Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION

STAEDTLER (PHILIPPINES) INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8431
For: Assessment

Members:

DEL ROSARIO, *Chairperson*
UY, and
MINDARO-GRULLA, JJ.

Promulgated:

JAN 20 2015 ; 9:51 a.m.

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DECISION

MINDARO-GRULLA, J.:

This resolves the Petition for Review filed by Staedtler (Philippines), Inc., as petitioner, against the Commissioner of Internal Revenue (CIR), as respondent, with the Court in Division, pursuant to Section 7 (a) (1) of Republic Act (RA) No. 1125, An Act Creating the Court of Tax Appeals, as amended[1], as well as Rule 4, Section 3 (a) (1), in relation to Rule 8, Section 4(a), of the Revised Rules of the Court of Tax Appeals (RRCTA)[2].

1 Sec. 7. *Jurisdiction.* –The CTA shall exercise:
(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
x x x x x x x x x
(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
x x x x x x x x x

2 RULE 4
JURISDICTION OF THE COURT

Sec. 3. *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:

Petitioner seeks the cancellation of the assessment issued against it for alleged deficiency income tax in the amount of ₱827,052.38, deficiency value-added tax (VAT) in the amount of ₱184,326.05, and deficiency expanded withholding tax (EWT) in the amount of ₱28,325.18 for the taxable year 2007.

Petitioner Staedtler (Philippines), Inc. is a corporation duly organized and existing under the laws of the Republic of the Philippines, with office address at the 2nd Floor, 15 Gilmore Avenue, New Manila, Quezon City.[3] It is engaged in the wholesale and importation of Staedtler products in the Philippines.[4] Petitioner is a registered taxpayer, with Certificate of Registration No. OCN3RC0000277506.[5]

Respondent is the Commissioner of the Bureau of Internal Revenue (BIR), the government agency officially responsible for the assessment and collection of all national internal revenue taxes, fees and charges and the enforcement of all forfeitures, penalties and fines connected

(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

x x x x x x x x x

(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;

x x x x x x x x x

RULE 8
PROCEDURE IN CIVIL CASES

Sec. 4. *Where to appeal; mode of appeal.* –

(a) An Appeal from a decision or ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claim for refund of internal revenue taxes erroneously or illegally collected; the decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade & Industry, the Secretary of Agriculture, and the Regional Trial Court in the exercise of their original jurisdiction, shall be taken to the Court by filing before it a petition for review as provided in Rule 42 of the Rules of Court. The Court in Division shall act on the appeal.

[3] Exhibit "B-31", Docket, p. 1124.
[4] Par. 2, Summary of Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 134.
[5] Exhibit "B-51", Docket, p. 1201.

with such taxes. She holds office at the 4th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner filed its Annual Income Tax Return (ITR) for the taxable year 2007 on April 15, 2008.[6] It likewise filed its Quarterly VAT Returns for the taxable year 2007 on April 24, 2007[7], July 25, 2007[8], October 24, 2007[9], and January 25, 2008[10].

On August 26, 2008, petitioner received Letter of Authority No. LOA200700039798, for the examination of its books of accounts and other accounting records for all internal revenue taxes for the period from January 1, 2007 to December 31, 2007.[11]

On October 8, 2010, respondent issued a Preliminary Assessment Notice[12] (PAN) and received by petitioner on October 21, 2010[13], assessing the latter for deficiency income tax, VAT and EWT, as detailed below:

I. DEFICIENCY INCOME TAX				
Taxable Income per Income Tax Return (ITR)			P	2,644,993.58
Add: Adjustments per investigation:				
Income Payments not subjected to withholding tax	P	569,706.72		
Unaccounted source of cash		977,097.22		1,546,803.94
Taxable Income per Investigation			P	4,191,797.52
Income tax due thereon (35%)			P	1,467,129.13
Less: Allowable tax credits payments				
Payments	P	556,727.06		
Claimed creditable tax withheld		369,020.94		925,748.00
Deficiency Income Tax			P	541,381.13
Add: 20% Interest p.a. (04.16.08 to 12.04.10)				268,762.36
TOTAL AMOUNT DUE			P	810,143.49

[6] Exhibit "A", Docket, p. 1044.
[7] Exhibits "B-3" and "B-3-1", Docket, p. 1055.
[8] Exhibits "B-6" and "B-6-1", Docket, p. 1059.
[9] Exhibits "B-9" and "B-9-1", Docket, p. 1064.
[10] Exhibits "B-12" and "B-12-a", Docket, p. 1068.
[11] Exhibit "1-a", BIR Records, p. 1.
[12] Exhibit "J", Docket, pp. 1605-1608; Exhibits "1-e" and "1-e-1", BIR Records, pp. 206-209.
[13] Exhibit "J-1-a", Docket, p. 1609.

II. DEFICIENCY VALUE ADDED TAX				
Taxable sales/receipts per value-added tax (VAT) returns			P	38,447,067.43
Add: Adjustments per investigation:				
Unaccounted source of cash				977,097.22
Taxable sales/receipts per investigation			P	39,424,164.65
Output tax Due thereon (12%)			P	4,730,899.76
Less: Allowable tax credits/payments				
Current Input Tax	P	4,261,115.70		
Payments		651,635.01		
Input tax credit carried over from previous period		911,214.41		
Total	P	5,823,965.12		
Less: Excess input tax carried over to next accounting period		1,210,317.03		4,613,648.09
Deficiency value-added tax			P	117,251.67
Add: 20% interest p.a. (01.26.08 to 10.08.10)				63,412.28
TOTAL AMOUNT DUE			P	180,663.95

III. DEFICIENCY EXPANDED WITHHOLDING TAX				
	Amount	**EWT Rate**		**EWT Due**
Income Payments to Sub/contractors	P494,566.56	2%	P	9,891.33
Brokerage fee	64,140.16	10%		6,414.02
Legal and professional fee	11,000.00	15%		1,650.00
Deficiency Expanded Withholding Tax				17,955.35
Add: 20% Interest p.a. (01.16.08 to 10.08.10)				9,809.03
TOTAL AMOUNT DUE			P	27,764.38

Petitioner then protested the said PAN through a Letter dated October 29, 2010, which was received by respondent on the same date.[14]

On November 19, 2010, petitioner received a copy of the Formal Letter of Demand (FLD) dated November 4, 2010 and the attached Final Assessment Notices[15] (FAN), assessing it for deficiency income tax, VAT, and EWT, broken down as follows[16]:

I. DEFICIENCY INCOME TAX				
Taxable Income per Income Tax Return (ITR)			P	2,644,993.58
Add: Adjustments per investigation:				
Income Payments not subjected to withholding tax	P	569,706.72		

[14] Exhibits "K", "K-1-1", and "K-1-2", Docket, pp. 1610-1612.
[15] Exhibits "L", "L-1-2", "L-1", "L-2" and "L-3", "L-4" and "L-4-a", Docket, pp. 1674-1681; Exhibits "1-f , "1-f-2", 1-f-3", and "1-f-4", BIR Records, pp. 217, 216, 215, 213-214, and 211-212, respectively.
[16] Pars. 4 and 5, Summary of Admitted Facts, JSFI, Docket, pp. 134-135.

Unaccounted source of cash			977,097.22		1,546,803.94
Taxable Income per Investigation				P	4,191,797.52
Income tax due thereon (35%)				P	1,467,129.13
Less: Allowable tax credits payments					
Payments		P	556,727.06		
Claimed creditable tax withheld			369,020.94		925,748.00
Deficiency Income Tax				P	541,381.13
Add: 20% Interest p.a. (04.16.08 to 12.04.10)					285,671.25
TOTAL AMOUNT DUE				P	827,052.38
II. DEFICIENCY VALUE ADDED TAX					
Taxable sales/receipts per value-added tax (VAT) returns				P	38,447,067.43
Add: Adjustments per investigation:					
Unaccounted source of cash					977,097.22
Taxable sales/receipts per investigation				P	39,424,164.65
Output tax Due thereon (12%)				P	4,730,899.76
Less: Allowable tax credits/payments					
Current Input Tax		P	4,261,115.70		
Payments			651,635.01		
Input tax credit carried over from previous period			911,214.41		
Total		P	5,823,965.12		
Less: Excess input tax carried over to next accounting period			1,210,317.03		4,613,648.09
Deficiency value-added tax				P	117,251.67
Add: 20% interest p.a. (01.26.08 to 12.04.10)					67,074.38
TOTAL AMOUNT DUE				P	184,326.05
III. DEFICIENCY EXPANDED WITHHOLDING TAX	**Amount**		**EWT Rate**		**EWT Due**
Income Payments to Sub/contractors	P494,566.56		2%	P	9,891.33
Brokerage fee	64,140.16		10%		6,414.02
Legal and professional fee	11,000.00		15%		1,650.00
Deficiency Expanded Withholding Tax					17,955.35
Add: 20% Interest p.a. (01.16.08 to 12.04.10)					10,369.83
TOTAL AMOUNT DUE				P	28,325.18

The FAN reiterated the deficiency tax assessments in the PAN dated October 8, 2010, except for the amount of interest.[17]

Petitioner submitted its Protest Letter against the FAN dated November 19, 2010[18] on November 22, 2010[19].

On July 11, 2011, petitioner received a Notice for Informal Conference[20] dated June 29, 2011, requesting

[17] Par. 6, Summary of Admitted Facts, JSFI, Docket, p. 136.
[18] Exhibit "M" and "M-1-2", Docket, p. 1682.
[19] Exhibit "M-1", Docket, p. 1682.

petitioner to appear at the BIR on July 14, 2011. It was issued in order to notify petitioner of the findings regarding its tax liabilities and to enable petitioner to present its side of the case. During the informal conference, petitioner submitted a Transmittal Letter[21] dated July 18, 2011 with the documents requested, which was received by Revenue Officer Rosanna Baduria.

On January 19, 2012, respondent issued the Final Decision[22], which was received by petitioner on January 26, 2012[23], denying the latter's Protest Letter dated November 19, 2010. Thus, petitioner filed the instant Petition for Review on February 23, 2012.

Respondent filed her Answer[24] on April 12, 2012, interposing the following special and affirmative defenses:

> "5. The assessments for calendar year 2007 deficiency income tax, deficiency value added tax and deficiency expanded withholding tax were issued in accordance with applicable laws and regulations. The factual and legal bases of the assessments are contained in the Formal Letter of Demand (FLD) and Final Assessment Notices (FAN).
>
> 6. As alleged by Petitioner in its Petition, it received the FAN and the FLD on November 19, 2010. Subsequently, it filed its Letter of Protest on October 29, 2010 for the PAN and November 22, 2010 for the FAN. However, the Petitioner failed to submit the required documents within sixty (days) from the filing of the letter of protest, hence, the assessment already become final, executory and demandable. Consequently, this Honorable Court cannot anymore exercise jurisdiction over Petitioner's Petition for Review.

[20] Exhibits "N" and "N-1", Docket, p. 1686; Exhibit "1-h", BIR Records, p. 213.
[21] Exhibits "O" and "O-1-1", Docket, p. 1688.
[22] Exhibits "P" and "P-1", Docket, pp. 1708-1709; Exhibit "1-j", BIR Records, p. 321.
[23] Exhibits "P-1-1-" and P-1-a", Docket, pp. 1708-1709.
[24] Docket, pp. 64-70.

