency	51,962.66		
Star Special Watchman & Detective Agency	33,296.50	75,447.07	25,288.59
U-Bix Corporation	56,788.50		
U-Bix Corporation	12,196.65		
U-Bix Corporation	23,108.33	91,054.96	1,038.52
Wholeworks Enterprises	4,686.00	-	4,686.00
Total	**₱17,380,786.39**	**₱ 615,243.31**	**₱16,765,543.08**

As represented by petitioner to the ICPA, said discrepancies were due to unreported purchases in the VAT returns on purchases directly related to its zero-rated sales and non-VATable purchases per

SLP, understated purchases per SLP and erroneous tax base used per SLP.

Although the ICPA made a full comparison of the income payments per EWT Alphalist and SLP per individual payee, the Court, however, deemed it proper to focus on the amounts picked up by the respondent and exclude all other income payments despite having a discrepancy. Hence, only the amount of ₱16,764,878.70 should be the subject of examination on whether or not this is related to an unaccounted source of funds.

Upon examination of the ICPA report and the related documents submitted by the petitioner, the Court found that all of the purchases were reported as assets or expenses in the petitioner's AFS by tracing the specific transactions from the Check Vouchers to the Disbursement by Account - Suppliers[95], which indicated the account title under which it was recorded. From the monthly disbursement schedule, the amount of purchases can be traced to the specific GL Account for the year 2009[96]. Since the total amount of ₱16,764,878.70 can be accounted in the records of the petitioner, it is established that the latter has no unaccounted source of cash.

Hence, the respondent's assessment on the said amount should be cancelled.

E. EXPENSES FAILING ADDITIONAL REQUIREMENT OF DEDUCTIBILITY - ₱24,111,338.23

Pursuant to Section 34(K) of the NIRC of 1997, as amended, respondent disallowed petitioner's claimed deductions totaling ₱24,111,338.23 due to non-withholding of the corresponding taxes. Said provision provides:

> "(K) *Additional Requirements for Deductibility of Certain Payments.*-Any amount paid or payable which is otherwise deductible from, or taken into account in computing gross income or for which depreciation or amortization may be allowed under this Section, shall be allowed as a deduction only if it is shown that the tax required to be deducted and withheld therefrom has been

[95] Exhibits P-68 to P-68.69.
[96] Exhibits P-69 to P-69.20.

paid to the Bureau of Internal Revenue in accordance with this Section, sections 58 and 81 of this Code."

1. Disallowed expenses due to non-withholding of FWT - ₱20,710,942.88

As discussed under the deficiency FWT assessment, petitioner failed to withhold the corresponding 30% FWT on the income payments it made to AIPL Singapore, in the amounts of ₱18,976,877.84 and ₱1,734,065.04 representing communication expense and marketing fees, respectively, totaling ₱20,710,942.88. Thus, the same cannot be validly deducted by petitioner against its taxable gross income for the year 2009.

2. Disallowed expenses due to non-withholding of EWT - ₱2,989,649.32

Based on the same finding under the deficiency EWT assessment that were certain income payments per petitioner's AFS which were not subjected to EWT as required under RR No. 02-98, respondent disallowed the sum of ₱2,989,649.32 as petitioner's deductible expenses, computed as follows:

Particular	Per AFS	Per Withholding Tax Return	Discrepancy
Goods	₱ 16,798,186.88	₱ 11,604,087.00	₱ 5,194,099.88
Rental	23,007,769.62	14,526,206.31	8,481,563.31
Professional Fees	1,998,400.00	1,773,648.87	224,751.13
Total	₱ 41,804,356.50	₱ 27,903,942.18	₱ 13,900,414.32
Less: Capital Goods			10,910,765.00
Disallowed Expenses due to non-withholding of EWT			**₱ 2,989,649.32**

Note that in arriving at the disallowed expenses of ₱2,989,649.32, respondent deducted the amount of ₱10,910,765.00 pertaining to capital goods purchases from the total amount of ₱13,900,414.32 discrepancies relating to petitioner's goods purchases, payments for rental and professional fees.

