REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

FORT BONIFACIO DEVELOPMENT CORPORATION,

Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

CTA Case Nos. 7696 & 7728

Members:

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

Promulgated:

JUL 15 2015
12:39 p.m.

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DECISION

RINGPIS-LIBAN, *J.*:

This is a Petition for Review[1] filed by Fort Bonifacio Development Corporation seeking to set aside and cancel the deficiency tax assessments of the respondent Commissioner of Internal Revenue in the total amount of ₱234,613,502.74, representing its deficiency Value-Added Tax (VAT), Withholding Tax on Compensation (WTC), Expanded Withholding Tax (EWT), Documentary Stamp Tax (DST), Final Withholding Tax on Fringe Benefits (FBT) and Income Tax for taxable year 2003, broken down as follows:

[1] *Docket*, Vol. I, pp. 4 to 58.

Type of Tax	Basic	Interest	Total
Value-Added Tax	₱ 43,599,988.80	₱ 26,446,678.14	₱ 70,046,666.94 [2]
Withholding Tax on Compensation	18,359,638.41	11,186,804.33	29,546,442.74 [3]
Expanded Withholding Tax	24,152,761.91	14,716,641.78	38,869,403.69 [4]
Final Withholding Tax on Fringe Benefits	3,938,395.64	2,399,723.81	6,338,119.45 [5]
Documentary Stamp Tax	7,774,970.37	4,780,009.18	12,554,979.55 [6]
Income Tax	48,302,723.51	28,955,166.86	77,257,890.37 [7]
Total	**₱146,128,478.64**	**₱ 88,485,024.10**	**₱234,613,502.74**

STATEMENT OF FACTS

Petitioner Fort Bonifacio Development Corporation (FBDC) is a domestic corporation duly registered with the Securities and Exchange Commission and existing under and by virtue of the laws of the Republic of the Philippines, with principal office address at 2nd Floor, Bonifacio Technology Centre, 31st St., corner 2nd Ave., Bonifacio Global City, Taguig City, Metro Manila.[8]

Respondent Commissioner of Internal Revenue (CIR) is the duly appointed head of the Bureau of Internal Revenue (BIR) empowered, among others, to decide on disputed deficiency internal revenue tax assessments, with office address at the Office of the Commissioner of Internal Revenue, BIR National Office Building, Agham Road, Diliman, Quezon City, Metro Manila.[9]

On February 23, 2005, the BIR issued Letter of Authority (LOA) No. 2001 00012957[10] to Revenue Officer Joseph Christian B. Santos, authorizing him to examine FBDC's books of accounts and other accounting records for taxable year 2003. By virtue of the said LOA, respondent sent several requests

[2] Exhibit "9", CTA Case No. 7696, BIR records, p. 534.
[3] Exhibit "8", CTA Case No. 7696, BIR records, p. 535.
[4] Exhibit "10", CTA Case No. 7696, BIR records, p. 533.
[5] Exhibit "11", CTA Case No. 7696, BIR records, p. 532.
[6] Exhibit "12", CTA Case No. 7696, BIR records, p. 531.
[7] Exhibit "24", CTA Case No. 7728, BIR records, p. 178.
[8] Par. 1, Summary of Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), CTA Case. No. 7696, Vol. I, Docket, p. 168.
[9] Par. 2, Summary of Admitted Facts, JSFI, CTA Case. No. 7696, Vol. I, Docket, p. 168.
[10] "Exhibit "1" and "15", BIR Records, p. 3.

for presentation of records/documents [11] and letter [12] requesting for the submission of additional documents to FBDC.

On November 30, 2006, the BIR issued a Notice of Informal Conference [13] to FBDC and subsequently, the BIR issued a Preliminary Assessment Notice[14] (PAN) to FBDC, finding it liable to pay deficiency Value Added Tax (VAT) in the amount of ₱70,046,666.93, Withholding Tax on Compensation (WC) in the amount of ₱29,546,442.74, Expanded Withholding Tax (EWT) in the amount of ₱38,869,403.69, Final Withholding Tax on Fringe benefits (FBT) in the amount of ₱6,338,119.46, Documentary Stamp Taxes (DST) in the amount of ₱12,554,979.55.

On January 2, 2007,[15] the BIR issued to FBDC a Formal Letter of Demand (FLD) and Assessment Notice Nos. VT-03-00021[16], WC-03-000094[17], EWT-03-000171[18], DST-03-000151[19], and FBT-03-000041[20] for FBDC's deficiency VAT, WC, EWT, DST, and FBT, respectively. Then, on April 13, 2007[21], the BIR issued another FLD with Details of Assessment and the corresponding Assessment Notice No. INC-03-000186 against FBDC, finding a deficiency income tax assessment in the amount of ₱77,257,890.37.[22]

The details of the computations for the alleged deficiency tax assessments are as follows:[23]

A. Value Added Tax

On Leases			
Leases LCR Beg			₱ 39,491,000.00
Add: Sales			186,226,299.00

[11] Exhibits "2", "3", "4", "16", "17" and "18", BIR Records, pp. 1-8.
[12] Exhibits "5" and "19", BIR Records, p. 9.
[13] Exhibits "6" and "21", BIR Records, p. 350.
[14] Exhibit "7", BIR Records, pp. 490-495.
[15] Exhibit "13", BIR Records, pp. 536-541; Par. 3, Summary of Admitted Facts, JSFI, CTA Case. No. 7696, Vol. I, Docket, pp. 168-169.
[16] Exhibit "9", BIR Records, p. 534; Par. 3, Summary of Admitted Facts, JSFI, CTA Case. No. 7696, Vol. I, Docket, pp. 168-169.
[17] Exhibit "8", BIR Records, p. 535; Par. 3, Summary of Admitted Facts, JSFI, CTA Case. No. 7696, Vol. I, Docket, pp. 168-169.
[18] Exhibit "10", BIR Records, p. 533; Par. 3, Summary of Admitted Facts, JSFI, CTA Case. No. 7696, Vol. I, Docket, pp. 168-169.
[19] Exhibit "12", BIR Records, p. 531; Par. 3, Summary of Admitted Facts, JSFI, CTA Case. No. 7696, Vol. I, Docket, pp. 168-169.
[20] Exhibit "11", BIR Records, p. 532; Par. 3, Summary of Admitted Facts, JSFI, CTA Case. No. 7696, Vol. I, Docket, pp. 168-169.
[21] Exhibit "23", BIR Records, pp. 181-182; Par. 4, Summary of Admitted Facts, JSFI, CTA Case. No. 7696, Vol. I, Docket, p. 169.
[22] Exhibit "24", BIR Records, p. 177-178; Par. 4, Summary of Admitted Facts, JSFI, CTA Case. No. 7696, Vol. I, Docket, p. 169.
[23] Summary of Admitted Facts, JSFI, Vol. I, Docket, pp. 169-173.

Less: Ending			88,832,000.00
Gross Receipts on Leases during the year			136,885,299.00
Add: Underdeclared receipts SLS vs. CRB		₱49,349,180.23	
Advancerent per CRB		27,226,990.58	76,576,170.81
On Sales of Real Estate			
Collections pertaining to principal			1,119,084,846.36
Interest Receivable beg.		55,968,000.00	
Interest Inc. - Install Sales per Return		75,558,726.00	
Interest Receivable End		20,634,000.00	110,892,726.00
Others			
Realized forex gain			17,274,198.00
Gain on sale of property			830,652.00
Other receivables Beg.		56,810,000.00	
Development Control Fees	3,804,675.00		
Marketing and management Fees	1,280,048.00		
Miscellaneous	394,209.00	5,478,932.00	
Other receivables End		59,617,000.00	2,671,932.00
Gross Receipts subject to VAT			1,464,215,824.17
Output tax per audit			146,421,582.42
Output tax per return			111,167,313.78
Output tax still due			35,254,268.64
Othe findings			
Disallowed utilization of Presumptive input VAT			
Output VAT		111,167,313.78	
Less			
Input VAT claimed for the Year	55,140,862.46		
VAT payments for the year	51,281,906.17	106,422,768.63	
Amount claimed from presumptive Input Disallowed			4,744,545.15
Disallowed Input Tax - invalid taxpayers			3,552,470.45

Disallowed Input Tax - FBDC Supp. Per SLP			48,704.56
Amount still due			43,599,988.80
Surcharge			
Interest 1/27/2004 to 1/31/2007		26,446,678.14	
Compromise			
Deficiency VAT			**₱70,046,666.93**

B. WITHHOLDING TAX – COMPENSATION

Total Expenses subject to withholding tax - compensation			₱82,164,831.35
Less: Exempt transactions:			
Non-taxable 13th month		₱684,179.16	
SSS, GSIS, Pag-Ibig		381,207.35	1,065,386.51
Total transactions subject to w/tax			81,099,444.84
Less transactions subject to w/tax			
Taxable Salaries		23,863,323.51	
Taxable 13th Month		519,118.17	24,382,441.68
Transactions not subject to w/tax-compensation			56,717,003.16
Rate			32%
Withholding tax still due			18,149,441.01
Add: Other findings			
Late filing of March 03 return			
Base		705,224.01	
Surcharge			176,306.00
Interest 8 days			3,091.39
Compromise			20,000.00
Professional Fees received by			
JMK Lim			
Per 1601C	569,100.00		
Per 1601E	90,000.00		
Taxable Income	659,100.00	175,912.00	
Tax Withheld per 1601C	147,112.00		
Tax Withheld per 1601E	18,000.00	165,112.00	10,800.00
Amount still due			₱18,359,638.41
Surcharge			
Interest 1-15-04 to 1-31-07		₱11,186,804.33	
Compromise			11,186,804.33
Deficiency W/T Compensation			**₱29,546,442.74**

C. EXPANDED WITHHOLDING TAX

EWT due on Actual Expenses subject to withholding		₱30,021,558.86
EWT due on expenses subjected to withholding		13,646,035.55
EWT still due based on expenses not subjected to withholding tax		16,375,523.31
Add: Other audit findings		
b. Alphalist vs. SLP discrepancy		7,126,786.67
c. Discrepancy in taxpayer's Alphalist (erroneous computation		119,898.65
d. Late filing of the 1601E March 03		
Basic 1,893,167.26		
Surcharge		473,291.82
Interest 7 days		7,261.46
Compromise		25,000.00
e. Late filing of 1604E 2003		25,000.00
Amount still due		24,152,761.91
Surcharge		
Interest 7 days	14,716,641.78	
Compromise		14,716,641.78
Deficiency EWT		**₱38,869,403.69**

D. DOCUMENTARY STAMP TAX:

	Base	Rate	DST Due
On Leases (Sales per Return)	₱186,226,299.00	₱3/₱2000; ₱1/₱1000	₱ 186,225.30
On Sale of Properties			
New	143,238,190.00	₱15/₱1000	2,148,572.85
Cash Sales	471,758,685.45	₱15/₱1000	7,076,380.28
Othe Contracted Agreements			
Transfer of Lot to CWDC	152,60,000.00	₱15/₱1000	2,289,000.00
Management Agreement w/ Related Parties	1,106,000.00	₱3/₱2000; ₱1/₱1000	1,113.00

Management Agreement other than Related Parties	29,733,000.00	₱3/₱2000; ₱1/₱1000	29,734.00
Advances to Affiliates per cash Flows	579,744,000.00	₱0.30/₱200	869,616.00
Total			12,600,641.43
Payments			4,825,671.06
DST Still Due			7,774,970.37
Surcharge			
Interest 1-05-04 to 1-31-07			4,780,009.18
Compromise			
DST Still Due			**₱12,554,979.55**

E. FINAL WITHHOLDING TAX – FRINGE BENEFITS

Representation and Entertainment		₱ 5,734,965.00
Transportation and Travel		350,399.00
Membership Fees		2,653,534.00
		8,738,898.00
		0.68
Grossed up value		12,851,320.59
Rate		0.32
Fringe benefits tax due		4,112,422.59
FBT Payments		174,026.94
Amount still due		3,938,395.64
Surcharge		
Interest 1-15-04 to 1-31-07	2,399,723.81	
Compromise		2,399,723.81
Deficiency Final Withholding Tax - Fringe Benefits		**₱ 6,399,723.81**

F. INCOME TAX

Revenues			Per ITR
Realized revenue on sale of real estate			₱1,205,596,247.00
Lease of Properties			186,226,299.00
Interest on installment contracts			
Sales			

Non operating & other income			
Dividend from foreign subsidiary			450,000,000.00
Interest in installment sales			75,558,726.00
Development control fees			3,804,675.00
Realized forex gain			17,274,198.00
Marketing & management fees			1,280,048.00
Gain on sale of property			830,652.00
Miscellaneous			394,209.00
			1,940,965,054.00
Cost and expenses			
Cost of real estate sold			938,062,042.00
Total General and Administrative Expenses			805,039,304.00
Marketing and Selling			
Commissions			37,961,444.00
Others/(Advertising per ITR)			5,625,871.00
			1,786,688,661.00
INCOME FROM OPERATIONS			154,276,393.00
Tax Due			49,368,445.76
payments: Unexpired Payment MCIT			49,368,445.76
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a. Disallowed expenses not subjected to withholding tax			
On Compensation			56,717,003.16
On Expanded Withholding Tax			16,375,523.31
On Fringe Benefits Tax (Expense)			8,738,898.00
b. Discrepancy in interest income on installment contract per FS vs. ITR			
Per F/S		76,150,000.00	
Per ITR		75,558,726.00	591,274.00
c. Overclaimed Retirement expense-per monthly trial balance final			
Retirement expenses disallowed (debits to retirement plan expense)		3,379,382.00	
Retirement cost added back to taxable income per recon		1,003,000.00	2,376,382.00
d. Interest Arbitrage Computation (Non deductible expense)			
Interest Income subject to final tax			
Interest inc. - ST Investment TB taken from worksheet aud.		9,861,790.74	

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Interest inc. - ST Investment TB taken from worksheet aud.		2,927,553.26	
Interest Inc. - Bank Deposits		592,264.48	
TOTAL		13,381,608.48	
Grossed Up value at 80%		16,727,010.60	
Rate		0.38	
Interest Deduction		6,356,264.03	
Claimed as non deductible interest exp.		2,694,884.00	
Discrepancy - Additional non deductible portion of interest expense			3,661,380.03
e. Debit to Miscellaneous Income (Batch 108747)			
Reduction of income account while reducing the advances-metro pacific (asset) account			62,485,550.46
Total			150,946,010.96
Rate			32%
Still Due			**₱ 48,302,723.51**
Surcharge			
Interest (April 16, 2004 to April 15, 2007			28,955,166.86
Compromise			
Deficiency Income Tax			**₱ 77,257,890.36**

On February 5, 2007, or within the reglementary period, FBDC administratively protested against the alleged deficiency VAT, WC, EWT, FBT, and DST assessments by filing a protest letter dated February 2, 2007 with the BIR.[24] Likewise, on May 10, 2007, or within the reglementary period, FBDC administratively protested against the deficiency income tax assessment by filing a protest letter dated May 9, 2007 with the BIR.[25]

On March 30, 2007 and on July 9, 2007, FBDC submitted additional documents to the BIR in support of its protest against the said deficiency VAT, WC, EWT, FBT, and DST,[26] and income tax[27] assessments.

However, respondent CIR did not act upon the protest of FBDC against the alleged deficiency VAT, WC, EWT, FBT, and DST assessments within the

[24] Par. 6, Summary of Admitted Facts, JSFI, CTA Case. No. 7696, Vol. I, Docket, p. 173.
[25] Par. 2, Stipulated Facts, JSFI, CTA Case. No. 7696, Vol. I, Docket, p. 177.
[26] Par. 7, Summary of Admitted Facts, JSFI, CTA Case. No. 7696, Vol. I, Docket, p. 173.
[27] Par. 3, Stipulated Facts, JSFI, CTA Case. No. 7696, Vol. I, Docket, p. 177.

180-day period provided for under Section 228 of the National Internal Revenue Code of 1997, as amended (NIRC of 1997, as amended). The said 180-day period expired on September 26, 2007.[28] Similarly, respondent CIR did not act upon the protest of FBDC against the alleged deficiency income tax assessment within the 180-day period which expired on January 5, 2008.[29]

Thus, on October 26, 2007[30] and February 4, 2008,[31] respectively, FBDC filed the present Petitions for Review.

On February 14, 2008, FBDC filed its "Ex Parte Motion for Consolidation",[32] where it prayed for the consolidation of the trial of CTA Case Nos. 7228 and 7696. The Court granted the aforesaid motion in the Resolution[33] dated June 4, 2008.

In CTA case No. 7696, respondent CIR raised the following special and affirmative defenses:[34]

> "VALUE-ADDED TAX (VAT)
>
> 6. Petitioner derives income primarily on the sale of real estate, lease of buildings and interest on installment contracts wherein bulk of its operations, however, are centered on sale of real properties. A gross underdeclaration of output VAT was arrived at amounting to ₱35,524,268.64 after identifying items subject to VAT on its cash receipts module such as advance rent and gross comparison between items declared per cash receipts module and summary list of sales for the year. It is worthy to note that petitioner's summary list of sales coincide with the output VAT declaration it made for the year.
>
> 6.1 Collections pertaining to principal on sale of properties were identified as well as gross receipts on interest thereto which were aptly subjected to output tax. Other miscellaneous items such as development control fees, marketing management fees were taken from the company's abstract ledger and subjected to VAT.

[28] Par. 8, Summary of Admitted facts, JSFI, Vol. I, Docket, p. 174.
[29] Par. 4, Stipulated Facts, JSFI, CTA Case. No. 7696, Vol. I, Docket, p. 177.
[30] Petition for Review, CTA Case. No. 7696, Vol. I, Docket, pp. 4-28.
[31] Petition for Review, CTA Case No. 7228, Docket, pp. 1-13.
[32] CTA Case No. 7228, Docket, pp. 61-62.
[33] CTA Case. No. 7696, Vol. I, Docket, pp. 126-127.
[34] Answer, CTA Case. No. 7696, Vol. I, Docket, pp. 74-82.

6.2 On input taxes, there was a disallowance of applied presumptive input tax for the year amounting to ₱4,744,545.15 arising from a Court of Appeals decision (CA G.R. No. 615117) affirming the fact that petitioner is not entitled to presumptive input as this arose from 8% beginning inventory on which real estate companies are entitled to such on improvements only based on Section 4.105-1 of Revenue Regulations 7-95. Petitioner based its claim on inventory of lots.

6.3 Another issue on disallowed input taxes were sources of input on which ₱3,552,470.45 and ₱48,704.56 were accounted for as unregistered/invalid taxpayers. Thus, deficiency VAT were assessed thereon amounting to ₱70,046,666.93 inclusive of increments.

<u>WITHHOLDING TAX ON COMPENSATION</u>

7. Discrepancies in withholding tax on compensation were arrived at after an analysis of petitioner's general ledger. The examiners closely identified items which have an impact in the computation of its withholding taxes then matched the figure total with the amount declared per alphabetical listing form 1604CF. The total transactions not subjected to withholding tax on compensation amounted to ₱56,717,003.16 or deficiency exposure of ₱18,149,441.01.

7.1 Additional findings were late filing of one of its returns in which a corresponding surcharge was incorporated in the discrepancy. Other discrepancies include one of petitioner's employees receiving both compensation and professional income with different application of withholding taxes. The said employee's compensation being subjected to graduated rates per Section 24 of the NIRC of 1997 and professional income using expanded withholding taxes. Both sources of income were treated as part of the employee's compensation as clearly defined in Section 32 of the NIRC of 1997. Thus, deficiency withholding taxes on compensation amounted to ₱29,546,442.74 inclusive of increments.

EXPANDED WITHHOLDING TAXES

8. Expenses subject to expanded withholding taxes per Revenue Regulations 2-98 as amended by Revenue Regulations 17-2003 and clarified by Revenue Memorandum Circular 72-04 as

disclosed by petitioner per returns, financial statements and general ledger were duly accounted for. The figures were matched against its alpha list of expanded withholding taxes and any discrepancies arising therefrom were assessed for deficiency expanded withholding tax for the year.

8.1 Other audit findings include matching inconsistencies on petitioner's summary list of purchases and alphabetical list of EWT Form 1604E wherein unmatched figures (purchases not equal to income payment) were assessed for non-withholding or a total discrepancy of ₱7,126,786.87.

8.2 Other findings include computation errors per alpha list amounting to ₱119,898.65 and two (2) accounts of late filing of returns and alpha list. Total deficiency taxes on expanded withholding tax amounted to ₱38,869,403.69 inclusive of increments.

FINAL WITHHOLDING TAX – FRINGE BENEFITS

9. Transportation and travel expenses, membership fees and representation and entertainment expenses subject to final withholding tax on fringe benefits were assessed pursuant to Section 33 of the NIRC of 1997, Revenue Regulations 2-98 and Revenue Regulations 3-98 or a total deficiency of ₱6,338,119.46 inclusive of increments.

DOCUMENTARY STAMP TAX (DST)

10. Certain transactions were subjected to DST which include sale and lease of real properties entered into during the year. These are subject to DST pursuant to Sections 180, 194 and 196 of the NIRC of 1997. Other transactions include management agreement transactions and certain advances treated as extended loans. Deficiency DST amounted to ₱12,554,979.55 inclusive of increments.

11. Petitioner was duly informed of the facts and the law on which the assessments are based. Contrary to its assertion, the Formal Letter of Demand did not merely contain the computation of the tax deficiencies and the interest due thereon rather, the complete details of the assessments were attached to the Formal Letter of Demand showing the facts and the law on which the assessments were made. xxx xxx xxx Moreover, in accordance with the policy of respondent to give taxpayers

opportunity to present their side of the case, a letter dated 30 November 2006 was sent to petitioner and duly received by it on 4 December 2006, inviting it for an informal conference to enable it to go over the findings and present objections, if any, as well as to submit whatever evidence it may have.

12. The assessments for deficiency VAT and DST were issued within the prescriptive period. Examination of petitioner's books of accounts and financial statements showed substantial underdeclarations of taxable sales and receipts. Such underdeclaration constitutes prima facie evidence of a false or fraudulent return as provided under Section 248 (B) thus:

xxx xxx xxx

Therefore, since it has been established that petitioner falsely underdeclared its returns, the right of the Government to collect the deficiency taxes has not yet prescribed. The Government is given, in such cases, a period of ten (10) years to assess and collect taxes under Section 222 (A) which provides thus:

xxx xxx xxx

13. The assessments for deficiency withholding tax on compensation has not yet prescribed. The corresponding expense portion of the findings was disallowed through a separate Final Assessment Notice issued to petitioner for income tax under Assessment Notice No. INC-03-000186 which was received on 13 April 2007. Furthermore, petitioner cannot raise the issue of prescription since the assessment was made based on the annual method (all expenses subject to withholding tax compensation for the entire year were accounted as one) and not on a monthly basis of computing withholding tax liability. It must be observed that although monthly withholding taxes are required to be remitted on the 10^{th} day of the following month, it is not until a final adjustment return shall have been filed that the taxes paid thereon are considered final. xxx xxx xxx

14. As can be gleaned from petitioner's annual information return (1604CF) there were certain adjustments made on the last month of the year to correct its withholding tax liabilities. This is manifested as overwithheld taxes which it corrected through reduction of remittances for December, its final return. In other words, petitioner's monthly returns filed from January to

November are not true representations of all its transactions subject to withholding tax for the year.

15. Finally, the assessment was prepared based on the declarations made by petitioner on its alphalist of expenses subject to withholding tax (1604CF and 1604 E) and not on petitioner's monthly returns. Since petitioner's declarations in its alphalist didn't match its declared monthly returns, it is imminent to use the alphalist data since it is the final declaration of petitioner after considering all its adjustments for the year.

16. The deficiency assessments for expanded withholding tax and final withholding tax – fringe benefits have not yet prescribed. Petitioner cannot raise the defense of prescription since the assessments were made based on the annual method (all expenses subject to expanded withholding tax for the entire year were accounted as one) and not on a monthly basis of computing withholding tax liability. It must be observed that although monthly withholding taxes are required to be remitted on the 10th day of the following month, it is not until a final adjustment return has been filed that the taxes paid thereon are considered final tax due. Neither amount can serve as the final figure to quantify what is correctly due the government. Finally, the assessments were prepared based on the declarations made by petitioner on its alphalist of expenses subject to withholding tax (1604CF & 1604E) and not on petitioner's monthly return. Since petitioner's declaration in its alphalist didn't match its declared monthly returns, it is imminent to use the alphalist data since it is the final declaration of petitioner after considering all of its adjustments for the year. x x x"

On the other hand, in CTA Case No. 7728, respondent CIR raised the following special and affirmative defenses:[35]

"SPECIAL AND AFFIRMATIVE DEFENSES

5. Petitioner was sufficiently informed in writing of the law and facts on which the deficiency income tax was made.

xxx xxx xxx

6. The assessment issued against petitioner is valid being supported by factual and legal bases. *rw*

[35] Special and Affirmative Defenses, Answer, CTA Case. No. 7728, Docket, pp. 43-46.

xxx xxx xxx

Based on the investigation conducted by revenue officers, petitioner derives income primarily on sale of real estate, lease of buildings and interest on installment contracts. Bulk of its operations, however, are centered on sale of real properties. Details of discrepancies are briefly outlined hereunder:

a. **Disallowed expenses not subject to Withholding taxes** – certain expenses claimed by petitioner for the year have been found to not being subjected *(sic)* to withholding taxes: **On compensation – P56,717,003.16; on EWT – 16,375,523.31; on Final withholding tax (Fringe Benefits) – P8,738,898.00**.