Section 3.1.5 of Revenue Regulations No. 12-99, specifically provides:

'3.1.5 Disputed Assessment. The taxpayer or his duly authorized representative may protest administratively against the aforesaid formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof. If there are several issues involved in the formal letter of demand and assessment notice but the taxpayer only disputes or protest against the validity of some of the issues raised, the taxpayer shall be required to pay the deficiency tax or taxes attributable to the undisputed issues, in which case, a collection letter shall be issued to the taxpayer calling for payment of the said deficiency tax, inclusive of the applicable surcharge and/or interest. No action shall be taken on the taxpayer's disputed issues until the taxpayer has paid the deficiency tax or taxes attributable to the said undisputed issues. The prescriptive period for assessment or collection of the tax or taxes attributable to the disputed issues shall be suspended. The taxpayer shall state the facts, the applicable law, rules and regulations, or jurisprudence on which his protest is based, otherwise, his protest shall be considered void and without force and effect. If there are several issues involved in the disputed jurisprudence in support of his protest against some of the several issues involved in the disputed assessment and the taxpayer fails to state the facts, the applicable law, rules and regulations, or

jurisprudence in support of his protest against some of the several issues on which the assessment is based, the same shall be considered undisputed issue or issues, in which case, the taxpayer shall be required to pay the corresponding deficiency tax or taxes attributable thereto. The taxpayer shall submit the required documents in support of his protest within sixty (60) days from the date of filing of his letter of protest, otherwise, the assessment shall become final, executory and demandable. The phrase 'submit the required documents' includes submission or presentation of the pertinent documents for scrutiny and evaluation by the Revenue Officer conducting the audit. The said Revenue Officer shall state this fact in his report of investigation. If the taxpayer fails to file a valid protest against the formal letter of demand and assessment notice within thirty (30) days from the date of receipt thereof, the assessment shall become final, executory and demandable. If the protest is denied, in whole or in part, by the Commissioner or his duly authorized representative, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from the date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable: Provided, however, that if the taxpayer elevates his protest to the Commissioner within thirty (30) days from the date of receipt of the final decision of the Commissioner's duly authorized representative, the latter's decision shall not be considered final, executory and demandable, in which case, the protest shall be decided by the

> *Commissioner. If the Commissioner or his duly authorized representative fails to act on the taxpayer's protest within one hundred eighty (180) days from the date of submission, by the taxpayer, of the required documents in support of his protest, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from the lapse of the said 180-day period, the assessment shall become final, executory and demandable.'*

7. A perusal of Annex 'D' of the Petition for Review purporting to be a protest letter does not stand the test as required under RR 12-99 and likewise, nowhere in said letter indicates that what was mentioned therein as a reply to the PAN is adopted for the FAN. Likewise, assuming without admitting that Petitioner's Annex 'D' is a proper protest letter, be it for reconsideration or reinvestigation, the same did not suspend the running of the prescriptive period within which to file this Petition before this Honorable Court. Hence, it is respectfully submitted that the filing of this Petition for Review after the prescriptive period results in the lack of jurisdiction of this Honorable Court over this case.

8. Assuming por arguendo that the instant Petition was filed within the period provided by law, the details of discrepancies disclosed the following:

<u>Deficiency Income Tax</u>

a. Verification disclosed that the income payments during the 2007 taxable year was not fully subjected to withholding tax as required by the provisions of Revenue Regulations No. 2-98, as amended, therefore, the difference was disallowed as deduction from gross income pursuant to Section 34(K) of the Tax Code of 1997, as amended.

b. Further, verification disclosed that the purchases and the insurance expense were not fully reported in the financial statements (FS) which led to the inference that part of your income has not been declared as enunciated by the Court in the case of Perez vs. CTA & CIR L-10507 dated May 30, 1958. Therefore, the amount is added in your reported taxable income pursuant to Section 31 of the Tax Code of 1997, as amended.

Deficiency Value Added Tax

Verification disclosed that the unaccounted source of cash which was considered as undeclared income, as discussed in item 1.b of the Details of Discrepancies of the FAN, is subject to 12% VAT pursuant to Section 106 to 108 of the Tax Code of 1997, as amended.

Deficiency Expanded Withholding Tax

Verification disclosed that income payments during the said taxable year were not fully subjected to expanded withholding tax, hence, assessed pursuant to the provisions of Revenue Regulations No. 2-98, as amended.

9. In *OCEANIC WIRELESS NETWORK, INC. VS. COMMISSIONER OF INTERNAL REVENUE*, GR No. 148380 dated December 9, 2005, the Honorable Supreme Court discussed what should be the content of the final decision of the Respondent, to wit:

> *'... the (CIR) should always indicate to the taxpayer in clear and unequivocal language whenever his action on an*

assessment questioned by a taxpayer constitutes his final determination on the disputed assessment, as contemplated by Sections 7 and 11 of [RA 1125], as amended. On the basis of his statement indubitably showing that the Commissioner's communicated action is his final decision on the contested assessment, the aggrieved taxpayer would then be able to take recourse to the tax court at the opportune time. Without needless difficulty, the taxpayer would be able to determine when his right to appeal to the tax court accrues.

The rule of conduct would also obviate all desire and opportunity on the part of the taxpayer to continually delay the finality of the assessment – and, consequently, the collection of the amount demanded as taxes – by repeated requests for recomputation and reconsideration. On the part of the [CIR], this would encourage his office to conduct a careful and thorough study of every questioned assessment and render a correct and definite decision thereon in the first instance. This would also deter the [CIR] from unfairly making the taxpayer grope in the dark and speculate as to which action constitutes the decision appealable to the tax court. Of greater import, this rule of conduct would meet a pressing need for fair play, regularity, and orderliness in administrative action.'

10. The final decision issued by the Respondent on the disputed assessments had complied with the requirements of the law as well as the decision of the Honorable Supreme Court in

the aforementioned case because the same was made in a clear and unequivocal language wherein the taxpayer would know when to take recourse to the tax court at the opportune time.

11. In *PROTECTOR'S SERVICES, INC. VS. COURT OF APPEALS AND COMMISSIONER OF INTERNAL REVENUE, GR No. 118176* dated April 12, 2000, the Honorable Supreme Court said, to wit:

> *'Only recently in GR No. 115712, Commission of Internal Revenue vs. Court of Appeals, February 25, 1999, we held, that the three-year prescriptive period of tax assessment of contractor' tax should be computed at the time of filing of the final annual percentage tax return, when it can be finally ascertained if the taxpayer still has an unpaid tax, and not from the tentative quarterly payments.'*

12. *Section 203 of the 1997 National Internal Revenue Code* provides, to wit:

> *'Sec. 203. Period of Limitation Upon Assessment and Collection - Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: Provided, That in a case where a return is filed beyond the period prescribed by law, the three (3) 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.'*

13. Hence, the assessment made on October 10, 2010 for the 2007 VAT and EWT of the Petitioner has not yet prescribed because the reckoning point on when the assessment should be made would be three (3) years from the filing of the Final Adjustment Return which in this case was made on January 25, 2008 for the value added tax and January 15, 2008 for the expanded withholding tax.

14. Finally, well settled is the rule that tax assessments by examiners are presumed correct and made in good faith. It is the taxpayer and not the Bureau of Internal Revenue who has the duty of proving otherwise. Equally settled is the rule that in the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed.

15. In *COMMISSIONER OF INTERNAL REVENUE VS. BANK OF THE PHILIPPINE ISLANDS, GR No. 134062* dated April 17, 2007, the Honorable Supreme Court said, to wit:

> *'Tax assessments by tax examiners are presumed correct and made in good faith. The taxpayer has the duty to prove otherwise. In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a Bureau of Internal Revenue examiner and approved by his superior officers will not be disturbed. All presumptions are in favor of the correctness of tax assessments.'"*

Respondent's Pre-Trial Brief was filed on May 10, 2012[25], while petitioner's Pre-Trial Brief was submitted on May 15, 2012[26].

A Motion for Leave of Court (To File Amended Answer) together with the Amended Answer[27] was filed on May 18, 2012, which the Court granted and then admitted the Amended Answer on June 6, 2012[28]. The Court likewise ordered the parties to file their respective Amended Pre-Trial Briefs. As such, respondent's Amended Pre-Trial Brief[29] and petitioner's Amended Pre-Trial Brief[30] were filed on May 22, 2012 and May 28, 2012, respectively.

On July 30, 2012, the parties filed their Joint Stipulation of Facts and Issues[31], which the Court approved on August 1, 2012[32]. A Pre-Trial Order[33] was also issued by the Court on November 27, 2012.

On December 10, 2012, petitioner filed a Motion for Correction/Amendment of Pre-Trial Order[34], which the Court granted on December 20, 2012.[35] Thus, a Supplemental Pre-Trial Order[36] was issued on January 15, 2013.

During trial, petitioner presented Anafe B. Posadas as its lone witness; while respondent presented Flordeliza B. Reyes and Rosanna F. Baduria as her witnesses. The parties likewise presented and formally offered their respective documentary evidence, to wit:

Petitioner's Exhibits:	Description
CC	Affidavit of Anafe B. Posadas

[25] Docket, p. 72.
[26] Docket, p. 77.
[27] Docket, pp. 93-102.
[28] Resolution, Docket, p. 127.
[29] Docket, pp. 105-109.
[30] Docket, pp. 110-124.
[31] Docket, pp. 134-147.
[32] Resolution dated August 1, 2012, Docket, p. 152.
[33] Docket, pp. 193-209.
[34] Docket, pp. 976-980.
[35] Resolution, Docket, p. 982.
[36] Docket, pp. 1729-1731.