If we are to adopt respondent's computation and deduct the amount of ₱10,910,765.00 pertaining to capital goods purchases from the valid discrepancies we have found earlier under the deficiency EWT assessment amounting to ₱8,091,260.73, there

would be no more expenses left that would be the subject for disallowance from petitioner's taxable gross income, as follows:

Particulars	Amount not subjected to EWT	Rate	Deficiency EWT
Purchases of Goods	₱ 5,194,099.88	1%	₱ 51,941.00
Rent			
Communication Exp-Rentals of Equip	2,332,798.41	5%	116,639.92
Storage Rental	21,696.48	5%	1,084.82
Outside Purchased Services			
Manila Bulletin	6,129.30	2%	122.59
Allied Banking Corporation	1,500.00	2%	30.00
Professional Fees			
Joint Marketing Fees	433,333.33	15%	65,000.00
Board Honorarium	70,000.00	15%	10,500.00
Mktg-Professional Fees			
Underwitholding of 5% EWT on the ₱27,445.00 prof. fees paid to E.M. Zalamea	9,148.33	15%	1,372.25
Non-withholding of 15% on the ₱22,555.00 prof. fees paid to E.M. Zalamea	22,555.00	15%	3,383.25
Total	**₱ 8,091,260.73**		**₱ 250,073.83**
Less: Capital Goods Purchases	**10,910,765.00**		
	₱ (2,819,504.27)		

3. Disallowed expenses due to non-withholding of WTC - ₱410,746.03

This assessment item shall be cancelled for lack of factual basis as we have discussed under the deficiency WTC assessment.

In sum, petitioner is liable to pay basic deficiency income tax for taxable year 2009 in the amount of ₱6,829,783.49, computed as follows:

Taxable Income per Return			₱ 11,194,801.00
Adjustments:			
(1) Forex Loss claimed/ITR			₱ 1,915,073.57
(2) Undeclared Income (SLS<SAWT)			139,928.50
(3) Disallowed Communication Expense and Marketing Fees due to non-withholding of corresponding FWT			20,710,942.88
Total Adjustments			₱ 22,765,944.95
Taxable Income per Audit			**₱33,960,745.95**
Computation of Tax Due			
(A) Regular - 30%		₱10,188,223.79	

(B) MCIT			
Gross Income per ITR	₱23,765,248.00		
Add: Adjustments			
Undeclared Income	139,928.50		
Gross Income per Audit	₱23,905,176.50		
Tax Rate	0.02	₱ 478,103.53	
Income Tax Due per Audit			₱ 10,188,223.79
Less:			
Unexpired MCIT		974,575.00	
Tax Payments - 1st Three Qtrs.		254,004.00	
Tax Credits - 4th Qtr.		59,310.00	
Tax Payment - Final Return		2,070,551.30	3,358,440.30
Deficiency Income Tax			**₱6,829,783.49**

VI. DEFICIENCY VAT – ₱34,050,266.06

Respondent found petitioner liable for deficiency VAT for taxable year 2009 in the amount of ₱34,050,266.06, computed as follows:[97]

Taxable Sales/VAT Return		₱ 17,546,815.08
Adjustments:		
(1) Discrepancy in Taxable Sales		
Equipment Rental	₱ 13,037,315.00	
Others	4,433,299.00	
Total Revenues	₱ 17,470,614.00	
Other Income/ITR	684,955.00	
Proceeds from Disposal of Assets (₱107,447)	95,934.82	
Total Taxable Sales per Audit	₱ 18,251,503.82	
Taxable Sales per Return	17,546,815.08	₱ 704,688.74
(2) Unaccounted Remittances		50,538,076.40
(3) Zero-rated Sales subject to VAT		111,154,286.12
(4) Undeclared Income (SLS<SAWT) - RMO 14-2011		570,130.98
(5) Unaccounted Sourceof funds (SLP<EWT) - RMO 14-2011		16,764,878.70
Total Adjustments		₱ 179,732,060.94
Taxable Sales/Audit		₱ 197,278,876.02
Output Tax		₱ 23,673,465.12
Creditable Input Tax/VAT Return		₱ 6,073,492.20
Less: Adjustments		-
Creditable Input Tax/Audit		₱ 6,073,492.20
VAT Payable per Audit		₱ 17,599,972.92
Less: VAT paid per return		-
Total		
Less: Excess Credit Carried Forward	(3,977,018.59)	(3,977,018.59)

[97] Exhibit "P-10", Docket, Vol.I, p.468.