   These items were disallowed pursuant to Section 34(K) of the NIRC of 1997 which states that any amount paid or payable which is otherwise deductible from gross income shall be allowed as a deduction only if it is shown that the tax required to be deducted and withheld therefrom has been paid to the Bureau of Internal Revenue and implemented by RR2-98;

b. **Discrepancy in the amount of ₱591,274.00.**

   Said amount was found to have been unreported on Interest income per Income tax against per Audited Financial Statements. Said unreported income is subject to Income tax pursuant to Section 32 of the NIRC of 1997;

c. Portion of retirement expenses claimed during the year were disallowed since there is no BIR letter of approval of the retirement plan provided by the taxpayer in line with compliance requirements of RA 4917.

   Retirement expenses charged to income amounting to ₱2,376,382.00 were disallowed as the net of retirement cost were added back by petitioner per FS-ITR reconciliation;

d. **Understatement on non-deductible portion of interest expense in the amount of ₱3,661,380.03.**

Such amount was disallowed because the Interest income subject to final tax was verified to be understated which is used as basis for the non-deductible portion of interest expense as covered by the underlying provisions of Section 34(B) of the NIRC of 1997;

e. **Debits to Miscellaneous Income in the amount of ₱62,485,550.46.**

A close scrutiny of their entries per monthly trial balance would reveal a reduction to miscellaneous income account with a corresponding decrease to their advances (asset) account understated the income subject to income tax under Section 32 of the NIRC of 1997. The amount of ₱62,485,550.46 was added back to taxable income under the same provision.

7. The unexpired or unapplied Minimum Corporate Income Tax (MCIT) may only be considered in computing income tax liability if verified and supported by records and computations.

In the instant case, petitioner failed to substantiate its alleged MCIT, hence the issuance of the assessment.

xxx xxx xxx

On June 19, 2008, the parties filed their respective consolidated pre-trial briefs[36] and on August 4, 2008, the parties filed their Joint Stipulation of Facts and Issues.[37]

In support of its Petitions, FBDC presented the following witnesses: Ms. Jennifer P. Salvador[38] – Financial Analyst for Tax of FBDC; Atty. Rosario S. Bernaldo[39] – Court Commissioned Independent Certified Public Accountant; Ms. Jenette S. Basister[40] - Sales Administrative Assistant of FBDC; and Ms. Anna Lisa P. Mesina[41] - Finance Manager under the comptrollership group of FBDC.

[36] CTA Case No. 7696, Vol. I, Docket, pp. 129-138; 139-157.
[37] CTA Case No. 7696, Vol. I, Docket, pp. 168-179.
[38] Minutes of the hearing dated November 10, 2008 and December 10, 2008, p. 223 and 327, respectively; Exhibits "EEE", "EEE-3", "EEE-4", "EEE-5", "EEE-6" and "EEE-7".
[39] Minutes of the Hearing dated February 26, 2009, Vol. I, Docket, p. 375; Exhibits "BBBBB" and "CCCCC".
[40] Minutes of the Hearing dated February 18, 2009, Vol. I, Docket, p. 371, 387; Exhibit S^4-50.
[41] Minutes of the Hearing dated July 26, 2012, Vol. II, Docket, p. 781; Exhibit "EEEEE", "E^5-2", "EEEEE-3" and "EEEEE-4".

FBDC likewise filed its Formal Offer of Evidence[42] on January 29, 2013. In the Court's Resolution[43] dated March 18, 2013, the Court admitted as evidence Exhibits "A" to "DDD", "FFF" to "TTT-1", "UUU" to "SSSS-44-a", "SSSS-65" to "SSSS-68-a", "AAAAA", "AAAAA-1", "BBBBB", "BBBBB-1", "BBBBB-2" to "BBBBB-11", "CCCCC", "CCCCC-1", "CCCCC-2" to "CCCCC-9", "FFFFF" to "HHHHH", "JJJJJ" to "MMMMM-11", "OOOOO" to "WWWWW-8", "WWWWW-10", "WWWWW-12", "WWWWW-13", "WWWWW-14", "WWWWW-16", "XXXXX" to "DDDDDD", "EEEEEE" to "FFFFFF-3", "GGGGGG-2" to "MMMMMM", "OOOOOO" to "UUUUUU", "EEE", "EEE-1", "EEE-3" to "EEE-7-a", "SSSS-50", "SSSS-50-a", "SSSS-51", "SSSS-51-a", "BBBBB", "BBBBB-1", "CCCCC", "CCCCC-1", "DDDDD", "DDDDD-1", "EEEEE", "EEEEE-1", and "EEEEE-2" to "EEEEE-4-a". However, Exhibits "TTT-1-a" to "IIIII", "GGGGGG" and "GGGGGG-1" for failure to have the said exhibits identified during trial; Exhibits "SSSS-45" to "SSSS-49", "SSSS-51", "SSSS-51-a" to "SSSS-64-a", "NNNNN", "WWWWW-9", "WWWWW-11", "WWWWW-15" and "DDDDDD-1", for failure of FBDC submit the original document for comparison; Exhibits "TTTT-1", "TTTT-2.1" to "TTTT-2.65", "UUUU-1" to "UUUU-17", "VVVV-1" to "WWWW-3", "XXXX-1", "XXXX-2", "XXXX-7", "XXXX-8", "XXXX-11", "XXXX-15", "XXXX-18", "XXXX-2.1" to "XXXX-2.12", "YYYY-1.1" to "YYYY-1.545" and "NNNNNN" for failure of FBDC to present the duly marked exhibits and for failure to show whether the documents presented were originals, faithful reproductions of the originals, or mere photocopies; and Exhibits "XXXX-3" and "XXXX-6", for failure of FBDC to present the duly marked exhibits, for failure to have the said exhibits identified during trial, and for failure to show whether the documents presented were originals, faithful reproductions of the originals, or mere photocopies.

On April 16, 2013, FBDC filed its motion for reconsideration[44] and in the Resolution[45] July 25, 2013, the Court admitted Exhibits "NNNNNN" and "IIIII" but still denied the admission of Exhibits "TTTT-1", "TTTT-2.1" to "TTTT-2.65", "UUUU-1" to "UUUU-17", "VVVV-1" to "WWWW-3", "XXXX-1", "XXXX-2", "XXXX-7", "XXXX-8", "XXXX-11", "XXXX-15", "XXXX-18", "XXXX-2.1" to "XXXX-2.12". Subsequently, on August 14, 2013, FBDC filed its omnibus motion[46] which prayed for the admission of the above-denied exhibits, among others. In the Court's Resolution[47] dated January 14, 2014, the Court resolved to admit Exhibits "TTTT-1", "TTTT-2.1" to "TTTT-2.65", "UUUU-1" to "UUUU-17", "VVVV-1" to "WWWW-3", "XXXX-1", "XXXX-2", "XXXX-7", "XXXX-8", "XXXX-11", "XXXX-15", "XXXX-18", "XXXX-2.1", "XXXX-2.12" and "YYYY-1.1" to "YYYY-1.545". However, Exhibits "XXXX-2.2" to "XXXX-2.11" were denied

[42] Vol. II, Docket, pp. 991-1118.
[43] Vol. II, Docket, pp. 1125-1127.
[44] Vol. III, Docket, pp. 1124-1230.
[45] Vol. III, Docket, pp.1268-1270.
[46] Vol. III, Docket, pp. 1272-1274.
[47] Vol. IV, Docket, pp. 1999-2001.

admission for failure to present the duly marked exhibits and for failure to show whether the documents presented were originals, faithful reproductions of originals, or mere photocopies.

On the other hand, respondent presented her witness Joseph Christian B. Santos[48] - Revenue Officer IV – Regular Large Taxpayers Audit Division II of the BIR. Moreover, respondent filed its Formal Offer of Evidence[49] and in this Court's Resolution[50] dated February 17, 2014, the Court admitted Exhibits "1 to 14, and 20 to 26-A", inclusive of sub-markings. However, Exhibits "15, 16, 16-A, 17, 17-A, 18, 18-A and 19" were denied admission by the Court for failure of respondent to submit the originals for comparison.

On March 4, 2014, respondent filed her motion for partial reconsideration[51] and on May 2, 2014, the Court issued a Resolution[52] granting respondent's partial motion for reconsideration and admitting Exhibits "15, 16, 16-A, 17, 17-A, 18, 18-A and 19".

On August 13, 2014, the respondent filed her memorandum[53] while FBDC failed to file the same. Consequently, in this Court's Resolution[54] dated July 31, 2014, the case was deemed submitted for decision.

Hence, this Decision.

THE ISSUES

The parties submitted the following issues[55] for this Court's resolution:

1. Whether or not petitioner is liable for deficiency VAT in the amount of ₱70,046,666.93[56];

2. Whether or not petitioner is liable for deficiency Withholding Tax on Compensation in the amount of ₱29,546,442.74;

[48] Exhibit "26", Vol. III, Docket, pp. 1247-1253.
[49] Vol. IV, Docket, pp. 1983-1995.
[50] Vol. IV, Docket, pp. 2003-2004.
[51] Vol. IV, Docket, pp. 2005-2007.
[52] Vol. IV, Docket, pp. 2024-2025.
[53] Vol. IV, Docket, pp. 2028-2038.
[54] Vol. IV, Docket, p.2041.
[55] Issues to be Tried and Resolved, Joint Stipulation of Facts and Issues (JSFI), CTA Case No. 7696, docket, vol. one, p. 178.
[56] Should be ₱70,046,666.94.

3. Whether or not petitioner is liable for deficiency Expanded Withholding Tax in the amount of ₱38,869,403.74[57];

4. Whether or not petitioner is liable for deficiency DST in the amount of ₱12,554,979.55;

5. Whether or not petitioner is liable for deficiency Final Withholding Tax – Fringe Benefits in the amount of ₱6,399,723.81[58];

6. Whether or not petitioner is liable for deficiency Income Tax for taxable year 2003 in the amount of ₱77,257,890.37;

7. Whether or not petitioner was sufficiently informed in writing of the law and facts on which the assessments were made;

8. Whether or not the right of the respondent to assess has prescribed;

9. Whether or not the deficiency tax assessments have factual and legal bases; and

10. Whether or not the unexpired Minimum Corporate Income Tax (MCIT) of petitioenr from prior periods should be considered in determining the actual deficiency income tax liability of petitioner, if there is any.

11. Whether or not FBDC was sufficiently informed in writing of the law and facts on the basis of which the alleged deficiency tax assessments were made.

12. Whether or not the right of the respondent to assess for the alleged deficiency tax assessments has prescribed.

13. Whether or not the alleged deficiency tax assessments issued against FBDC has factual and legal bases.

14. Whether or not the unexpired Minimum Corporate Income Tax (MCIT) of petitioner from prior periods should be considered in determining the actual deficiency tax income liability of FBDC, if there is any.

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[57] Should be ₱38,869,403.69.

[58] Should be ₱6,338,119.45.

From the foregoing, there are three (3) main issues to be resolved by the Court: (1) Whether or not the right of the respondent to assess has prescribed; (2) Whether or not the assessment has factual and legal bases sufficient to inform petitioner thereof; and (3) Whether or not respondent CIR is correct in assessing petitioner for deficiency VAT, DST, WTC, EWT, FBT and Income Tax for taxable year 2003 in the aggregate sum of ₱234,613,502.74.

THE COURT'S RULING

I. Whether or Not the Right of the Respondent to Assess Petitioner's Deficiency VAT and DST has Prescribed

Deficiency VAT

Petitioner alleges that for taxable year 2003, it filed its Quarterly VAT Returns on the following dates:[59]

Taxable Quarter (2003)	Date Filed	Last Day to File Return
1st Quarter	April 24, 2003	April 25, 2003
2nd Quarter	July 24, 2003	July 25, 2003
3rd Quarter	October 27, 2003	October 27, 2003
4th Quarter	January 26, 2004	January 26, 2004

With respect to DST, petitioner argues that for purposes of the 3-year prescriptive period, the counting of the period to assess deficient DST shall be reckoned from the date the DST return subject of the deficiency tax assessment was actually filed.[60]

On the other hand, respondent argues that her right to assess petitioner's deficiency VAT and DST has not yet prescribed considering the falsity of petitioner's returns. Thus, respondent has 10 years after the discovery of the falsity, within which to assess petitioner, pursuant to Section 222(a) of the National Internal Revenue Code of 1997, as amended (NIRC of 1997, as amended).[61]

[59] Par. 5.04, Petition for Review, CTA Case No. 7696, Vol. I, Docket, p. 14.
[60] Par. 5.12, Petition for Review, CTA Case No. 7696, Vol. I, Docket, p. 17.
[61] "SEC. 222. **Exceptions as to Period of Limitation of Assessment and Collection of Taxes. –**

Section 203 in relation to Section 114(A) of the NIRC of 1997, as amended, and Section 4(3) of Revenue Regulations No. 06-01 (RR 06-01), respectively provide:

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

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

> "(3) SECTION 4(3.3) of Revenue Regulations No. 1-98 is hereby amended to read as follows:
>
> 'SECTION 4. *Filing of Returns and Payment of Taxes.* –
>
> xxx xxx xxx
>
> 3. When to File and Pay
>
> Monthly VAT declarations of Large Taxpayers shall be filed, and taxes paid, not later than the 10th day following the end of each month; provided, however, that **with respect to Large Taxpayers who availed of the electronic filing and payment**

(a) In the case of false or fraudulent return with intent to evade or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the diScovery of the falsity, fraud or omission xxx"

> **system (EFPS),** the deadline for electronically filing the monthly VAT declaration and paying the tax due thereon via the EFPS shall be five (5) days later than the deadline set above. **The quarterly VAT returns of Large Taxpayers shall be filed, and the taxes paid, not later than the 25th day following the end of each quarter.**" *(Emphasis supplied)*

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

On the other hand, in case of false returns, the CIR has 10 years from the date of discovery of the falsity of the return within which to assess a taxpayer under Section 222(a) of the NIRC of 1997, as amended.

In the leading case of *Jose B. Aznar v. Court of Tax Appeals and Collector of Internal Revenue*,[62] the Supreme Court characterized a false return as mere deviation from truth. Hence, to determine whether there is a deviation from what should have appeared in petitioner's returns *vis a vis* the application of the 3-year or 10-year prescriptive period of respondent's right to assess, the Court shall examine the pieces of evidence submitted by petitioner.

Meanwhile, considering that the determination of whether petitioner filed false returns is intertwined with the correctness of the assessments, the Court shall likewise proceed to determine the correctness thereof.

Based on the FLD[63] dated January 2, 2007, respondent computed the deficiency VAT assessment as follows:

On Leases			
Leases LCR Beg			₱ 39,491,000.00
Add: Sales			186,226,299.00
Less: Ending			88,832,000.00
Gross Receipts on Leases during the year			₱ 136,885,299.00
Add: Underdeclared receipts S LS vs. CRB		₱ 49,349,180.23	
Advance rent per CRB		27,226,990.58	76,576,170.81

[62] G.R. No. L-20569, August 23, 1974.
[63] Exhibit "13", CTA Case No. 7696, BIR records, pp. 536-541.

On Sales of Real Estate			
Collections pertaining to principal			1,119,084,846.36
Interest Receivable Beg.		₱ 55,968,000.00	
Interest Inc. - Install Sales per Return		75,558,726.00	
Interest Receivable End		(20,634,000.00)	110,892,726.00
Others			
Realized forex gain			17,274,198.00
Gain on sale of property			830,652.00
Other receivables Beg.		₱ 56,810,000.00	
Development Control Fees	₱ 3,804,675.00		
Marketing and Management Fees	1,280,048.00		
Miscellaneous	394,209.00	5,478,932.00	
Other receivables End		(59,617,000.00)	2,671,932.00
Gross Receipts subject to VAT			₱1,464,215,824.17
Output tax per audit			₱ 146,421,582.42
Output tax per return			111,167,313.78
OOutput tax still due			₱ 35,254,268.64
Other findings			
Disallowed utilization of Presumptive input VAT			
Output VAT		₱111,167,313.78	
Less			
Input VAT claimed for the Year	₱55,140,862.46		
VAT payments for the year	51,281,906.17	106,422,768.63	
Amount claimed from Presumptive Input Disallowed			4,744,545.15
Disallowed Input Tax - invalid taxpayers			3,552,470.45
Disallowed Input Tax - FBDC Supp. Per SLP			48,704.56
Amount still due			₱ 43,599,988.80
Surcharge		-	
Interest 1/27/2004 to 1/31/2007		26,446,678.14	
Compromise		-	26,446,678.14
Deficiency VAT			**₱70,046,666.94**[64]

Based from the above computation, the basic deficiency VAT assessment of ₱43,599,988.80 arose from the following:

[64] Erroneously indicated as ₱70,046,666.93 per FLD.

A. Output VAT on the discrepancy in gross receipts subject to VAT per audit vs. per returns	₱ 35,254,268.64
B. Disallowed presumptive input VAT	4,744,545.15
C. Disallowed input tax -invalid taxpayers	3,552,470.45
D. Disallowed input tax - FBDC supplier per SLP	48,704.56
	₱ 43,599,988.80

A. Output VAT on the Discrepancy in Gross Receipts Subject to VAT per Audit vs. per Returns- ₱35,254,268.64

Respondent's verification disclosed that petitioner's taxable gross receipts for the year 2003 amounted to ₱1,464,215,824.17, obtained from the following income accounts:

1. Leases;
2. Sales of Real Estate including Interest Income on Installment Sales and;
3. Other Income which included:
   a. Realized Forex Gain
   b. Gain on sale of property
   c. Development Control Fees
   d. Marketing and Management Fees
   e. Miscellaneous

Upon comparison of the ₱146,421,582.42 output VAT due on the aforesaid gross receipts with the ₱111,167,313.78 output VAT reflected per petitioner's VAT returns, respondent found an output VAT discrepancy in the amount of ₱35,254,268.64.

On the other hand, petitioner maintains that the deficiency VAT assessment lacks factual and legal bases and submitted the following arguments for each item of income[65]:

1. Leases

a. According to petitioner, the examiners allegedly included in their computation of gross receipts on leases subject to VAT those which are not

[65] Exhibit "A", pp. 4-6; Petition for Review, CTA Case No. 7696, docket, vol. one, pp. 19-22.

subject thereto, on account of the entitlement of certain lessees to tax incentives as PEZA-registered enterprises.

Records show that petitioner presented the following pieces of evidence to prove that their lessees are PEZA registered:

Name of Corporation	Date of PEZA Certificate of Registration
DATA Horizon Philippines (Exhibit "XXXXX")	May 3, 2002
NEC Telecom Software, Inc. (Exhibit "YYYYY")	May 17, 2001
VOCATIV SYSTEMS, INC. (Exhibit "MMMMMM")	October 22, 2001
Hatchasia.com, Inc. (Exhibit "NNNNNN")	*Denied Admission by the Court in the Resolution Dated March 18, 2013[66]

The foregoing pieces of evidence submitted by petitioner show that their lessees were PEZA-registered on 2001 and 2002, respectively. However, FBDC failed to show that its respective lessees were, in fact, still PEZA registered during 2003, the taxable year subject of the present Petitions. Hence, the Court is constrained to accord no probative value to the said pieces of evidence for being immaterial or irrelevant to this case.

b. Petitioner alleged that respondent subjected to VAT common area usage and service area expenses or common area dues and other reimbursable expenses collected from tenants which are actually not subject to VAT.

In this regard, petitioner presented the non-VAT official receipts[67] it issued to lessees for collections of alleged common area allocations in the total amount of ₱25,232,429.77 with VAT equivalent of ₱2,523,242.98.

The Court agrees with petitioner that reimbursements-at-cost (i.e., without any mark-up or profit element to the lessor) for shared expenses such as utilities and other maintenance expenses of the leased areas, do not constitute income but are amounts held in trust by the lessor for the service providers. Thus, they should not form part of the taxable gross receipts of the lessor. Nevertheless, petitioner has the burden to prove whether its collections

[66] Supra., Note 36.
[67] Exhibits "YYYY-1.1" "YYYY-1.545".

are mere reimbursements-at-cost in order to be excluded from income and thus, not subject to VAT.

In the case of *Commissioner of Internal Revenue vs. Tours Specialists, Inc. and The Court of Tax Appeals*[68], the Supreme Court held that:

> "As demonstrated in the above-mentioned case, **gross receipts subject to tax under the Tax Code do not include monies or receipts entrusted to the taxpayer which do not belong to them and do not redound to the taxpayer's benefit;** and it is not necessary that there must be a law or regulation which would exempt such monies and receipts within the meaning of gross receipts under the Tax Code." (*Emphasis supplied*)

An examination of the non-VAT ORs submitted by petitioner reveals that they were all dated during the year 2003 and that the collected amounts were for common area dues, parking fees, electricity and water, among others. However, petitioner failed to present evidence to prove that the collected amounts were mere reimbursements-at-cost and that no amount of profit was added or charged by petitioner. Thus, the Court cannot determine the veracity of the foregoing allegations.

For want of evidence, the alleged common area charges of ₱25,232,429.77 cannot be deducted from petitioner's taxable gross receipts.

c. The discrepancies between petitioner's Summary List of Sales (SLS) for 2003 and cash receipts book resulting in findings of under-declaration of gross receipts were the possible results of timing difference.

Petitioner states that it records and remits the output tax due on certain rental income upon issuance of the billing invoice and not upon receipt of payment, as if payment was made during the same taxable period, whether the payment was actually received or not.

It bears stressing that Section 108(A) of the NIRC of 1997, as amended, imposes 10% VAT on the use or lease of properties based on the lessor's *gross receipts* as follows:

> **"SEC. 108.-** ***Value-added Tax on Sale of Services and Use or Lease of Properties.-***

[68] G.R. No. 66416. March 21, 1990.

> "(A) *Rate and Base of Tax.*-There shall be levied, assessed and collected, a value-added tax equivalent to ten percent (10%) of the **gross receipts, derived from** the sale or exchange of services, including the **use or lease of properties**.
>
> xxx xxx xxx
>
> The term '**gross receipts'** means the total amount of money or its equivalent representing the contract price, compensation, service fee, rental or royalty, including the amount charged for materials supplied with the services and **deposits and advanced payments actually** or constructively **received during the taxable quarter for the services performed or to be performed for another person, excluding value-added tax.**" *(Emphasis supplied)*

Thus, a lessor's obligation to pay the VAT accrues from the time it received the rental payment, and not upon issuance of the billing.

In the instant case, petitioner failed to present evidence to show that the under declaration of gross receipts merely arose from the timing difference in petitioner's recognition of income and the related output VAT. Thus, the Court finds no merit to petitioner's argument.

d. The advance rental payments could have constituted security deposits paid by tenants which are not subject to VAT.

The term gross receipts under Section 108(A) of the NIRC of 1997, as amended, states that these include 'deposits and advanced payments actually and constructively received' during the taxable year. Therefore, the advance rental payments received by petitioner during the year 2003 are subject to VAT in the month/quarter of receipt.

e. Not all entries in the cash receipts module represent actual cash collections subject to VAT.

In this regard, petitioner likewise failed to present evidence to support the foregoing argument. Thus, the Court cannot consider the same. At any rate, the Court notes that with regard to the manner by which respondent computed the discrepancy arising from SLS vs. CRB in the amount of ₱49,349,180.23, and the advanced rent per CRB in the amount of ₱27,226,990.58, the same resulted in petitioner's gross receipts being subjected twice to deficiency VAT.

The Court observes that respondent's computation with respect to the line item of "Output Tax per audit", is based on what respondent considers as the "should-be gross receipts" of petitioner. On the other hand, the line item of "Output Tax per return" is based on petitioner's VAT returns and SLS. Said comparison led to the deficiency assessment.

The supplier comparison of SLS vs. CRB and addition of advanced rent per CRB were unnecessary because the computation of "Leases LCR Beg + Sales – Leases LCR ending" results in an all-encompassing amount representing the total collections of petitioner, including the receipts per CRB and the advance rent per CRB, and the output tax due therefrom already formed part of the "Output tax per audit" figure.

In fine, respondent's assessment on the ₱49,349,180.23 discrepancy between SLS and CRB and on the ₱27,226,990.58 advance rent per CRB in the total amount of ₱76,756,170.81 should be cancelled and withdrawn due to incorrect double taxation.

2. Sales of Real Estate

With regard to the deficiency VAT assessment on real estate sales, petitioner argued that the VAT discrepancy on the sale of real property is the possible result of the timing difference inherent in the real estate business in complying with existing revenue regulations as petitioner already reports and remits the full VAT on the sale transactions where the buyer has already paid at least 25% of the selling price during the initial year of sale. Moreover, petitioner states that for administrative convenience, it remits the full VAT on the sale of its condominium units, regardless of whether some actually qualify as installment sales.