CC-1	Signature of Anafe B. Posadas
A	Annual Income Tax Return for taxable year 2007
A-2	Audited Financial Statement for taxable year 2007 (2007 AFS)
A-2-b	Amount of insurance expense (P9,502.50)
A-3	Proof of Payment of income tax
B	Transmittal of documents/receipt dated 5 September 2008
B-1-1	Signature of Revenue Officer Sabado dated 5 September 2008
B-1	Monthly Value-added Tax Return for January 2007
B-2	Monthly Value-added Tax Return for February 2007
B-3	Quarterly Value-added Tax Return for January-March 2007
B-3-1	BIR stamp receipt dated 24 April 2007
B-3-a	Proof of Payment of VAT for January-March 2007
B-3-a-1	Computer-generated receipt dated 24 April 2007
B-4	Monthly Value-added Tax Return for April 2007
B-5	Monthly Value-added Tax Return for May 2007
B-6	Quarterly Value-added Tax Return for April-June 2007
B-6-1	BIR stamp receipt dated 25 July 2007
B-6-a-1	Computer-generated receipt dated 25 July 2007
B-7	Monthly Value-added Tax Return for July 2007
B-8	Monthly Value-added Tax Return for August 2007
B-9	Quarterly Value-added Tax Return for July-September 2007
B-9-a	BIR stamp receipt dated 24 October 2007
B-10	Monthly Value-added Tax Return for October 2007

B-11	Monthly Value-added Tax Return for November 2007
B-12	Quarterly Value-added Tax Return for October-December 2007
B-12-a	BIR stamp receipt dated 25 January 2008
B-13	Schedule of output and input taxes (Summary List of Sales and Purchases)
B-14	Quarterly Income Tax Return for the First Quarter of 2007
B-15	Quarterly Income Tax Return for the Second Quarter of 2007
B-16	Quarterly Income Tax Return for the Third Quarter of 2007
B-17	Monthly Expanded Withholding Tax Return for January 2007
B-17-1	BIR stamp receipt dated 8 February 2007
B-17-a	PNB BTR-BIR Payment Slip dated 8 February 2007
B-17-a-1	Computer-generated receipt dated 8 February 2007
B-18	Monthly Expanded Withholding Tax Return for February 2007
B-18-1	BIR stamp receipt dated 9 March 2007
B-18-a	PNB BTR-BIR Payment Slip dated 9 March 2007
B-18-a-1	Computer-generated receipt dated 9 March 2007
B-19	Monthly Expanded Withholding Tax Return for March 2007
B-19-1	BIR stamp receipt dated 4 April 2007
B-19-a	PNB BTR-BIR Payment Slip (undated)
B-19-a-1	Computer-generated receipt dated 4 April 2007
B-20	Monthly Expanded Withholding Tax Return for April 2007
B-20-1	BIR stamp receipt dated 10 May 2007

B-20-a	PNB BTR-BIR Payment Slip dated 10 May 2007
B-20-a-1	Computer-generated receipt dated 10 May 2007
B-21	Monthly Expanded Withholding Tax Return for May 2007
B-21-1	BIR stamp receipt (undated)
B-21-a	PNB BTR-BIR Payment Slip dated 12 June 2007
B-21-a-1	Computer-generated receipt dated 12 June 2007
B-22	Monthly Expanded Withholding Tax Return for June 2007
B-22-1	BIR stamp receipt dated 10 July 2007
B-22-a	PNB BTR-BIR Payment Slip dated 9 July 2007
B-22-a-1	Computer-generated receipt dated 10 July 2007
B-23	Monthly Expanded Withholding Tax Return for July 2007
B-23-1	BIR stamp receipt dated 7 August 2007
B-23-a	PNB BTR-BIR Payment Slip dated 7 August 2007
B-23-a-1	Computer-generated receipt dated 7 August 2007
B-24	Monthly Expanded Withholding Tax Return for August 2007
B-24-1	BIR stamp receipt dated 10 September 2007
B-24-a	PNB BTR-BIR Payment slip dated 10 September 2007
B-24-a-1	Computer-generated receipt dated 10 September 2007
B-25	Monthly Expanded Withholding Tax Return for September 2007
B-25-1	BIR stamp receipt dated 10 October 2007
B-25-a	PNB BTR-BIR Payment Slip dated 10 October 2007
B-25-a-1	Computer-generated receipt dated 10 October 2007
B-26	Monthly Expanded Withholding Tax Return for October 2007

B-27	Monthly Expanded Withholding Tax Return for November 2007
B-28	Monthly Expanded Withholding Tax Return for December 2007
B-29	Annual Expanded Withholding Tax Return for taxable year 2007
B-29-a	Alpha-list of Payees (Expanded Withholding Tax)
B-29-a-1	Row for Freight, Trucking and Handling (P36,000.00/2% EWT)
B-29-a-2	Row for Sub-contractor (₱18,000.00/10% EWT)
B-30	Schedule of Taxes and Licenses
B-31	Latest copy of Articles of Incorporation (as of 5 September 2008)
B-32	Schedule of Importations
B-33	Land Bank of the Philippines Official Receipt No. 0121095
B-33-a	BOC Temporary Assessment Notice
B-33-b	BOC Import Entry and Internal Revenue Declaration dated 12 January 2007
B-34	PNB Deposit Slip dated 31 January 2007
B-34-a	BOC Assessment Notice
B-34-b	BOC Import Entry and Internal Revenue Declaration dated 26 January 2007
B-35	Land Bank of the Philippines Official Receipt No. 0126460
B-35-a	BOC Assessment Notice
B-35-b	BOC Import Entry and Internal Revenue Declaration dated 12 February 2007
B-36	PNB Deposit Slip dated 20 February 2007
B-36-a	BOC Assessment Notice
B-36-b	BOC Import Entry and Internal Revenue Declaration dated 16 February 2007
B-37	Land Bank of the Philippines Official Receipt No. 0129820

B-37-a	BOC Assessment Notice
B-37-b	BOC Import Entry and Internal Revenue Declaration dated 7 March 2007
B-38	Land Bank of the Philippines Official Receipt No. 0134633
B-38-a	BOC Assessment Notice
B-38-b	BOC Import Entry and Internal Revenue Declaration dated 10 April 2007
B-39	Land Bank of the Philippines Official Receipt No. 0138082
B-39-a	BOC Temporary Assessment Notice
B-39-b	BOC Import Entry and Internal Revenue Declaration dated 8 May 2007
B-40	PNB Deposit Slip dated 31 May 2007
B-40-a	BOC Assessment Notice
B-40-b	BOC Import Entry and Internal Revenue Declaration dated 26 May 2007
B-41	Land Bank of the Philippines Official Receipt No. 0146660
B-41-a	BOC Assessment Notice
B-41-b	BOC Import Entry and Internal Revenue Declaration dated 3 July 2007
B-42	Land Bank of the Philippines Official Receipt No. 0147565
B-42-a	BOC Assessment Notice
B-42-b	BOC Import Entry and Internal Revenue Declaration dated 11 July 2007
B-43	Land Bank of the Philippines Official Receipt No. 0148473
B-43-a	BOC Assessment Notice
B-43-b	BOC Import Entry and Internal Revenue Declaration dated 18 July 2007
B-44	Bureau of Customs Official Receipt No. 4723613

B-44-a	Bureau of Customs Entry & Series No. 82424142
B-45	PNB Deposit Slip dated 12 September 2007
B-45-a	BOC Assessment Notice
B-45-b	BOC Import Entry and Internal Revenue Declaration dated 7 September 2007
B-46	PNB Deposit Slip dated 24 September 2007
B-46-a	BOC Assessment Notice
B-46-b	BOC Import Entry and Internal Revenue Declaration dated 21 September 2007
B-47	Bureau of Customs Entry & Series No. 82994107
B-48	Land Bank of the Philippines Official Receipt No. 0161541
B-48-a	BOC Assessment Notice
B-48-b	BOC Import Entry and Internal Revenue Declaration dated 9 October 2007
B-49	Land Bank of the Philippines Official Receipt No. 0165741
B-49-a	BOC Assessment Notice
B-49-b	BOC Import Entry and Internal Revenue Declaration dated 19 October 2007
B-50	Land Bank of the Philippines Official Receipt No. 0172594
B-50-a	BOC Assessment Notice
B-50-b	BOC Import Entry and Internal Revenue Declaration dated 26 November 2007
B-51	BIR Certificate of Registration
B-52	Monthly Breakdown of Real and Nominal Accounts
B-53	Audited Financial Statements for taxable year 2007
B-54	Letter of Authority for the previous taxable year
B-55	Statement of deficiency taxes paid for the previous taxable year
B-56	Schedule of Interest Expense

C	Transmittal of documents/receipt dated 16 September 2008
C-1-1	Signature of Revenue Officer Sabado dated 17 September 2008
C-1	Inventory list of unused sales invoice and official receipts as of 2007
C-2	Schedule/Summary Miscellaneous Expenses
D	Staedtler Philippine Letter dated 23 September 2008
E	Transmittal of documents/receipt dated 26 September 2008
E-1-1	Signature of Revenue Officer Sabado dated 29 September 2008
E-1	Working Trial Balance
E-2	Reconciliation of income payments subject to withholding taxes (Alphalist v. Audited Financial Statements)
E-3	Schedule of 2007 Tax Payments
F	Transmittal of documents/receipt dated 8 December 2008
F-1-1	Signature of Revenue Officer Sabado dated 8 December 2008
F-1	Schedule of Purchases
F-1-a	Ocean & Air Freight (P495,172.66)
G	Transmittal of documents/receipts dated 25 May 2009)
G-1-1	Signature of Group Supervisor Guro dated 25 May 2009
G-1	Inventory List
G-2	Chinabank Promissory Note No. 001071525061
G-3	Chinabank Promissory Note No. 001071529094
G-4	Chinabank Debit Memorandum dated 19 March 2007
G-5	Chinabank Debit Memorandum dated 19 April 2007

G-6	Chinabank Debit Memorandum dated 30 April 2007
G-7	Chinabank Debit Memorandum dated 21 May 2007
G-8	Chinabank Debit Memorandum dated 30 May 2007
G-9	Chinabank Debit Memorandum dated 19 June 2007
G-10	Chinabank Debit Memorandum dated 2 July 2007
G-11	Chinabank Debit Memorandum dated 19 July 2007
G-12	Chinabank Debit Memorandum dated 30 July 2007
G-13	Chinabank Debit Memorandum dated 6 August 2007
G-14	Chinabank Debit Memorandum dated 22 August 2007
G-15	Chinabank Debit Memorandum dated 28 August 2007
G-16	Chinabank Debit Memorandum dated 30 August 2007
G-17	Chinabank Debit Memorandum dated 10 September 2007
G-18	Chinabank Debit Memorandum dated 1 October 2007
G-19	Chinabank Debit Memorandum dated 22 October 2007
G-20	Schedule of Accounts Receivable
G-21	Monthly Balance of General Ledger Accounts
H	Transmittal of documents/receipt dated 5 February 2010
H-1-1	Signature of BIR Representative dated 5 February 2010
H-1	Sales Book
H-2	Cash Receipt Book
H-3	Cash Disbursement Book
H-3-a	Miscellaneous expense entry for Voucher No. 19 (₱6,350.00)

H-3-b	Miscellaneous expense entry for Voucher No. 23 (₱350.00)
H-3-c	Miscellaneous expense entry for Voucher No. 25 (₱6,350.00)
H-3-d	Miscellaneous expense entry for Voucher No. 32 (₱350.00)
H-3-e	Miscellaneous expense entry for Voucher No. 39 (₱350.00)
H-3-f	Miscellaneous expense entry for Voucher No. 51 (₱850.00)
H-3-g	Miscellaneous expense entry for Voucher No. 53 (P3,500.00)
H-3-h	Miscellaneous expense entry for Voucher No. 77 (P350.00)
H-3-i	Miscellaneous expense entry for Voucher No. 79 (P4,350.00)
H-3-j	Miscellaneous expense entry for Voucher No. 87 (P350.00)
H-3-k	Miscellaneous expense entry for Voucher No. 93 (P350.00)
H-4	Purchase Book
H-5	General Ledger
H-6	General Journal
H-6-a	Journal entry for Shortlanded Cost (J.V. 2007-13) (₱2,262.59)
H-6-b	Journal entry for Shortlanded Cost (J.V. 2007-14) (₱1,238.76)
H-6-c	Journal entry for Shortlanded Cost (J.V. 2007-23) (P5,177.95)
H-6-d	Journal entry for Shortlanded Cost (J.V. 2007-35) (P1,711.17)
H-6-e	Journal entry for Shortlanded Cost (J.V. 2007-42) (P3,347.70)
H-7	Sales Invoices (4251-4350)
H-8	Official Receipts (4301-4400)