Deficiency VAT		₱ 21,576,991.51
Add: Interest (25 Jan 10 to 15 Dec 2012)	0.578082	12,473,274.55
TOTAL AMOUNT DUE		**₱ 34,050,266.06**

(1) Discrepancy in taxable sales—₱704,688.74

The discrepancy is computed by comparing the amount of taxable sales as declared in petitioner's VAT returns with the taxable sales per audit, to wit:[98]

Taxable sales per return		₱17,546,815.08
Taxable sales per audit:		
Equipment rental	₱13,037,315.00	
Others	4,433,299.00	
Other Income per ITR	684,955.00	
Proceeds from disposal of assets (P107,447)	95,934.82	₱ 18,251,503.82
Discrepancy		**₱ 704,688.74**

Other Income per ITR

Examination of petitioner's Other Income per ITR shows that it is in the amount of ₱684,455.00,[99] not ₱684,955.00. This allegedly represents its reversal of accrued expenses incurred in prior years. Consequently, the same is not subject to VAT because it did not arise from the sale, barter, exchange or lease of goods or properties and services or importation of goods into the Philippines.[100]

The ICPA reported that the Other Income in petitioner's ITR indeed pertains to expenses incurred in the years 2005 to 2008 but were only recognized as expenses and accrued in the books of petitioner in the year 2008 based on billings received on July 25, 2008. These charges were contested by petitioner with the supplier and were subsequently written-off from the books in 2009, resulting in a reversal of the accrued expenses which appeared as a negative amount under the Communication Expense account.[101] As proof, petitioner submitted the Statements of Account from Mozcom Inc.[102], and petitioner's Journal Voucher (JV) 12/19[103] that shows the reversal of the accrued expenses.

[98] *Ibid.*
[99] Exhibit "P-56.3", Schedule 4.
[100] Memorandum for the Petitioner, par. 73, Docket, Vol. III, pp. 1411-1412.
[101] Exhibit "P-64", p. 19.
[102] Exhibits "P-70" to "P-70.60".
[103] Exhibits "P-42.1242", "P-42.1244" and "P-42.1244" to "P-42.1246".

Petitioner has satisfactorily proven that its Other Income in the amount of ₱684,455.00 is a mere reversal of accrued expenses, thus respondent's assessment should be cancelled.

Proceeds from disposal of assets

Respondent's examiner picked up from petitioner's Statement of Cash Flows the proceeds from disposal of property and equipment[104] amounting to ₱107,447.00, then computed the tax base subject to VAT, thus:

Proceeds from disposal of property and equipment	₱ 107,447.00
Divided by	1.12
Assessed proceeds from disposal	**₱ 95,934.82**

Petitioner argues that the actual proceeds on sale/disposal of assets for the year 2009 amount to ₱76,201.00, the breakdown of which is listed below with petitioner's official receipts as supporting documents:[105]

Particulars	Exhibit	Amount	
Proceeds from sale of used carpet	P-71	₱ 4,000.00	
Proceeds from sale of defective power supply UPS	P-71.1	3,500.00	
Proceeds from sale of used cellphone #10 units		3,000.00	₱ 10,500.00
Disposal of fixed assets:			
2009-04-01	P-71.2	₱ 3,470.00	
2009-06-02	P-71.3	35,500.00	
2009-09-03	P-71.4	13,500.00	
2009-12-04	P-71.5	12,631.00	
HP Monitor #1	P-71.6	600.00	65,701.00
Balance per book			**₱ 76,201.00**

The remaining amount of ₱31,246.00 pertains to the book value of the disposed and retired assets in the year 2009 as shown in Note 5 of petitioner's audited financial statements:[106]

Cost of Disposals & retirements for the year 2009	₱17,118,864.00

[104] Exhibit "P-27".
[105] Exhibit "P-64-g".
[106] Exhibit "P-27", Note 5.