Furthermore, petitioner points that the income on installment sale could actually and possibly refer to interest receivables from intercompany advances of petitioner to its subsidiaries. Some of the advances were intended as additional capital contribution and/or deposit for future subscription. Since petitioner is not a lending investor, dealer in securities, or financial institution, its interest receivable, if any, from intercompany advances is not subject to VAT.

Again, petitioner's assertions are unsupported by documentary proof. Thus, the Court has no basis to ascertain whether petitioner's assertions are correct.

On the other hand, the Court-commissioned Independent Certified Public Accountant (ICPA), R. S. Bernaldo & Associates through its Partner, Ms. Rosario S. Bernaldo, reported that interest income from certain installment sales were included by the BIR examiners in their computation of gross receipts subject to VAT.

According to the ICPA, examination of the supporting documents provided by petitioner showed that a certain portion of the collections pertaining to petitioner's sale of lots amounting to ₱1,119,084,846.36 used by the BIR was already inclusive of the interest income on installment sales. This actually refers to the sale of land in favor of WAFCO Trading Corporation that yielded interest income in the amount of ₱5,171,723.00[69].

However, verification of the records shows that the supporting documents referred to by the ICPA were not formally offered before this Court. Thus, the Court cannot determine the veracity of the ICPA finding.

3. Other Income

Petitioner avers that the realized foreign exchange gain reported in its AITR is connected with the intercompany advances it granted to its subsidiaries as these were stated in foreign currency. Petitioner explained that when these advances were restated in local currency at year end, foreign exchange gains were accordingly recorded. It is petitioner's view that these realized foreign exchanges, being non-trade in nature, are not subject to VAT.

However, petitioner failed to submit supporting documents to prove the actual nature of its realized foreign exchange gain. In the absence of proof to the contrary, the said realized foreign exchange gain shall be deemed to have been earned by petitioner in the ordinary course of its business of leasing and sale of real properties for the year 2003 and is subject to VAT pursuant to Section 105 in relation to Section 108(A) of the NIRC of 1997, as amended.

As to the development control fees, management and marketing fees, petitioner stated that it has properly reported and remitted the VAT due thereon. However, petitioner likewise failed to present evidence to support the same.

With respect to the gain on sale of property and equipment, petitioner did not refute the findings of the respondent's examiner. Moreover, in the consolidated Supreme Court (SC) cases of *Mindanao I Geothermal Partnership and Mindanao II Geothermal Partnership vs. Commissioner of Internal Revenue*, [70] the SC clarified the term and VAT treatment to an "incidental" transaction, *to wit:*

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[69] Exhibit "AAAAA", p. 15.
[70] G.R. Nos. 193301 and 194637, dated March 11, 2013.

"Mindanao II asserts that the sale of a fully depreciated Nissan Patrol is not an incidental transaction in the course of its business; hence, it is an isolated transaction that should not have been subject to 10% VAT.

Section 105 of the 1997 Tax Code does not support Mindanao II's position:

> 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 nonstock, 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 non-resident foreign persons shall be considered as being rendered in the course of trade or business. (Emphasis supplied)

Mindanao II relies on Commissioner of *Internal Revenue v. Magsaysay Lines*, Inc. (*Magsaysay*) and *Imperial v. Collector of Internal Revenue* (*Imperial*) to justify its position. Magsaysay, decided under the NIRC of 1986, involved the sale of vessels of the National Development Company (NDC) to Magsaysay Lines, Inc. We ruled that the sale of vessels was not in the course of NDC's trade or business as it was involuntary and made pursuant to the

> Government's policy for privatization. Magsaysay, in quoting from the CTA's decision, imputed upon Imperial the definition of "carrying on business." Imperial, however, is an unreported case that merely stated that 'to engage' is to embark in a business or to employ oneself therein.
>
> Mindanao II's sale of the Nissan Patrol is said to be an isolated transaction. However, it does not follow that an isolated transaction cannot be an incidental transaction for purposes of VAT liability. Indeed, a reading of Section 105 of the 1997 Tax Code would show that a transaction "in the course of trade or business" includes "transactions incidental thereto." Mindanao II's business is to convert the steam supplied to it by PNOC-EDC into electricity and to deliver the electricity to NPC. In the course of its business, Mindanao II bought and eventually sold a Nissan Patrol. Prior to the sale, the Nissan Patrol was part of Mindanao II's property, plant, and equipment. Therefore, the sale of the Nissan Patrol is an incidental transaction made in the course of Mindanao II's business which should be liable for VAT."

The Gain on Sale of Property and Equipment (PE), as held in the above-quoted case, is also considered incidental to petitioner's business since the said property was once part of petitioner's PE.

Considering the foregoing, the Court finds that respondent has ample basis in including in her computation of deficiency VAT, petitioner's other income, net of receivables as of year-end in the amount of ₱20,776,782.00 representing the sum of the realized forex gain of (i.e., ₱17,274,198 plus ₱830,652 plus ₱2,671,932), and the interest income on installment sales in the amount of ₱110,892,726.00.

B. Disallowed Presumptive/Transitional Input Tax -₱4,744,545.15

According to petitioner, their presumptive input tax should not be disallowed because of the favorable decision of the Supreme Court in G.R. No. 158885 dated April 2, 2009[71]. The Court notes, however, that the same is not yet final and executory as the opposing party submitted a Motion for Reconsideration therefore.

At any rate, the Court agrees with the *raison d'être* of the High Court in ruling in favor of petitioner.

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[71] Fort Bonifacio Development Corp. vs. CIR, G.R. Nos. 158885 & 170680, April 2, 2009.

The SC stated that there is nothing in Section 105 of the Old NIRC that prohibits the inclusion of real properties, together with the improvements thereon, in the beginning inventory of goods, materials, supplies, based on which inventory the transitional input tax credit is computed. This is based on the contention of then-respondent that based on Section 4.105-1 of Revenue Regulations (RR) No. 7-95 wherein it was specifically stated that for real estate dealers, only the beginning inventory pertaining to improvements made on real properties are to be given such transitional input tax credit.

Accordingly, had Section 100 [of R.A. No. 7716] supplied any differentiation between the treatment of real properties or real estate dealers and the treatment of the transactions involving other commercial goods, then such differing treatment would have constituted the statutory basis for the CIR to engage in such differentiation which the respondent in the cited case sought to accomplish through Section 4.105-1 of RR 7-95.[72] Yet the amendments introduced by R.A. No. 7716 to Section 100, coupled with the fact that the said law left Section 105 [now Section 111] intact, reveal the lack of any legislative intention to make persons or entities in the real estate business subject to a VAT treatment different from those engaged in the sale of other goods or properties or in any other commercial trade of business.

Moreover, the SC disagreed with the Decisions of this Court and the Court of Appeals (CA) that there is an underlying presumption that in order to avail of transitional/presumptive input VAT on the beginning inventory of real estate dealers who were subjected to VAT in 1996, there should be a sales tax that was previously paid by petitioner in its purchase of inventory. However, since petitioner acquired the land from the government in a VAT-exempt sale, this Court and the CA denied its entitlement to transitional/presumptive input tax credit.

The SC proceeded to state that the transitional input tax credit operates to benefit newly VAT-registered persons, whether or not they previously paid taxes in the acquisition of their beginning inventory of goods, materials and supplies. During that period of transition from non-VAT to VAT status, the transitional input tax credits serves to alleviate the impact of the VAT on the tax on the taxpayer.

Considering the foregoing, the Court finds the cancellation of respondent's assessment of deficiency VAT on petitioner's transitional input tax in the amount of ₱4,744,545.15, to be in order.

[72] *Id.*

C. Disallowed Input Tax due to Invalid Taxpayers -₱3,552,470.45;

D. Disallowed Input Tax due to Invalid FBDC Supplier - ₱48,704.56

Based on petitioner's Summary List of Purchases (SLP) for the year 2003, respondent disallowed petitioner's claimed input VAT in the amount of ₱3,552,470.45 because these input taxes were allegedly derived by petitioner on its purchases from unregistered or invalid taxpayers, *to wit:*[73]

Supplier	Input VAT	Reason for disallowance
Aurora S. Bautista	₱ 6,227.27	Not VAT registered
Conrado S. Realubit	10,499.38	Registered only in 2005
Full Circle Communications	17,203.47	Registered only in 2005
Gligorick C. Garupa	71,061.15	Not VAT registered
I4 Trading & Advertising	3,927.14	Does not exist
JT Zhang & Company Inc.	117.55	Not VAT registered
Magma Trading Inc.	4,454.55	Not VAT registered
Makati Development Corp.	1,431.82	Not VAT registered
Manuel V. Pangilinan	24,450.00	Not VAT registered
Melanie Rita Galita	17,382.07	Not VAT registered
Mold Food Corp.	14.73	Percentage tax registered
Pasto Café & Bar Inc.	69.42	Registered only in 2005
Philippine Health Insurance Corp.	630	Not VAT registered
RJ Calpo & Partners	54,000.00	Does not exist
Ricardo S. PaScua	1,410,459.76	Not VAT registered
Rudy S. Labos & Associates Inc.	1,396,861.71	2004 Registered
Superfix Auto Concept	79,062.75	Does not exist
Will Decena and Associates	454,617.68	Percentage tax registered
	₱ 3,552,470.45	

In its protest letter[74], petitioner stated that it will be presenting VAT invoices or official receipts to support the disallowed input tax. Further, petitioner asserted that if indeed the said suppliers are invalid taxpayers, then the BIR should collect the deficiency taxes from such invalid taxpayers and not from petitioner. To require petitioner to substantiate its claimed input tax beyond and more than what the VAT law requires would be unjust, discriminatory and burdensome on the part of petitioner who has neither the means nor the resources to determine the validity of the taxpayer's VAT

[73] Exhibit "CCCCC".
[74] Exhibit "A", p. 6.

invoices or official receipts, which are otherwise appearing to be validly BIR approved receipts or invoices.

The Court partially finds for petitioner.

A VAT invoice or official receipt constitutes sufficient proof of creditable input VAT on domestic purchases of goods or services, respectively, as provided for under Section 110(A) of the NIRC of 1997 [prior to its amendment under Republic Act (RA) No. 9337], which states in part:

> "SEC. 110. *Tax Credits.* —
>
> (A) *Creditable Input Tax.* —
>
> (1) **Any input tax evidenced by a VAT invoice or official receipt** issued in accordance with Section 113 hereof on the following **transactions shall be creditable against the output tax**:
>
> xxx xxx xxx
>
> (b) Purchase of services on which a value-added tax has been actually paid.
>
> (2) The input tax on domestic purchase of goods or properties shall be creditable:
>
> (a) To the purchaser upon consummation of sale and on importation of goods or properties; and
>
> xxx xxx xxx
>
> However, in the case of purchase of services, lease or use of properties, the input tax shall be creditable to the purchaser, lessee or licensee upon payment of the compensation, rental, royalty or fee." (*Emphasis supplied*)

The Court observes that the word "or" in Section 110(A)(1) indicates an alternative. However, further reading of the above Section 110(A)(1)(b) and Section 110(A)(2)(a) reveals that input VAT on domestic purchases of goods or properties shall be allowed as tax credit to the purchaser upon consummation of sale, which means **upon issuance by the seller of the VAT invoice evidencing the sale of goods or properties**. On the other hand, the input

VAT on purchases of services shall be available as tax credit to the purchaser only upon payment of the compensation or fee, *i.e.*, **upon issuance by the seller of the VAT official receipt evidencing receipt of the payment for services performed or yet to be performed.**

In the case of *AT&T Communications Services Philippines, Inc., vs. Commissioner of Internal Revenue,*[75] the Supreme Court held that a VAT sales invoice must support the sale of goods or properties while a VAT official receipt must substantiate the sale of services, thus:

> "For emphasis, even prior to the enactment of R.A. No. 9337, which clearly delineates the invoice and official receipt, our Tax Code has already made the distinction.
>
> Section 113 of the NIRC of 1997, as amended, is the focal provision, to wit:
>
>> SEC. 113. *Invoicing and Accounting Requirements for VAT-registered Persons.* —
>>
>> (A) Invoicing Requirements. — *A VAT-registered person shall, for every sale, issue an* ***invoice or receipt****.* In addition to the information required under Section 237, the following information shall be indicated in the invoice or receipt: (Emphasis supplied)
>>
>> xxx xxx xxx
>
> Although it appears under the above-quoted provision that there is no clear distinction on the evidentiary value of an invoice or official receipt, it is worthy to note that the said provision is a general provision which covers all sales of a VAT registered person, whether sale of goods or services. It does not necessarily follow that the legislature intended to use the same interchangeably. The Court therefore cannot conclude that the general provision of Section 113 of the NIRC of 1997, as amended, intended that the invoice and official receipt can be used for either sale of goods or services, because there are specific provisions of the Tax Code which clearly delineates the difference between the two transactions.

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[75] G.R. No. 185969, November 19, 2014.

In this instance, Section 108 of the NIRC of 1997, as amended, provides:

> SEC. 108. ***Value-added Tax on <u>Sale of Services</u> and Use or Lease of Properties.*** —
>
> xxx xxx xxx
>
> (C) Determination of the Tax — The tax shall be computed by multiplying the total amount indicated in the ***official receipt*** by one-eleventh (1/11). (Emphasis supplied)

Comparatively, Section 106 of the same Code covers sale of goods, thus:

> SEC. 106. ***Value-added Tax on <u>Sale of Goods or Properties</u>***. —
>
> xxx xxx xxx
>
> (D) Determination of the Tax. — The tax shall be computed by multiplying the total amount indicated in the ***invoice*** by one-eleventh (1/11). (Emphasis supplied)

Apparently, the construction of the statute shows that the legislature intended to distinguish the use of an invoice from an official receipt. It is more logical therefore to conclude that subsections of a statute under the same heading should be construed as having relevance to its heading. The legislature separately categorized VAT on sale of goods from VAT on sale of services, not only by its treatment with regard to tax but also with respect to substantiation requirements. Having been grouped under Section 108, its subparagraphs, (A) to (C), and Section 106, its subparagraphs (A) to (D), have significant relations with each other."

Considering that for the same transaction, the output VAT of the seller becomes the input VAT of the purchaser, the law requires that the input VAT be substantiated by the very same document on which the output VAT was based. Accordingly, the input VAT on purchases of goods must be supported by VAT sales invoices; while the input VAT on purchases of services must be supported by VAT official receipts.

In order to be considered as valid VAT invoices or official receipts, the same must contain all the information required under Section 113(A) of the NIRC of 1997 [prior to its amendment under RA No. 9337], as amended, to wit:

> "SEC. 113. *Invoicing and Accounting Requirements for VAT Registered Persons.* —
>
> (A) Invoicing Requirements. — A VAT-registered person shall, for every sale, issue an invoice or receipt. In addition to the information required under Section 237, the following information shall be indicated in the invoice or receipt:
>
> (1) A statement that the seller is a VAT-registered person, followed by his taxpayer's identification number (TIN); and
>
> (2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax."

Corollary thereto, the pertinent portions of Section 4.108-1 of Revenue Regulations No. 7-95, read as follows:

> "SECTION 4.108-1. Invoicing Requirements. — All VAT-registered persons shall, for every sale or lease of goods or properties or services, issue duly registered receipts or sales or commercial invoices which must show:
>
> 1. the name, TIN and address of seller;
> 2. date of transaction;
> 3. quantity, unit cost and description of merchandise or nature of service;
> 4. the name, TIN, business style, if any, and address of the VAT-registered purchaser, customer or client;
> 5. the word 'zero-rated' imprinted on the invoice covering zero-rated sales; and

6. the invoice value or consideration.

xxx xxx xxx

Only VAT-registered persons are required to print their TIN followed by the word 'VAT' in their invoice or receipts and this shall be considered as a 'VAT Invoice'. All purchases covered by invoices other than 'VAT Invoice' shall not give rise to any input tax."

Such invoice or receipt must be duly registered with the Bureau of Internal Revenue, as prescribed under Section 237 of the NIRC of 1997, which states:

"SEC. 237. *Issuance of Receipts or Sales or Commercial Invoices.* — All persons subject to an internal revenue tax shall, for each sale or transfer of merchandise or for services rendered valued at Twenty-five pesos (P25.00) or more, issue duly registered receipts or sales or commercial invoices, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service: x x x"

In the present case, out of the disallowed input VAT of ₱3,552,470.45, petitioner was able to substantiate by proper VAT official receipts, input VAT in the total amount of ₱1,025,336.57 related to its domestic purchases of services, detailed as follows:

Exhibit	Supplier	OR No.	Date	Amount
"CCCCC-1"	Rudy S. Labos & Associates, Inc.	2325	4/4/2003	₱ 7,640,000.00
"CCCCC-2"	Rudy S. Labos & Associates, Inc.	2653	12/12/2003	397,766.75
"CCCCC-3"	Rudy S. Labos & Associates, Inc.	2551	11/14/2003	95,717.19
	Subtotal			**₱ 8,133,483.94**
	Less: Amt received as w/tax refund			(397,766.75)
	Subtotal, as adjusted			**₱ 7,735,717.19**
"CCCCC-4"	Super Fix Auto Concept	5626	3/13/2003	1,816.36
"CCCCC-5"	Super Fix Auto Concept	5627	3/13/2003	12,696.87
"CCCCC-6"	Super Fix Auto Concept	5628	3/13/2003	8,036.46
	Subtotal			**₱ 22,549.69**
"CCCCC-7"	Will Decena & Associates	1892	12/19/2003	1,325,724.50

"CCCCC-8"	Will Decena & Associates	1858	11/5/2003	1,012,610.48
"CCCCC-9"	Will Decena & Associates	1822	10/24/2003	1,182,100.46
	Subtotal			**₱ 3,520,435.44**
	Total Purchases of Services			**₱ 11,278,702.32**
	Allowable Input VAT (1/11)			**₱ 1,025,336.57**

In addition, petitioner, through the Supplemental Judicial Affidavit[76] of its Finance Manager, Ms. Anna Lisa P. Mesina, made the following observation with regard to the disallowance of the input VAT of ₱1,410,459.76 (included in the total input VAT disallowance of ₱3,552,470.45):

"(205)
Q: xxx

A: xxx the input tax reported in the April 2003 VAT returns and SLP of FBDC pertaining to Ricardo S. Pascua in the amount of ₱1,410,459.76, which was disallowed by the BIR examiners for the reason that payee was not VAT registered was actually corrected by the company in its May 2003 VAT returns and SLP by adjusting its input tax credit deducting the amount of ₱1,410,459.76, which was in fact considered in Exhibit "CCCCC" even by the BIR examiners under the name of First Pacific Management Services, Inc. of which Mr. Pascua was also associated with. Therefore, for the 2nd quarter VAT returns of FBDC and its SLP for the months of April 2003 or Exhibits "BBBBB-3" and May 2003 or "BBBBB-4", the said disallowed input tax was already adjusted or taken out by FBDC."

The Court agrees with the petitioner.

A perusal of petitioner's SLP[77] for the year 2003 upon which respondent based her disallowance of the ₱3,552,470.45 input VAT shows that the amount of ₱1,410,459.76 appeared twice: 1) as an addition to petitioner's claimed input VAT under the name of Ricardo S. Pascua[78]; and 2) as a deduction from petitioner's claimed input VAT under the name of First Pacific Management Services, Inc.[79] In other words, the amount of ₱1,410,459.76 was not claimed at all as input VAT by petitioner for the year 2003 as this was zeroed-out by the addition and deduction of the same amount. Thus, the deficiency VAT assessment in the amount of ₱1,410,459.76 should be cancelled.

[76] Exhibit "EEEEE-4", p. 61.
[77] Exhibit "CCCCC".
[78] Exhibit "CCCCC", p. 3.
[79] Exhibit "CCCCC", p. 2.

Based from the foregoing discussion, it appears that petitioner failed to substantiate all of its claims against the assessment. However, does the failure of petitioner to substantiate all of its allegations constitute deviation from truth so as to categorize its returns as false? The Court does not believe so.

In other words, petitioner was able to prove that some of its claims were valid. However, the fact that it was not able to present all the necessary pieces of evidence to prove its claims against the assessment does not make its returns, *per se*, false. These are evidentiary matters which militate upon the correctness of the assessment and not upon the truth or falsity of petitioner's returns.

Consequently, an examination of FBDC's filing of its quarterly VAT Returns in relation to the 3-year period to assess by the respondent CIR is shown as follows:

Taxable Quarter (2003)	**Date Filed**	**Last Day to File Return**	**Last Day of the 3-year Period to Assess**
1st Quarter[80]	April 24, 2003	April 25, 2003	April 25, 2006
2nd Quarter[81]	July 24, 2003	July 25, 2003	July 25, 2006
3rd Quarter[82]	October 27, 2003	October 27, 2003	October 27, 2006
4th Quarter[83]	January 26, 2004	January 26, 2004	January 26, 2007

In the instant case, records show that that the respondent CIR issued the FLD on January 2, 2007. Hence, the Court finds that respondent's right to assess FBDC for deficiency VAT for the 1st, 2nd and 3rd quarter of taxable year 2003 has already prescribed.

In sum, petitioner is liable for basic deficiency VAT in the amount of ₱28,889,366.59, computed as follows:

On Leases			

[80] Exhibit "F".
[81] Exhibit "H".
[82] Exhibit "J".
[83] Exhibit "K".

Lease Contracts Receivable, Beg, net of VAT (₱39,491,000.00 / 110%)			₱ 35,900,909.09
Add: Sales			186,226,299.00
Less: Lease Contracts Receivable, End, net of VAT (₱88,832,000.00 / 110%)			(80,756,363.64)
Gross Receipts on Leases during the year			₱ 141,370,844.45
On Sales of Real Estate			
Collections pertaining to principal			1,119,084,846.36
Interest Receivable, Beg.		₱50,880,000.00	
Interest Inc. - Install Sales per Return		75,558,726.00	
Interest Receivable, End		(18,758,181.82)	107,680,544.18
Others			
Realized forex gain			17,274,198.00
Gain on sale of property			830,652.00
Other receivables, Beg.		₱56,810,000.00	
Development Control Fees	₱3,804,675.00		
Marketing and management Fees	1,280,048.00		
Miscellaneous	394,209.00	5,478,932.00	
Other receivables ,End		(59,617,000.00)	2,671,932.00
Gross Receipts subject to VAT			₱1,388,913,016.99
Output tax per audit			₱ 138,891,301.70
Output tax per return			111,167,313.78
Output tax still due			₱ 27,723,987.92
Other findings:			
Disallowed Input Tax - invalid taxpayers		₱ 3,552,470.45	
Less: Input Tax duly supported by VAT ORs		(1,025,336.57)	
Input Tax not claimed by petitioner		1,410,459.76	1,116,674.12
Disallowed Input Tax - FBDC Supp. Per SLP			48,704.56
Basic Deficiency VAT			**₱ 28,889,366.59**

Deficiency DST

On the other hand regarding the time of filing of returns for DST, Section 5 of RR 06-01 provides:

> "Section 5. Time for Filing of Documentary Stamp Tax Returns and the Payment of Taxes Due Thereon. – xxx
>
> (2) For large taxpayers, Section 4(3.6) of Revenue Regulations No. 1-98 is hereby amended to read as follows:

"Section 4. Filing of Returns and Payment of Taxes. –

3. When to File and Pay

3.6 Large taxpayers shall pay their documentary stamp taxes within five (5) days after the close of the month when the taxable document was made, signed, issued, accepted or transferred by the filing of the documentary stamp tax returns, through purchase or actual affixture or by imprinting the documentary stamps through a documentary stamp tax metering machine."

Based from the foregoing, petitioner has five (5) days after the close of the month when the taxable document was made within which to file its DST Return. In the present case, petitioner's transactions subject to DST, in relation to the 3-year period to assess, are shown as follows:

Date of Transaction	Last Day to File Return	Last Day of the 3-year Period	Date of Issuance of FLD
October 27, 2003 (Exhibit "SSSS")	November 5, 2003	November 5, 2006	January 2, 2007
June 16, 2003 (Exhibit "SSSS-9")	July 5, 2003	July 5, 2006	January 2, 2007
October 29, 2003 (Exhibit "SSSS-16")	November 5, 2003	November 5, 2006	January 2, 2007
October 27, 2003 (Exhibit "SSSS-23")	November 5, 2003	November 5, 2006	January 2, 2007
November 27, 2003 (Exhibit "SSSS-30")	December 5, 2003	December 5, 2006	January 2, 2007
November 21, 2003 (Exhibit "SSSS-38")	December 5, 2003	December 5, 2006	January 2, 2007

As discussed earlier, the failure of petitioner to substantiate all its claims against the assessment does not affect the truth or falsity of its returns and does not constitute deviation from truth *per se*, though the same affects the correctness of the assessment. Thus, the Court shall proceed in determining whether respondent's right to assess deficiency DST had already prescribed and the appurtenant computation of petitioner's deficiency DST.