H-9	Copy of Letter dated 5 November 1976
H-10	Quarterly Value-added Tax Return for the period October-December 2006
I	Transmittal of documents/receipt dated 10 February 2010
I-1-1	Signature of Revenue Officer Reyes dated 10 February 2010
I-1	Pecton Mercantile, Inc. Official Receipt No. 96695 dated 30 June 2007
I-2	Pecton Mercantile, Inc. Official Receipt No. 98121 dated 29 December 2007
J	Preliminary Assessment Notice dated 8 October 2010 (PAN)
J-1-1	Notation "Rcd 10/21/2010" with signature of Anafe Posadas
J-1	Envelope containing the Preliminary Assessment Notice
J-1-a	Notation "Rcd 10/21/2010"
K	PAN Protest letter dated 29 October 2010
K-1-1	BIR stamp receipt dated 29 October 2010
K-1-2	Signature of Anafe B. Posadas
K-1	Excerpts of the book entitled "Financial Accounting-Theory" by Nicanor B. Padilla, Jr. BBA, LLB, LLM, CPA, Attorney-at-Law
K-2	Schedule of Purchases for the year 2007
K-2-1	Amount of total payments to Asia United Insurance, Inc. (₱155,412.11)
K-2-a	Staedtler Mars GmbH & Co. Invoice No. 10011051339 dated 5 January 2007
K-2-b	Staedtler Mars GmbH & Co. Invoice No. 10011051608 dated 19 January 2007
K-2-c	Staedtler Mars GmbH & Co. Invoice No. 10011052644 dated 28 February 2007
K-2-d	Staedtler Mars GmbH & Co. Invoice No. 10011054200 dated 2 May 2007

K-2-e	Staedtler Mars GmbH & Co. Invoice No. 10011054099 dated 26 April 2007
K-2-f	Staedtler Mars GmbH & Co. Invoice No. 0014008475 dated 29 June 2007
K-2-g	Staedtler Mars GmbH & Co. Invoice No. 0014012141 dated 6 July 2007
K-2-h	Staedtler Mars GmbH & Co. Invoice No. 0014015600 dated 11 July 2007
K-2-i	Staedtler (Hong Kong) Limited Invoice No. TSA/20089093 dated 26 June 2007
K-2-j	Staedtler Mars GmbH & Co. Invoice No. 0014023490 dated 31 July 2007
K-2-k	Staedtler Mars GmbH & Co. Invoice No. 0014023490-A dated 31 July 2007
K-2-l	Staedtler Mars GmbH & Co. Invoice No. 0014058469 dated 5 October 2007
K-2-m	Staedtler Mars GmbH & Co. Invoice No. 0014041898 dated 6 September 2007
K-3	Excerpt of the book entitled "Financial Accounting-Theory of Accounts" by Nicanor B. Padilla, Jr. BBA, LLB, LLM, CPA, Attorney-at-Law
K-4	Safeway Customs Brokerage, Inc. Statement of Account No. 32713 dated 26 January 2007
K-5	Safeway Customs Brokerage, Inc. Statement of Account No. 32961 dated 23 March 2007
K-6	Safeway Customs Brokerage, Inc. Statement of Account No. 33080 dated 25 April 2007
K-7	Safeway Customs Brokerage, Inc. Statement of Account No. 33220 dated 29 May 2007
K-8	Safeway Customs Brokerage, Inc. Statement of Account No. 33303 dated 18 June 2007
K-9	Safeway Customs Brokerage, Inc. Statement of Account No. 33502 dated 26 July 2007
K-10	Safeway Customs Brokerage, Inc. Statement of Account No. 33872 dated 8 October 2007
K-11	Schedule of Marine Insurance Premiums
K-11-1	Amount of total premium payments (₱111,319.82)

K-11-a	Asian United Insurance, Inc. Official Receipt No. 0083472 dated 19 January 2007
K-11-b	Asian United Insurance, Inc. Official Receipt No. 0083975 dated 31 January 2007
K-11-c	Asian United Insurance, Inc. Official Receipt No. 0084339 dated 7 February 2007
K-11-d	Asian United Insurance, Inc. Official Receipt No. 0084663 dated 13 February 2007
K-11-e	Asian United Insurance, Inc. Official Receipt No. 0085002 dated 20 February 2007
K-11-f	Asian United Insurance, Inc. Official Receipt No. 0086720 dated 29 March 2007
K-11-g	Asian United Insurance, Inc. Official Receipt No. 0088456 dated 11 May 2007
K-11-h	Asian United Insurance, Inc. Official Receipt No. 0089293 dated 28 May 2007
K-11-i	Asian United Insurance, Inc. Official Receipt No. 0091413 dated 10 July 2007
K-11-j	Asian United Insurance, Inc. Official Receipt No. 0091927 dated 24 July 2007
K-11-k	Asian United Insurance, Inc. Official Receipt No. 0091926 dated 24 July 2007
K-11-l	Asian United Insurance, Inc. Official Receipt No. 0093913 dated 4 September 2007
K-11-m	Asian United Insurance, Inc. Official Receipt No. 0094756 dated 25 September 2007
K-11-n	Asian United Insurance, Inc. Official Receipt No. 0095312 dated 5 October 2007
K-11-o	Asian United Insurance, Inc. Official Receipt No. 0095871 dated 19 October 2007
K-11-p	Asian United Insurance, Inc. Official Receipt No. 0097300 dated 4 December 2007
L	Formal Letter of Demand dated 4 November 2010 ("FAN")
L-1-1	Statement "[p]lease note that the interest and total amount due will have to be adjusted if paid beyond OCTOBER 8, 2010."

L-1-2	Notation "Rcd 11/19/2010" with signature of Anafe Posadas
L-1	Assessment Notice dated 4 November 2010 for deficiency income tax
L-2	Assessment Notice dated 4 November 2010 for deficiency value-added tax
L-3	Assessment Notice dated 4 November 2010 for deficiency expanded withholding tax
L-4	Envelope containing the Formal Letter of Demand and Assessment Notices
L-4-a	Notation "Rcd 11/19/2010" with signature of Anafe Posadas
M	Protest Letter to the FAN dated 19 November 2010
M-1	BIR stamp receipt dated 22 November 2010
M-1-2	Signature of Anafe B. Posadas
N	Notice for Informal Conference dated 29 June 2011
N-1	Notation "Rcd July 11, 2011"
O	Transmittal of Documents/Receipt dated 18 July 2011
O-1-1	Signature of Revenue Officer Baduria dated 18 July 2011
O-1	Schedule of 2007 Purchases of Services
O-2	Schedule of 2007 Marine Insurance
O-3	2007 VAT Relief Diskette/CD Acknowledgment Form
O-4	Schedule of 2007 Purchases
P	BIR's Final Decision dated 19 January 2012 ("Final Decision")
P-1-1	Notation "Rcd 1/26/2012"
P-1	Envelope containing the Final Decision
P-1-a	Notation "Rcd 1/26/2012" with signature of Anafe Posadas

S	Safeway Customs Brokerage, Inc. Statement of Account No. 32825 dated 14 February 2007
T	Safeway Customs Brokerage, Inc. Statement of Account No. 32849 dated 26 February 2007
U	Safeway Customs Brokerage, Inc. Statement of Account No. 32864 dated 26 February 2007
V	Safeway Customs Brokerage, Inc. Statement of Account No. 33424 dated 16 July 2007
W	Safeway Customs Brokerage, Inc. Statement of Account No. 33528 dated 27 July 2007
X	Safeway Customs Brokerage, Inc. Statement of Account No. 33871 dated 8 October 2007
Y	Safeway Customs Brokerage, Inc. Statement of Account No. 33968 dated 25 October 2007
Z	Safeway Customs Brokerage, Inc. Statement of Account No. 33977 dated 7 November 2007
AA	Safeway Customs Brokerage, Inc. Statement of Account No. 34181 dated 13 December 2007
BB	Pacific Mutual Insurance Agency, Inc. Official Receipt No. 17096
BB-1	Federal Phoenix Assurance Company Debit Note for Fire Insurance Policy No. FI-COM-HO-07-0001151-00

Respondent's Exhibits:	**Description**
1	Whole Tax Docket of Staedtler (Philippines), Inc for taxable year 2007
1-a	Letter of Authority No. LOA 200700039798
1-b	Memorandum of Referral No. 039-0509-00037-LA
1-c	Post Reporting Notice
1-c-1	Preliminary Computation of Deficiency Taxes
1-d	Memorandum
1-d-1	Revenue Officer's Audit Report on Income Tax
1-d-2	Revenue Officer's Audit Report on VAT

1-d-3	Revenue Officer's Audit Report on Compensation Withholding Tax
1-d-4	Revenue Officer's Audit Report on Expanded Withholding Tax
1-e	Preliminary Assessment Notice
1-e-1	Details of Discrepancies
1-f	Assessment Notice on Income
1-f-1	Assessment Notice on VAT
1-f-2	Assessment Notice on Expanded Withholding Tax
1-f-3	Formal Letter of Demand
1-f-4	Details of Discrepancies
1-g	Memorandum of Assignment
1-h	Notice of Informal Conference
1-i	Memorandum dated September 4, 2011
1-i-1	Computation of Deficiency Taxes
1-j	Final Decision dated January 19, 2012
1-k	Judicial Affidavit of RO Florderliza Reyes
1-k-1	Signature of RO Reyes
1-l	Judicial Affidavit of RO Rosanna Baduria
1-l-1	Signature of RO Reyes

The case was submitted for decision on February 19, 2014,[37] after respondent filed her Memorandum[38] on January 16, 2014 and petitioner filed its Memorandum[39] on February 12, 2014.

The parties presented the following issues[40] to be resolved by this Court:

[37] Resolution, Docket, p. 1923.
[38] Docket, pp. 1877-1889.
[39] Docket, pp. 1890-1921.
[40] Stipulation of Issues, JSFI, Docket, p. 141.

"1. Whether or not the Final Decision is void for having been issued in violation of Petitioner's right to administrative due process.

1.1. Whether or not Respondent complied with the procedural requirements under Revenue Regulations No. 12-99.

1.2. Whether or not the Final Decision failed to state the facts, applicable law, rules and regulations, or jurisprudence upon which such Final Decision was based.

1.3. Whether or not Respondent has factual and/or legal basis for finding that Petitioner did not submit supporting documents.

2. Whether or not Respondent's right to assess Petitioner for deficiency value-added tax for the First to Third Quarters of taxable year 2007 has already prescribed.

3. Whether or not Respondent's right to assess Petitioner for deficiency expanded withholding taxes for January to September of taxable year 2007 has already prescribed.

4. Whether or not Petitioner is liable for the deficiency income tax assessment.

5. Whether or not Petitioner is liable for the deficiency value-added tax assessment.

6. Whether or not Petitioner is liable for the deficiency expanded withholding tax assessment."

The Court will determine first the timeliness of the filing of the instant Petition for Review.

Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, provides:

> "SEC. 228. *Protesting Assessment*. - When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however*, That a preassessment notice shall not be required in the following cases:
>
> xxx xxx xxx
>
> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise; the assessment shall be void.
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer

adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable."

Respondent issued her Final Decision on January 19, 2012, which was received by petitioner on January 26, 2012. Petitioner then filed the instant Petition for Review on February 23, 2012; thus, it was timely filed.

Petitioner contends that its right to due process was violated when respondent issued the Final Decision not in accordance with Revenue Regulations No. 12-99. It alleges that respondent's Final Decision is void for failure to state the facts, the applicable law, rules and regulations, or the jurisprudence upon which her decision was based. Petitioner cites the case of *Liquigaz Philippines Corporation vs. Commissioner of Internal Revenue*[41], where this Court declared some of the assessments void due to the failure of respondent to comply with the requirements of Section 228 of the NIRC of 1997 and Revenue Regulations No. 12-99.

Respondent counters that she sent Notice for Informal Conference, Preliminary Assessment Notices, Formal Letter of Demand and Final Assessment Notices to petitioner, as provided under Revenue Regulations No. 12-99, and the latter was given opportunity to file its protest and to submit pertinent documents in support of the said protest. Respondent insists that the Final Decision was issued conformably with the said Revenue Regulations, and in support thereof, cites the case of *Oceanic Wireless Network, Inc. vs. Commissioner of Internal Revenue, the Court of Tax Appeals, and the Court of Appeals* [42].

Section 3.1.6 of Revenue Regulations No. 12-1999 provides that the decision of the BIR Commissioner or her duly authorized representative shall state the (1) facts,

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[41] CTA Case No. 8141, November 22, 2012.
[42] G.R. No. 148380, December 9, 2005.

applicable law, rules and regulations, or jurisprudence on which such decision is based, otherwise, the decision shall be void, and (2) that the same is her final decision.

Records confirm that the Final Decision conforms to the procedural requirements provided in Revenue Regulations No. 12-1999.

In the Final Decision, petitioner was requested to pay immediately its tax liability per Final Assessment Notice/Demand Letter No. 40-B105-07 dated November 4, 2010; and the same was respondent's final decision. It has also a statement that if petitioner disagrees, it may appeal with this Court within thirty (30) days from receipt thereof, otherwise the deficiency tax liabilities shall become final, executory and demandable. The subject Final Decision referred to the Final Assessment Notice/Demand Letter No. 40-B105-07, reiterating petitioner's deficiency tax assessments.

By referring to the Final Assessment Notice/Demand Letter No. 40-B105-07 dated November 4, 2010, which contained the legal and factual bases of petitioner's deficiency income tax, deficiency VAT and deficiency EWT, the Final Decision has substantially complied with the requirement that it should contain the facts, the applicable law, rules and regulations, or the jurisprudence on which such decision is based.

It must be emphasized that after petitioner filed the Protest Letter[43] dated October 29, 2010, respondent issued the Formal Letter of Demand with the Assessment Notices. Essentially, the issuance of the Formal Letter of Demand is tantamount to the denial of petitioner's Protest Letter.

It is equally noteworthy that despite the denial of the afore-mentioned Protest Letter, petitioner still reiterated the same arguments contained therein when it filed its Protest

[43] Exhibit "K", Docket, pp. 1610-1612.

Letter[44] dated November 19, 2010 against the FAN. Since there was no new arguments raised by petitioner and it was a mere reiteration of its Protest Letter on the PAN, respondent issued the Final Decision, upholding the Final Assessment Notice/Demand Letter No. 40-B105-07.

The case of *Liquigaz Philippines Corporation vs. Commissioner of Internal Revenue*[45] (*Liquigaz case)* is not applicable to the present case as the antecedent facts of the two cases are different.

The Final Decision on Disputed Assessment in the *Liquigaz case* reflected reductions in petitioner's basic deficiency tax liabilities, and petitioner did not protest the Preliminary Assessment Notice issued against it.

On the other hand, the Final Decision in this case requested immediate payment of the tax deficiency assessment previously made, and petitioner's protest against the FAN was merely a reiteration of its protest to the PAN.

Thus, the Final Decision is valid as it has complied with the requirements provided under Revenue Regulations No. 12-1999.

As to the allegation that petitioner failed to submit supporting documents for its protest, the records reveal that the contrary is true. Petitioner submitted documents to respondent on September 5, 16, 23 and 26, 2008; December 8, 2008; May 25, 2009 and February 5 and 10, 2010 in relation to the Letter of Authority No. LOA 200700039798. It likewise attached supporting documents to its Protest Letter on October 29, 2010, and re-submitted the same to protest the Formal Letter of Demand.

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[44] Exhibit "M", Docket, p. 1682.
[45] *Supra*, note 43.

The Court emphasizes that the term "relevant supporting documents" should be understood as those documents necessary to support the legal basis in disputing a tax assessment as determined by the taxpayer. The BIR can only inform the taxpayer to submit additional documents. The BIR cannot demand what type of supporting documents should be submitted. Otherwise, a taxpayer will be at the mercy of the BIR, which may require the production of documents that a taxpayer cannot submit.[46]

Suffice it to say that respondent's right to assess petitioner for deficiency VAT and for deficiency EWT has prescribed except for the 4th quarter (VAT) and for October to December 2007 (EWT).

Petitioner alleges that since the FAN was issued on November 4, 2010, respondent's right to assess it for deficiency VAT for the first to third quarters and for deficiency EWT for January to September of taxable year 2007 has already lapsed pursuant to Section 203 of the NIRC of 1997, as amended.

Respondent counter-argues that her right to assess petitioner for VAT and EWT for taxable year 2007 has not yet prescribed because the reckoning point of the three (3)-year prescriptive period provided by law to assess is from the filing of the final adjustment return. According to respondent, it is only upon the filing of the final adjustment return that she would be able to ascertain if petitioner had an unpaid tax, relying on the case of *Protector's Services, Inc. vs. Court of Appeals and Commissioner of Internal Revenue*[47] as her basis.

Section 203 of the NIRC of 1997, as amended, provides as follows:

[46] *Commissioner of Internal Revenue vs. First Express Pawnshop Company, Inc.*, G.R. Nos. 172045-46, June 16, 2009.
[47] G.R. No. 118176, April 12, 2000.

> "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." *(Emphasis supplied)*

In relation thereto, Section 114 of the NIRC of 1997, as amended, states:

> "SEC. 114. *Return and Payment of Value-added Tax.* -
>
> (A) *In General.* - **Every person liable to pay the value-added tax** imposed under this Title **shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer**: *Provided, however,* That VAT-registered persons shall pay the value-added tax on a monthly basis." *(Emphasis supplied)*

Further, Section 5 of Revenue Regulations No. 17-03 provides:

> "SECTION 5. *Returns and Payments of Taxes Withheld at Source.* - Section 2.58 of Revenue Regulations No. 2-98, as amended, is hereby further amended to read as follows:

'Sec. 2.58. RETURNS AND PAYMENT OF TAXES WITHHELD AT SOURCE.

(A) *Monthly return and payment of taxes withheld at source.* -

(1) . . .

(2) WHEN TO FILE -

(a) For both large and non-large taxpayers, **the withholding tax return**, whether creditable or final (including final withholding taxes on interest from any currency bank deposit and yield or any other monetary benefit from deposit substitutes and from trust funds and similar arrangements) **shall be filed and payments should be made, within ten (10) days after the end of each month, except for taxes withheld for the month of December of each year, which shall be filed on or before January 15 of the following year**; and except for the final capital gains tax on the sale or other onerous disposition of real property considered as capital asset which must be taken/withheld from the seller by the buyer and remitted within thirty (30) days from the date of notarization of the transfer document to the collecting agent of the RDO having jurisdiction over the place where the property is located." *(Emphasis supplied)*

Based on the foregoing provisions, respondent has three years within which to assess petitioner for its deficiency taxes. With respect to the deficiency VAT, the three-year period commences from the last day prescribed by law for filing of the return, which is twenty-five (25) days following the close of each taxable quarter. However, if the return was filed beyond the prescribed period, the three-year period shall be counted from the day the return was filed. As to deficiency EWT, the three-year period to assess the same commences from ten (10) days after the end of each month except for taxes withheld for the month of December of each year, which shall be filed on or before January 15 of the following year.

The BIR Records indicate that petitioner filed its Quarterly VAT Return and its Withholding Tax Returns on the following dates:

VAT RETURNS	DATE OF FILING	LAST DAY TO ASSESS
1st Quarter[48]	April 24, 2007	April 25, 2010
2nd Quarter[49]	July 25, 2007	July 25, 2010
3rd Quarter[50]	October 24, 2007	October 25, 2010
4th Quarter[51]	January 25, 2008	January 25, 2011

WITHHOLDING TAX RETURNS	DATE OF FILING	LAST DAY TO ASSESS
January[52]	February 8, 2007	February 10, 2010
February[53]	March 9, 2007	March 10, 2010
March[54]	April 4, 2007	April 10, 2010
April[55]	May 10, 2007	May 10, 2010
May[56]	June 12, 2007	June 12, 2010
June[57]	July 10, 2007	July 10, 2010
July[58]	August 7, 2007	August 10, 2010
August[59]	September 10, 2007	September 10, 2010
September[60]	October 10, 2007	October 10, 2010
October[61]	November 12, 2007	November 12, 2010
November[62]	December 7, 2007	December 10, 2010
December[63]	January 15, 2008	January 15, 2011

48 Exhibits "B-3" and "B-3-1", Docket, p. 1055.
49 Exhibits "B-6" and "B-6-1", Docket, p. 1059.
50 Exhibits "B-9" and "B-9-a", Docket, p. 1064.
51 Exhibits "B-12" and "B-12-a", Docket, p. 1068.
52 Exhibits "B-17" and "B-17-1", Docket, p. 1088.
53 Exhibits "B-18" and "B-18-1", Docket, p. 1091.
54 Exhibits "B-19" and "B-19-1", Docket, p. 1094.
55 Exhibits "B-20" and "B-20-1", Docket, p. 1097.
56 Exhibits "B-21" and "B-21-1", Docket, p. 1100.
57 Exhibits "B-22" and "B-22-1", Docket, p. 1103.
58 Exhibits "B-23" and "B-23-1", Docket, p. 1106.
59 Exhibits "B-24" and "B-24-1", Docket, p. 1109.
60 Exhibits "B-25" and "B-25-1", Docket p. 1112.
61 Exhibits "B-26" and "B-26-1", Docket, p. 1115.
62 Exhibits "B-27" and "B-27-1", Docket, p. 1117.
63 Exhibits "B-28" an d"B-28-1", Docket, p. 1119.

Accordingly, the right of respondent to assess petitioner for deficiency VAT with respect to the first, second and third quarters of the taxable year 2007 and for deficiency EWT for the period from January to September 2007 has already prescribed, considering that the Formal Letter of Demand and Assessment Notices were issued only on November 4, 2010.