Less: Accumulated depreciation	17,087,618.00
Book value of disposals & retirement for the year 2009	**₱ 31,246.00**

Nonetheless, the ICPA reported that the total proceeds from disposal of assets of ₱107,447.00 were not subjected to 12% VAT.[107]

The Court finds that petitioner recognized a gain on sale of property in its ITR for the taxable year 2009 in the amount of ₱76,201.00[108]. Taking into consideration the book value of the assets disposed and retired of ₱31,246.00, the proceeds from disposal of property and equipment reported in its Statement of Cash Flows in the amount of ₱107,447.00 is correct.

It should be reiterated that VAT is imposed on the gross selling price or gross receipts derived from the sale or exchange of goods or services, including importation of goods and the use or lease of properties.[109] Hence, respondent's VAT assessment is in order.

(2) Unaccounted remittances—₱50,538,076.40

As previously found in the discussion of petitioner's deficiency income tax assessment, petitioner has no unaccounted remittances.

(3) Zero-rated sales subject to VAT—₱111,154,286.12

Respondent alleged that petitioner's booking commissions received from AIPL, a Singapore-based entity, cannot be classified as zero-rated sales but subject to VAT at the rate of 12% for the reason that there is no service rendered to AIPL, as the fees were payable based on the number of access made by the travel agencies in the Philippines using the Abacus System.[110]

Petitioner countered that it executed a Sub-Distribution Agreement with AIPL[111] wherein petitioner was engaged to be the national marketing company or NMC of the Abacus System in the Philippines. As such, petitioner became the exclusive distributor and marketer of the said system. In consideration for the air and non-air

[107] Exhibit "P-64", p. 19.
[108] Exhibit "P-56.3", Schedule 4.
[109] Sections 106(A) and 108(A) of the NIRC of 1997, as amended.
[110] Exhibit "P-10", Details of Discrepancies, p. 2.
[111] Exhibit "P-3".

bookings made by the subscribers through the Abacus System, AIPL pays to petitioner a monthly sum equivalent to 25% of the net bookings fees received by AIPL and recorded by petitioner as booking commissions.

Petitioner further explains that the Sub-Distribution Agreement provides that AIPL grants exclusive sub-license to operate the Business in the Territory under the Tradename, "business" meaning the marketing and distribution of the Abacus Services to Subscribers within the Territory. Corollary thereto, petitioner shall formulate and carry out marketing strategies to secure a wide distribution network in the Philippines. Furthermore, petitioner shall provide AIPL all the necessary services and support infrastructure to ensure that the utilization levels of the Abacus System and Abacus Services are optimized in the Territory.[112]

Thus, petitioner is correct in stating that the booking commissions are in consideration for the marketing and distribution services rendered by petitioner to AIPL. Pursuant to Section 108(B)(2) of the NIRC of 1997, as amended, the subject services are subject to VAT at zero percent (0%) rate:

> "SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.*—
>
> xxx xxx xxx
>
> (B) *Transactions Subject to Zero Percent (0%) Rate.*—The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> xxx xxx xxx
>
> (2) Services other than those mentioned in the preceding paragraph rendered to a person engaged in business conducted outside the Philippines or to a nonresident person not engaged in business who is outside the Philippines when the services are performed, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);"

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[112] *Ibid.*

Nevertheless, petitioner must comply with the requisites set forth by the Supreme Court in the case of *CIR vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*,[113] to wit:

1) the services must be other than processing, manufacturing or repacking of goods;

2) payment for such services must be in acceptable foreign currency accounted for in accordance with the BSP rules and regulations; and

3) the recipient of such services is doing business outside the Philippines.