The Court notes that the reckoning date for counting the prescriptive period *vis a vis* FBDC's DST is not from the date of the Deeds of Sale, but from the date of the respective Contracts to Sell. Section 196 of the NIRC of 1997, as amended, provides:

> "SEC. 196. **Stamp Tax on Deeds of Sale and Conveyances of Real Property.** – On all conveyances, deeds, instruments, or writings, other than grants, patents or original certificates of adjudication issued by the Government, whereby any land, tenement or other realty sold shall be granted, assigned, transferred, or otherwise conveyed to the purchaser or to any other person or persons designated by such purchaser or purchasers, there shall be collected a documentary stamp tax, at the rates herein below prescribed, based on the consideration contracted to be paid for such realty or on its fair market value determined in accordance with Section 6(E) of this Code, whichever is higher; x x x"

In the instant case, FBDC argues that the DST covering its sale of properties becomes due only upon the execution of its respective Deeds of Sale.[84]

However, it has been held that "DST is by nature, an excise tax since it is levied on the exercise by persons of privileges conferred by law. These privileges may cover the creation, modification or termination of contractual relationships by executing specific documents like deeds of sale, mortgages, pledges, trust and issuance of shares of stock."[85]

Considering the foregoing, the Court rules that DST liability attaches upon the execution of FBDC's respective Contracts to Sell, because the same effectively conveyed to its buyer certain rights to the property subject of the contract, although by the very nature of FBDC's Contracts to Sell, the same are subject to the fulfillment of a suspensive condition which is the full payment of the purchase price.

Thus, based on the table above, with respect to respondent's period within which to assess, it appears that her right to assess FBDC with respect to the above-illustrated sales transactions of FBDC had already prescribed.

To continue, respondent invoked Sections 180, 194 and 196 of the NIRC of 1997, as amended, to subject petitioner's DST to certain transactions entered into by petitioner during the year 2003, which include lease and sale of real properties, transfer of lot to Crescent West Development Corporation (CWDC), management agreements and advances to affiliates. Below is the computation of the deficiency DST assessment:

	Base	Rate	DST Due

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[84] Exhibits "SSSS-1", "SSSS-10", "SSSS-17", "SSSS-24", "SSSS-31" and "SSSS-39".

[85] *Fort Bonifacio Development Corporation*, G.R. No. 164155 & 175543, February 25, 2013, citing *Philippine Home Assurance Corporation v. Court of Appeals*, 361 Phil. 368, 372-373 (1999).

On Leases (Sales per Return)	₱ 186,226,299.00	₱3/first ₱2000; ₱1/₱1000	₱ 186,225.30
On Sale of Properties			
New	143,238,190.00	₱15/₱1000	2,148,572.85
Cash Sales	471,758,685.45	₱15/₱1000	7,076,380.28
Other Contracted Agreements			
Transfer of Lot to CWDC	152,600,000.00	₱15/₱1000	2,289,000.00
Management Agreement w/ related parties	1,106,000.00	₱3/first ₱2000; ₱1/₱1000	1,113.00
Management Agreement other than related parties	29,733,000.00	₱3/first ₱2000; ₱1/₱1000	29,734.00
Advances to affiliates per cash flows	579,744,000.00	₱0.30/₱200	869,616.00
Total			₱ 12,600,641.43
Payments			4,825,671.06
DST Still Due			₱ 7,774,970.37
Surcharge			
Interest 1-05-04 to 1-31-07			4,780,009.18
Compromise			
DST Still Due			**₱ 12,554,979.55**

A. Lease Agreements

With regard to petitioner's alleged agreements, petitioner asserts that the DST due thereon is for the account of the lessee. However, verification of the records shows that FBDC failed to present any evidence to prove that indeed, the DST imposable upon its lease agreements were, in fact, for the account of the lessee. As such, the Court has no basis to confirm the assertion of FBDC and accordingly, the Court finds the deficiency assessment by the respondent with respect thereto is proper.

B. Sale of Properties

Evidence forwarded to this Court shows that the deficiency DST assessment on petitioner's sales of properties pertain to the following:

Real property cash sales[86]	

[86] Exhibit "AAAAA", Annex F.3.

Lessee	Date Per Contract to Sell	Collections per BIR schedule[87]	Contract Price (Principal)	FMV/ Tax Base per return	DST	Date Paid	Exhibit No.
Tecoma Corp.	**-**	**157,763,230.91**	**157,763,230.91**	**167,300,000.00**	**2,509,500.00**	**4/1/2003**	**"SSSS-45" to "SSSS-48"**
Robinson's Land Corp.	10/27/2003	210,450,000.00	210,450,000.00	420,900,000.00	6,313,500.00	12/5/2003	"SSSS" to "SSSS-8"
FANAL Holdings, Inc.	10/27/2003	43,045,454.55	43,045,454.55	94,700,000.00	1,420,500.00	11/10/2003	"SSSS-23" to "SSSS-29"
Prudentialife Bank	10/29/2003	60,500,000.00	60,500,000.00	110,000,000.00	1,650,000.00	6/4/2003	"SSSS-16" to "SSSS-22"
Sub-total		**471,758,685.46**	**471,758,685.46**	**792,900,000.00**	**11,893,500.00**		
Real Property Deferred Sales[88]							
Buyer	**Date Per Contract To Sell**	**Collections per BIR schedule[89]**	**Contract Price (Principal)**	**FMV**	**DST**	**Date Paid**	**Exhibit No.**
WAFCO Trading Corp.	06/16/2003	48,593,440.91	139,760,000.00	174,700,000.00	2,620,500.00	8/2/2003	"SSSS-9", "SSSS-11" to "SSSS-14"
Grand Sequoia Estate DC	11/27/2003	81,495,635.45	132,550,000.00	265,100,000.00	3,976,500.00	1/20/2006	"SSSS-30" to "SSSS-37"
Cirtek Land Corp.	11/21/2003	13,149,113.64	57,255,000.00	104,100,000.00	1,561,500.00	11/24/2005	"SSSS-38" to "SSSS-44"
Sub-total		**143,238,190.00**	**329,565,000.00**	**543,900,000.00**	**8,158,500.00**		
TOTAL					**₱20,209,957.00**		

As stated earlier, the deficiency DST assessment on petitioner's sale of properties to Robinson's Land Corp., FANAL Holdings, Inc., Prudentialife Bank, WAFCO Trading Corp., Grand Sequoia Estate DC and Cirtek Land Corp had already prescribed.

As regards petitioner's real property cash sale to Tecoma Corporation, petitioner submitted supporting documents such as Deed of Absolute Sale, Documentary Stamp Tax Declaration/Return (BIR Form No. 2000), BIR Tax Payment Deposit Slip, Certificate Authorizing Registration and Tax Clearance

[87] CTA Case No. 7696, BIR records, p.416.
[88] Exhibit "AAAAA", Annex F.4.
[89] CTA Case No. 7696, BIR records, p. 416.

Certificate. However, the said documents which were provisionally marked as Exhibits "SSSS-45" to "SSSS-49" were denied admission by this Court in the Resolution[90] dated March 18, 2013 for petitioner's failure to submit the originals thereof for comparison and since then petitioner did not include the said set of documents in its Motion for Reconsideration.

Since the DST return pertaining to petitioner's sale to Tecoma had been denied admission by the Court, it cannot be determined whether respondent's right to assess petitioner of deficiency DST thereon had already prescribed.

However, as to whether or not petitioner had paid the DST due on the said sale, the answer is in the affirmative.

Petitioner, in a letter[91] dated February 25, 2009 requested from the Chief, Revenue Accounting Division of the BIR, a certification of payment and/or remittance of DST due on certain sales of real properties located within Bonifacio Global City, Taguig City, to certain buyers wherein petitioner was the seller thereof. Included in the mentioned sales transactions was petitioner's sale of real property to Tecoma Corporation for which an amount of ₱2,509,500.00 DST was allegedly paid.

A scrutiny of the Certification[92] issued by Ms. Evelyn C. De Guzman, Chief, Revenue Accounting Division of the BIR, shows that the DST of ₱2,509,500.00 was indeed paid by Tecoma Corporation and that such payment was in fact remitted to the BIR.

Since the aforementioned DST payment of ₱2,509,500.00 is higher than the assessed amount of ₱2,366,448.46 *(₱157,763,230.91 x ₱15/₱1,000.00)*, it follows that petitioner is not liable of any deficiency DST on its real property sale to Tecoma Corporation.

C. Transfer of Lot to CWDC

The ICPA reported that on November 14, 2003, petitioner entered into a Deed of Transfer with Crescent West Development Corporation (CWDC) for the transfer of TCT No. 29504 under a tax-free transfer scheme that had been approved by the BIR under BIR Ruling No. SN-007-2003 dated 24 January 2003. DST on the said transaction amounting to ₱3,273,000.00 had been paid by petitioner on 24 November 2003[93].

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[90] CTA Case No. 7696, docket, vol. 2, pp. 1125-1127.
[91] Exhibit "SSSS-67".
[92] Exhibit "SSSS-68".
[93] Exhibit "AAAAA", p. 17.

Records reveal that the aforesaid DST payment of ₱3,273,000.00 formed part of the total amount of ₱4,825,671.06 DST payments deducted by respondent in arriving at the basic deficiency DST assessment of ₱7,774,970.37. Below is the breakdown of the ₱4,825,671.06 DST payment[94]:

Return Period	Transaction Date	DST Payment
1/30/2003	2/10/2003	102,553.40
2/24/2003	3/5/2003	349,193.64
4/11/2003	4/11/2003	231,439.42
7/8/2003	8/5/2003	234,545.45
8/27/2003	9/5/2003	270,499.24
11/14/2003	11/24/2003	364,439.91
11/14/2003	11/24/2003	3,273,000.00
	Total	**4,825,671.06**

Inasmuch as the respondent herself recognized petitioner's payment of the DST amount of ₱3,273,000.00, the deficiency DST assessment on the transfer of lot to CWDC shall be cancelled.

D. Petitioner's Management Agreements

FBDC argues that DST may not be imposed upon its management contracts within the contemplation Section 194 of the NIRC of 1997, as amended, which reads:

> "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 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."

From the foregoing provision of the law, the phrase "contract for hire" was used in reference to "any lands or tenements, or portions thereof". Verily, the Court agrees with FBDC that it does not apply to any other contract aside from what was contemplated therein.

[94] CTA Case No. 7696, BIR records, p. 354.

However, verification of the records also shows that FBDC failed to present these alleged management agreements upon which respondent imposed deficiency DST. Hence, the Court cannot ascertain whether FBDC's management agreements were in reference to any of its lands or tenements, or portions thereof, or in reference to any other contract. As such, the Court finds the deficiency assessment by the respondent with respect thereto is proper.

E. Petitioner's Advances to Affiliates per Cash Flows

In *Commissioner of Internal Revenue vs. Filinvest Development Corporation,*[95] the Supreme Court ruled that the intercompany loans, which are evidenced by instructional letters and memos, are subject to DST under Section 180 of the NIRC of 1997, as amended, in relation to Section 173 of the same Code, to wit:

> "On the other hand, insofar as documentary stamp taxes on loan agreements and promissory notes are concerned, Section 180 of the NIRC provides follows:
>
> **Sec. 180. Stamp tax on all loan agreements, promissory notes, bills of exchange, drafts, instruments and securities issued by the government or any of its instrumentalities, certificates of deposit bearing interest and others not payable on sight or demand.** *On all loan agreements signed abroad wherein the object of the contract is located or used in the Philippines; bill of exchange (between points within the Philippines), drafts, instruments and securities issued by the Government or any of its instrumentalities or certificates of deposits drawing interest, or orders for the payment of any sum of money otherwise than at sight or on demand, or on all promissory notes, whether negotiable or non-negotiable, except bank notes issued for circulation, and on each renewal of any such note, there shall be collected a documentary stamp tax of Thirty centavos (₱0.30) on each two hundred pesos, or fractional part thereof, of the face value of any such agreement, bill of exchange, draft, certificate of deposit or note:* **Provided,** *That only one documentary stamp tax shall be imposed on either loan agreement, or promissory notes issued to secure such loan, whichever will yield a higher tax:* **Provided however,** *That loan agreements or promissory notes the aggregate of which does not exceed Two hundred fifty thousand pesos (₱250,000.00) executed by an individual for his purchase on installment for his personal use or that of his family and not for business, resale, barter or hire of a house, lot, motor vehicle, appliance or furniture shall be exempt from the payment of documentary stamp tax provided under this Section.*
>
> When read in conjunction with Section 173 of the 1993 NIRC, the foregoing provision concededly applies to "(a)ll loan

[95] G.R. Nos. 163653 and 167689, July 19, 2011.

agreements, whether made or signed in the Philippines, or abroad when the obligation or right arises from Philippine sources or the property or object of the contract is located or used in the Philippines." Correlatively, Section 3 (b) and Section 6 of Revenue Regulations No. 9-94 provide as follows:

> Section 3. *Definition of Terms.* For purposes of these Regulations, the following term shall mean:
>
> (b) 'Loan agreement' refers to a contract in writing where one of the parties delivers to another money or other consumable thing, upon the condition that the same amount of the same kind and quality shall be paid. The term shall include credit facilities, which may be evidenced by credit memo, advice or drawings.
>
> The terms 'Loan Agreement" under Section 180 and "Mortgage' under Section 195, both of the Tax Code, as amended, generally refer to distinct and separate instruments. A loan agreement shall be taxed under Section 180, while a deed of mortgage shall be taxed under Section 195."
>
> Section 6. *Stamp on all Loan Agreements.* All loan agreements whether made or signed in the Philippines, or abroad when the obligation or right arises from Philippine sources or the property or object of the contract is located in the Philippines shall be subject to the documentary stamp tax of thirty centavos (₱0.30) on each two hundred pesos, or fractional part thereof, of the face value of any such agreements, pursuant to Section 180 in relation to Section 173 of the Tax Code.

In cases where no formal agreements or promissory notes have been executed to cover credit facilities, the documentary stamp tax shall be based on the amount of drawings or availment of the facilities, which may be evidenced by credit/debit memo, advice or drawings by any form of check or withdrawal slip, under Section 180 of the Tax Code.

Applying the aforesaid provisions to the case at bench, we find that the instructional letters as well as the journal and cash vouchers evidencing the advances FDC extended to its affiliates in 1996 and 1997 qualified as loan agreements upon which documentary stamp taxes may be imposed. In keeping with the caveat attendant to every BIR Ruling to the effect that it is valid only if the facts claimed by the taxpayer are correct, we find that the CA reversibly erred in utilizing BIR Ruling No. 116-98, dated 30 July 1998 which, strictly speaking, could be invoked only by ASB Development Corporation, the taxpayer who sought the same. In said ruling, the CIR opined that documents like those evidencing the advances FDC extended to its affiliates are not subject to documentary stamp tax, xxx."

In the instant case, petitioner failed to present proof to show that it paid DST on its advances to affiliates. Thus, the Court finds no reason to overturn respondent's assessment of deficiency DST on petitioner's advances to its affiliates.

In sum, petitioner is liable for basic deficiency DST in the amount of ₱1,086,684.30, as shown in the computation below:

	Base	Rate	DST Due
On Leases (Sales per Return)	₱186,226,299.00	₱3/₱2000; ₱1/₱1000	₱ 186,227.30
Other Contracted Agreements			
Management Agreement w/ Related Parties	1,106,000.00	₱3/₱2000; ₱1/₱1000	1,107.00
Management Agreement other than Related Parties	29,733,000.00	₱3/₱2000; ₱1/₱1000	29,734.00
Advances to Affiliates per cash Flows	579,744,000.00	₱0.30/₱200	869,616.00
Basic Deficiency DST			**₱ 1,086,684.30**

Respondent's Period to Assess With Respect to WTC, EWT, FBT and Income Tax

Petitioner's WTC

With respect to FBDC's deficiency WTC, it alleges that for taxable year 2003, it filed its monthly returns of taxes withheld on compensation on the following dates:[96]

Period Taxable Year 2003	Date Filed
January	February 13, 2003

ry

[96] Par. 5.07, Petition for Review, CTA Case No. 7696, Vol. I, Docket, p. 15.

February	March 13, 2003
March	April 15, 2003
April	May 15, 2003
May	June 12, 2003
June	July 11, 2003
July	August 15, 2003
August	September 12, 2003
September	October 15, 2003
October	November 14, 2003
November	December 15, 2003
December	January 20, 2004

On the other hand, respondent asserts that FBDC cannot raise the issue of prescription with respect to FBDC's deficiency WTC assessment since it was made based on the annual method and not on a monthly basis of computing withholding tax liability.[97]

Sections 7 and 8.1 of RR No. 09-01, as last amended by RR 26-02, prescribes the time of filing and remittance of WTC through the BIR's EFPS, as follows:

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

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

[97] Par. 13, Answer, CTA Case No. 7696, Vol. I, Docket, p. 80.

"SECTION 8. *Time and Place of Payment.* —

8.1 Large Taxpayers. — (a) Large Taxpayers who will e-pay shall enroll with any AAB authorized to serve them and who are capable to accept e-payments, until such time that private banks are allowed by the Monetary Board of the BSP to open accounts with the Bureau of Treasury and, provided, that such private banks are e-banking capable. **E-payments** (when available as provided in Section 4 of these Regulations) **shall be made within the day the return was electronically filed following the "pay-as-you-file" principle.**

(b) For Large Taxpayers who intend to pay their taxes manually, the same shall be made at the AABs servicing the aforesaid taxpayers located at the Ground Floor of the BIR National Office Building with respect to Large Taxpayers registered with the LTS or at the premises of the AABs servicing the said taxpayers located within the respective territorial jurisdiction of the LTDOs with respect to Large Taxpayers registered with the LTDOs. **Manual payments shall be made within banking hours of the day when the return was electronically filed following the "pay-as-you-file" principle.**" *(Emphasis supplied)*

Records show that FBDC availed of the EFPS with respect to its WTC Returns. Applying the provisions of Sections 7 and 8.1 of RR No. 09-01, as last amended by RR 26-02, in relation to Section 203 of the NIRC of 1997, as amended, the 3-year period of limitation to assess FBDC is as follows:

Period Taxable Year 2003	Date Filed	Last Day to File Return	3-year Period of Limitation to Assess
January (Exhibit "LLLL-1")	February 13, 2003	February 13, 2003	February 13, 2006
February (Exhibit "KKKK-1")	March 14, 2003	March 13, 2003	March 13, 2006
March (Exhibit "IIII-1")	April 23, 2003	April 13, 2003	April 13, 2006
April (Exhibit "HHHH-1")	May 15, 2003	May 13, 2003	May 13, 2006
May (Exhibit "GGGG-1")	June 12, 2003	June 13, 2003	June 13, 2006
June (Exhibit "FFFF")	July 11, 2003	July 13, 2003	July 13, 2006
July (Exhibit "EEEE-1")	August 15, 2003	August 13, 2003	August 13, 2006

August (Exhibit "DDDD-1")	September 12, 2003	September 13, 2003	September 13, 2006
September (Exhibit "CCCC-1")	October 15, 2003	October 13, 2003	October 13, 2006
October (Exhibit "AAAA-1")	November 14, 2003	November 15, 2003	November 13, 2006
November (Exhibit "ZZZ-1")	December 15, 2003	December 15, 2003	December 13, 2006
December (Exhibit "VVV-1")	January 20, 2004	January 20, 2004	January 13, 2007

Based from the foregoing, the respondent's right to assess FBDC for deficiency WTC for the months of January to November 2003 had already prescribed.

On the other hand, there is no merit in respondent's position that its right to assess has not yet prescribed because its computation is based on annual method. As clearly set forth, Section 203 of the NIRC of 1997, as amended, provides the reckoning date of the 3-year period which is after the last day prescribed by law for the filing of the return, or from the day the return was filed, as the case may be.

Considering the foregoing, the Court declares that the right of the respondent to assess FBDC for deficiency WTC for the period January to November 2003 had already prescribed.

Petitioner's EWT

With respect to FBDC's deficiency EWT, FBDC alleges that for taxable year 2003, it filed its monthly EWT return on the following dates:[98]

Period Taxable Year 2003	**Date Filed**
January	February 13, 2003
February	March 14, 2003
March	April 15, 2003
April	May 12, 2003
May	June 12, 2003
June	July 11, 2003
July	August 15, 2003

[98] Par. 5.10, Petition for Review, CTA Case No. 7696, Vol. I, Docket, p. 16.

August	September 12, 2003
September	October 15, 2003
October	November 17, 2003
November	December 15, 2003
December	January 20, 2004

Similarly, respondent contends that its right to assess FBDC for deficiency EWT has not yet prescribed since it was based on annual method.[99]

Records show that FBDC availed of the EFPS with respect to its EWT Returns. Applying the provisions of Sections 7 and 8.1 of RR No. 09-01, as last amended by RR 26-02, in relation to Section 203 of the NIRC of 1997, as amended, the 3-year period of limitation to assess FBDC is as follows:

Period Taxable Year 2003	**Date Filed**	**Last Day to File Return** (RR 06-01 or Section 203 of the NIRC of 1997, as amended)	**3-year Period of Limitation to Assess**
January (Exhibit "LLLL-1")	February 13, 2003	February 13, 2003	February 13, 2006
February (Exhibit "KKK")	March 14, 2003	March 13, 2003	March 13, 2006
March (Exhibit "FFF")	April 22, 2003	April 13, 2003	April 13, 2006
April (Exhibit "AAA")	May 12, 2003	May 13, 2003	May 13, 2006
May (Exhibit "WW")	June 12, 2003	June 13, 2003	June 13, 2006
June (Exhibit "SS")	July 11, 2003	July 13, 2003	July 13, 2006
July (Exhibit "PP")	August 15, 2003	August 13, 2003	August 13, 2006
August (Exhibit "MM")	September 12, 2003	September 13, 2003	September 13, 2006
September (Exhibit "HH")	October 15, 2003	October 13, 2003	October 13, 2006
October (Exhibit "AA")	November 17, 2003	November 13, 2003	November 13, 2006
November (Exhibit "W")	December 15, 2003	December 13, 2003	December 13, 2006
December (Exhibit "S")	January 20, 2004	January 13, 2004	January 13, 2007

[99] Par. 16, Answer, CTA Case No. 7696, Vol. I, Docket, pp. 81-82.

Based from the foregoing, the respondent's right to assess FBDC for deficiency EWT for the months of January to November 2003 had already prescribed. Similar to the above-discussion regarding FBDC's WTC, there is no merit to respondent's position that its right to assess has not yet prescribed because its computation is based on annual method. The reckoning date of the 3-year period is after the last day prescribed by law for the filing of the return, or from the day the return was filed, as the case may be.

Considering the foregoing, the Court declares that the right of the respondent to assess FBDC for deficiency EWT for the period January to November 2003 had already prescribed.

Petitioner's FBT

With respect to FBDC's deficiency FBT, FBDC alleges that for taxable year 2003, it filed its quarterly remittance return of final income taxes withheld on fringe benefits on the following dates:

Period Taxable Quarter (2003)	**Date Filed**
1st Quarter	April 15, 2003
2nd Quarter	July 11, 2003
3rd Quarter	October 15, 2003
4th Quarter	January 15, 2004

On this score, Section 5 of RR No. 04-02 provides:

> "SECTION 5. *Time for filing of Quarterly Remittance Return of Final Income Taxes Withheld on Fringe Benefits Paid to Employees Other than Rank and File.* – The tax imposed under Sec. 33 of the Tax Code shall be treated as a final income tax on the employee that shall be withheld and paid by the employer, whether a large taxpayer or non-large taxpayer, on or before the 10th day of the month following the calendar quarter in which the fringe benefits were granted, provided, however that with respect to employers, whether Large or Non-Large Taxpayers, enrolled with the Electronic Filing and Payment System (EFPS), the deadline for e-filing the Quarterly Remittance Return of Final Income Taxes Withheld on Fringe Benefit Paid to Employees other than Rank and File (BIR Form No. 1603) and e-paying the tax due thereon shall be five (5) days later than the deadline set herein."

Applying the above-quoted provision in relation to Section 203 of the NIRC of 1997, as amended, the 3-year period of limitation to assess FBDC is as follows:

Taxable Quarter (2003)	Date Filed	Last Day to File Return (RR 06-01 or Section 203 of the NIRC of 1997, as amended)	Last Day of the 3-year Period to Assess
1st Quarter[100]	April 23, 2003	April 15, 2003	April 15, 2006
2nd Quarter[101]	July 11, 2003	July 15, 2003	July 15, 2006
3rd Quarter[102]	October 15, 2003	October 15, 2003	October 15, 2006
4th Quarter[103]	January 15, 2004	January 15, 2004	January 15, 2007

Based from the foregoing, the respondent's right to assess FBDC for deficiency FBT for the 1st, 2nd and 3rd Quarters of 2003 had already prescribed. Thus, there is no merit to respondent's assertion that its right to assess FBDC for deficiency FBT has not yet prescribed because the BIR uses the annual method as basis for computation, for the same reasons stated above.

Considering the foregoing, the Court declares that the right of the respondent to assess FBDC for deficiency FBT for the 1st, 2nd and 3rd Quarters of 2003 had already prescribed.