The Court will now proceed to resolve whether or not petitioner is liable for deficiency income tax for taxable year 2007 and deficiency VAT and EWT for the period from October to December 2007.

On November 4, 2010, respondent issued the Formal Letter of Demand[64], which was received by petitioner on November 19, 2010[65] with Details of Discrepancies and Assessment Notices[66], assessing petitioner for deficiency income tax, VAT, and EWT, detailed as follows:

I. DEFICIENCY INCOME TAX		
Taxable Income per Income Tax Return		₱2,644,993.58
Add: Adjustments per Investigation		
Income Payments not subjected to withholding tax	₱569,706.72	
Unaccounted source of cash	977,097.22	1,546,803.94
Taxable Income per Investigation		4,191,797.52
Income Tax Due thereon		1,467,129.13
Less: Allowable Tax Credits/Payments		
Payments	556,727.06	
Claimed Creditable Tax Withheld	369,020.94	925,748.00
Deficiency Income Tax		**541,381.13**
Add: 20% interest p.a. (04.16.08 to 12.04.10)		285,671.25
Total Amount Due		**₱ 827,052.38**

II. DEFICIENCY VALUE-ADDED TAX		
Taxable Sales/Receipts per VAT Returns		₱38,447,067.43
Add: Adjustments per Investigation		
Unaccounted source of cash		977,097.22
Taxable Sales/Receipts per Investigation		39,424,164.65

[64] Exhibit "L", Docket, pp. 1674-1681.
[65] Exhibit "L-1-2", Docket, p. 1674.
[66] Exhibits "L-1", "L-2", and "L-3", Docket, pp. 1678-1680.

Output Tax Due thereon		4,730,899.76
Less: Allowable Tax Credits/Payments		
Current Input Tax	₱4,261,115.70	
Payments	651,635.01	
Input Tax Credit carried over from previous period	911,214.41	
Total	5,823,965.12	
Less: Excess Input Tax carried over to next accounting period	1,210,317.03	4,613,648.09
Deficiency Value-Added Tax		**117,251.67**
Add: 20% interest p.a. (01.26.08 to 12.04.10)		67,074.38
Total Amount Due		**₱ 184,326.05**

III. DEFICIENCY EXPANDED WITHHOLDING TAX			
	Amount	**EWT Rate**	**EWT Due**
Income Payments to Sub/contractors	₱494,566.56	2%	₱ 9,891.33
Brokerage Fee	64,140.16	10%	6,414.02
Legal and Professional Fee	11,000.00	15%	1,650.00
Deficiency Expanded Withholding Tax			**17,955.35**
Add: 20% interest p.a. (01.16.08 to 12.04.10)			10,369.83
Total Amount Due			**₱28,325.18**

I. Deficiency Income Tax

The deficiency income tax assessment consists of two items, namely: (a) disallowance of income payments allegedly not subjected to withholding tax, which is also the subject matter of the deficiency EWT assessment, and (b) imputed income from unaccounted source of cash.

A. Income payments not subjected to withholding tax - ₱569,706.72

Based on the examination and verification made by respondent, the following income payments during the taxable year 2007 were not fully subjected to withholding tax, as required by the provisions of Revenue Regulations No. 2-98, as amended; therefore, the difference, as shown below, was disallowed as deduction from petitioner's gross income pursuant to Section 34(K) of the NIRC of 1997, as amended:

	PER FS/AUDIT	PER ALPHALIST/ RETURNS	DIFFERENCE
Income Payments to Sub/contractors:			
Freight, Trucking and Handling	₱ 36,000.00		
Ocean and Air Freight	495,172.66		
Printing lodged under Miscellaneous Expense	9,700.00		
Total	540,872.66	₱ 46,306.10	₱ 494,566.56
Brokerage Fee			
Brokerage Fee	120,708.27		
Brokerage Fee lodged under Miscellaneous Expense	47,238.18		
Total	167,946.45	103,806.29	64,140.16
Legal and Professional Fee	23,000.00	12,000.00*	11,000.00
Income Payments not Subjected to Withholding Tax			**₱ 569,706.72**
* Professional Fee paid at 10%	₱1,800.00		
Divided by	15%		
Equivalent Professional Fee at EWT Rate at 15%	12,000.00		

1. Income payments to sub/contractors

These consist of payments for (1) Freight, Trucking and Handling (₱36,000.00); (2) Ocean and Air Freight (₱495,172.66); and (3) Printing lodged under Miscellaneous Expenses (₱9,700.00). Respondent claims that only ₱46,306.10 was reported in the alphalist/returns of petitioner, and the latter failed to withhold tax on the ₱494,566.56 income payments.

As regards the Freight, Trucking and Handling in the amount of ₱36,000.00, petitioner explains that it pertained to payments made to Safeway Customs Brokerage, Inc., and it duly withheld and remitted the corresponding two percent (2%) EWT, as shown in the Alphalist of Payees attached to the EWT Return for taxable year 2007.

A scrutiny of the documents reveal that Freight, Trucking and Handling in the amount of ₱36,000.00 indeed pertains to income payments made to Safeway Customs Brokerage, Inc., which was subjected by petitioner to 2% EWT and was duly remitted to the BIR, as evidenced by the Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded)[67], and the Schedule 4 of BIR Form No. 1604-E, Annual Information Return of Creditable Income

[67] Exhibits "B-17" to "B-28", Docket, pp. 1088-1119.

Taxes Withheld (Expanded)/Income Payments Exempt from Withholding Tax or the Alphalist of Payees Subject to Expanded Withholding Tax.[68]

Anent the Ocean and Air Freight in the amount of ₱495,172.66[69] as can be seen from petitioner's Schedule of Purchases[70], the same formed part of the total Net Landed Cost of ₱34,640,658.10, which was paid by petitioner to its foreign supplier, Staedtler Mars GmbH & Co., and which was reflected in the Audited Financial Statements for taxable year 2007 (2007 AFS) under the account Purchases. Petitioner submitted various invoices[71] to prove that the Ocean and Air Freight charges were part of the importation/purchases made by petitioner from its foreign supplier. However, out of the total amount of ₱495,172.66, only the amount of ₱418,822.12, as shown below, was supported by invoices duly issued by petitioner's foreign supplier and should not be subjected to expanded withholding tax:

DATE	PARTICULARS	EXHIBIT NO.	AMOUNT
5-Jan-07	Air Freight	K-2-a	₱ 29,099.22
19-Jan-07	Sea Freight	K-2-b	49,407.98
28-Feb-07	Sea Freight	K-2-c	56,036.47
2-May-07	Air Freight	K-2-d	42,256.62
26-Apr-07	Sea Freight	K-2-e	52,494.24
29-Jun-07	Air Freight	K-2-f	19,306.70
6-Jul-07	Air Freight	K-2-g	24,263.64
11-Jul-07	Air Freight	K-2-h	11,511.01
26-Jun-07	Courier Charges	K-2-i	2,261.16
31-Jul-07	Sea Freight	K-2-j	61,872.03
5-Oct-07	Air Freight & Delivery Charges	K-2-l	52,541.38
6-Sep-07	Sea Freight	K-2-m	17,771.67
TOTAL			**₱ 418,822.12**

Since the remaining amount of ₱76,350.54 cannot be proven and duly substantiated that it was made to its foreign supplier and it indeed pertained to Ocean and Freight Charges, the disallowance of the same should be sustained.

[68] Exhibit "B-29-a", Docket, p. 1122.
[69] Exhibit "F-1-a", Docket, p. 1232.
[70] Exhibit "F-1", Docket, p. 1232.
[71] Exhibits "K-2-a" to "K-2-m", Docket, pp. 1616-1647.

As to the Printing lodged under Miscellaneous Expense in the amount of ₱9,700.00, petitioner, in its Protest Letter,[72] admitted that the same represents cost of printing of sales invoices and official receipts. As provided by Section 2.57.2(E)(4)(f) of RR No. 2-98, as amended, petitioner's printing expense should be subjected to 2% EWT.

Based on the foregoing, only the aggregate amount of ₱86,050.54, representing Printing lodged under Miscellaneous Expense in the amount of ₱9,700.00 and the unsubstantiated Ocean and Freight Charges of ₱76,350.54, should be disallowed as deduction from gross income, as the same was not subjected to withholding tax.

2. Brokerage Fee

Petitioner asserts that respondent failed to consider that the purported discrepancy of ₱64,140.16 approximately corresponds to the following items, none of which is subject to EWT:

1. Discount on brokers fee (₱16,911.79) - The BIR considered the amount of ₱120,708.27 as subject to EWT when the actual amount paid by petitioner to its broker was only ₱103,806.29, which petitioner subjected to EWT. The difference of ₱16,901.79 pertains to the discounts granted by petitioner's broker, Safeway Customs Brokerage, Inc., in favor of petitioner, which are reflected in the following Statements of Account:

Exhibit	Statement of Account No.	Date	Discount
"K-4"	32713	1/26/2007	₱ 1,614.88
"K-5"	32961	3/23/2007	2,822.86
"K-6"	33080	4/25/2007	3,982.30
"K-7"	33220	5/29/2007	2,620.91
"K-8"	33303	6/18/2007	2,724.27

[72] Exhibit "M", Docket, p. 1682.

"K-9"	33502	7/26/2007	1,559.36
"K-10"	33872	10/8/2007	1,587.21
	Total		**₱16,911.79**

2. Loss on short-landed items (₱10,878.17) - Loss on short-landed items correspond to losses sustained by petitioner as a result of pilferage not covered by an insurance policy which were duly recorded in petitioner's General Journal.

3. Out-of-pocket expenses (₱36,560.11) - Out-of-pocket expenses are not income payments to the broker of petitioner but are mere reimbursements of expenses incurred by the customs brokers in behalf of petitioner.

Based on the records, petitioner's Brokerage Charge is ₱120,718.07, as reflected in the Summary of Importation[73]. On the other hand, in the Schedule of Purchases[74], the Brokerage Charge is ₱103,806.28. It is the amount of ₱103,806.28 as brokerage charges that formed part of the Net Landed Cost and included in the account Purchases (₱34,640,658.11) in the 2007 AFS and ITR.

An examination of the documents support petitioner's allegation that the difference of ₱16,911.79 pertained to discounts granted to it, as evidenced by the Statement of Account issued by Safeway Customs Brokerage, Inc., summarized as follows:

SOA NO.	EXH. NO.	BROKERAGE FEE	1/8 OF 1%	TOTAL	DISCOUNT	NET AMOUNT	VAT	TOTAL AMOUNT DUE
32713	K-4	₱ 5,300.00	₱ 2,614.88	₱ 7,914.88	₱ (1,614.88)	₱ 6,300.00	₱ 756.00	₱ 7,056.00
32825	S	5,300.00	1,281.67	6,581.67		6,581.67	789.80	7,371.47
32849	T	5,300.00	120.26	5,420.26		5,420.26	650.43	6,070.69
32864	U	5,300.00	1,262.51	6,562.51		6,562.51	787.50	7,350.01
32961	K-5	5,300.00	5,322.86	10,622.86	(2,822.86)	7,800.00	936.00	8,736.00
33080	K-6	5,300.00	6,482.30	11,782.30	(3,982.30)	7,800.00	936.00	8,736.00
33220	K-7	5,300.00	4,620.91	9,920.91	(2,620.91)	7,300.00	876.00	8,176.00
33303	K-8	5,300.00	5,224.27	10,524.27	(2,724.27)	7,800.00	936.00	8,736.00

[73] Exhibit "B-32", Docket, p. 1138.
[74] Exhibits "F-1" and "K-2", Docket, pp. 1232 and 1615.