Petitioner submitted the following documents as evidence, among others:

- Sub-Distribution Agreement with AIPL[114]
- Certification of Non-Registration of Company issued by the Securities and Exchange Commission (SEC)[115]
- Memorandum and Articles of Association of Abacus International Pte. Ltd. (AIPL)[116]
- Certificate of Inward Remittances[117]
- VAT Zero-rated receipts[118]

As petitioner provides marketing and distribution services to AIPL, it complied with the first requisite. Further, the third requisite is complied with by the Memorandum and Articles of Association of AIPL, Certification of Non-Registration of Company issued by the SEC and petitioner's Sub-Distribution Agreement with AIPL.

The ICPA found that per official receipts issued to AIPL, petitioner had zero-rated sales in the aggregate amount of US$2,529,971.81.[119] The same are reported in petitioner's VAT returns in the total amount of ₱111,154,286.12, as follows:

Exhibit	Quarter	Zero-rated Sales
P-58.2	1st	₱ 33,309,054.46

[113] G.R. No. 153205. January 22, 2007.
[114] Exhibit "P-3".
[115] Exhibit "P-29".
[116] Exhibit "P-2".
[117] Exhibits "P-43" to "P-43.25".
[118] Exhibits "P-65" to "P-65.56."
[119] Exhibit "P-64-k".

P-58.5	2nd	26,433,014.89
P-58.8	3rd	28,492,282.66
P-58.11	4th	22,919,934.11
	TOTAL	**₱111,154,286.12**

Scrutiny of the official receipts issued by petitioner shows that zero-rated sales amounting to US$719,552.85 are supported by undated official receipts or dated outside of the year 2009:

Exhibit	**OR No.**	**OR Date**	**USD**
1.) Undated official receipts			
P-65.8	50035	-	248,245.72
P-65.33	52812	-	199,216.97
Subtotal			***447,462.69***
2.) Dated outside the taxable period			
P-65.49	54949	1/27/2010	158,254.65
P-65.53	55262	3/1/2010	113,835.51
Subtotal			***272,090.16***
TOTAL			**719,552.85**

In addition, petitioner failed to reconcile the inward remittances it received from AIPL with the corresponding official receipts it issued for the marketing and distribution services performed. The certification of inward remittances received by the Philippine National Bank (PNB) only shows a list of fund wire transfers from AIPL to petitioner's USD bank account in the total amount of US$2,982,306.83.[120]

Thus, petitioner failed to prove that its sales to AIPL qualify as zero-rated sales. Consequently, the assessment must be upheld.

(4) Undeclared income (SLS<SAWT)—₱570,130.98

Per discussion of petitioner's deficiency income tax assessment regarding petitioner's undeclared income of ₱570,130.98, petitioner failed to reconcile the remaining discrepancy of ₱139,928.50. Accordingly, petitioner shall be liable to pay the corresponding deficiency VAT.

(5) Unaccounted source of funds (SLP<EWT)—₱16,764,878.70

[120] Exhibit "P-43".

Respondent's examiner compared petitioner's Summary List of Purchases (SLP) with the income payments made which are subjected to expanded withholding tax (EWT) and found a discrepancy of ₱16,764,878.70. Respondent considered it as an understatement in purchases indicative of unaccounted source of cash subject to income tax.

Petitioner protested that the breakdown of the discrepancy were not provided with the Formal Letter of Demand (FLD).[121]

The Court finds this assessment bereft of factual basis. Aside from respondent's failure to provide the details of the alleged undeclared purchases, it appears that respondent merely relied on the assumption that the discrepancy on purchases automatically means unaccounted source of income without obtaining any factual basis corroborating such findings.

The Supreme Court has ruled that for income tax to be imposed, the following elements must be present:[122]

1. There must be gain or profit;
2. That the gain or profit is realized or received, actually or constructively; and
3. It is not exempted by law or treaty from income tax.