Petitioner's Income Tax

Finally, with regard to the reckoning point of the 3-year prescriptive period provided for under the above-quoted Section 203 of the NIRC of 1997, as amended, Section 77(B) of the same law provides:

> "SEC. 77. **Place and Time of Filing and Payment of Quarterly Corporate Income Tax. –**
>
> xxx xxx xxx
>
> (B) *Time of Filing the Income Tax Return.* – The corporate quarterly declaration shall be filed within sixty (60) days following the close of each of the first three (3) quarters of the taxable year. The final adjustment return shall be filed on or before the fifteenth (15th) day of April,

[100] Exhibit "PPPP-1".
[101] Exhibit "OOOO".
[102] Exhibit "NNNN-1".
[103] Exhibit "MMMM-1".

> or on or before the fifteenth (15th) day of the fourth (4th) month following the close of the fiscal year, as the case may be. x x x"

In the instant case, FBDC filed its Annual Income Tax Return on April 15, 2004,[104] which is also the last day prescribed by law for filing of the return for the taxable year 2003. Counting the 3-year prescriptive period therefrom, the BIR had until April 15, 2007 to assess FBDC. As earlier stated, the BIR issued its FLD on April 13, 2007,[105] which is well within the 3-year prescriptive period.

In sum, the Court finds that there was no falsity with respect to petitioner's VAT and DST Returns based on the evidence presented by petitioner. Its failure to provide proof to some of its claims is not synonymous to deviating so far from the truth so as to constitute false returns. Rather, that circumstance merely affects the correctness of respondent's assessment. On the other hand, the Court finds that the respondent's right to assess FBDC for the following types of taxes already prescribed:

Type of Tax	**Period for which the Respondent's Right to Assess had Already Prescribed**
VAT	1st, 2nd and 3rd Quarters
DST	Prescribed with Respect to Sale of Properties
WTC	January to November 2003
EWT	January to November 2003
FBT	1st, 2nd and 3rd Quarters

II. Whether or Not the Deficiency Assessment has Factual and Legal Bases Sufficient to Inform FBDC Thereof

Considering that not all of the respondent's deficiency tax assessments against FBDC have prescribed, the Court shall proceed to determine whether the same had factual and legal bases sufficient to inform FBDC thereof.

A perusal of the FLDs[106] issued by respondent to FBDC reveals that it sufficiently explained the bases for the deficiency VAT, DST, WTC, EWT, FBT and Income Tax assessments. In fact, the aforesaid FLDs discussed and

[104] Exhibit "RRRR-3".
[105] *Supra.*, Note 14.
[106] *Supra.*, Note 8 and 15.

explained piecemeal the respective deficiency tax assessments against FBDC. Thus, the Court declares that there is no transgression of FBDC's right to be informed of the factual and legal bases of the respondent's assessment.

III. Whether or Not Respondent CIR is Correct in Assessing FBDC for Deficiency WTC, EWT, FBT And Income Tax

In this regard, the Court has already determined the correctness of respondent's assessments with respect to petitioner's deficiency VAT and DST, in relation to the discussion on whether or not petitioner filed false returns. Hence, the Court shall now proceed to determine the correctness of respondent's assessment with regard to FBDC's deficiency WTC, EWT, FBT and Income Taxes that did not prescribe.

Withholding Tax on Compensation - ₱29,546,442.74

FBDC maintains that the separation pay it paid to its separated employees due to redundancy are not subject to withholding tax on compensation pursuant to Section 32(B)(6)(b) of the NIRC of 1997, as amended, which provides as follows:

> "SEC. 32. Gross Income. –
>
> xxx xxx xxx
>
> (B) Exclusions from Gross Income. –
>
> xxx xxx xxx
>
> (6) Retirement Benefits, pensions, Gratuities, etc. –
>
> xxx xxx xxx
>
> (a) Any amount received by an official or employee or by his heirs from the employer as a consequence of separation of such official or employee from the service of the employer because of death, sickness or other physical disability or for any cause beyond the control of the said official or employee. x x x"

Section 32(B)(6)(c) of the NIRC of 1997, as amended, provides that any amount received by an employee as a consequence of his separation from employment for any cause beyond his control, *i.e.*, retrenchment, is excluded from the gross income of the taxpayer-employee. Accordingly, since the same is excluded from the employee's gross income, the employer is not mandated to withhold the taxes therefrom.

However, Revenue Regulation No. 2-98 (RR 2-98) provides that the cash equivalent of vacation leaves exceeding 10 days, monetized sick leave credits, separated employee's salaries, 13th month pay and other benefits in excess of ₱30,000.00 are not excluded from the exemption and hence, subject to tax.

In the instant case, Respondent arrived at the deficiency WTC in the amount of ₱29,546,442.74 as follows:

Total Expenses subject to withholding tax - compensation			₱ 82,164,831.35
Less: Exempt transactions:			
Non-taxable 13th month		₱ 684,179.16	
SSS, GSIS, Pag-Ibig		381,207.35	1,065,386.51
Total transactions subject to w/tax			₱ 81,099,444.84
Less transactions subjected to w/tax			
Taxable Salaries		₱23,863,323.51	
Taxable 13th Month		519,118.17	24,382,441.68
Transactions not subjected to w/tax-compensation			**₱ 56,717,003.16**
Rate			32%
Withholding tax still due			₱ 18,149,441.01
Add: Other findings			
Late filing of March 03 return			
Base		₱ 705,224.01	
Surcharge			176,306.00
Interest 8 days			3,091.39
Compromise			20,000.00
Professional Fees received by			
JMK Lim			
Per 1601C	₱ 569,100.00		
Per 1601E	90,000.00		
Taxable Income	₱ 659,100.00	₱ 175,912.00	
Tax Withheld per 1601C	₱ 147,112.00		
Tax Withheld per 1601E	18,000.00	165,112.00	10,800.00
Amount still due			₱ 18,359,638.41
Surcharge		-	
Interest 1-15-04 to 1-31-07		₱11,186,804.33	
Compromise		-	11,186,804.33
Deficiency W/T Compensation			**₱ 29,546,442.74**

The deficiency WTC assessment resulted from the following:

A. Transactions not subjected to WTC	₱56,717,003.16
B. Increments for late filing of March 2003 return	199,397.39
C. Underwithheld tax on professional fees received by JMK Lim	10,800.00

Discrepancies in withholding tax on compensation were arrived at after an analysis of petitioner's general ledger. The examiners closely identified items which have an impact in the computation of its withholding taxes then matched the figure total with the amount declared per alphabetical listing form 1604CF. The total transactions not subjected to withholding tax on compensation amounted to ₱56,717,003.16 or deficiency exposure of ₱18,149,441.01[107].

In disagreeing with the deficiency WTC assessment, petitioner contends that the figures and computation made by the respondent to support her assessment findings are not accurate and do not have factual bases. Specifically, petitioner raised the following arguments:

(a) Certain items included in the assessment findings of the respondent are not subject to withholding tax, such as separation pay received by retrenched employees of the petitioner, pursuant to Section 32(B)(c) of the 1997 Tax Code, as amended.

Petitioner submitted before the Court its various Notices [108] of Employment Termination due to Redundancy to several of its employees. A reading of the said Notices similarly shows the following terms:

> "1. You will be paid your salary up to ___________.
> 2. You will be paid a redundancy pay of one (1) month basic monthly pay per year of service, with a fraction of six or more month treated as 1 year, as and by way of separation pay.
> 3. You will be paid the 100% company contribution to the FBDC Retirement Plan including gains/losses.
> 4. All unused vacation and sick leaves shall be commuted to cash.
> 5. Pro rata 13th and 14th month based on the number of months served for the year 2003 shall be paid."

[107] Respondent's Answer, CTA Case No. 7696, docket, vol. one, p. 76; Exhibit "13", CTA Case No. 7696, BIR records, p. 537.

[108] Exhibits "TTTT-2.3", "TTTT-2.5", "TTTT-2.6", "TTTT-2.7", "TTTT-2.8", "TTTT-2.10", "TTTT-2.11", "TTTT-2.13", "TTTT-2.15", "TTTT-2.17", "TTTT-2.19", "TTTT-2.21", "TTTT-2.22", "TTTT-2.24", "TTTT-2.26", "TTTT-2.28", "TTTT-2.30", "TTTT-2.32", "TTTT-2.34", "TTTT-2.36", TTTT-2.38", TTTT-2.40", "TTTT-2.42", "TTTT-2.44", "TTTT-2.47", "TTTT-2.49", "TTTT-2.51", "TTTT-2.52", "TTTT-2.54", "TTTT-2.56", "TTTT-2.57", "TTTT-2.59","TTTT-2.61", "TTTT-2.63" and "TTTT-2.64".

Applying the provisions of Section 32(B)(6)(c) of the NIRC of 1997, as amended, in relation to RR 2-98, the Court declares that FBDC is not liable for WTC with respect to its separated employees, except for their respective cash equivalent of vacation leaves exceeding 10 days, monetized sick leave credits, separated employee's salaries, 13th month pay and other benefits in excess of ₱30,000.00 which are taxable under RR 2-98.

Likewise, from the above statements in the Notices of Employment Termination, numbers 1, 4, and 5 are taxable, with the unused vacation leaves exempted up to the first 10 days, while numbers 2 and 3 are exempt from WTC.

The amount of total separation pay as verified by the ICPA is ₱15,051,979.63, which is summarized under Annex "B-1" of the report[109].

From the aforesaid summary, it appears that the ICPA correctly distinguished the tax-exempt items, which are the redundancy pay, the retirement pay (the reimbursement of retirement contributions shouldered by the former employees to the tax-exempt fund, which will be discussed in the deficiency income tax assessment portion), and the monetized amount of VL credits not exceeding 10 days.

However, the Court cannot ascertain the correctness of the amounts indicated in the ICPA-prepared summary because the same do not tie-up with those reflected in the Quit Claims[110]. Thus, the Court finds that the ICPA summary as well as the Quit Claim forms and/or Termination letters are insufficient to prove the truthfulness of the amounts of non-taxable redundancy pay, retirement pay and exempt VL credits. The Court simply cannot rely on the ICPA's report, without the presentation of the actual basis of the amounts. Petitioner could have provided the Court with the actual final pay computations where the proper breakdown of the amounts could be found, and the check payments to prove the actual amounts paid out to the terminated employees that tie up with the Quit Claims.

Considering the foregoing, the Court finds that petitioner failed to substantiate the amounts of non-taxable redundancy pay, retirement pay, and exempt VL credits in the alleged amount of ₱15,051,979.63. Thus, respondent's assessment should be upheld with regard thereto.

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[109] Exhibit "AAAAA".

[110] Exhibits "TTTT-2.2" "TTTT-2.4" "TTTT-2.6" "TTTT-2.9" "TTTT-2.10" "TTTT-2.12" "TTTT-2.14" "TTTT-2.16" "TTTT-2.18" "TTTT-2.20" "TTTT-2.21" "TTTT-2.23" "TTTT-2.25" "TTTT-2.27" "TTTT-2.29" "TTTT-2.31" "TTTT-2.33" "TTTT-2.35" "TTTT-2.37" "TTTT-2.39" "TTTT-2.41" "TTTT-2.43" "TTTT-2.45" "TTTT-2.46" "TTTT-2.48" "TTTT-2.50" "TTTT-2.53" "TTTT-2.55" "TTTT-2.56" "TTTT-2.58" "TTTT-2.60".

(b) The respondent's indiscriminate imposition of the 32% withholding tax rate is unjustified inasmuch as the applicable rate of withholding depends on the payment of taxable compensation less allowable exemption to each individual employees of petitioner.

The Court agrees with petitioner. Following the ICPA's computation of the reasonable withholding tax rate that respondent should have applied instead of the maximum rate of 32%, the Court has determined the average WTC rate for taxable year 2003 to be 21.068090%, as computed below:

Alphalist	Taxable Compensation	Tax Withheld
No previous employer *(Exh. "UUU-4")*		
13th month & other benefits	₱ 519,118.17	
Salaries and other forms of compensation	12,918,378.42	₱ 3,254,413.39
Terminated before December 31, 2003 *(Exh. "UUU-3")*		
13th month & other benefits	-	
Salaries and other forms of compensation	10,631,128.03	1,864,233.90
With more than one (1) employer within 2003 *(Exh. "UUU-5")*		
13th month & other benefits	-	
Salaries and other forms of compensation	786,994.43	117,956.89
Total	₱ 24,855,619.05	₱ 5,236,604.18
Average WTC Rate		**21.068090%**

This is contrary to the computation of the ICPA resulting to 20.45%[111], since the figures used by the ICPA in the report, which allegedly were from BIR Form No. 1604-CF, do not coincide with the amended BIR Form No. 1604-CF filed on March 19, 2004[112]. The ICPA also failed to include in the computation, amounts attributable to compensation of employees with more than one (1) employer within the same taxable year.

In addition to the above arguments, the ICPA pointed out additional errors on the part of respondent, as narrated in the Supplemental Judicial Affidavit of the ICPA[113]:

[111] Exhibit "AAAAA", p. 11.
[112] Exhibit "UUU" to "UUU-5".
[113] Exhibit "DDDDD", p. 2.

(3)
"Q: What was the basis of your findings for that particular item?

A: We noted that the BIR examiners in computing for the alleged 2003 deficiency tax liability for withholding tax on compensation of FBDC, deducted from their findings of alleged total expenses subject to withholding the non-taxable items: 1) on alphalist of employees terminated before December 31, 2003 – the amount of SSS, Phil. Health, and Pag-ibig contributions of employees amounting to ₱150,657.35; (2) on the alphalist of employees with no previous employer within the year – the amount of the amount of SSS, Phil. Health, and Pag-ibig contributions of employees amounting to ₱218,950.00 and the amount of 13th month pay and other benefits amounting to ₱658,670.82; (3) on the alphalist of employees with previous employee(s) within the year - the amount of SSS, Phil. Health, and Pag-ibig contributions of FBDC employees amounting to ₱11,600.00 and the amount of 13th month pay and other benefits amounting to ₱25,508.34, were all deducted.

However, BIR examiners may have overlooked and thus failed to consider on the alphalist of employees terminated before December 31, 2003, the amount of 13th month pay and other benefits the amount of ₱495,407.40, which was reflected in the said alphalist as other forms of non-taxable compensation."

Upon scrutiny of the alphalist[114] attached to the amended BIR Form No. 1604-CF[115], The Court agrees with the findings of the ICPA. The amount of ₱495,407.40 was the total of Column 5(c) entitled in the alphalist as Non-Taxable Salaries and Other Forms of Compensation. Thus, this amount of ₱495,407.40 shall be excluded from the compensation subject to withholding tax.

In addition, the Court notes that the total amount of ₱82,164,831.35 compensation subject to withholding tax as found by respondent included employer's contributions for SSS/Medicare premiums in the amount of ₱487,862.65 and Pag-ibig contributions in the amount of ₱44,000.00, as shown below[116]:

[114] Exhibits "UUU-2" to "UUU-3".
[115] Exhibit "UUU".
[116] Exhibit "FFFFF-1".

Salaries	₱ 21,661,914.49
Overtime	138,978.88
Office Subsidy Fund (OSF)	3,614,370.50
Allowances	1,971,409.14
Bonuses	1,140,324.27
Leave pay	1,027,357.21
SSS premiums Medicare	487,862.65
Pag-ibig contributions	44,000.00
Medical and Dental	725,764.03
Hospital/Medical Insurance	1,187,528.89
Accident Insurance	39,504.70
Gratuity and Separation Pay	48,604,751.59
Parties and Gifts	938,500.00
Meal Subsidy	579,390.00
Other Employees Welfare	3,175.00
Total	**₱ 82,164,831.35**

Pursuant to Section 32(B)(7)(f) of the NIRC of 1997, as amended, the said SSS/Medicare premiums and Pag-ibig contributions should be excluded from taxable compensation.

A. Increments for Late Filing of WTC Return for March 2003-₱199,397.39

For the belated filing of its WTC return for March 2003, petitioner was assessed deficiency increments in the amount of ₱199,397.39, as computed below, pursuant to Sections 248 and 249 of the NIRC of 1997, as amended:

Tax base	₱ 705,224.01
Surcharge	₱ 176,306.00
Interest	3,091.39
Compromise	20,000.00
Total	**₱ 199,397.39**

According to petitioner, it was able to manually file its WTC return for March 2003 and remitted the corresponding withholding tax due thereon with notice to and approval of the BIR Large Taxpayers Assistance Division.

Records reveal that Exhibit "JJJJ" with sub-markings served as proof of the manual filing and payment of the March 2003 WTC tax due, which were both made on April 15, 2003. On the other hand, Exhibit "IIII" with sub-markings was presented to show that petitioner e-filed its WTC return on April 23, 2003.

However, the Court rules that taxpayers who are enrolled in the Electronic Filing System (EFPS) are covered by the rules and regulations of EFPS, and therefore, the e-filed return prevails over the manual return. Moreover, the relevant EFPS rules provide that manual filing is allowed only if there has been a crash in the system on the deadline of filing. Proof of this circumstance was not alleged nor presented by petitioner to the Court.

In relation to Sections 7 and 8.1 of RR No. 09-01, as last amended by RR 26-02 as quoted above, petitioner should have e-filed the WTC return for March 2003 and paid the corresponding WTC on April 14, 2003 (April 13, 2003 being a Sunday) instead of April 23, 2003. Thus, petitioner's WTC return for March 2003 was filed nine (9) days late and the corresponding WTC taxes were paid one (1) day late. Consequently, petitioner ought to pay the surcharge and interest related to the late filing of return and remittance of WTC for March 2003 as provided for under Sections 248 and 249 of the NIRC of the 1997, as amended, computed as follows:

Tax base	₱	705,224.01
Surcharge	₱	176,306.00
Interest (₱705,224.01 x 20% x 10/365 days)		3,864.24
Total increments for late filing of return/remittance of WTC for March 2003	**₱**	**180,170.24**

Meanwhile, the assessment portion pertaining to the compromise penalty of ₱20,000.00 should be cancelled. Pursuant to Revenue Memorandum Order (RMO) No. 01-90, as amended by RMO No. 19-07, compromise penalties are only suggested in settlement of criminal liability, and may not be imposed or exacted on the taxpayer in the event that a taxpayer refuses to pay the same. Clearly, the compromise penalty implies a mutual agreement between the parties in respect of the thing or subject matter which is so compromised. The imposition of the compromise penalty without the conformity of the taxpayer is illegal and unauthorized. In this case, there was nothing in the records which would show that petitioner consented to the compromise penalty. Consequently, the compromise penalty should not be imposed and must be cancelled.

B. Underwithheld Tax on Professional Fees Received by JMK Lim-₱10,800.00

The deficiency WTC assessment included one of petitioner's employees receiving both compensation and professional income with different application of withholding taxes. The said employee's compensation was subjected to graduated rates per Section 24 of the NIRC of 1997 and professional income using expanded withholding taxes. Both sources of income were treated as part of the employee's compensation as clearly defined in Section 32 of the NIRC of 1997.

Petitioner did not refute the examiner's finding on this assessment item. Section 2.57.2 of RR No. 02-98, as last amended by Section 2 of RR No. 30-03, states:

> "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.* — xxx
>
> xxx xxx xxx
>
> Notwithstanding the foregoing, **if an individual recipient receives *professional fees*/talent fees/*directors fees* in addition to salaries from the same payor, the said fees shall be considered as supplemental compensation and, thus be subject to the withholding tax on compensation.** (*Emphasis supplied*)

Based therefrom, both the compensation and professional fees paid by petitioner to JMK Lim shall be treated as compensation subject to WTC. Consequently, the assessed deficiency WTC in the amount of ₱10,800.00 shall be upheld.

In sum, petitioner failed to prove that it properly withheld and remitted the taxes on the amount of ₱55,730,198.12 employees' compensation for the year 2003, computed as follows:

Total Compensation		₱ 82,164,831.35
Less: Exempt transactions (*Exhibits "UUU-2" to "UUU-5" and*		

"FFFFF-1")		
Non-taxable 13th month	₱ 1,179,586.56	
SSS, GSIS, Pag-Ibig	381,207.35	
SSS premiums Medicare (employer's share)	487,862.65	
Pag-ibig Contributions (employer's share)	44,000.00	2,092,656.56
Total Compensation subject to withholding tax		₱ 80,072,174.79
Less: Transactions subjected to withholding tax (*Exhibits "UUU-2" to "UUU-5"*)		
Taxable Salaries	₱23,863,323.51	
Taxable 13th Month	519,118.17	24,382,441.68
Compensation not subjected to withholding tax		₱ 55,689,733.11
Add: Other findings		
Compensation related to the ₱10,800.00 underwithheld taxes from JMK Lim (₱10,800.00 ÷ 26.6897284%*)		40,465.01
*Tax Due ÷ Total Taxable Income		
₱175,912.00 ÷ ₱659,100.00 = 26.6897284%		
Total Compensation not subjected to withholding tax		**₱55,730,198.12**

Since prescription had already set-in for the months of January to November 2003, respondent's deficiency assessment for late filing of petitioner's WTC return for the month of March 2003 shall be cancelled.

With regard to the under-withheld taxes from JMK Lim, the related compensation in the amount of ₱40,465.01 shall be considered to have been paid in December 2003 because no details were provided as to date of recording and/or payment thereof.

Thus, only the following compensation items in the total amount of ₱2,840,015.00, which were included in respondent's assessment but pertaining only to the month of December 2003, shall be considered in determining petitioner's deficiency WTC liability:

Account Title Account No.	GL Date	Amount
Salaries[117]		
75101	12/31/2003	512,315.00
75101	12/31/2003	569,960.00
75101	12/31/2003	144,395.00
Sub-total		**1,226,670.00**
Overtime[118]		
75103	12/31/2003	1,713.00

[117] Exhibit "FFFFF-2".
[118] Exhibit "FFFFF-3".

75103	12/31/2003	31,737.00
75103	12/31/2003	2,298.00
Sub-total		**35,748.00**
Office Subsidy Fund[119]		
75104	12/31/2003	52,200.00
75104	12/31/2003	12,000.00
Sub-total		**64,200.00**
Allowances[120]		
75105	12/31/2003	14,100.00
75105	12/31/2003	12,400.00
75105	12/31/2003	3,100.00
Sub-total		**29,600.00**
Bonuses[121]		
75106	12/31/2003	161,296.00
75106	12/31/2003	177,052.00
75106	12/31/2003	60,833.00
Sub-total		**237,885.00**
SSS Premiums[122]		
75201	12/31/2003	9,575.00
75201	12/31/2003	16,550.00
75201	12/31/2003	4,180.00
Sub-total		**30,305.00**
Pag-ibig Contributions[123]		
75202	12/31/2003	800.00
75202	12/31/2003	1,700.00
75202	12/31/2003	400.00
Sub-total		**2,900.00**
Medical and Dental[124]		
75203	12/31/2003	2,699.00
75203	12/31/2003	6,929.00
75203	12/31/2003	805.00
75203	12/31/2003	14,703.00
75203	12/31/2003	34,451.00
75203	12/31/2003	26,869.00
75203	12/31/2003	10,778.00
75203	12/31/2003	88,774.00

[119] Exhibit "FFFFF-4".
[120] Exhibit "FFFFF-5".
[121] Exhibit "FFFFF-6".
[122] Exhibit "FFFFF-8".
[123] Exhibit "FFFFF-9".
[124] Exhibit "FFFFF-10".

75203	12/31/2003	340.00
75203	12/31/2003	12,646.00
75203	12/31/2003	21,397.00
75203	12/31/2003	2,712.00
75203	12/31/2003	6,013.00
Sub-total		**229,116.00**
Hospital/Medical[125]		
75204	12/16/2003	19,015.00
75204	12/16/2003	11,387.00
Sub-total		**30,402.00**
Accident[126]		
75206	12/22/2003	(583.00)
75206	12/22/2003	(188.00)
Sub-total		**(771.00)**
Meal Subsidy[127]		
75212	12/31/2003	12,000.00
75212	12/31/2003	18,000.00
75212	12/31/2003	3,000.00
Sub-total		**33,000.00**
Parties & Gifts[128]		
75211	12/31/2003	888,500.00
75211	12/15/2003	8,000.00
75211	12/15/2003	11,000.00
75211	12/15/2003	1,000.00
75211	12/18/2003	3,345.00
75211	12/18/2003	6,355.00
75211	12/22/2003	507.00
75211	12/22/2003	880.00
75211	12/22/2003	556.00
75211	12/22/2003	817.00
Sub-total		**920,960.00**
TOTAL		**2,840,015.00**

From the above total amount of ₱2,840,015.00, the tax-exempt items, namely, SSS premiums Medicare in the amount of ₱30,305.00 and Pag-ibig Contributions in the amount ₱2,900.00, shall be excluded. On the other hand, the compensation of ₱40,465.01 related to the under-withheld taxes from JMK Lim shall be added. The resulting amount of ₱2,847,275.01 when compared with that subjected to WTC per petitioner's amended Monthly Remittance

[125] Exhibit "FFFFF-11".
[126] Exhibit "FFFFF-12".
[127] Exhibit "FFFFF-15".
[128] Exhibit "FFFFF-14".