33424	K-9	5,300.00	1,559.36	6,859.36	(1,559.36)	5,300.00	636.00	5,936.00
33502	V	5,300.00	580.20	5,880.20		5,880.20	705.62	6,585.82
33528	W	4,000.00		4,000.00		4,000.00	480.00	4,480.00
33872	K-10	5,300.00	4,087.21	9,387.21	(1,587.21)	7,800.00	936.00	8,736.00
33871	X	5,300.00	552.58	5,852.58		5,852.58	702.31	6,554.89
33968	Y	5,300.00	1,660.19	6,960.19		6,960.19	835.22	7,795.41
33977	Z	5,300.00	1,754.50	7,054.50		7,054.50	846.54	7,901.04
34181	AA	5,300.00	94.37	5,394.37		5,394.37	647.32	6,041.69
Total		**₱83,500.00**	**₱37,218.07**	**₱120,718.07**	**₱(16,911.79)**	**₱103,806.28**	**₱12,456.75**	**₱116,263.03**

Thus, the disallowance of the discrepancy of ₱16,911.79 is without basis.

With regard to Brokerage Fee lodged under Miscellaneous Expense in the amount of ₱47,238.18, the Court finds that based on the Summary of Miscellaneous Expense[75], this is actually composed of the following:

Out-of-pocket expenses (Safeway Customs Brokerage, Inc.)	₱ 23,500.00
Loss on short-landed items	13,738.17
Miscellaneous expenses	10,000.00
TOTAL	**₱47,238.17**

Aside from the journal entries, petitioner failed to provide other supporting documents for this Court to verify its nature. Accordingly, for lack of supporting documents, respondent's assessment for the amount of ₱47,238.18 must be sustained.

3. Professional Fee

As can be gathered from the 2007 AFS and ITR, petitioner declared a Professional Fee of ₱23,000.00, representing ₱18,000.00 as payment to its Auditor Lolita A. Lim, and ₱5,000.00 as payment to Atty. Wilma M.V. Cua of Romulo Mabanta Buenaventura Sayoc & De los Angeles, a general professional partnership not subject to income tax under Section 26 of the Tax Code.

[75] Exhibits "C-2", Docket, p. 1223.

Petitioner avers that the ₱18,000.00 paid to Auditor Lim was subjected to ten percent (10%) EWT or in the equivalent amount of ₱1,800.00, in accordance with Revenue Regulations No. 30-2003.

However, respondent maintains that the Audit Fee is subject to a fifteen percent (15%) EWT, so she derived the EWT base by dividing the ₱1,800.00 EWT by 15%. In doing so, it shows that petitioner withheld only on the ₱12,000.00 instead of on the actual Audit Fee of ₱18,000.00.

Respondent is misplaced in claiming that petitioner did not withhold on the remaining ₱6,000.00 Audit Fee. In fact, petitioner has fully withheld the Audit Fees it paid, but only at the lower and correct rate of 10%.

As manifested in the Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) for the month of December 2007[76] and in the Alphalist[77] under the column "Amount of Income Payment", petitioner has duly withheld and remitted the 10% EWT of ₱1,800.00. Since the Audit Fees of ₱18,000.00 do not exceed the threshold amount of ₱720,000.00, pursuant to the Consolidated Withholding Tax Regulations, as amended by RR No. 30-03, the correct rate to be used is 10% and not 15%.

As to the remaining ₱5,000.00 representing legal fees allegedly paid to Atty. Wilma M.V. Cua of Romulo Mabanta Buenaventura Sayoc & De los Angeles, petitioner did not provide any documentary evidence to prove that the same has been paid to a lawyer of a general professional partnership. Petitioner should have presented documents such as billing invoice and/or official receipts, so the Court can ascertain the nature and veracity of such payment. Consequently, the assessment on the same shall be maintained.

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[76] Exhibit "B-28", Docket, p. 1119.
[77] Exhibit "B-29-a-2", Docket, p. 1122.

Based on the foregoing, petitioner's total income payments not subjected to EWT amount to ₱138,288.72, and therefore, should be disallowed as deduction from gross income pursuant to Section 34(K) of the NIRC of 1997, as amended, computed as follows:

Income payments to sub/contractors		
Ocean and Air Freight	₱ 76,350.54	
Printing lodged under Miscellaneous Expense	9,700.00	₱ 86,050.54
Brokerage Fee		
Brokerage Fee lodged under Miscellaneous Expense		47,238.18
Legal and Professional Fee		5,000.00
TOTAL		**₱138,288.72**

B. Unaccounted source of cash - ₱977,097.22

Respondent's verification disclosed that the following purchases and insurance expense were not fully reported in the financial statements, wherein the discrepancies were considered as unaccounted source of cash:

	Per Audit / Schedule	Per FS	Difference
Purchases per Audit			
Suy Sing Commercial Corporation	₱ 3,780.60		
National Steel Corporation	3,780.60		
Subtotal	7,561.20	-	₱ 7,561.20
Purchases per Schedule	35,509,299.09	₱ 34,640,658.11	868,640.98
Insurance Expense	110,397.54	9,502.50	100,895.04
Unaccounted Source of Cash	**₱35,627,257.83**	**₱34,650,160.61**	**₱ 977,097.22**

Respondent concluded that part of petitioner's income has not been declared, as enunciated by the Court in the case of *Perez vs. Court of Tax Appeals and the Collector of Internal Revenue*[78]. Therefore, the amount is added in the petitioner's reported taxable income pursuant to Section 31 of the Tax Code of 1997, as amended.

1. Purchases per Audit (Suy Sing Commercial

[78] G.R. No. L-10507, dated May 30, 1958.

Corporation and National Steel Corporation)

Petitioner asserts that respondent clearly erred in finding that it failed to account for the amount of ₱7,561.20 supposedly pertaining to purchases from Suy Sing Commercial Corporation and National Steel Corporation, considering that said purchases were never actually made by petitioner.

As explained by Ms. Anafe B. Posadas in her Judicial Affidavit[79], petitioner did not make any transaction with the afore-mentioned corporations, and the BIR did not even bother to explain why they thought that petitioner transacted with these companies, to wit:

> "72. Q: Do you agree with the BIR's finding that the purchases made by Staedtler Philippines from Suy Sing Commercial Corporation and National Steel Corporation (₱7,561.20) were not accounted for?
>
> A: No. Staedtler Philippines has no transactions with these corporations. Thus, the BIR's finding has no factual basis. The BIR did not explain how they ascertained that we had purchases with these companies. Our business is the importation and sale of Staedtler products which would readily show that we do not purchase goods from any other supplier except the foreign Staedtler companies."

Petitioner's explanation was not overthrown by any arguments or by any evidence submitted by respondent. Be that as it may, respondent's conclusion lacks merit because assuming that there is unaccounted source of cash or undeclared income, the same will be offset by recording the equivalent amount as Cost of Goods Sold.

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[79] Exhibit "CC", Docket, pp. 1017-1043.

Consequently, no taxable income will result from the said transactions.

2. Purchases per Schedule vis-a-vis per AFS

Petitioner avers that respondent failed to consider that the Purchases per Schedule included not only petitioner's importation of goods but also purchases of services, such as Management Fees of ₱768,941.35 and Brokerage Fees of ₱103,806.28, made by petitioner for the year 2007, which are not reflected as Purchases in the AFS under accounting rules. Ms. Posadas explained it in this wise:

"73. Q: Do you agree with the BIR's finding that the discrepancy between the Purchases per Audit as against the Purchases per 2007 AFS (₱868,640.98) was not accounted for?

A: No. There is actually no difference between the Purchases per VAT Relief Schedule as against the Purchases reported in the 2007 AFS. The BIR simply failed to consider that the purchases per VAT Relief Schedule includes the purchase of managerial services (₱768,941.35) and brokerage services (₱103,806.28) made by Staedtler Philippines for the year 2007 which are not reflected as Purchases in the AFS under the accounting rules.

74. Q: What is your basis for saying that the difference between the Purchases per VAT Relief Schedule and per 2007 AFS (₱868,640.96) failed to take into account the purchases of managerial services (₱768,941.35) and brokerage services (₱103,806.28) made by Staedtler Philippines?

A: The Quarterly VAT Returns for taxable year 2007 show that the Purchases reflected thereon includes both purchases of goods and services, to wit:

Exhibit	Description	Amount of Purchased Goods (₱)	Amount of Purchased Services (₱)
B-3 *(Annex 7)*	Quarterly Value-added Tax Return for the period of January-March 2007	9,995,048.25	113,232.97
B-6 *(Annex 11)*	Quarterly Value-added Tax Return for the period of April-June 2007	14,409,953.10	304,350.92
B-9 *(Annex 15)*	Quarterly Value-added Tax Return for the period of July-September 2007	6,636,856.94	205,112.28
B-12 *(Annex 18)*	Quarterly Value-added Tax Return for the period of October-December 2007	3,594,693.23	250,051.46
Total		34,636,551.52	872,747.63
Total VATable Purchases			**₱35,509,299.15**

The cost of managerial services in the amount of ₱768,941.35 is indicated in the official receipts issued by Pecton to Staedtler Philippines *(Exhibits 'I-1' and 'I-2'; Annexes 123 and 124)* while the cost of brokerage services in the amount of ₱103,806.28 (brokerage fees after discount) is indicated in the Statements of Accounts issued by Safeway to Staedtler Philippines *(Exhibits 'K-4' to 'K-10' [Annexes 144-150] and 'S' to 'AA')*. xxx

The Purchases reflected in the AFS relate only to the Purchases of goods. As indicated in the Income Statement *(See page 3 of Exhibit 'A-2')* Purchases pertain only to goods available for sale. xxx"

An examination of petitioner's 2007 AFS and ITR Purchases shows that it reported Purchases in the amount of

₱34,640,658.11 (inclusive of Brokerage Charges of ₱103,806.28), broken down as follows:

Schedule of Purchases *(Exhibit "F-1")*	
Peso Value	₱ 32,016,765.63
Bank Charges	99,271.35
Custom Duties	1,622,452.00
IPF/Other Charges	13,750.00
Brokerage Charges[80]	103,806.28
Refundable Charges	144,706.25
Insurance	155,412.11
Ocean/Freight	495,172.66
Short Landed Cost	(10,678.17)
Total Landed Cost	**₱34,640,658.10**

On the other hand, petitioner's Purchases per Audit/Schedule which was the basis of its reporting in its VAT Returns amount to ₱35,509,299.16, representing Importation of Goods in the amount of ₱34,636,551.53 (inclusive of Brokerage Charges of ₱120,718.07) and Domestic Purchase of Services (inclusive of another Brokerage Charges of ₱103,806.28) in the total amount of ₱872,747.63, broken down as follows:

Importation of Goods Other than Capital Good *(Exhibit "B-32")*		
Taxable Value	₱32,827,421.65	
Bank Charges	41,034.28	
Custom Duties	1,620,897.00	
Brokerage Charges	120,718.07	
Documentary Stamp	4,240.00	
IPF/Other Charges	22,240.53	₱ 34,636,551.53
Domestic Purchase of Services		
Management Fee	₱ 768,941.35	
Brokerage Charges	103,806.28	872,747.63
Total Purchases Per VAT Returns		**₱35,509,299.16**

It may be noted that respondent's examiner used the total amount of ₱35,409,299.46 in her comparison of Purchases per VAT Returns as against per AFS. The Court has further noticed that petitioner included the amounts of Brokerage Charges both in the importation of goods, as well as in the purchase of services. Apparently petitioner's

[80] Net Discount of ₱16,911.79.

declared purchases per Quarterly VAT Returns for the taxable year 2007 were overstated by ₱120,718.07[81]; consequently, the input VAT was also overstated by ₱14,486.17 (₱120,718.07 multiply by 12%).