Presumption of the foregoing is contrary to the doctrine laid down in the case of *Collector of Internal Revenue vs. Benipayo,*[123] wherein it was held that:

> "xxx An assessment fixes and determines the tax liability of a taxpayer. As soon as it is served, an obligation arises on the part of the taxpayer concerned to pay the amount assessed and demanded. Hence, **assessments should not be based on mere presumptions no matter how reasonable or logical said presumptions may be** xxx.
>
> **In order to stand the test of judicial scrutiny, the assessment must be based on actual facts. The presumption of correctness of assessment being a**

[121] Exhibits "P-10" and "P-11".
[122] *CIR vs. CA, CTA and A. Soriano Corporation*, G.R. No. 108576, January 20, 1999.
[123] G.R. No. L-13656, January 31, 1962.

> **mere presumption cannot be made to rest on another presumption** xxx" *(Emphasis supplied.)*

Thus, the deficiency income tax assessment arising from the discrepancy on purchases should be cancelled.

(6) Excess input tax carried forward

The Court notes that in its VAT assessment, respondent added back petitioner's excess input taxes for the year 2009 amounting to ₱3,977,018.59 which were carried forward to the succeeding taxable period. This is not proper as the application of the said excess credits in the subsequent taxable periods is beyond the scope of the present assessment. The same can only be the subject of assessment on the taxable year when they are offset from the output tax due.

In fine, petitioner is liable for basic deficiency VAT for taxable year 2009 in the amount of ₱9,389,799.41, as computed hereafter:

Taxable sales per VAT Return		₱17,546,815.08
Adjustments:		
(1) Equipment rental	₱13,037,315.00	
Others	4,433,299.00	
Total Revenues	₱17,470,614.00	
Proceeds from disposal of assets	95,934.82	
Total taxable sales per audit	₱17,566,548.82	
Taxable sales per return	(17,546,815.08)	₱ 19,733.74
(2) Unaccounted remittances		-
(3) Zero-rated sales subject to VAT		111,154,286.12
(4) Undeclared income (SLS<SAWT)		139,928.50
(5) Unaccounted source of funds (SLP<EWT)		-
Total adjustments		₱111,313,948.36
Taxable sales per audit		₱128,860,763.44
Output tax		₱ 15,463,291.61
Less: Creditable input tax		(6,073,492.20)
Deficiency VAT		**₱9,389,799.41**

VII. DEFICIENCY DST – ₱4,426.57[124]

Invoking Section 194[125] of the NIRC of 1997, as amended, respondent imposed DST on the alleged deductions claimed by

[124] Exhibit "P-10", Docket, Vol.I, p. 472.
[125] "SEC. 194. *Stamp Tax on Leases and Other Hiring Agreements.* — On each lease, agreement, memorandum, or contract for hire, use or rent of any lands or tenements, or portions thereof, there shall be

petitioner for lease of real properties under the "Rent Exp-Mktg" and "Storage Rentals" accounts amounting to ₱201,600.00 and ₱2,203,424.56. Below is the computation of the deficiency DST assessment of ₱4,426.57:

Rent Exp-Mktg	₱	201,600.00
Storage Rentals		2,203,424.56
Total Rental pertaining to Real Prop	₱	2,405,024.56
Tax Base	₱	2,406,000.00
Tax Rate (Sec. 194, NIRC)		.001+1
DST Due	₱	2,407.00
DST Paid		-
Deficiency DST	₱	2,407.00
Add: Surcharge		601.75
Interest (1/5/2010 to 12/15/2012)		1,417.82
TOTAL AMOUNT DUE	**₱**	**4,426.57**

The Court partially upholds the assessment.

A. Rent Exp-Mktg. – ₱201,600.00

As earlier discussed under the deficiency EWT assessment, this pertains to the Contract[126] of Lease entered into by the petitioner and Plaza De Luisa Development, Inc. for the period July 1 2009 to June 30, 2012. Since petitioner did not provide proof that the related documentary stamp tax was remitted to the BIR, the assessment on this item shall remain.