Return of Income Taxes Withheld on Compensation (BIR Form No. 1601-C) in the amount of ₱5,626,784.30, shows that petitioner has no deficiency WTC liability for the month of December 2003, as computed below:

Total Compensation		₱ 2,840,015.00
Compensation related to JMK Lim		40,465.01
Total Compensation		₱ 2,880,480.01
Less: Exempt transactions		
SSS premiums Medicare (employer's share)	₱ 30,305.00	
Pag-ibig Contributions (employer's share)	2,900.00	33,205.00
Total Compensation subject to withholding tax		₱ 2,847,275.01
Less: Compensation subjected to withholding tax[129]		5,626,784.30
Difference		**₱ (2,779,509.29)**

Deficiency Expanded Withholding Tax - ₱38,869,403.69

Respondent's computation of the deficiency EWT is shown below:

EWT due on Actual Expenses subject to withholding		₱ 30,021,558.86
EWT due on expenses subjected to withholding		13,646,035.55
EWT still due based on expenses not subjected to withholding tax		₱ 16,375,523.31
Add: Other audit findings		
b. Alphalist vs. SLP discrepancy		7,126,786.67
c. Discrepancy in taxpayer's Alphalist (erroneous computation)		119,898.65
d. Late filing of the 1601E March 03		
Basic ₱1,893,167.26		
Surcharge		473,291.82
Interest 7 days		7,261.46
Compromise		25,000.00
e. Late filing of 1604E 2003		25,000.00
Amount still due		₱ 24,152,761.91
Surcharge		
Interest	₱ 14,716,641.78	
Compromise		14,716,641.78
Deficiency EWT		**₱ 38,869,403.69**

rv

129 Exhibit "WWW=1".

A. EWT Still Due Based on Expenses Not Subjected to Withholding Tax - ₱16,375,523.31

Records reveal that respondent listed down all the expense accounts/income payments subject to EWT as found in the Annual Income Tax Return (AITR), Trial Balance (TB) and Audited Financial Statements (AFS) of petitioner for the taxable year 2003, and imposed a specific EWT rate based on the nature of the expense/income payment[130].

Petitioner alleged that respondent made a mistake in applying the correct tax rates which were based on the nature of the accounts in the books of petitioner. Moreover, petitioner argued that respondent failed to differentiate those expenses which are actually not subject to EWT, such as payments to general professional partnerships, non-resident foreign corporations on services performed outside the Philippines, payments to tax-exempt entities or other entities enjoying tax incentives, among others.

On the other hand, the ICPA noted that professional fees paid to general professional partnerships which are exempted from EWT amounted to ₱1,650,848.65, with EWT equivalent of ₱165,084.87. Said expenses were properly booked and supported by statements of accounts and/or petitioner's checks that cleared through the respective depositary banks[131].

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 said law 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.

In relation thereto, Section 2.57.5 of RR No. 2-98, as amended by RR No. 14-02, 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

[130] CTA Case No. 7696, BIR records, pp. 391-393.
[131] Exhibit "AAAAA", p. 12; Exhibits "UUUU-1" to "UUUU-17".

(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 GPPs in the amount of ₱1,650,848.65, hence the related EWT of ₱165,084.87 must be deducted from the assessed amount.

The ICPA also observed that upon arriving at the assessment, respondent doubly subjected to EWT certain expenses amounting to ₱2,025,992.22, with EWT equivalent of ₱86,691.08. According to the ICPA, these items were included both in the per account basis and the comparison between SLP and 1604-CF, as follows[132]:

		Per SLP vs. Alphalist			Per FBDC account basis		
Additional Assessments by BIR		**Purchases**	**Input VAT**	**Withholding**	**Account**	**Amount**	**EWT Equivalen**
Abello Concepcion Regala	10%	518,681.00	51,868.10	51,868.10	Professional Fees	480,000.00	48,000.0(
Banco De Oro	2%	35,891,975.50	3,589,197.55	717,839.51	Professional Fees	3,000.00	60.0(
Citibank Visa	1%	1,777.30	177.73	17.77	Rep. & Entertainment	2,122.27	21.2:
De Borja MediaIdea	1%	20,000.00	2,000.00	200.00	Professional Fees	90,000.00	900.0(
Equitable Card Networks, Inc.	2%	10,451.90	1,045.19	209.04	Rep. & Entertainment	25,975.32	519.51
Fort Bonifacio Dev't. Corp.	2%	487,045.60	48,704.56	9,740.91	Various	36,580.63	731.61
Lim Ocampo & Candelaria	10%	200,000.00	20,000.00	20,000.00	Professional Fees	250,840.00	25,084.0(
Mannasoft Techonolgy Corp.	1%	2,336,550.00	233,655.00	23,365.50	Professional Fees	476,177.00	4,761.7
Nera Philippines, Inc.	1%	661,290.90	66,129.09	6,612.91	Building	661,297.00	6,612.9
TOTAL		**40,127,772.20**	**4,012,777.22**	**829,853.74**		**2,025,992.22**	**86,691.0**

However, the ICPA failed to illustrate how the amounts and corresponding payees and expense classifications were arrived at. No

[132] Exhibit "AAAAA", p.12 and Annexes C.3 and C.4; Exhibit "EEEEE", p. 2.

documentary evidence was presented to show that these specific amounts were indeed included in both computations and subjected twice by respondent to EWT.

At any rate, based on the Supplemental Judicial Affidavit[133] of Ms. Anna Lisa P. Mesina, Tax Accountant of petitioner, respondent doubly subjected two accounts to deficiency EWT – Communication, Light and Water; and Director's Fees/Management Fees, based on respondent's working papers[134].

i. Communication, Light and Water (₱112,437,313.00)

According to Ms. Mesina, respondent used the same expense item of Communication, Light and Water per FS in the amount of ₱112,437,313.00 to the respondent's per account basis of finding EWT discrepancies twice[135].

From respondent's computation[136], it can be gleaned that for the line item 'Utilities and water subsidy', the amount of ₱110,141,000.00 under the per FS column was assessed, while for the line item entitled 'Communication', the amount of ₱112,437,313.00 under the per ITR column was assessed, upon comparison with the amount of ₱2,296,000.00 under the per FS column.

According to petitioner, if the amount of Utilities and Water per FS is added to Communication per FS, the total amount would also be ₱112,437,000.00. Evidently, both ₱110,141,000.00 and ₱112,437,313.00 were considered by respondent in arriving at the EWT due on Actual Expenses subject to Withholding.

Upon this Court's verification, the figures mentioned in the affidavit can be found under Note 14 of the AFS[137] and AITR[138] for the year 2003 of petitioner. Moreover, petitioner presented a GL run that bear the descriptions 'Electricity and Power' with account no. 75402 and payee of Manila Electric Co., 'Water' with account no. 75403 and payee of Bonifacio Water Corp. and 'Telephone and Fax' with account no. 75506 and payees Smart Communications, Inc. and Philippine Long Distance Tel Co[139], which sum up to ₱112,437,761.00.

As such, the Court finds that there was double imposition of deficiency EWT by respondent.

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[133] Exhibit "EEEEE-3".
[134] CTA Case No. 7696, BIR records, pp. 391-393.
[135] Exhibit "EEEEE-3", pp. 9-12.
[136] CTA Case No. 7696, BIR records, pp. 391-393.
[137] Exhibit "RRRR-5", FBDC's Notes to Parent Company Financial Statements, p. 16.
[138] Exhibit "RRRR-3", Section D, line 98.
[139] Exhibit "KKKKK".

The question that remains, however, is whether "Communication, Light & Water" in the amount of ₱112,437,313.00 was indeed subjected to EWT. Upon verification of this Court, petitioner failed to present evidence to show that the corresponding EWT was already withheld from the billing statement, or that income payments relating to such expenses were reported. Thus, the Court was unable to ascertain if the entire expense attributable to "Communication, Light & Water" was indeed subjected to EWT.

Considering the foregoing, the assessment should be decreased by ₱2,202,820.00 (computed as ₱110,141,000.00 x 2% EWT).

ii. Director's fees (₱30,839,104.00)

Another account that was allegedly subjected twice to EWT per respondent's audit pertains to management fees/director's fees in the amount of ₱30,839,104.00 per AITR.

Portion of the witness' testimony reads as follows[140]:

(36)

"Q: What other items have you determined to have been subjected twice to the expanded withholding tax based on the computation and assessment findings of the BIR?"

A: We have noted that the amount of ₱30,839,000.00 for management fees taken from the 2003 audited F/S of FBDC and the same amount of ₱30,839,104.00 taken from the amended ITR of FBDC under the expense item "Director's Fees" which the difference of ₱104.00 due to the rounding off of the figures in the audited F/S to the nearest thousands relate or pertain to the same transaction and therefore, by imposing or subjecting the same to expanded withholding tax, although at different rates, effectively subjected the said expense item to tax twice.

(37)
Q: How could these items, which are management fees on one hand and director's fees on the other, although having the same amount except for a minimal difference, refer to the same item or transactions?

[140] Exhibit "EEEEE-3", p. 13.

A: Based on the assessment findings of the BIR examiners, the figures or amount of ₱30,839,000.00 refer to management fees subjected by the BIR examiners to 10% expanded withholding tax on professional fees were taken from the 2003 audited F/S of FBDC, particularly on page 16, Note 14 of the Notes to F/S, which is part of the items comprising general and administrative account. And the figures or amount of ₱30,839,104.00 referring to director's fees, which were subjected by the BIR examiners to 20% expanded withholding tax, were taken from the amended ITR of FBDC, particularly on Section D on deductions under item no. 79. We verified the breakdown of these two account and we have determined that actually the amounts or the accounts for both were comprised of director's fees with GL account no. 75804 and estate management fees with GL account No. 63015."

In this regard, Ms. Anna Lisa Mesina provided the Court with the GL extractions of account Nos. 75804 and 63015, representing Director's fees (₱3,300,000.00) and estate management fees (₱27,539,099.00) which, when added together, total to ₱30,839,104.00. The same was marked as Exhibit "LLLLL".

In the same Affidavit[141], Ms. Mesina proceeded to explain to the Court the nature of the estate management fees. According to her, estate management fees are being paid to Bonifacio Estate Services Corporation (BESC) for development control functions that BESC performs on petitioner's owned or controlled areas, and to Bonifacio Global City Estate Association (BGCEA), Inc. for the estate or association dues.

In this regard, petitioner alleged that development control fees and association dues paid to BESC and BGCEA, respectively, are not subject to expanded withholding tax, invoking BIR Ruling No. DA-008-200 dated January 5, 2000 wherein it was ruled that assessments or charges collected by BGCEA from its members to be used for administrative expenses, utilities and amenities for public use, and maintenance do not form part of the gross income of BGCEA and not subject to income tax and consequently to expanded withholding tax.

Consequently, this Court has ruled that "association/condominium dues, membership fees and other assessment/charges collected from the members, which are merely held in trust and which are to be used solely for administrative expenses in implementing their purpose(s), *viz.,* to protect and safeguard the welfare of the owners, lessees and occupants; provide utilities and

[141] Exhibit "EEEEE-3", pp. 15-16.

amenities for their members, and from which the corporation could not realize any gain or profit as a result of their receipt thereof, must not be included in said corporation's gross income. This means that the same are not subject to income tax and to withholding tax".[142]

To prove that its income payments to BESC and BGCEA are indeed association dues and development control fees, petitioner provided official receipts which are summarized as follows:

Payee	OR No.	OR Date	Amount	Exhibit No.
Bonifacio Estate Services Corporation	3400	08/01/2003	₱ 200,000.00	"O^{5}"
Bonifacio Estate Services Corporation	3526	10/24/2003	400,000.00	"O^{5}-1"
Bonifacio Global City Estate Association	0952	11/28/2003	10,980,701.99	"G^{6}-2"
Total			**₱ 11,580,701.99**	

The Court traced the above amounts to the general ledger and found that these were booked under "Estate Management Fees" account. Moreover, it was noted that the amount of maintenance dues paid to BGCEA per books totals ₱10,992,148.00, which leaves a discrepancy of ₱11,446.01. Nonetheless, what will be taken into account is the amount per OR No. 0952.

Based on these supporting documents, the Court is not convinced that the account "Director's Fees" per petitioner's AITR actually pertains to maintenance fees and development control fees that qualify for exemption from income tax, and consequently, to EWT, save for the substantiated amount of ₱11,580,701.99.

As to whether petitioner is correct in alleging the double taxation on these director's/management fees, the Court is convinced that "Director's Fees" per AITR and "Management Fees" per AFS refer to one and the same set of expenses.

Considering the foregoing, the Court declares that the 10% EWT assessment, imposed on "Management Fees" per BIR computation, should be cancelled completely on the ground of double taxation. On the other hand, the 20% deficiency EWT imposed on Director's Fees should likewise be cancelled, but only up to the extent of the related expense for which substantiation was presented in the amount of ₱11,580,701.99 with an EWT equivalent of ₱2,316,140.40.

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[142] *Officemetro Philippines, Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 8382, dated June 3, 2014.

In sum, the Court rules that respondent's assessment on the EWT due on Actual Expenses subject to withholding should be reduced by a total amount of ₱7,767,955.66, broken down as follows:

	Expense Amount	EWT Rate	EWT Due
Professional fees paid to GPPs	₱ 1,650,848.65	10%	₱ 165,084.87
Expenses doubly subjected to EWT by respondent:			
Utilities & Water Subsidy	110,141,000.00	2%	2,202,820.00
Management fees	30,839,104.00	10%	3,083,910.40
Association Dues and Development Control Fees included in the "Director's Fees" account	11,580,701.99	20%	2,316,140.40
	₱ 154,211,654.64		₱ 7,767,955.66

B. Alphalist vs. SLP Discrepancy - ₱7,126,786.67

Upon scrutiny, the Court finds that respondent arrived at the discrepancy by taking the input VAT reported per SLP, and grossing up the input tax by 10%, in order to get the tax base which respondent then subjected to the EWT rate based on the Alphanumeric Tax Code (ATC) assigned to the income payee per alphalist.

With respect thereto, the ICPA reported that a certain ₱23,019.36 (representing deficiency tax assessed on total expenses in the amount of ₱1,865,802.00) pertains to EWT on income payments already declared in the 2003 alphalist. The summary is presented in the ICPA Report[143] as Annex "C2", as follows:

		Expenses not withheld per BIR			Per FBDC Alphalist		
Income payee	ATC	Amount	Rate	Withholding	Amount	Rate	Withholding
Canon Marketing Phils. Inc.	WC158	321,078.70	1%	3,210.79	3,600.00	1%	36.00
E-Plus Stationery, Inc.	WC158	466,165.80	1%	4,661.66	40,972.00	1%	409.72
Elizabeth B. Ancaja	WI120	11,493.80	10%	1,149.38	14,210.00	2%	284.20
Elizabeth B. Ancaja	WC158			-	4,391.00	1%	43.91
Gracepark International	WC158	1,380,705.20	1%	13,807.05	1,380,705.00	1%	13,807.05
Mannasoft Technology Corporation	WC120	2,336,550.00	1%	23,365.50	217,772.50	2%	4,355.45
Manpower Outsourcing	WC160	1,404,087.50	2%	28,081.75	134,964.00	2%	2,699.28

[143] Exhibit "AAAAA".

Services, Inc.							
Super Fix Auto Concept	WC120	790,627.50	2%	15,812.55	69,187.50	2%	1,383.75
TOTAL		**6,710,708.50**		**90,088.68**	**1,865,802.00**		**23,019.36**

The contested amounts are found at the latter part[144] of respondent's EWT working papers. Relative thereto, it can be observed that income payments found therein were only subjected to VAT and reported through the SLP, and not subjected to EWT. Hence, the discrepancies.

The Court find for petitioner.

The Court observes that the procedure of respondent in considering all expenses of petitioner for the year 2003 in the ITR or FS, or both, in the computation of deficiency EWT, is already all-encompassing. Therefore, it would be prejudicial to the petitioner if the assessment of deficiency tax is allowed based merely on the discrepancies in reporting.

C. Discrepancy in Taxpayer's Alphalist (erroneous computation) - ₱119,898.65

Again, the Court observes that the assessment on erroneous computation has no effect because the procedure wherein all expenses in the FS and ITR of petitioner were subjected to EWT has already covered any mistake in reporting in the Alphalist. Hence, the Court finds that this assessment should be canceled.

D. Late Filing of 1601-E March 2003 and Late filing of 1604-E for CY 2003

Petitioner argued that it was able to manually file the EWT return for March 2003 and pay the corresponding tax due for the said period on April 15, 2003, with notice to and approval of the BIR Large Taxpayers Assistance Division (LTAD). The Annual Information Return of Creditable Income Taxes Withheld[145] (1604-E) was likewise manually filed with the BIR on March 1, 2004, which is within the deadline provided by existing regulations.

Upon scrutiny of the pieces of evidence presented, petitioner manually filed the 1601-E for March 2003 with the Large Taxpayers Division[146] and

[144] CTA Case No. 7696, BIR records, pp. 361-363.
[145] Exhibits "N" and "O".
[146] Exhibit "HHH".

subsequently manually paid the tax due on April 15, 2003[147]. There was a notation on the face of the manually filed return stating "for e-filing up to 4/30/03". However, the Court cannot ascertain if the notation was indeed from the LTAD, as there was no signature, name and position title of the person from LTAD who indicated such notation.

Consequently, taxpayers who are enrolled in the Electronic Filing and Payment System (eFPS) of the BIR are covered by the rules and regulations of eFPS. Therefore, the e-filed return prevails over the manual return. Moreover, the eFPS rules provide that manual filing is allowed only if there has been a crash in the system on the deadline of filing. Proof of this circumstance was not alleged nor presented by petitioner to the Court.

Nevertheless, the Court disagrees with respect to the amounts assessed by respondent for late filing. The portion pertaining to the compromise penalty of ₱25,000.00 should not be included, as previously discussed. Also, pursuant to Sections 7 and 8.1 of RR No. 09-01, as last amended by RR No. 26-02, petitioner should have e-filed the EWT return for March 2003 on April 14, 2003 (April 13, 2003 being a Sunday) instead of April 22, 2003 and paid the corresponding EWT on the same date of April 14, 2003 instead of April 15, 2003. Hence, petitioner should pay the surcharge and interest related to the late filing of EWT return for March 2003, as follows:

Tax base	₱ 1,893,167.26
Surcharge	₱ 473,291.82
Interest (₱1,893,167.26 x 20% x 9/365 days)	9,336.17
Total increments for late filing of return/remittance of EWT for March 2003	**₱ 482,627.98**

On the other hand, petitioner's 1604-E was manually filed on March 1, 2003, and electronically filed on March 2, 2003 (late), as discussed above. However, the compromise penalty in the amount of ₱25,000.00 imposed on the late filing should be cancelled.

In sum, petitioner failed to prove that it properly withheld and remitted the EWT due on the amount of ₱303,527,056.86 expenses subject to withholding:

Actual Expenses not subjected to withholding as found by respondent		₱ 457,738,711.50
Less: Adjustments		
Professional fees paid to GPPs	₱ 1,650,848.65	

[147] Exhibit "GGG".

Expenses doubly subjected to EWT by respondent		
Utilities & Water Subsidy	110,141,000.00	
Management fees	30,839,104.00	
Association Dues and Development Control Fees included in the "Director's Fees" account	11,580,701.99	154,211,654.64
Actual expenses not subjected to withholding		**₱303,527,056.86**

Since prescription had set in, respondent's right to assess petitioner of deficiency EWT shall only be limited to December 2003. Thus, after taking into account all the December expense transactions for which petitioner provided detailed breakdown per general ledger (GL), petitioner is liable for deficiency EWT in the amount of ₱6,815,989.95, broken down as follows:

Income Payments	EWT Rate	EWT Due
Purchases of Goods	1%	₱ 54,182.02
Purchases of Services	2%	3,138,194.53
Professional Fees	10%	400,141.70
Director's Fees	20%	3,050,551.40
Rentals	5%	172,920.30
Total		**₱ 6,815,989.95** [148]

Deficiency FBT - ₱6,399,723.81

Respondent found that there were expense items, *i.e.*, representation and entertainment, transportation and travel and membership fees, which petitioner failed to subject to FBT pursuant to Section 33 of the NIRC of 1997, RR 2-98 and RR-38. Hence, respondent assessed petitioner of the corresponding deficiency FBT in the amount of ₱6,399,723.81, computed as follows[149]:

Representation and Entertainment		₱ 5,734,965.00
Transportation and Travel		350,399.00
Membership Fees		2,653,534.00
		₱ 8,738,898.00
		0.68
Grossed up value		₱ 12,851,320.59
Rate		0.32
Fringe benefits tax due		₱ 4,112,422.59
FBT payments		174,026.94
Amount still due		₱ 3,938,395.64
Surcharge		

[148] See details per Annex A.
[149] Exhibit "13", CTA Case No. 7696, BIR records, pp. 536 and 538.

Interest 1-15-04 to 1-31-07	₱ 2,399,723.81	
Compromise		2,399,723.81
Deficiency Final Withholding Tax - Fringe Benefits		**₱ 6,399,723.81**

Petitioner, on the other hand, maintains that the deficiency FBT assessment was computed on erroneous presumptions, citing *Collector of Internal Revenue v. Benipayo*[150] as basis. Particularly, petitioner raised the following arguments:

(a) The treatment by the respondent of the representation and entertainment expense of the petitioner as fringe benefits granted to its employees other than rank and file is erroneous and unjustified. These expenses, included expenses for transportation and travel, are incurred by the petitioner in connection with the conduct of its trade or business.

Also according to petitioner, the nature of its business as a real estate developer, which deals with not only prospective buyers and tenants but also with brokers, agents and contractors among others, will necessitate actual representation expenses.

Petitioner cited Section 33(A) of the NIRC of 1997 in relation to Section 2.33 of RR No. 03-98, which prescribe the following conditions in order that fringe benefits shall not be subject to FBT:

(1) The fringe benefit is required by the nature of or necessary to the trade or business of the employer;

(2) The fringe benefit is for the convenience or advantage of the employer.

(b) With regard to the deficiency FBT imposed on the alleged membership fees and dues, the same allegedly pertain to condominium dues paid by petitioner on the condominium units it held for sale. No employee or officer of the petitioner ever benefitted from these condominium units as these units were intended for sale to third party buyers. As such, the payment of said dues is not subject to FBT.

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[150] 4 SCRA 182, "As 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. The assessment must be based on actual facts. The presumption of correctness of assessment being a mere presumption cannot be made to rest on another presumption."

As to the allegation that respondent's assessment was only based on erroneous presumptions, the Supreme Court, in the case of *Commissioner of Internal Revenue vs. Hantex Trading Corporation*,[151] ruled:

> "We agree with the contention of the petitioner that, as a general rule, tax assessments by tax examiners are presumed correct and made in good faith. All presumptions are in favour of the correctness of a tax assessment. It is to be presumed, however, that such assessment was based on sufficient evidence. Upon the introduction of the assessment in evidence, a prima facie case of liability on the part of the taxpayer is made. If a taxpayer files a petition for review in the CTA and assails the assessment, the prima facie presumption is that the assessment made by the BIR is correct, and that in preparing the same, the BIR personnel regularly performed their duties. This rule for tax initiated suits is premised on several factors other than the normal evidentiary rule imposing proof obligation on the petitioner-taxpayer: the presumption of administrative regularity; the likelihood that the taxpayer will have access to the relevant information; and the desirability of bolstering the record-keeping requirements of the NIRC.
>
> However, the *prima facie* correctness of a tax assessment does not apply upon proof that an assessment is utterly without foundation, meaning it is arbitrary and capricious. Where the BIR has come out with a "naked assessment," *i.e.*, without any foundation character, the determination of the tax due is without rational basis.[152] In such a situation, the U.S. Court of Appeals ruled that the determination of the Commissioner contained in a deficiency notice disappears. *Hence, the determination by the CTA must rest on all the evidence introduced and its ultimate determination must find support in credible evidence.*"

In view of the above discussion, the Court shall scrutinize the pieces of evidence submitted by petitioner.

A. Representation and Entertainment (₱5,734,965.00)

According to petitioner's witness, Ms. Anna Lisa P. Mesina, Representation and Entertainment expense is comprised of three accounts per books: (1) "meetings", with GL account no. 75603; (2) "parties and gifts" with

[151] G.R. No. 136975, March 31, 2005.
[152] Id., citing United States v. Janis, 49 L. Ed. 2d 1046 (1976); 428 US 433 (1976).

GL account no. 75211; and (3) "representation and entertainment" with GL account no. 75602[153].

The said schedule was presented as Exhibit "HHHHH". The GL entries under the individual accounts were congruent with the account titles, although some entries were for petty cash fund (PCF) replenishment, while other entries had no descriptions on them.

However, petitioner did not present any other proof besides the above-mentioned schedule which was supposedly extracted from the actual general ledger. Thus, the Court finds this document insufficient to prove that representation and entertainment account is composed of expenses that are not supposed to be subject to FBT, since the schedule was internally produced by petitioner and therefore, highly self-serving.

Considering the foregoing, the Court finds that the deficiency FBT imposed on representation and entertainment account should be sustained, save for the deficiency FBT pertaining to the amount of ₱938,500.00[154] classified under general ledger account "Parties and Gifts", which was already subjected to deficiency WTC by respondent.

B. Transportation and Travel (₱350,399.00)

Transportation and Travel is comprised of the following GL accounts: (1) "fare-local travel" with GL account no. 75701; (2) "other travel expenses" with GL account no. 75704; (3) "registration of vehicles" with GL account no. 75904; and (4) "tires batteries and accessories" with GL account no. 75903[155]. The said schedule was presented as Exhibit "IIIII".

However, For the same reasons cited in the immediately preceding discussion, the Court finds that the deficiency assessment imposed on transportation and travel account also be upheld.

C. Membership Dues (₱2,653,534.00)

According to petitioner, membership dues are booked into two (2) different accounts, which are "membership dues" with GL account no. 75301 and "subscriptions" with GL account no. 75303[156]. Petitioner provided Exhibit "JJJJJ" which is the GL schedules for both accounts.

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[153] Exhibit "E^5-2", Q&A no. (63), p. 19.
[154] Exhibit "E^5-2", Q&A 70-73, pp. 20-21; Exhibits "FFFFF-14" and "HHHHH".
[155] Exhibit "E^5-2", Q&A no. (64), p. 19.
[156] Exhibit "E^5-2", Q&A no. (65), p. 19.

The Court notes that the entries made in the "membership dues" account were mostly sports and country club membership fees, some are named after management officers of petitioner, as evidenced by some official receipts in the table above.

In her Supplemental Judicial Affidavit,[157] petitioner's witness, Ms. Anna Lisa P. Mesina, mentioned the last three entries in the GL run for account no. 75301, which reflects the amounts recorded on November 30, 2003 as follows: ₱479,347.00, ₱525,194.00 and ₱737,054.00. According to her, these expenses represent association dues paid to Regent Parkway Corporation, where petitioner owns several condominium units.

Meanwhile, Ms. Mesina clarified that these units are part of the inventory of real properties for sale of petitioner, and that none of petitioner's officers or employees lived in these condo units.

In support thereof, petitioner provided several Deeds of Sale between petitioner and third-party buyers to prove that units in Regent Parkway Condominium are part of their inventory, and not for use of their employees. The same were presented as Exhibits "WWWWW" to "WWWWW-16".

However, the Court finds that these documents do not prove the veracity of petitioner's claim that the payments actually pertain to association dues. It bears stressing that basic is the rule that mere testimonies are self-serving if they are not supported by documentary evidence within his reach, and it is the settled rule that the presumption is always and inevitably against a litigant who fails to furnish evidence within his reach, and it is stronger when documents, writings, etc., would be conclusive in establishing his case.[158]

On the other hand, in the "subscriptions" account, Ms. Mesina pointed out GL record made on 02/18/03 in the amount of ₱248,167.00, which pertains to petitioner's payment to J.D. Edwards computerized accounting system adopted and used by the company at the time.

However, petitioner failed to present supporting documents to prove that a transaction transpired between petitioner and J.D. Edwards, and payment was made in consideration therefore. Hence, the Court is unable to ascertain the truthfulness thereof.

The same holds true with the alleged subscription fees paid to Bloomberg in the amount of ₱272,420.00, as petitioner failed to substantiate such payment.

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[157] Exhibit "EEEEE-3", p. 4.
[158] *Republic vs. Sandiganbayan*, G.R. No. 112708-09, March 29, 1996.

Again, the Court cannot simply give credence to the testimonies of Ms. Mesina without presenting supporting evidence, as above-discussed. Therefore, respondent's assessment on membership dues should be upheld.

According to the Court-commissioned ICPA, she obtained BIR Form No. 1604-CF that petitioner filed for taxable year 2003 to verify if the fringe benefits furnished to managerial and supervisory employees declared and recorded in the books of accounts were subjected to FBT[159].

Furthermore, the ICPA stated that out of the protested amount, her verification revealed that expenses amounting to ₱55,477.67 are supported by official receipts proving that expenses relating to the said amount should not be subject to FBT[160]. The same is summarized under Annex "D" of the ICPA Report. Below is the summary of the exhibits presented, with modifications deviating from the Annex "D" prepared by the ICPA based on verification of this Court:

Supplier	Amount	Date	Supporting document	Doc. No.	Exhibit No.
Alabang County Club, Inc.	₱ 22,000.00	January 2003	Statement of Account	None	"XXXX-1"
Capitol Hills Golf & Country Club	1,227.67	16-Feb-03	Official Receipt	261382	"XXXX-2"
Personnel Management Association	5,500.00	02-Apr-03	Official Receipt	54266	"XXXX-6"
Sta. Elena Golf Club, Inc.	3,000.00	26-Mar-03	Official Receipt	79471	"XXXX-7"
Sta. Elena Golf Club, Inc.	6,000.00	06-Mar-03	Official Receipt	79472	"XXXX-8"
Ana Maria G. Bondoc	11,250.00	19-Dec-03	Official Receipt	30064	"XXXX-11"
Nature's Touch	1,500.00	21-Mar-03	Official Receipt	73790	"XXXX-15"
Nature's Touch	4,000.00	22-Dec-03	Official Receipt	77154	"XXXX-18"
Henry L. Yap	2,000.00	18-Feb-03	Official Receipt	596	None
TOTAL	**₱ 56,477.67**				

The Court notes that most supporting documents were issued in the name of petitioner, except for the following: Statement of Account from Alabang Country Club, Inc. in the amount of ₱22,000.00 which was issued in the name of Mr. Mariano Galicia Jr.; OR from Capitol Hills Golf & Country Club in the amount of ₱1,227.67 which was issued in the name of Atty. Luis B. Pangilinan, petitioner's Assistant Corporate Secretary; and OR from Sta. Elena

[159] Exhibit "AAAAA", p. 6.
[160] Exhibit "AAAAA", p. 13.

Golf Club, Inc. in the amount of ₱3,000.00 which was issued in the name of Vicente C. Tinsay, petitioner's SVP for Commercial Operations.

The Court further notes that some of the expenses as described in the payment request attached, were incurred for celebrations such as petitioner's office blessing and Bonifacio Day decorations. Specifically, payment to RRL Nature's Touch in the amount of ₱4,000.00 was for a wreath displayed during Bonifacio Day, and payment to Ana Maria Bondoc in the amount of ₱11,250.00 was for the catering services rendered during the office blessing.

Finally, the Court likewise observes that Exhibit "XXXX-6" and supporting document to the payment to Henry L. Yap are not in the records.

In sum, petitioner failed to prove that it properly withheld and remitted the FBT due on the following expenses totaling ₱7,777,648.00:

Representation and Entertainment	₱ 5,734,965.00
Transportation and Travel	350,399.00
Membership Fees	2,653,534.00
Total Fringe Benefits Per Assessment	₱ 8,738,898.00
Less: Adjustments	
"Parties and Gifts" under the "Representation and Entertainment" account had already been subjected to deficiency WTC by respondent	938,500.00
Duly supported expenses not subject to FBT[161]	22,750.00
Total Fringe Benefits as Adjusted	**₱ 7,777,648.00**

To reiterate, however, respondent's right to assess petitioner for deficiency FBT had already prescribed for the first three quarters of taxable year 2003, pursuant to Section 5 of RR No. 04-02, in relation to Section 203 of the 1997 NIRC, as amended.

Hence the Court determined the amount of Representation and Entertainment, Travel and Transportation, and Membership expenses recorded in the last quarter of 2003, and compared the same to the expenses subjected to FBT per BIR Form No. 1603 for the fourth quarter of 2003, as follows:

	October	November	December	Total

[161] Exhibits "XXXX-8", "XXXX-11", "XXXX-15" and "XXXX-18".

Representation and Entertainment[162]	₱19,064.00	₱ 12,845.00	₱2,616,042.00	₱ 2,647,951.00
Transportation and Travel[163]	3,225.00	2,670.00	244,432.00	250,327.00
Membership Dues[164]	-	1,742,665.00	-	1,742,665.00
Total 4th quarter expenses subject to FBT				₱ 4,640,943.00
Expense amount subjected to FBT by petitioner in the 4th Quarter[165]				3,900.00
Difference				**₱4,637,043.00**

Since prescription had already set in, out of the valid supporting documents in the amount of ₱22,750.00[166], only the amount of ₱15,250.00[167] pertaining to the un-prescribed fourth quarter will be considered in the Court's computation.

Considering the above discussions, petitioner is liable for basic deficiency FBT in the amount of ₱2,173,126.12 , computed as follows:

	October	November	December	Total
Representation and Entertainment	₱19,064.00	₱ 12,845.00	₱2,616,042.00	₱ 2,647,951.00
Transportation and Travel	3,225.00	2,670.00	244,432.00	250,327.00
Membership Dues	-	1,742,665.00	-	1,742,665.00
Total 4th quarter expenses subject to FBT				₱ 4,640,943.00
Less: Expense amount subjected to FBT by petitioner in the 4th Quarter				3,900.00
Difference				₱ 4,637,043.00
Less: Duly supported expenses not subject to FBT				15,250.00
Unsupported expenses subject to FBT				₱ 4,621,793.00
Gross Up Value (68%)				₱ 6,796,754.41
Deficiency FBT per this Court's verification (32%)				₱ 2,174,961.41
Less: FBT payment in the 4th Quarter				1,835.29

162 Exhibit "HHHHH", net of the amount of ₱888,500.00 recorded under the account "Parties and Gifts" which was subjected also to deficiency WTC by respondent.
163 Exhibit "IIIII".
164 Exhibit ""JJJJJ".
165 Exhibit "MMMM-1-a".
166 Exhibits "XXXX-8", "XXXX-11", "XXXX-15" and "XXXX-18".
167 Exhibits "XXXX-11" and "XXXX-18".

Basic deficiency FBT still due				**₱2,173,126.12**

Deficiency Income Tax - ₱77,257,890.36

Finally, Respondent computed the deficiency income tax assessment as follows[168]:

Revenues			Per ITR
Realized revenue on sale of real estate			₱1,205,596,247.00
Lease of Properties			186,226,299.00
Interest on installment contracts			
Sales			
Non-operating & other income			
Dividend from foreign subsidiary			450,000,000.00
Interest in installment sales			75,558,726.00
Development control fees			3,804,675.00
Realized forex gain			17,274,198.00
Marketing & management fees			1,280,048.00
Gain on sale of property			830,652.00
Miscellaneous			394,209.00
			₱1,940,965,054.00
Cost and expenses			
Cost of real estate sold			938,062,042.00
Total General and Administrative Expenses			805,039,304.00
Marketing and Selling			
Commissions			37,961,444.00
Others/(Advertising per ITR)			5,625,871.00
			₱1,786,688,661.00
INCOME FROM OPERATIONS			₱ 154,276,393.00
Tax Due			₱ 49,368,445.76
Less: Unexpired Payment MCIT			49,368,445.76
			--
a. Disallowed expenses not subjected to withholding tax			
On Compensation			₱ 56,717,003.16
On Expanded Withholding Tax			16,375,523.31
On Fringe Benefits Tax (Expense)			8,738,898.00

[168] Exhibit "23", CTA Case No. 7728, BIR records, pp.181-182.

b. Discrepancy in interest income on installment contract per FS vs. ITR			
Per F/S		₱76,150,000.00	
Per ITR		75,558,726.00	591,274.00
c. Over-claimed Retirement expense-per monthly trial balance final			
Retirement expenses disallowed (debits to retirement plan expense)		₱3,379,382.00	
Retirement cost added back to taxable income per recon		1,003,000.00	2,376,382.00
d. Interest Arbitrage Computation (Non-deductible expense)			
Interest Income subject to final tax			
Interest inc. - ST Investment TB taken from worksheet aud.		9,861,790.74	
Interest inc. - ST Investment TB taken from worksheet aud.		2,927,553.26	
Interest Inc. - Bank Deposits		592,264.48	
TOTAL		13,381,608.48	
Grossed Up value at 80%		16,727,010.60	
Rate		0.38	
Interest Deduction		6,356,264.03	
Claimed as non-deductible interest exp.		2,694,884.00	
Discrepancy - Additional non-deductible portion of interest expense			3,661,380.03
e. Debit to Miscellaneous Income (Batch 108747)			
Reduction of income account while reducing the advances-metro pacific (asset) account			62,485,550.46
Total			₱150,946,010.96
Rate			32%
Still Due			**₱48,302,723.51**
Surcharge			
Interest (April 16, 2004 to April 15, 2007			₱28,955,166.86
Compromise			
Deficiency Income Tax			**₱77,257,890.36**

Based on the above computation, it could be gleaned that the assessment arose from the following findings of respondent:

A. **Disallowed Expenses Not Subject to Withholding Tax on: (a) Compensation; (b) Expanded Withholding Tax and; (c) Fringe Benefits Tax - ₱81,831,424.47**

Based on the computation of deficiency income tax reflected in the FLD, The Court finds that respondent erred in the amount she considered as disallowable expenses not subjected to EWT, because the amount of ₱16,375,523.31 is the EWT still due, not the related expenses.

However, this error results in the disallowable expenses being exponentially greater than what has been assessed. 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, albeit the erroneous computation per FLD.

Furthermore and as previously discussed, the following discrepancies as to expenses not subject to tax should be upheld for the other taxes, as follows:

a. WTC – ₱ 55,730,198.12
b. FBT – ₱ 7,777,648.00

Under Section 34(K), expenses could be deducted from taxable income only if the corresponding withholding has been imposed and remitted therefrom, to wit:

> "SEC. 34. *Deductions from Gross Income.* – Except for taxpayers earning compensation income arising from personal services rendered under an employer-employee relationship where no deductions shall be allowed under this Section other than under subsection (M) hereof , in computing taxable income subject to income tax under Sections 24(A); 25(A); 26; 27(A), (B) and (C); and 28(A), there shall be allowed the following deductions from gross income:
>
> (A) *Expenses.* -
>
> (1) Ordinary and Necessary Trade, Business or Professional Expenses.-
>
> xxx xxx xxx
>
> *(K) Additional Requirements for Deductibility of Certain Payments.* – Any amount paid or payable which is otherwise deductible from, or taken into account in computing gross income or for which depreciation or amortization may be allowed under this Sect ion, shall be allowed as a deduct ion

> only if it is shown that the tax required to be deducted and withheld therefrom has been paid to the Bureau of Internal Revenue in accordance with this Section, Sections 58 and 81 of this Code."

Considering that petitioner did not refute this finding of respondent and it likewise failed to substantiate its claim, the Court rules that the assessment with regard thereto should be upheld.

B. Discrepancy in Interest Income on Installment Contract per FS vs. ITR - ₱591,274.00

Based on the records, the discrepancy computed by respondent was as follows:

Per FS	₱ 76,150,000.00	
Per ITR	75,558,726.00	₱ 591,274.00

Basing from the Protest Letter dated May 9, 2007,[169] petitioner stated that it has yet to verify the amount and submit supporting documents. However, petitioner failed to do the same. Moreover, the ICPA also made no mention of this assessment item[170].

Considering that respondent's bases for the amounts in the computation were accurate, the Court rules that the same be upheld.

C. Over Claimed Retirement Expense – per Monthly Trial Balance – ₱2,376,382.00

According to respondent, the retirement expense was disallowed because there was no BIR letter of approval of the retirement plan provided by taxpayer in line with the compliance requirements of R.A. 4917. Retirement expenses charges to income amounting to ₱2,376,382.00 were disallowed – net of retirement cost added back by petitioner per FS-ITR reconciliation[171].

The ICPA noted that petitioner's contribution to the retirement fund is actually exempt from tax under Republic Act No. 4917, as it is supported by BIR Ruling No. ERP-013-98 dated March 27, 1998[172].

[169] Exhibit "C", p. 3.
[170] Exhibit "AAAAA", pp. 8-10.
[171] CTA Case No. 7728, BIR Records, p. 180.
[172] Exhibit "DDDDD".

Considering that petitioner was able to prove that it was actually able to secure a BIR letter of approval certifying the validity of its retirement plan, the Court rules that the amount of ₱2,376,382.00 assessed should be cancelled.

D. Additional Non-Deductible Portion of Interest Expense - ₱3,661,380.03

Based on the FLD, respondent made the assessment on this item because petitioner's Interest Income subject to final tax were verified to be understated, which was used as the basis for computing the non-deductible portion of interest expense as covered by the underlying provisions of Sections 34(B) of the 1997 NIRC, as amended and as applicable to the year 2003, to wit:

"**(B) Interest.-**

(1) *In General.* – The amount of interest paid or incurred within a taxable year on indebtedness in connection with the taxpayer's profession, trade or business shall be allowed as deduction from gross income: Provided, however, That the taxpayer's otherwise allowable deduction for interest expense shall be reduced by an amount equal to the following percentages of the interest income subjected to final tax:

Forty-one percent (41%) beginning January 1, 1998;
Thirty-nine percent (39%) beginning January 1, 1999; and
Thirty-eight percent (38%) beginning January 1, 2000;

(2) *Exceptions.* – No deduction shall be allowed in respect of interest under the succeeding subparagraphs:

(a) If within the taxable year an individual taxpayer reporting income on the cash basis incurs an indebtedness on which an interest is paid in advance through discount or otherwise: Provided, That such interest shall be allowed a deduction in the year the indebtedness is paid: Provided, further, that if the indebtedness is payable in periodic amortizations, the amount of interest which corresponds to the amount of the principal amortized or paid during the year shall be allowed as deduction in such taxable year;

(b) If both the taxpayer and the person to whom the payment has been made or is to be made are persons specified under Section 36(B); or

(c) If the indebtedness is incurred to finance petroleum exploration.

(3) *Optional Treatment of Interest Expense.* – At the option of the taxpayer, interest incurred to acquire property used in trade business or exercise of a profession may be allowed as a deduct ion or treated as a capital expenditure." *(Emphasis supplied)*

BIR records[173] reveal that respondent computed for the discrepancy in the following manner:

Interest Income	Amount	
Interest inc. - ST Investment TB taken from worksheet aud.	₱ 9,861,790.84[174]	
Interest inc. - ST Investment TB taken from worksheet aud.	2,927,553.26[175]	
Interest Inc. - Bank Deposits	592,264.48[176]	
TOTAL	13,381,608.58	
Grossed up value at 80%	16,727,010.60	
Rate	38%	
Interest deduction	6,356,264.03	
Claimed as non-deductible interest expense	2,694,884.00	
Discrepancy – additional non-deductible portion of interest exp		**₱ 3,661,380.03**

The Court compared the trial balance amounts to the FS-ITR reconciliation to check whether these were not indeed included in the interest income subject to final tax per ITR.

Based on the Reconciliation of Net Loss per books versus taxable income attached to the Annual Income Tax Return, the Court found that petitioner treated as non-taxable income, Interest income subject to final tax only in the amount of ₱2,741,168.00 and non-deductible interest expense in the amount of ₱2,694,884.00.

In its protest letter, petitioner asserted that the said finding is incorrect and has no basis. However, it should be noted that the amounts in respondent's computation were simply taken from petitioner's trial balance.

[173] CTA Case No. 7728, BIR records, p. 133
[174] CTA Case No. 7728, BIR records, p. 89, Trial Balance account no. 100.8101.
[175] CTA Case No. 7728, BIR records, p. 87, Trial Balance account no. 200.8101.
[176] CTA Case No. 7728, BIR records, p. 89, Trial Balance account no. 100.81011.

Consequently, petitioner failed to provide supporting documents to refute the finding.

On the other hand, the ICPA reported that petitioner failed to provide the necessary bank documents and related papers such as bank statement, vouchers and other related documents in order for the ICPA to thoroughly verify that the additional items of interest income was indeed subjected to final withholding tax[177].

Considering the foregoing, the Court rules that the additional non-deductible interest expense in the amount of ₱3,661,380.03 be upheld.

E. Debit to Miscellaneous Income (Batch 108747) - Reduction of Income Account while Reducing the Advances-Metro Pacific (asset) Account - ₱62,485,550.46

Based on the FLD, respondent found an unjustified reduction to miscellaneous income account with a corresponding decrease to their advances (asset) account which understated the income subject to income tax.

Moreover, scrutiny of petitioner's trial balance for 2003 submitted to respondent on February 1, 2007, reveals that the amount debited to Miscellaneous Income account is ₱ 62,526,902.00. However, since this revised amount is greater, the Court is constrained to uphold the original assessed amount of ₱62,485,550.46.

Examination by the ICPA of petitioner's AFS and AITR for taxable year 2003 shows that during the year, petitioner made an adjustment to miscellaneous income which in effect reduced taxable income by ₱62,485,550.46. According to the ICPA, this relates to the sale of Block 6 Lot 1 to Metro Pacific Corporation (MPC). Sometime in 2002, petitioner's Board of Directors resolved to approve the return of the lot by MPC and effectively refund the amount to MPC[178].

In its protest letter dated May 9, 2007[179], petitioner states that the sale was not consummated and that the property is still in the name of FBDC. Therefore, petitioner believes that there was sufficient basis for the reversal of income previously reported and subjected to tax.

[177] Exhibit "AAAAA", p. 10.
[178] Exhibit "AAAAA", p. 10.
[179] CTA Case No. 7728, BIR records, p. 206.

In support of its contention, petitioner provided two journal vouchers, voucher numbers 0202-004[180] and 0202-0034[181] dated February 28, 2002, to prove that the journal entry made in the books of petitioner was an adjustment to miscellaneous income due to sales return and refund of paid amortizations by Metro Pacific Corporation (MPC) for the purchase of Lot 6-1 in BGC. Moreover, petitioner presented the Minutes of FBDC Special Meeting of the Board of Directors held on January 25, 2002[182] to prove that the return of the lot by MPC was approved by petitioner's Board of Directors.

However, upon scrutiny of the said documents, it was found that the journal vouchers did not actually reflect the amount of ₱62,485,550.46 debit to miscellaneous income. The journal entries recorded were as follows:

Particulars	Debit	Credit
ICR - MPC	24,972,585.00	
A/R - Others	**21,458,034.14**	
Cash in Bank - PDCP C/A		46,430,619.14
# To record return of MPC 04/07/01 amort on Lot 6-1ST per OR 3526		
ICR - MPC	25,596,899.00	
A/R - Others	**20,833,719.18**	
Cash in Bank - PDCP C/A		46,430,618.18
# To record return of MPC 04/07/01 amort on Lot 6-1ST per OR 3824		
ICR - MPC	26,236,822.00	
A/R - Others	**20,193,797.14**	
Cash in Bank - PDCP C/A		46,430,619.14
# To record return of MPC 04/07/01 amort on Lot 6-1ST per OR 4196		

We put emphasis on the three debits to the account "A/R – Others" as this actually corresponds to the total amount in question. However, the account in question is not "A/R – Others" made in 2002, but the adjustment (debit) to miscellaneous income in the year 2003. Moreover, while there is evidence of approval through the minutes of the BOD meeting, there was no proof of actual refund that will justify the cancellation of income.

Thus, the Court finds that the assessment of respondent pertaining to the unexplained debit to Miscellaneous Income account in the amount of ₱62,485,550.46 should be sustained, for lack of proper substantiation on the part of petitioner.

F. Excess Unexpired MCIT as of CY 2002 in the Amount of ₱17,199,081.00 was not Considered as Deduction from the Assessment.

[180] Exhibit "WWWW-1".
[181] Exhibit "WWWW-2".
[182] Exhibit "WWWW-3".

Based on the 2003 Annual Income Tax Return[183], petitioner has excess MCIT amounting to ₱66,567,526. Since for the taxable year 2003, it incurred Regular Corporate Income Tax Liability (RCIT) of ₱49,368,445.00, petitioner applied the MCIT to the extent of its RCIT due, leaving the amount of ₱17,199,081.00 at the end of 2003. On this score, petitioner asserts that this should be deducted from deficiency income tax due.

Section 27(E)(2) of the 1997 NIRC, as amended, provides the treatment for the excess MCIT from previous years, *to wit:*

> "(E) *Minimum Corporate Income Tax on Domestic Corporation.* – xxx
>
> (2) *Carry Forward of Excess Minimum Tax.* – Any excess of the minimum corporate income tax over the normal income tax as computed in Subsection(A) of this Section shall be carried forward and credited against the normal income tax for the three (3) immediately succeeding taxable years."

Considering that the unexpired MCIT arose from taxable year 2002 and that respondent offered no justification as to why there was no deduction made to account for the said excess MCIT, this Court deems it fair to deduct the same from the basic deficiency income tax due of petitioner.

To conclude, petitioner is liable for basic deficiency income tax for taxable year 2003 in the amount of ₱29,719,822.65, computed as follows:

a. Disallowed expenses not subjected to withholding tax		
On Compensation		₱ 55,730,198.12
On Expanded Withholding Tax		16,375,523.31
On Fringe Benefits Tax (Expense)		7,777,648.00
b. Discrepancy in interest income on installment contract per FS vs. ITR		
Per F/S	₱76,150,000.00	
Per ITR	75,558,726.00	591,274.00
c. Interest Arbitrage Computation (non-deductible expense)		
Interest Income subject to final tax		
Interest inc. - ST Investment TB taken from	9,861,790.74	

[183] Computation of Minimum Corporate Income Tax of Previous Year, Exhibit "RRRR-3", p.2

worksheet aud.		
Interest inc. - ST Investment TB taken from worksheet aud.	2,927,553.26	
Interest Inc. - Bank Deposits	592,264.48	
Total	13,381,608.48	
Grossed Up value at 80%	16,727,010.60	
Rate	0.38	
Interest Deduction	6,356,264.03	
Claimed as non-deductible interest expense	2,694,884.00	
Discrepancy - Additional non-deductible portion of interest expense		3,661,380.03
d. Debit to Miscellaneous Income (Batch 108747)		
Reduction of income account while reducing the advances-metro pacific (asset) account		62,485,550.46
Total		₱ 146,621,573.92
Income Tax Rate		32%
Income Tax Due		₱ 46,918,903.65
Less: Excess MCIT from CY 2002		17,199,081.00
Basic Deficiency Income Tax		**₱29,719,822.65**

WHEREFORE, premises considered, the assessment issued by respondent against petitioner for taxable year 2003 covering deficiency Withholding Tax on Compensation in the amount of ₱29,546,442.74 is hereby **CANCELLED.** However, the assessments issued by respondent against petitioner for taxable year 2003 covering deficiency VAT, Expanded Withholding Tax, Documentary Stamp Tax, Fringe Benefit Tax and Income Tax are hereby **AFFIRMED** but with modifications. Accordingly, petitioner is hereby **ORDERED TO PAY** respondent the amount of **EIGHTY FIVE MILLION EIGHT FIFTY SIX THOUSAND TWO HUNDRED THIRTY SEVEN PESOS AND EIGHTY NINE CENTAVOS** (**₱85,856,237.89**) representing basic deficiency Value-Added Tax, Expanded Withholding Tax, Documentary Stamp Tax, Fringe Benefits Tax and Income Tax and the 25% surcharge imposed under Section 248(3) of the NIRC of 1997, as amended, computed as follows:

Type of Tax	Basic Tax due	25% Surcharge	Total
Value-Added Tax	₱ 28,889,366.59	₱ 7,222,341.65	₱ 36,111,708.24
Expanded Withholding Tax	6,815,989.95	1,703,997.49	8,519,987.44
Documentary Stamp	1,086,685.00	271,671.25	1,358,356.25

Tax			
Fringe Benefits Tax	2,173,126.12	543,281.53	2,716,407.65
Income Tax	29,719,822.65	7,429,955.66	37,149,778.32
Total	**₱ 68,684,990.31**	**₱ 17,171,247.58**	**₱85,856,237.89**

In addition, petitioner is hereby **ORDERED to PAY**:

a) Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency Value-Added Tax, Expanded Withholding Tax, Documentary Stamp Tax, Fringe Benefits Tax and Income Tax 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**	**Deficiency interest computed from**
Value-Added Tax	₱ 28,889,366.59	January 25, 2004
Expanded Withholding Tax	6,815,989.95	January 13, 2004
Documentary Stamp Tax	1,086,685.00	January 5, 2004
Fringe Benefits Tax	2,173,126.12	January 15, 2004
Income Tax	29,719,822.65	April 15, 2004

b) Delinquency interest at the rate of twenty percent (20%) per annum on the deficiency interest which have accrued on the deficiency Value-Added Tax, Expanded Withholding Tax, Documentary Stamp Tax and Fringe Benefits Tax as aforestated in (a) computed from January 2, 2007 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended;

c) Delinquency interest at the rate of twenty percent (20%) per annum on the deficiency interest which have accrued on the deficiency Income Tax as aforestated in (a) computed from April 13, 2007 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended;

d) Delinquency interest at the rate of twenty percent (20%) per annum on the following amounts computed from the dates indicated below until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended:

Type of Tax	Total Amount Due	Delinquency Interest Computed from
Value-Added Tax	₱ 36,111,708.24	January 2, 2007
Expanded Withholding Tax	8,519,987.44	
Documentary Stamp Tax	1,358,356.25	
Fringe Benefits Tax	2,716,407.65	
Income Tax	29,719,822.65	April 13, 2007

SO ORDERED.

Ma. Belen R. L.
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

ATTESTATION

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

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13 of Article VIII 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice

FORT BONIFACIO DEVELOPMENT CORPORATION -versus- COMMISSIONER OF INTERNAL REVENUE
CTA CASE NOS. 7696 & 7728
COMPUTATION OF DEFICIENCY EXPANDED WITHHOLDING TAX
FOR TAXABLE YEAR 2003

	Per ITR	Per Trial Balance	Per FS	Purchases	Purchases of Goods 1%	Purchases of services 2%	Professional Fees 10%	Director's fees 20%	Rentals 5%
Additions to PPE									
Buildings		60,571,246.00	7,395,000.00		-				
Office Equipment			857,000.00 *		8,570.00				
Transpo Equipment			2,000,000.00 *		20,000.00				
Machinery			181,000.00 *		1,810.00				
Advertising	2,939,612.00					58,792.24			
Commissions	13,812,720.00						1,381,272.00		
Rental	3,458,406.00								172,920.30
Professional fees			1,737,580.00				173,758.00		
Audit Fees									
Consultancy Fees									
Consultancy Fees									
Other Professional Fees									
Estate Management Fees									
Director's fees	15,252,757.00							3,050,551.40	
Security Services	698,430.00					13,968.60			
	28,932,560.00					578,651.20			
Janitorial & Messengerial Services	714,712.00					14,294.24			
Repairs & Maintenance Labor	723,331.00					14,466.62			
Repairs & Maintence Supplies	327,809.00				3,278.09				
Rep & Maint Bldg		30,542.29 *			305.42				
Rep & Maint Software		512,870.36 *			5,128.70				
Rep & Maint Bldg		37,800.00 *			378.00				
Rep & Maint Bldg		8,836.37 *			88.36				
Rep & Maint Vehicle		136,452.83 *			1,364.53				
Rep & Maint Vehicle		71,323.04 *			713.23				
Rep & Maint Vehicle		103,202.42 *			1,032.02				
Sanitation		3,840.00 *			38.40				
Sanitation Expense		35,248.73 *			352.49				
Sanitation Services		3,840.00 *			38.40				
Office Supplies	1,108,437.00 *				11,084.37				
Accident Insurance		39,504.70 *				790.09			
Group Life Insurance		5,000.00 *				100.00			
Group Life Insurance		257,134.85 *				5,142.70			
Hospital/Medical Insurance		1,187,528.89 *				23,750.58			
Ins. Directors/Officers		1,261,470.79 *				25,229.42			
Ins. Gen Liability		-				-			

ANNEX A

FORT BONIFACIO DEVELOPMENT CORPORATION -versus-
COMMISSIONER OF INTERNAL REVENUE
CTA CASE NOS. 7696 & 7728
COMPUTATION OF DEFICIENCY EXPANDED WITHHOLDING TAX
FOR TAXABLE YEAR 2003

	Per ITR	Per Trial Balance	Per FS	Purchases	Purchases of Goods 1%	Purchases of services 2%	Professional Fees 10%	Director's fees 20%	Rentals 5%
Insurance Property		138,439.69 *				2,768.79			
Insurance Vehicle		10,762.66 *				215.25			
Bank charges	66,219.00 *					1,324.38			
Membership fees	2,653,534.00 *					53,070.68			
Entertainment, amusement and recreation			5,734,000.00 *			114,680.00			
Communication	112,437,313.00 *		2,296,000.00			2,248,746.26			
				Total EWT Due	**54,182.02**	**3,155,991.05**	**1,555,030.00**	**3,050,551.40**	**172,920.30**
				Less: Per Alphalist	**-**	**17,796.52**	**1,154,888.30**	**-**	**-**
				Difference	**54,182.02**	**3,138,194.53**	**400,141.70**	**3,050,551.40**	**172,920.30**

Summary:

Income Payments	**EWT Rate**	**EWT Due**
Purchases of Goods	1%	54,182.02
Purchases of Services	2%	3,138,194.53
Professional Fees	10%	400,141.70
Director's Fees	20%	3,050,551.40
Rentals	5%	172,920.30
Total		**6,815,989.95**

* Amounts as indicated in the assessment; no detailed GL entries provided by

FORT BONIFACIO DEVELOPMENT CORPORATION -versus-
COMMISSIONER OF INTERNAL REVENUE
CTA CASE NOS. 7696 & 7728
DETAILED GL ENTRIES FOR DECEMBER 2003

					Traced to Alphalist				
Account Title	**GL Date**	**Amount**	**Supplier**	**Exhibit**	**1%**	**2%**	**10%**	**20%**	**5%**
Advertising	12/11/2003	50,000.00	Kilusang Diwa ng Taguig Foundation	"U5"					
Advertising	12/13/2003	7,272.00	Arturo T. Regala	"U5"					
Advertising	12/13/2003	52,033.00	Strategic Edge Incorporated	"U5"		1,040.66			
Advertising	12/18/2003	60,000.00	Stingray Advertising	"U5"		1,200.00			
Advertising	12/22/2003	45,000.00	EP Marfori Business Communications	"U5"					
Advertising	12/31/2003	1,834,307.00	Boni Ridge	"U5"					
Advertising		891,000.00	BBDO Guerero	"U5"					
Total		**2,939,612.00**							
Commissions	12/16/2003	1,956,611.00	Ayala Land Sales Inc	"V5"			195,661.10		
Commissions	12/31/2003	2,290,200.00	Accrual (Cirtek)	"V5"					
Commissions	12/31/2003	9,565,909.00	Robinson's Land Inc.				956,590.90		
Total		**13,812,720.00**							
Insurance General Liability		-		"T5"					
Interest Expense	12/9/2003	1,521,500.00	Banco de Oro	"IIIIII"					
Interest Expense	12/11/2003	750,975.00	Deutsche Bank AG	"IIIIII"					
Interest Expense	12/11/2003	346,275.00	Deutsche Bank AG	"IIIIII"					
Interest Expense	12/13/2003	60,000.00	HSBC Trust Department	"IIIIII"					
Interest Expense	12/13/2003	2,144,420.00	Wise Capital Investment and Trust Corp	"IIIIII"					
Interest Expense	12/13/2003	847,279.00	Wise Capital Investment and Trust Corp	"IIIIII"					
Interest Expense	12/13/2003	682,860.00	Wise Capital Investment and Trust Corp	"IIIIII"					
Interest Expense	12/13/2003	405,172.00	Wise Capital Investment and Trust Corp	"IIIIII"					
Interest Expense	12/13/2003	33,997.00	Wise Capital Investment and Trust Corp	"IIIIII"					
Interest Expense	12/13/2003	33,437.00	Wise Capital Investment and Trust Corp	"IIIIII"					
Interest Expense	12/13/2003	33,172.00	Wise Capital Investment and Trust Corp	"IIIIII"					
Interest Expense	12/13/2003	32,817.00	Wise Capital Investment and Trust Corp	"IIIIII"					
Interest Expense	12/13/2003	27,638.00	Wise Capital Investment and Trust Corp	"IIIIII"					
Interest Expense	12/13/2003	27,409.00	Wise Capital Investment and Trust Corp	"IIIIII"					
Interest Expense	12/13/2003	26,875.00	Wise Capital Investment and Trust Corp	"IIIIII"					
Interest Expense	12/13/2003	16,111.00	Wise Capital Investment and Trust Corp	"IIIIII"					
Interest Expense	12/15/2003	927,194.00	HSBC Trust Department	"IIIIII"					
Interest Expense	12/15/2003	152,757.00	HSBC Trust Department	"IIIIII"					
Interest Expense	12/19/2003	22,500.00	Caterpillar Financial Services Phil Inc.	"IIIIII"					

ANNEX A

FORT BONIFACIO DEVELOPMENT CORPORATION -versus-
COMMISSIONER OF INTERNAL REVENUE
CTA CASE NOS. 7696 & 7728
DETAILED GL ENTRIES FOR DECEMBER 2003

					Traced to Alphalist				
Account Title	**GL Date**	**Amount**	**Supplier**	**Exhibit**	**1%**	**2%**	**10%**	**20%**	**5%**
Interest Expense	12/31/2003	19,559,025.00		"IIIIII"					
Interest Expense	12/31/2003	1,281,147.00		"IIIIII"					
Total		**28,932,560.00**							
Janitorial & Messengerial Serv	12/2/2003	(5,250.00)		"R^{5}"					
Janitorial & Messengerial Serv	12/8/2003	(10,000.00)		"R^{5}"					
Janitorial & Messengerial Serv	12/10/2003	63,386.00	Joubert Construction Inc.	"R^{5}"		1,267.72			
Janitorial & Messengerial Serv	12/15/2003	79,115.00	Professional Maintenance Group Inc.	"R^{5}"		1,582.30			
Janitorial & Messengerial Serv	12/15/2003	10,071.00	Professional Maintenance Group Inc.	"R^{5}"		201.42			
Janitorial & Messengerial Serv	12/15/2003	53,106.00	Professional Maintenance Group Inc.	"R^{5}"		1,062.12			
Janitorial & Messengerial Serv	12/15/2003	5,603.00	Professional Maintenance Group Inc.	"R^{5}"		112.06			
Janitorial & Messengerial Serv	12/15/2003	23,330.00	Professional Maintenance Group Inc.	"R^{5}"		466.60			
Janitorial & Messengerial Serv	12/15/2003	2,404.00	Professional Maintenance Group Inc.	"R^{5}"		48.08			
Janitorial & Messengerial Serv	12/15/2003	23,330.00	Professional Maintenance Group Inc.	"R^{5}"		466.60			
Janitorial & Messengerial Serv	12/15/2003	2,404.00	Professional Maintenance Group Inc.	"R^{5}"		48.08			
Janitorial & Messengerial Serv	12/15/2003	8,181.00	Professional Maintenance Group Inc.	"R^{5}"		163.62			
Janitorial & Messengerial Serv	12/15/2003	22,107.00	Professional Maintenance Group Inc.	"R^{5}"		442.14			
Janitorial & Messengerial Serv	12/15/2003	35,000.00	Professional Maintenance Group Inc.	"R^{5}"		700.00			
Janitorial & Messengerial Serv	12/15/2003	14,000.00	Professional Maintenance Group Inc.	"R^{5}"		280.00			
Janitorial & Messengerial Serv	12/15/2003	8,181.00	Professional Maintenance Group Inc.	"R^{5}"		163.62			
Janitorial & Messengerial Serv	12/18/2003	1,363.00	Environment and General Services Inc.	"R^{5}"		27.26			
Janitorial & Messengerial Serv	12/22/2003	87,686.00	Professional Maintenance Group Inc.	"R^{5}"		1,753.72			
Janitorial & Messengerial Serv	12/22/2003	3,420.00	Professional Maintenance Group Inc.	"R^{5}"		68.40			
Janitorial & Messengerial Serv	12/22/2003	1,158.00	Professional Maintenance Group Inc.	"R^{5}"		23.16			
Janitorial & Messengerial Serv	12/22/2003	2,493.00	Professional Maintenance Group Inc.	"R^{5}"		49.86			
Janitorial & Messengerial Serv	12/22/2003	27,797.00	Professional Maintenance Group Inc.	"R^{5}"		555.94			
Janitorial & Messengerial Serv	12/22/2003	9,090.00	Professional Maintenance Group Inc.	"R^{5}"		181.80			
Janitorial & Messengerial Serv	12/31/2003	85,286.00		"R^{5}"					
Janitorial & Messengerial Serv	12/31/2003	63,089.00		"R^{5}"					
Janitorial & Messengerial Serv	12/31/2003	27,717.00		"R^{5}"					
Janitorial & Messengerial Serv	12/31/2003	27,717.00		"R^{5}"					
Janitorial & Messengerial Serv	12/31/2003	3,840.00		"R^{5}"					
Janitorial & Messengerial Serv	12/31/2003	28,376.00		"R^{5}"					

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CTA CASE NOS. 7696 & 7728
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Account Title	**GL Date**	**Amount**	**Supplier**	**Exhibit**	**1%**	**2%**	**10%**	**20%**	**5%**
Janitorial & Messengerial Serv	12/31/2003	6,872.00		"R^5"					
Janitorial & Messengerial Serv	12/31/2003	3,840.00		"R^5"					
Total		**714,712.00**							
Professional Fees	12/10/2003	3,636.00	Cuervo Appraisers Inc.	"P^5"			363.60		
Professional Fees	12/10/2003	8,181.00	Domingo Ignacio & Co. CPAs	"P^5"					
Professional Fees	12/10/2003	22,727.00	IFCA Consulting Phils. Inc.	"P^5"			2,272.70		
Professional Fees	12/10/2003	43,636.00	Mannasoft Technology Corporation	"P^5"					
Professional Fees	12/13/2003	150,000.00	Lim Ocampo Law Offices	"P^5"					
Professional Fees	12/18/2003	20,000.00	Cayetano Sebastian Dado & Cruz Law Offic	"P^5"					
Professional Fees	12/18/2003	50,000.00	Full Circle Communications	"P^5"					
Professional Fees	12/18/2003	150,000.00	Miguel C. Caisip	"P^5"					
Professional Fees	12/22/2003	26,133.00	IFCA Consulting Phils. Inc.	"P^5"					
Professional Fees	12/23/2003	450,000.00	Abello Concepcion Regala & Cruz Law	"P^5"					
Professional Fees	12/23/2003	20,000.00	Cayetano Sebastian Dado & Cruz Law Offic	"P^5"					
Professional Fees	12/23/2003	350.00	Puyat Jacinto & Santos	"P^5"					
Professional Fees	12/23/2003	45,762.00	Puyat Jacinto & Santos	"P^5"					
Professional Fees	12/23/2003	1,440.00	Puyat Jacinto & Santos	"P^5"					
Professional Fees	12/23/2003	500.00	Puyat Jacinto & Santos	"P^5"					
Professional Fees	12/31/2003	419,100.00	B. Barsabal	"P^5"					
Professional Fees	12/31/2003	42,350.00	Balane, Chiong	"P^5"					
Professional Fees	12/31/2003	480,000.00		"P^5"					
Professional Fees	12/31/2003	166,666.00		"P^5"					
Professional Fees	12/31/2003	166,666.00		"P^5"					
Professional Fees	12/31/2003	83,333.00		"P^5"					
Professional Fees	12/31/2003	83,333.00		"P^5"					
Less: Payments to GPPs									
Professional Fees	12/10/2003	(8,181.00)	Domingo Ignacio & Co. CPAs	"P^5"					
Professional Fees	12/13/2003	(150,000.00)	Lim Ocampo Law Offices	"P^5"					
Professional Fees	12/18/2003	(20,000.00)	Cayetano Sebastian Dado & Cruz Law Offic	"P^5"					
Professional Fees	12/23/2003	(450,000.00)	Abello Concepcion Regala & Cruz Law	"P^5"					
Professional Fees	12/23/2003	(20,000.00)	Cayetano Sebastian Dado & Cruz Law Offic	"P^5"					
Professional Fees	12/23/2003	(350.00)	Puyat Jacinto & Santos	"P^5"					

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FORT BONIFACIO DEVELOPMENT CORPORATION -versus- COMMISSIONER OF INTERNAL REVENUE
CTA CASE NOS. 7696 & 7728
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Account Title	**GL Date**	**Amount**	**Supplier**	**Exhibit**	**1%**	**2%**	**10%**	**20%**	**5%**
Professional Fees	12/23/2003	(45,762.00)	Puyat Jacinto & Santos	"P^{5}"					
Professional Fees	12/23/2003	(1,440.00)	Puyat Jacinto & Santos	"P^{5}"					
Professional Fees	12/23/2003	(500.00)	Puyat Jacinto & Santos	"P^{5}"					
Total (net of payments to GPPs)		**1,737,580.00**							
Rental	12/11/2003	9,844.00	Hewlett Packard Phils Corp	"S^{5}"					
Rental	12/11/2003	9,844.00	Hewlett Packard Phils Corp	"S^{5}"					
Rental	12/11/2003	9,844.00	Hewlett Packard Phils Corp	"S^{5}"					
Rental	12/11/2003	9,844.00	Hewlett Packard Phils Corp	"S^{5}"					
Rental	12/11/2003	9,844.00	Hewlett Packard Phils Corp	"S^{5}"					
Rental	12/11/2003	454.00	Hewlett Packard Phils Corp	"S^{5}"					
Rental	12/21/2003	568,122.00	ePLDT Inc.	"S^{5}"					
Rental	12/21/2003	568,122.00	ePLDT Inc.	"S^{5}"					
Rental	12/21/2003	568,122.00	ePLDT Inc.	"S^{5}"					
Rental	12/21/2003	568,122.00	ePLDT Inc.	"S^{5}"					
Rental	12/21/2003	568,122.00	ePLDT Inc.	"S^{5}"					
Rental	12/21/2003	568,122.00	ePLDT Inc.	"S^{5}"					
Total		**3,458,406.00**							
Repairs & Maintenance - Labo	12/10/2003	10,000.00	Tri-Point 2000 Engineering	"Q^{5}"					
Repairs & Maintenance - Labo	12/15/2003	5,200.00	Professional Maintenance Group Inc.	"Q^{5}"		104.00			
Repairs & Maintenance - Labo	12/15/2003	1,000.00	Professional Maintenance Group Inc.	"Q^{5}"		20.00			
Repairs & Maintenance - Labo	12/15/2003	6,363.00	Professional Maintenance Group Inc.	"Q^{5}"		127.26			
Repairs & Maintenance - Labo	12/15/2003	1,000.00	Professional Maintenance Group Inc.	"Q^{5}"		20.00			
Repairs & Maintenance - Labo	12/18/2003	504,210.00	J.D. Edwards (Asia Pacific) Pte Ltd	"Q^{5}"					
Repairs & Maintenance - Labo	12/18/2003	3,400.00	N.C. General Merchandising Group Inc.	"Q^{5}"					
Repairs & Maintenance - Labo	12/18/2003	1,800.00	Robust Inc.	"Q^{5}"					
Repairs & Maintenance - Labo	12/22/2003	3,000.00	International Elevator & Equipment Inc.	"Q^{5}"					
Repairs & Maintenance - Labo	12/22/2003	6,980.00	Summex Trading Corp	"Q^{5}"					
Repairs & Maintenance - Labo	12/31/2003	21,705.00		"Q^{5}"					
Repairs & Maintenance - Labo	12/31/2003	8,836.00		"Q^{5}"					
Repairs & Maintenance - Labo	12/31/2003	37,800.00		"Q^{5}"					
Repairs & Maintenance - Labo	12/31/2003	8,836.00		"Q^{5}"					

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Account Title	**GL Date**	**Amount**	**Supplier**	**Exhibit**	**1%**	**2%**	**10%**	**20%**	**5%**
Repairs & Maintenance - Labo	12/31/2003	35,135.00		"Q^{5}"					
Repairs & Maintenance - Labo	12/31/2003	20,288.00		"Q^{5}"					
Repairs & Maintenance - Labo	12/31/2003	11,713.00		"Q^{5}"					
Repairs & Maintenance - Labo	12/31/2003	12,185.00		"Q^{5}"					
Repairs & Maintenance - Labo	12/31/2003	23,880.00		"Q^{5}"					
Total		**723,331.00**							
Estate Management Fees	12/16/2003	200,000.00		"LLLLL"					
Director's Fees	12/31/2003	45,000.00		"LLLLL"					
Director's Fees	12/31/2003	720,000.00		"LLLLL"					
Estate Management Fees	12/31/2003	4,181,157.00		"LLLLL"					
Estate Management Fees	12/31/2003	(4,181,157.00)		"LLLLL"					
Estate Management Fees	12/31/2003	10,106,600.00		"LLLLL"					
Estate Management Fees	12/31/2003	4,181,157.00		"LLLLL"					
Total		**15,252,757.00**							
Security Services	12/10/2003	33,803.00	Speedwatch Security & Allied Services	"HHHHHH"		676.06			
Security Services	12/11/2003	(10,100.00)		"HHHHHH"					
Security Services	12/13/2003	75,312.00	Bonifacio Security Services Inc.	"HHHHHH"		1,506.24			
Security Services	12/13/2003	38,494.00	Bonifacio Security Services Inc.	"HHHHHH"		769.88			
Security Services	12/22/2003	86,326.00	Bonifacio Security Services Inc.	"HHHHHH"		1,726.52			
Security Services	12/22/2003	23,535.00	Bonifacio Security Services Inc.	"HHHHHH"		470.70			
Security Services	12/22/2003	23,535.00	Bonifacio Security Services Inc.	"HHHHHH"		470.70			
Security Services	12/22/2003	199,957.00		"HHHHHH"					
Security Services	12/31/2003	107,192.00		"HHHHHH"					
Security Services	12/31/2003	60,188.00		"HHHHHH"					
Security Services	12/31/2003	60,188.00		"HHHHHH"					
Total		**698,430.00**			**-**	**17,796.52**	**1,154,888.30**	**-**	**-**