Furthermore, inasmuch as only the Purchases of ₱34,640,658.11 was recognized by petitioner in its Annual ITR and AFS, and to be able to make a reasonable comparison, respondent's examiner should have excluded payments for Management Fee of ₱768,941.35 from the Purchases per VAT Returns in its comparison. Thus, the discrepancy between the Purchases reported per AFS and per VAT Returns amounts to ₱21,018.37, as computed below:

Per VAT Returns/Per Audit as adjusted (₱34,636,551.52+₱103,806.28-₱120,718.07)	₱34,619,639.73
Per Financial Statements	34,640,658.11
Difference	**(₱ 21,018.38)**

Nevertheless, considering that petitioner correctly declared the amount of Purchases of ₱34,640,658.11 in its 2007 AFS and ITR, the assessment for the alleged unaccounted source of cash should be cancelled. At most, the internal tax that is affected is the input VAT declared by petitioner in its VAT Returns for the year 2007.

3. Insurance Expense

Petitioner argues that respondent failed to explain how she arrived at the amount per Audit/Relief of ₱100,397.54. Petitioner alleges that said amount corresponds to the Marine Insurance Premiums paid to Asia United Insurance for incoming shipments for the period of January to November 2007. This amount is supposedly part of the total insurance premium paid amounting to ₱155,412.11[82], in which charges such as documentary stamps, local government tax, survey fees and eVAT were included.

[81] The correct amount of Brokerage Charges, as supported by Statement of Accounts, is ₱103,806.28.
[82] Exhibit "K-11", Docket, p. 1657.

Moreover, the amount of ₱155,412.11 was reported by petitioner as part of the purchase cost, not as part of insurance expense. Necessarily, said insurance cost will not be reflected as part of insurance expense.

On the other hand, the insurance expense of ₱9,502.50 reflected in the Financial Statements represents premium payments made by petitioner for its fire insurance for the year 2007.[83]

In support to the foregoing assertions, petitioner submitted a Summary of Marine Insurance Premiums[84], which breaks down the total payments (inclusive of VAT, survey fee, local government tax, and documentary stamp tax) made to Asia United Insurance, Inc. for the marine insurance, as well as its corresponding official receipts[85]. Examination of the said documents reveals that indeed this insurance formed part of the purchases recorded per 2007 AFS in the amount of ₱34,640,658.11, as reflected in the Schedule of Purchases for the year 2007.

As for the insurance expense reflected in the 2007 AFS, petitioner submitted a Policy Schedule[86] and official receipt[87], which clearly shows that the insurance expense per 2007 AFS, indeed, represents payment for its fire insurance for the same year. Hence, respondent's assessment is without legal and factual bases.

In sum, petitioner should be held liable for basic deficiency income tax in the amount of ₱48,400.81, as computed below:

DEFICIENCY INCOME TAX		
Taxable Income per Income Tax Return		₱ 2,644,993.58
Add: Adjustments per Investigation		
Income Payments not subjected to withholding tax		138,288.72
Taxable Income per Investigation		**₱2,783,282.30**

[83] Exhibits "BB" and "BB-1", Docket, pp. 1719 and 1720
[84] Exhibit "K-11", Docket, p. 1657.
[85] Exhibits "K-11-a" to "K-11-p", Docket, pp. 1658-1673.
[86] Exhibit "BB-1", Docket, p. 1720.
[87] Exhibit "BB", Docket, p. 1719.

Income Tax Due thereon		P 974,148.81
Less: Allowable Tax Credits/Payments		
Payments	₱556,727.06	
Claimed Creditable Tax Withheld	369,020.94	925,748.00
Basic Deficiency Income Tax		**P 48,400.81**

II. Deficiency Value-Added Tax

1. Unaccounted source of cash

As previously discussed, respondent's findings for deficiency income tax from the alleged unaccounted source of cash is bereft of merit. Accordingly, the corresponding assessment for the deficiency VAT on the same is also without basis.

However, the Court finds that petitioner's declared purchases were overstated by ₱120,718.07, representing payment for Brokerage Fee, which formed part of the total cost of importation, as well as part of the cost purchase of services declared in the VAT Returns. As a result, the input VAT was also overstated by ₱14,486.17 (₱120,718.07 multiply by 12%).

2. Excess Input Tax carried over to next accounting period

In the Formal Letter of Demand, respondent also disallowed from the total tax credit of ₱2,512,255.96 the amount of ₱1,210,317.03, representing excess input tax credits carried over to the next accounting period, presumably to recapture the tax benefit realized by petitioner in carrying the said amount to the succeeding year. Apparently, the disallowance is improper inasmuch as any tax benefit derived therefrom redounds to the succeeding year 2008, which is not the period covered by the present assessment. Since the tax benefit will be in the succeeding year, at most, petitioner may only be assessed in the said succeeding year.

In fine, petitioner has no deficiency VAT liability for the year 2007 since it has sufficient input tax credits to cover its output VAT liability for the same year, as shown below:

DEFICIENCY VALUE-ADDED TAX		
Taxable Sales/Receipts per VAT Returns		₱ 38,447,067.43
Output Tax Due thereon		₱ 4,613,648.09
Less: Allowable Tax Credits/Payments		
Current Input Tax	₱4,261,115.70	
Less: Overclaimed Input Tax	14,486.17	
Adjusted Current Input Tax	4,246,629.53	
Payments	651,635.01	
Input Tax Credit carried over from previous period	911,214.41	5,809,478.95
Basic Deficiency Value-added Tax		**(₱1,195,830.86)**

Therefore, respondent's deficiency VAT assessment for the year 2007 should be cancelled.

III. Deficiency Expanded Withholding Tax

Based on the finding that petitioner failed to withhold and remit the EWT on its income payments to sub/contractors, Brokerage Fee and Legal and Professional Fees for the year 2007 pursuant to RR No. 02-98, as amended, as discussed under the deficiency income tax assessment,[88] respondent assessed petitioner of deficiency EWT in the amount of ₱28,325.18, computed as follows:

	AMOUNT	**EWT RATE**	**EWT DUE**
Income Payments to Sub/contractors	₱494,566.56	2%	₱ 9,891.33
Brokerage Fee	64,140.16	10%	6,414.02
Legal and Professional Fee	11,000.00	15%	1,650.00
Deficiency Expanded Withholding Tax			₱ 17,955.35
Add: 20% interest p.a. (01.16.08 to 12.04.10)			10,369.83
Total Amount Due			**₱28,325.18**

As already ruled by this Court that the right of respondent to assess petitioner for deficiency EWT for the

[88] See discussion in item I.A.1 to I.A.3.

period from January to September 2007 has already prescribed, only the period from October to December may be the subject of the assessment. Nevertheless, since petitioner was not able to show which portion of the income payments subject of the deficiency EWT assessment for the entire taxable year 2007 pertains to the prescribed months of January to September 2007, all of the subject income payments shall be considered as referring to the unprescribed months of October to December 2007.

1. Income Payments to Sub/contractors

As earlier discussed, only the aggregate amount of ₱86,050.54, representing payment for Ocean and Air Freight (₱76,350.54) and Printing lodged under Miscellaneous Expense (₱9,700.00), should be disallowed. Consequently, the entire amount of ₱86,050.54 should be subjected to 2% EWT pursuant to Section 2.57.2(E)(4)(f) of RR No. 2-98, as amended.

2. Brokerage Fee

Going forth from the discussion of Brokerage Fee under deficiency income tax, the Court finds that only the Brokerage Fee lodged under Miscellaneous Expense in the amount of ₱47,238.18 should be subjected to 10% EWT, since petitioner failed to provide other supporting documents aside from the journal entries for the Court to verify its nature and to confirm that it is not subject to EWT.

3. Legal and Professional Fee

As previously discussed, petitioner's Professional Fee in the amount of ₱18,000.00 has been subjected to 10% EWT. Petitioner explains that the balance of ₱5,000.00 was not subjected to EWT because it pertained to payments made to a lawyer of a general professional partnership. Due to lack of evidence, the Court finds that the amount of ₱5,000.00 should be maintained as disallowed deduction from gross income, and thus subject to EWT.

In sum, petitioner should be held liable for basic deficiency expanded withholding tax in the amount of ₱6,944.83, as computed below:

	Amount	EWT Rate	EWT Due
Income Payments to Sub/contractors	₱86,050.54	2%	₱ 1,721.01
Brokerage Fee	47,238.18	10%	4,723.82
Legal and Professional Fee	5,000.00	10%	500.00
Basic Deficiency EWT			**₱6,944.83**

WHEREFORE, premises considered, the assessment issued by respondent against petitioner for the taxable year 2007, covering deficiency VAT in the amount of ₱117,251.67 is **CANCELLED** and **WITHDRAWN**. However, the assessments for deficiency income tax and EWT are **UPHELD WITH MODIFICATIONS**. Accordingly, petitioner is **ORDERED TO PAY** the amount of ₱60,501.01 and ₱8,681.04, representing deficiency income tax and EWT, respectively, inclusive of the twenty-five percent (25%) surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, computed as follows:

TAX TYPE	BASIC	25% SURCHARGE	TOTAL
Income Tax	₱ 48,400.81	₱ 12,100.20	₱ 60,501.01
EWT	6,944.83	1,736.21	8,681.04
TOTAL	**₱55,345.64**	**₱13,836.41**	**₱69,182.05**

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

a. Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency income tax of ₱48,400.81 and EWT of ₱6,944.83, computed from April 15, 2008 and January 15, 2008, respectively, until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended;

b. Delinquency interest at the rate of 20% per annum on the total deficiency taxes of ₱69,182.05, computed from December 4, 2010 until full payment thereof pursuant to Section 249(C)(3) of the NIRC of 1997, as amended; and

c. Delinquency interest at the rate of 20% per annum on the 20% deficiency interest which have accrued as afore-mentioned in "a", computed from December 4, 2010 until full payment thereof pursuant to Section 249(C)(3) of the NIRC of 1997, as amended.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

C E R T I F I C A T I O N

Pursuant to Article VIII, Section 13 of the Constitution, 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