B. Storage Rental - ₱2,203,424.56

Likewise, as discussed under the deficiency EWT assessment, the Storage Rental of ₱2,203,424.56 pertains to the transactions lodged under Outside Purchased Services. It was ascertained that out of the said amount, only the amount of ₱21,624.48 actually pertains to Storage Rental, as shown below:

Outside Purchase Services	₱	2,203,424.56
Less:		
(1) Purchase of Services subjected to EWT		1,118,823.94

collected a documentary stamp tax of Three pesos (P3.00) for the first Two thousand pesos (P2,000), or fractional part thereof, and an additional One peso (P1.00) for every One thousand pesos (P1,000) or fractional part thereof, in excess of the first Two thousand pesos (P2,000) for each year of the term of said contract or agreement.

[126] Exhibits "P-87" to "P-87.12".

(2) Purchase of Services exempt from EWT	1,057,294.89
(3) Unaccounted Difference	(2,020.05)
Income Payments not subjected to EWT	**₱ 29,325.78**
With Breakdown as follows:	
(1) Storage rental fees paid to TPCC	**₱ 21,696.48**
(2) Purchase of Services from	
a.) Manila Bulletin	6,129.30
b.) Allied Banking Corporation	1,500.00
Income Payments not subjected to EWT	**₱ 29,325.78**

Hence, for petitioner's failure to prove that the DST due on the storage rental of ₱21,696.48 had been paid to the BIR, the Court sustains the deficiency DST assessment thereon.

In sum, petitioner is liable for basic deficiency DST only in the amount of ₱225.00, computed as follows:

Rent Exp-Mktg	₱ 201,600.00
Storage Rentals	21,696.48
Total Rental Pertaining to Real Property	₱ 223,296.48
DST Due	
₱3.00 for the first ₱2,000.00 or fractional part thereof	₱ 3.00
Additional ₱1.00 for every ₱1,000.00 or fractional part thereof, in excess of the first ₱2,000.00 per year	222.00
Total Basic Deficiency DST Due	**₱ 225.00**

WHEREFORE, the assessment issued by respondent against petitioner for taxable year 2009 covering deficiency WTC in the amount of ₱162,153.34 is **CANCELLED AND WITHDRAWN**. However, the assessments for deficiency EWT, FWVAT, FWT, income tax, VAT and DST are **PARTIALLY UPHELD**. Accordingly, petitioner is ordered to pay respondent the amount of **THIRTY ONE MILLION FOUR HUNDRED SIXTY THOUSAND FIVE HUNDRED NINETY-SEVEN PESOS AND 17/100 (₱31,460,597.17)** representing basic deficiency EWT, FWVAT, FWT, Income Tax, VAT and DST and the 25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, computed as follows:

Tax Type	Basic Deficiency	25% Surcharge	Total
EWT	₱ 250,073.83	₱ 62,518.46	₱ 312,592.29
FWVAT	2,485,313.15	621,328.29	3,106,641.43
FWT	6,213,282.86	1,553,320.72	7,766,603.58
INCOME TAX	6,829,783.49	1,707,445.87	8,537,229.36
VAT	9,389,799.41	2,347,449.85	11,737,249.26
DST	225.00	56.25	281.25
Total	**₱ 25,168,477.73**	**₱ 6,292,119.43**	**₱ 31,460,597.17**

In addition, petitioner is liable to pay:

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

Tax Type	Basic Tax Due	20% Deficiency Interest Computed from:
EWT	₱ 250,073.83	15-Jan-10
FWVAT	2,485,313.15	10-Jan-10
FWT	6,213,282.86	15-Jan-10
INCOME TAX	6,829,783.49	15-Apr-10
VAT	9,389,799.41	25-Jan-10
DST	225.00	5-Jan-10
Total	**₱ 25,168,477.73**	

b) Delinquency interest at the rate of twenty percent (20%) per annum on the total amount of **₱31,460,597.17** and on the deficiency interest which have accrued as afore-stated in (a) computed from June 27, 2013 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.

SO ORDERED.

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

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

ATTESTATION

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

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice