REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION
****

COMPOSITE MATERIALS, INC., Petitioner,	**CTA Case No. 8365**
	Members:
- versus -	**DEL ROSARIO,** P.J., **UY,** and **MINDARO-GRULLA,** JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** MAY 02 2016 ; 10:18 a.m.

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DECISION

UY, J.:

Before this Court is a Petition for Review[1] filed by Composite Materials, Inc. on November 2, 2011, praying that judgment be rendered ordering the cancellation and withdrawal of the assessment issued against it for alleged deficiency income tax, value-added tax (VAT), expanded withholding tax (EWT), and final withholding tax (FWT) for taxable year 2006, in the total amount of ₱5,416,501.70, inclusive of interest, broken down as follows:

TAX TYPE	BASIC	INTEREST	TOTAL
Income Tax	₱ 2,579,285.09	₱ 1,464,185.95	**₱ 4,043,471.04**
VAT	426,380.60	260,968.29	**687,348.89**
EWT	373,905.57	230,899.49	**604,805.06**
FWT	50,000.00	30,876.71	**80,876.71**
TOTAL	**₱ 3,429,571.26**	**₱ 1,986,930.44**	**₱ 5,416,501.70**

THE FACTS

Petitioner Composite Materials, Inc. is a domestic corporation

[1] Docket, pp. 6 to 20.

duly organized and existing under Philippine laws, with principal office at 11 Joe Borris St., Bo. Bagong Ilog, Pasig City. It is duly registered with the Bureau of Internal Revenue (BIR), with Tax Identification Number 005-581-218.[2]

On the other hand, respondent is the duly appointed Commissioner of Internal Revenue, vested under appropriate laws with authority to carry out the functions, duties and responsibilities of said Office, including *inter alia*, the power to decide disputed assessments, cancel and abate tax liabilities pursuant to the provisions of the National Internal Revenue Code (NIRC) of 1997, as amended, and other tax laws, rules and regulations.[3]

On January 19, 2010, petitioner received a Formal Letter of Demand (FLD) dated January 15, 2010, with attached Details of Discrepancies and Assessment Notices. In the said FLD, respondent found petitioner liable for alleged deficiency income tax, VAT, EWT, and FWT, in the aggregate amount of ₱5,416,501.70, inclusive of interest, for taxable year 2006.[4]

As stated in the FLD dated January 15, 2010, respondent alleged that the following deficiency income tax and interest are due from petitioner,[5] to wit:

Taxable income per ITR		₱ 1,204,846.68
Add: Adjustments per investigation		
Undeclared sales per audit	₱2,589,285.72	
Income payments not subjected to withholding tax	3,816,213.20	
Disallowed expenses	963,886.06	7,369,384.98
Taxable income per investigation		₱ 8,574,231.66
Income tax due thereon		₱ 2,926,151.73
Less: Allowable tax credits		
Creditable tax withheld	₱ 355,202.23	
Payments	66,493.76	421,695.99
Deficiency income tax		2,579,285.09
Add: 20% interest p.a. (04.17.07 to 02.15.10)		1,464,185.95
Total amount due		**₱4,043,471.04**

[2] Par. 1, Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 87.
[3] Par. 2, Admitted Facts, JSFI, Docket, pp. 87 to 88.
[4] Par. 3, Admitted Facts, JSFI, Docket, p. 88.
[5] Par. 9, Admitted Facts, JSFI, Docket, pp. 89 to 90.

The alleged "Undeclared sales per audit" in the amount of ₱2,589,285.72 pertained to the alleged discrepancy in petitioner's sales per its Audited Financial Statements ("FS") as against the total debits in petitioner's Accounts Receivable account as adjusted by the account's beginning balance and petitioner's output taxes for 2006.[6] Respondent's revenue examiners assumed that the resulting amount constituted petitioner's total sales that should be reported in its Income Tax Return (ITR). Hence, the resulting discrepancy was then assumed by respondent to be "Undeclared sales per audit". Respondent added this alleged undeclared sales to petitioner's taxable income, pursuant to Section 31 of the NIRC of 1997, as amended.[7]

Furthermore, the alleged deficiency VAT and interest was primarily due to the alleged "Undeclared sales" amounting to ₱2,589,285.72. Respondent claims that these alleged undeclared sales should have been subject to VAT, pursuant to Sections 106 and 108 of the NIRC of 1997, as amended. Moreover, respondent's revenue examiners disallowed the input taxes pertaining to the alleged unsupported expenses that were disallowed for income tax purposes because petitioner allegedly claimed input taxes on the said expenses. The disallowed input tax was computed by multiplying the alleged unsupported expenses of ₱963,886.06 by the 12% VAT rate.[8]

In addition, respondent's claim against petitioner for alleged deficiency EWT stems from respondent's allegation that petitioner failed to withhold taxes on its payments amounting to ₱3,816,213.20, the details of which are as follows:

Income Payments	Per FS / Audit	Per Returns	Difference
Payment to Professionals:			
(a) Survey fee	₱ 24,407.99		
(b) Broker's fee	899,763.58		
(c) Director's fee	639,348.70		
(d) Commission	3,230,051.73		
Total	4,793,572.00	₱1,073,805.69	₱ 3,719,766.31
Payment to contractors/ subcontractors:			
(e) Service contractors	2,656,491.01		
(a) Insurance	48,221.59		
Total	2,704,712.60	2,608,265.71	96,446.89
Income payments not subjected to withholding tax			**₱3,816,213.20**

[6] Par. 10, Admitted Facts, JSFI, Docket, p. 90.
[7] Par. 11, Admitted Facts, JSFI, Docket, p. 90.
[8] Par. 12, Admitted Facts, JSFI, Docket, pp. 90 to 91.

The EWT assessment was computed as follows:[9]

	Amount	Tax rate	EWT Due
Payment to professionals	₱3,719,766.31	10%	₱ 371,976.63
Payment to contractors/subcontractors	96,446.89	2%	1,928.94
Deficiency EWT			₱ 373,905.57
Add: 20% Interest p.a. (01.16.07 to 02.15.10)			230,899.49
TOTAL AMOUNT DUE			₱ 604,805.06

As for the amount of ₱963,886.06, respondent disallowed the following deductible expenses from gross income for allegedly not being properly supported by documentary evidence, pursuant to Section 34(A)(1)(b) of the NIRC of 1997, as amended, broken down as follows:[10]

Professional fee	₱ 647,348.70
Commission	251,503.41
Brokerage fee	65,033.95
Disallowed expenses	**₱ 963,886.06**

On January 29, 2010, petitioner filed its protest letter dated January 27, 2010 against the assessment issued by respondent, and requested the cancellation thereof.[11]

On September 30, 2011, petitioner received a copy of respondent's letter dated September 26, 2011 stating, in part, that:

> "Please be informed that your case was returned by the investigating officer of Revenue District Office No. 43A, East-Pasig City, recommending for the reiteration of the assessments issued against you considering that you failed to submit documents in support of your protest.
>
> In view thereof, it is requested that your tax liability per Final Assessment Notice/Demand Letter No. F43-393A dated January 15, 2010 be paid immediately with the authorized agent bank in which you are enrolled and to submit to this office the proof/s of payment.
>
> This is our **FINAL DECISION**. If you disagree, you may appeal this final decision with the Court of Tax

[9] Pars. 13 and 15, Admitted Facts, JSFI, Docket, pp. 91 and 92.
[10] Par. 16, Admitted Facts, JSFI, Docket, pp. 92 and 93.
[11] Par. 4, Admitted Facts, JSFI, Docket, p. 88.

Appeals within thirty (30) days from date of receipt hereof, otherwise our said deficiency tax liabilities shall become final, executory and demandable."[12]

In view thereof, petitioner filed the instant Petition for Review before this Court on November 2, 2011, pursuant to Section 228 of the NIRC of 1997 and Section 3(a), Rule 8, Revised Rules of the Court of Tax Appeals.[13]

On December 12, 2011, respondent filed her Answer,[14] interposing the following defenses:

"3. The assessment for calendar year 2006 in the total amount of P5,416,501.70 was issued in accordance with law and regulations. The factual and legal bases of the subject assessment are contained in the Final Assessment Notices and Formal Letters of Demand with Details of Discrepancies and was served within the three-year prescriptive period provided in Sec. 203 of the Tax Code, as amended.

4. Verification disclosed that the total sales per investigation was not fully reported on the financial statements resulting to an undeclared sales of P2,589,285.72, taxable pursuant to Sec. 31 of the 1997 Tax Code, as amended.

5. Verification disclosed that the petitioner failed to subject income payments of P3,816,213.20 to withholding tax, thus disallowed as deductions from gross income pursuant to Sec. 34(k) of the 1997 Tax Code, as amended.

6. Verification disclosed that expenses amounting to P963,886.00 were not properly supported with documentary evidence, hence, disallowed as deduction from gross income pursuant to Sec. 34 (A)(1)(b) of the NIRC, as amended.

7. Verification disclosed that there is disallowed input from the disallowed expenses in the amount of P115,666.33 pursuant to Sec. 110 in relation to Sec. 113 and 277 of the NIRC, as amended.

8. Verification disclosed, further, that income payment

[12] Par. 5, Admitted Facts, JSFI, Docket, pp. 88 to 89.
[13] Pars. 6 and 8, Admitted Facts, JSFI, Docket, p. 89.
[14] Docket, pp. 46 to 49.

to professionals and contractors/subcontractors were not subjected to expanded withholding tax as required under RR No. 2-98.

9. Verification disclosed that the dividends declared amounting to P500,000.00 were not subjected to final withholding tax under Sec. 24(B)(2) of the NIRC, as amended.

10. Finally, settled is the rule that the tax assessments by tax examiners are presumed correct and made in good faith (Cagayan Robina Sugar Milling Co. vs. Court of Appeals, 342 SCRA 671). 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. All presumptions are in favor of tax assessments. Dereliction on the part of petitioner to satisfactorily overcome the presumption of regularity and correctness of the assessment will justify the judicial upholding of said assessment notices."

The case was set for pre-trial conference on February 3, 2012.[15] At the hearing held on March 29, 2012, the Joint Stipulation of Facts and Issues dated March 13, 2012 and the Supplemental Joint Stipulation of Facts and Issues dated March 28, 2012 were approved by the Court.[16]

During trial, petitioner presented its Chief Accountant, Maria Mutya Faigao, as its sole witness.[17]

On September 25, 2013, respondent and petitioner filed a Joint Manifestation/Motion,[18] averring that petitioner expressed its intention and willingness to settle/compromise its tax liabilities and pay forty percent (40%) of the basic deficiency income tax and VAT and one hundred percent (100%) of the final tax and EWT plus interest thereon. The said Manifestation/Motion also stated that petitioner intends to file a Motion to Withdraw upon approval of the proposed settlement and the corresponding payment.

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[15] Docket, p. 50.
[16] Resolution dated April 2, 2012, Docket, p. 131.
[17] Minutes of the Hearing dated March 29, 2012, Docket, p. 123.
[18] Docket, pp. 839 to 840.

On September 30, 2013, petitioner paid the amounts of ₱1,031,714.04 and ₱170,552.24, equivalent to 40% of the basic deficiency income tax and VAT, respectively, and ₱116,726.71 and ₱872,895.35, equivalent to 100% of the final tax and EWT plus interest, for taxable year 2006.[19] Thereafter, on February 5, 2014, the Collection Division of the BIR Revenue Region No. 7 approved petitioner's compromise application.[20]

Nonetheless, respondent presented Revenue Officer Rodorico Peralta as witness,[21] and formally offered her evidence on October 28, 2014.[22]

This case was submitted for decision on May 4, 2015[23] taking into consideration respondent's Memorandum filed on March 2, 2015,[24] and petitioner's Memorandum filed on April 10, 2015.[25]

Hence, this Decision.

THE ISSUES

The parties presented the following issues[26] for this Court's resolution:

> "A. Whether Petitioner was denied due process of law.
>
> B. Whether the right of Respondent to make an assessment for alleged Expanded Withholding Tax and Final Withholding Tax for taxable year 2006 has already prescribed.
>
> C. Whether the right of respondent to make an assessment for alleged deficiency Value-Added Tax ('VAT') for the first to third quarters of taxable year 2006 has already prescribed.

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[19] Joint Manifestation/Motion, Docket, pp. 841 to 848.
[20] Par. 3, Joint Manifestation/Motion, Docket, pp. 878 to 880.
[21] Minutes of the Hearing held on August 12, 2014, Docket, pp. 907 to 908.
[22] Formal Offer of Evidence, Docket, pp. 921 to 925.
[23] Resolution dated May 4, 2015, Docket, p. 1038-A.
[24] Docket, pp. 974 to 980.
[25] Docket, pp. 993 to 1019.
[26] JSFI, Docket, p. 94.

D. Whether or not Petitioner is liable to pay the deficiency income tax, VAT, Expanded Withholding Tax, and Final Withholding Tax assessment in the aggregate amount of Php5,416,501.70."

Petitioner's arguments:

Petitioner primarily argues that respondent's deficiency tax assessments are void for failure to inform petitioner of the factual and legal basis thereof. It contends that there are essential information that must necessarily be provided in the FAN in order for it to determine and understand the nature and reasons behind the tax assessments and to properly prepare its protest and defenses. In this connection, petitioner likewise claims that the method used by respondent's examiners in computing the alleged undeclared sales per audit is erroneous because it is based on overly broad generalization and incorrect assumptions.

Moreover, petitioner avers that respondent's right to assess deficiency VAT for the first to third quarters of taxable year 2006, and deficiency EWT and FWT for January to November of taxable year 2006 has already prescribed, citing Section 203 of the NIRC of 1997.

Furthermore, petitioner asserts that, as regards the deficiency income tax assessment, respondent's finding of alleged undeclared sales for taxable year 2006 has no factual or legal basis as it arose from respondent's erroneous examination of petitioner's records; that petitioner's payments of commissions and professional fees for taxable year 2006 amounting to ₱3,816,213.20 were properly subjected to withholding tax; and that petitioner's expenses for professional fees, commissions, and brokerage fees for taxable year 2006 are properly substantiated.

As for the deficiency VAT, petitioner submits that the same has no legal or factual basis. Petitioner points out that the alleged undeclared sales amounting to ₱2,589,285.72 is nonexistent in this case; and that the disallowance of input taxes attributed by respondent to petitioner's alleged unsupported expenses has no valid basis.

Petitioner likewise expresses its disagreement with the deficiency EWT assessment as it alleges that it properly withheld taxes on all of its income payments for taxable year 2006; and with the deficiency FWT assessment because, according to petitioner, it fully subjected to FWT the cash dividends it declared in taxable year 2006 and remitted the applicable FWT to respondent.

Lastly, petitioner adds that it is currently engaged in serious discussions with respondent for the amicable settlement of the case; and has already paid the compromise settlement amounts corresponding to the deficiency tax assessments subject of the case.

Respondent's counter-arguments:

Respondent, on the other hand, contends that petitioner was informed of the factual and legal bases of the deficiency assessments and was given all the opportunity to assail the same, and submit documents to substantiate their protest upon reinvestigation. According to respondent, all legal rights owed to the petitioner were duly respected and accorded by the respondent; hence, petitioner was not denied due process.

Furthermore, respondent asserts that the right of respondent to make an assessment for alleged income tax, VAT, EWT and FWT for taxable year 2006, has not prescribed.

Moreover, respondent stresses that petitioner is liable to pay the deficiency income tax of ₱4,043,471.04, deficiency VAT in the amount of ₱687,348.89, deficiency EWT of ₱604,805.06, and deficiency FWT of ₱80,876.71, or the aggregate amount of ₱5,416,501.70.

According to respondent, her witness RO Rodorico Peralta in his Judicial Affidavit and during the court hearing when he was called upon to testify, was able to discuss thoroughly the factual and legal bases of the deficiency assessments on income tax, VAT, EWT and FWT issued against the petitioner. Respondent also points that the factual and legal bases for the deficiency assessments were also clearly stated in the Details of Discrepancies attached with the FLD.

Finally, respondent states that well-settled is the rule that tax assessments by tax examiners are presumed correct and made in good faith; and that it is the taxpayer and not the BIR who has the duty of proving otherwise.

THE COURT'S RULING

The instant Petition for Review is partly meritorious.

There was no denial of due process.

Petitioner argues that respondent's deficiency tax assessments against petitioner are void for failure to inform petitioner of the factual and legal bases thereof, denying the latter of due process.

We disagree.

Section 228 of the NIRC of 1997 reads in part:

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

In relation thereto, Section 3 of RR No. 12-99 provides as follows:

> "SECTION 3. **Due process requirement in the Issuance of a deficiency tax assessment.**—
>
> xxx xxx xxx
>
> 3.1.4 *Formal Letter of Demand and Assessment Notice.*— The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. **The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, otherwise the formal letter of demand and assessment notice shall be void** (see illustration in ANNEX B hereof). xxx.
>
> xxx xxx xxx." *(Emphases supplied)*

The law requires that the legal and factual bases of the assessment be stated in the formal letter of demand and assessment notice.[27] This is in keeping with the constitutional principle that no person shall be deprived of property without due process.[28]

We find that petitioner was informed of the legal and factual bases of the subject tax assessments.

For ease of reference, the Details of Discrepancies for the FLD dated January 15, 2010[29] provide as follows:

"I. **DEFICIENCY INCOME TAX**

1. ***Undeclared sales per audit (P 2,589,285.72)*** – Verification disclosed that the total sales per investigation was not fully reported on the financial statements resulting to an understatement of sales, as per analysis hereunder, hence, added to your reported taxable income pursuant to Section 31 of the NIRC of 1997, as amended.

Accounts Receivable – Total debits		P 44,719,482.57
Less: Accounts Receivable – Beginning balance		1,450,270.87
Sales on Account		P 43,269,211.70
Less: Output tax		
January	P 334,190.95	
February to December	4,242,119.07	4,576,310.02
Sales, net of VAT		P 38,692,901.68
Less: Sales per FS		36,103,615.96
Undeclared sales per audit		**P 2,589,285.72**

2. ***Income Payments not subjected to withholding tax (P 3,816,213.20)*** – Verification disclosed that you failed to subject the following income payments to withholding tax as required under RR No. 2-98, as amended, thus, disallowed as deductions from your gross income pursuant to Section 34(K) of the NIRC of 1997, as amended.

Income Payments	Per FS / Audit	Per Returns	Difference
Payment to Professionals:			
Survey fee	P 24,407.99		
Broker's fee	899,763.58		
Director's fee	639,348.70		
Commission	3,230,051.73		
Total	P4,793,572.00	P1,073,805.69	P 3,719,766.31

[27] *Commissioner of Internal Revenue vs. Enron Subic Power Corporation*, G.R. No. 166387, January 19, 2009.
[28] *Id.*
[29] Exhibit "A", Docket, pp. 459 to 460.

Payment to contractors/ subcontractors:			
Service contractors	2,656,491.01		
Insurance	48,221.59		
Total	P2,704,712.60	2,608,265.71	96,446.89
Income payments not subjected to withholding tax			**P 3,816,213.20**

3. ***Disallowed expenses (P 963,886.06)*** – Verification disclosed that the following expenses were not properly supported with documentary evidence, hence, disallowed as deduction from your gross income pursuant to Section 34(A)(1)(b) of the NIRC of 1997, as amended.

Professional fee	P 647,348.70
Commission	251,503.41
Brokerage fee	65,033.95
Disallowed expenses	**P 963,886.06**

II. DEFICIENCY VALUE-ADDED TAX

1. ***Undeclared sales per audit (P 2,589,285.72)*** – Verification disclosed that the undeclared sales per audit, as discussed under item I.1 above, is subject to value-added tax pursuant to Sections 106 and 108 of the NIRC of 1997, as amended.

2. ***Disallowed input from disallowed expenses (P 115,666.33)*** – Verification disclosed that the disallowed expenses, as discussed in item I.3 above, have the corresponding, claimed input tax credits which was also disallowed pursuant Section 110 in relation to Sections 113 and 237 of the NIRC of 1997, as amended.

Professional fee	P 647,348.70
Commission	251,503.41
Brokerage fee	65,033.95
Disallowed expenses	P 963,886.06
Multiply by: Tax Rate	12%
Disallowed input from disallowed expenses	**P 115,666.33**

III. DEFICIENCY EXPANDED WITHHOLDING TAX

Verification disclosed that the following income payments, as discussed on item I.2 above, were not subjected to expanded withholding tax as required under RR No. 2-98, to wit:

Income Payments	**Per FS / Audit**	**Per Returns**	**Difference**
Payment to Professionals:			
Survey fee	P 24,407.99		
Broker's fee	899,763.58		
Director's fee	639,348.70		
Commission	3,230,051.73		
Total	P4,793,572.00	P1,073,805.69	P 3,719,766.31

Payment to contractors/ subcontractors:			
Service contractors	2,656,491.01		
Insurance	48,221.59		
Total	P2,704,712.60	2,608,265.71	96,446.89

IV. DEFICIENCY FINAL WITHHOLDING TAX

Verification disclosed that the dividends declared was not fully subjected to final withholding tax as required under Section 24(B)(2) of the NIRC of 1997, as amended and RR 2-98, as amended.

Cash dividends per FS	P 1,000,000.00
Cash Dividends per BIR Form 1601-F	500,000.00
Disallowed input from disallowed expenses	**P 500,000.00** "

Based on the foregoing, a summary of the facts and the law upon which the subject assessments were based may be shown as follows:

Kind of Tax	Amount Involved	Facts	Law / Rules & Regulations / Jurisprudence
Income Tax	₱2,589,285.72	Undeclared sales per audit.	Section 31, NIRC of 1997, as amended
	₱3,816,213.20	Income Payments not subjected to withholding tax	Section 34(K), NIRC of 1997, as amended
	₱963,886.06	Disallowed expenses	Section 34(A)(1)(b), NIRC of 1997, as amended
VAT	₱2,589,285.72	Undeclared sales per audit.	Sections 106 and 108, NIRC of 1997, as amended
	₱115,666.33	Disallowed input from disallowed expenses	Sections 110 in relation to Sections 113 and 237, NIRC of 1997, as amended
EWT	₱3,816,213.20	Income payments not subjected to EWT	Revenue Regulations (RR) No. 2-98
FWT	₱500,000.00	Dividends declared were not fully subjected to FWT	Section 24(B)(2), NIRC of 1997, as amended, and RR No. 2-98, as amended

As can be gleaned from the foregoing, there being the pertinent facts and law or regulation on the which the assessments were made, the same are valid as they complied with the requirements of aforequoted Section 228 of the NIRC of 1997 and Section 3 of RR No. 12-99.

Conversely, petitioner was able to file a protest letter dated January 27, 2010 against the subject tax assessments, and was able to sufficiently address and effectively deny the said findings of the

BIR. Thus, the Court cannot sustain petitioner's claim that respondent failed to provide sufficient information and opportunity to intelligently answer the assessment.

Correspondingly, petitioner was not denied due process.

Timeliness of the issuance of assessment

With regard to the second and third issues, petitioner submits that respondent's right to assess petitioner for deficiency VAT for the first to third quarters of taxable year 2006 and deficiency EWT and FWT for taxable year 2006 had already prescribed.

We agree.

Section 203 of the NIRC of 1997 specifically provides that respondent has three (3) years to assess and collect an internal revenue tax, 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." *(Emphasis supplied)*

Based on the foregoing provisions, internal revenue taxes shall, as a rule, be assessed within three (3) years after the last day prescribed by law for the filing of the return, or the actual filing thereof, whichever comes later.

In determining the last day for respondent to assess petitioner for deficiency VAT, this Court shall apply Section 114(A) of the NIRC of 1997, as amended; and for deficiency EWT and FWT, Section 2.58 of RR No. 2-98, as amended by RR No. 17-03, is relevant, to wit:

"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)*

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

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

xxx xxx xxx

(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**; xxx." *(Emphasis supplied)*

In the instant case, petitioner received the FLD[30] on January 19, 2010. As a result, respondent's right to assess petitioner for deficiency VAT for the first to third quarters of taxable year 2006, and for deficiency EWT and FWT for the months of January to December of the same year had already prescribed, shown as follows:

Month/ Quarter (2006)	Date of Filing of Return	Last Day to File the Return under the Law	Last Day to Assess	Date of Receipt of FLD	Prescribed or Not Prescribed
VAT[31]					
1st	04/25/06	04/25/06	04/27/09[32]	01/19/10	Prescribed

[30] Exhibit "A", Docket, pp. 683 to 686.
[31] BIR Records, pp. 66 to 87, Exhibit "R-10".
[32] April 25, 2009 fell on Saturday.

2nd	07/25/06	07/25/06	07/27/09[33]		Prescribed
3rd	10/25/06	10/25/06	10/26/09[34]		Prescribed
4th	01/25/07	01/25/07	01/25/10		Not Prescribed
EWT[35]					
January	02/08/06	02/10/06	02/10/09	01/19/10	Prescribed
February	03/10/06	03/10/06	03/10/09		Prescribed
March	04/10/06	04/10/06	04/10/09		Prescribed
April	05/08/06	05/10/06	05/11/09[36]		Prescribed
May	06/13/06	06/13/06	06/15/09[37]		Prescribed
June	07/10/06	07/10/06	07/10/09		Prescribed
July	08/07/06	08/10/06	08/10/09		Prescribed
August	09/11/06	09/11/06	09/11/09		Prescribed
September	10/09/06	10/10/06	10/12/09[38]		Prescribed
October	11/8/06	11/10/06	11/10/09		Prescribed
November	12/7/06	12/11/06[39]	12/11/09		Prescribed
December	01/10/07	01/15/07	01/15/10		Prescribed
FWT[40]					
January	02/08/06	02/10/06	02/10/09	01/19/10	Prescribed
February	03/10/06	03/10/06	03/10/09		Prescribed
March	04/05/06	04/10/06	04/10/09		Prescribed
April	05/05/06	05/10/06	05/11/09[41]		Prescribed
May	06/13/06	06/13/06	06/15/09[42]		Prescribed
June	07/10/06	07/10/06	07/10/09		Prescribed
July	08/04/06	08/10/06	08/10/09		Prescribed
August	09/07/06	09/11/06[43]	09/11/09		Prescribed
September	10/10/06	10/10/06	10/12/09[44]		Prescribed
October	11/10/06	11/10/06	11/10/09		Prescribed
November	12/06/06	12/11/06[45]	12/11/09		Prescribed
December	01/05/07	01/15/07	01/15/10		Prescribed

Consequently, the assessments pertaining to deficiency EWT and FWT from January to December 2006, and VAT for the first to third quarters of taxable year 2006, shall be cancelled, for having been made beyond the prescriptive period. Meanwhile, the assessment pertaining to deficiency VAT for the fourth quarter of taxable year 2006 was made within the prescriptive period.

[33] July 25, 2009 fell on Saturday.
[34] October 25, 2009 fell on Sunday.
[35] BIR Records, pp. 40 to 62, Exhibit "R-10".
[36] May 10, 2009 fell on Sunday.
[37] June 13, 2009 fell on Saturday.
[38] October 10, 2009 fell on Saturday.
[39] December 10, 2006 fell on Sunday.
[40] BIR Records, pp. 16 to 27, Exhibit "R-10".
[41] May 10, 2009 fell on Sunday.
[42] June 13, 2009 fell on Saturday.
[43] September 10, 2006 fell on Sunday.
[44] October 10, 2009 fell on Saturday.
[45] December 10, 2006 fell on Sunday.

Liability of petitioner for deficiency income tax, VAT, EWT, and FWT.

Deficiency Income Tax

In computing the deficiency income tax assessment, which amounted to ₱4,043,471.04, respondent added adjustments made to petitioner's taxable income per Income Tax Return (ITR) for the year 2006, consisting of (1) undeclared sales amounting to ₱2,589,285.72, (2) income payments not subjected to withholding tax amounting to ₱3,816,213.20, and (3) disallowed expenses amounting to ₱963,886.06, as shown below:

Taxable income per ITR		₱ 1,204,846.68
Add: Adjustments per investigation		
Undeclared sales per audit	₱2,589,285.72	
Income payments not subjected to withholding tax	3,816,213.20	
Disallowed expenses	963,886.06	7,369,384.98
Taxable income per investigation		₱ 8,574,231.66
Income tax due thereon		₱ 3,000,981.08
Less: Allowable tax credits		
Creditable tax withheld	₱ 355,202.23	
Payments	66,493.76	421,695.99
Deficiency income tax		2,579,285.09
Add: 20% interest p.a. (04.17.07 to 02.15.10)		1,464,185.95
Total amount due		**₱4,043,471.04**

The Court shall determine the validity of the assessment by looking into the propriety of each of the foregoing adjustments.

1. Undeclared sales per audit (₱2,589,285.72)

Respondent's verification disclosed that the total sales per investigation was not fully reported in the FS resulting in an understatement of sales, hence, added to petitioner's taxable income pursuant to Section 31 of the NIRC of 1997, computed as follows:

Accounts receivable – total debits		₱ 44,719,482.57
Less: Accounts receivable – beginning balance		1,450,270.87
Sales on account		₱ 43,269,211.70
Less: Output tax		

January	₱ 334,190.95	
February to December	4,242,119.07	4,576,310.02
Sales, net of VAT		₱ 38,692,901.68
Less: Sales per FS		36,103,615.96
Undeclared sales per audit		**₱2,589,285.72**

Petitioner contends that respondent's finding of undeclared sales for TY 2006 was brought about by respondent's failure to correctly examine petitioner's records. Specifically, respondent made allegedly an error in computing the balance of petitioner's accounts receivables by failing to fully consider the entries in petitioner's journal voucher book relating to O.R. No. 175. This erroneous examination relating to said O.R. No. 175 was fully explained by petitioner's Chief Accountant, Maria Mutya Faigao, in her Sworn Statement[46], as follows:

> "Q: What is your basis in saying that the amount of Php2,589,285.72 was not part of Petitioner's sales for TY 2006?
>
> A: We have Petitioner's reversal journal voucher entry number 5, collector's receipt number ('O.R. No.') 175 and the cash receipts book[47] to prove this matter. These documents show that the amount of Php2,589,285.72 was not part of Petitioner's sales for TY 2006. In 2006, PPPI [Polymer Products (Phil.) Inc.] remitted the amount of Php2,900,000.00 to Petitioner as advance payment for future purchases. The advance payment of Php2,900,000.00 is actually the amount of Php2,589,285.72 (alleged by Respondent as 'undeclared sales') plus VAT.
>
> xxx xxx xxx
>
> Q: What information does O.R. No. 175 contain?
>
> A: O.R. No. 175 states in the 'in payments of the following bills' portion thereof that:

In payment of the following bills	
Inv# 166	1,263,507.50
168	2,041,910.00
169	161,362.00
164	1,932,240.00

[46] Exhibit "R", Docket, pp. 492 to 495.
[47] Exhibits "N", "O-1", and "P-1", Docket, pp. 482 to 488; Reference supplied.

Less: EWT	(48,205.83)
Advances	(2,900,000.00)
TOTAL	2,450,813.97

Q: What is the significance of O.R. No. 175?

A: O.R. No. 175 shows that on July 19, 2006, PPPI made purchases in the total amount of Php5,399,019.50. However, since PPPI had already given an advance payment of Php2,900,000.00, the actual cash received by Petitioner from PPPI is only Php2,450,813.97 (net of EWT).

Q: What basis do you have in saying that the actual cash received by petitioner from PPPI is only Php2,450,813.97 (net of EWT)?

A: We have Petitioner's cash receipt book.

xxx xxx xxx

Q: What is the relevance of Petitioner's cash receipts book to this case?

A: On page 11[48] of Petitioner's cash receipts book, it is shown that the cash amount received by Petitioner for O.R. No. 175 is only Php2,450,813.97.

Q: Given the above explanation for the existence of the Php2,900,000.00 advance payment made to Petitioner, why is it that the BIR still found Petitioner's accounts receivables to be in excess of the amount of Php2,900,000.00?

A: The BIR made an error in computing the balance of Petitioner's accounts receivables when it failed to consider one journal entry in Petitioner's journal voucher book.

Q: To which journal entry are you referring?

A: I'm referring to journal voucher entry number 5 for the year 2006.

xxx xxx xxx

[48] Exhibit "O-1", Docket, p. 485; Reference supplied.

Q: What is the significance of this entry?

A: **Journal voucher entry number 5[49] was made because of an accounting error. I made a mistake in thinking that the Php2,900,000.00 cash advance payment made by PPPI to Petitioner was not properly recorded in Petitioner's books. Thus, I made journal voucher entry number 5 in order to record the receipt of cash in the amount of Php2,900,000.00, with the corresponding reduction of Petitioner's accounts receivable.**

However, immediately after making the journal entry number 5, I realized my mistake because O.R. No. 175 already recorded Petitioner's receipt of the Php2,900,000.00 cash advance payment made by PPPI to Petitioner. As explained earlier, this receipt evidences Petitioner's receipt of a cash advance payment in the total amount of Php2,900,000.00 from PPPI. Journal voucher entry number 5 resulted to a double entry of the receipt of cash in the amount of Php2,900,000.00 and erroneously reduced Petitioner's accounts receivable by the amount of Php2,900,000.00.

Hence, in order to correct the inadvertent recording of journal voucher entry number 5, I had to make a corresponding reversal entry. Thus, I recorded journal voucher entry number 7[50] in order to reverse the effect of journal voucher entry number 5.

Q: What information do journal voucher entry numbers 5 and 7 contain?

A: These two journal voucher entries contain the following information:

	DEBIT	CREDIT
<u>Journal Voucher Entry Number 5:</u>		
SBC – Peso	2,900,000.00	
Accounts Receivable – Trade		2,900,000.00

[49] Exhibit "P-1", Docket, p. 488; Reference supplied.
[50] Exhibit "P-2", Docket, p. 488; Reference supplied.

To take up advances from PPPI deducted from payment for O.R. # 175 dtd 7/19/06

Journal Voucher Entry Number 7:

Accounts Receivable – Trade	2,900,000.00	
SBC – Peso		2,900,000.00

To reverse JV # 5. Pls refer to O.R. No. # 180 dtd 10/12/06 and O.R. # 181 dtd 10/23/06

Q: How did the BIR's failure to consider journal voucher entry number 5 result in the error in the computation of Petitioner's accounts receivables in relation to the computation of its total sales for TY 2006?

A: Respondent overstated its computation, by the amount of Php2,589,285.72, of Petitioner's accounts receivable because she failed to consider journal voucher entry number 5, which would have shown that Petitioner's accounts receivable was reduced by Php2,900,000.00. Since Respondent only considered journal voucher entry number 7 which was intended merely to correct the error in entry number 5, Respondent's computation became bloated by Php2,589,285.72.

Q: What is the relation of the amount of Php2,900,000.00 to Petitioner's alleged undeclared sales of Php2,589,285.72?

A: Both amounts pertain to the same advance payment made by PPPI to Petitioner in the amount of Php2,900,000.00. The difference between these two amounts represents the amount of VAT, calculated by the BIR to be due, included in Php2,900,000.00 (Php2,589,285.72 x 1.12 = Php2,900,000.00)." *(Emphasis supplied)*

Petitioner's contention is unwarranted.

Based on the foregoing testimony, there are three journal entries for consideration: (1) recognizing the cash advance payment made by PPPI in the amount of ₱2,900,000.00, (2) Journal Entry Voucher (JEV) No. 5, and (3) JEV No. 7. Petitioner failed to establish that these entries were actually effected or incorporated in its books. Notwithstanding petitioner's submission of its general ledger[51], still, this Court cannot ascertain the veracity of petitioner's allegations. Considering that the said ledger is presented only on a monthly basis, the Court cannot trace whether or not said entries were included in the monthly totals per ledger. Therefore, respondent's assessment shall be sustained.

2. Income payments not subjected to withholding tax (₱3,816,213.20) vis-à-vis disallowed expenses (₱963,886.06)

Respondent's verification disclosed that petitioner failed to subject the following income payments to withholding tax, as required under RR No. 02-98, as amended; thus, disallowed as deductions from petitioner's gross income pursuant to Section 34(K)[52] of the NIRC of 1997, as amended.

Income Payments	Per FS / Audit	Per Returns	Difference
Payment to Professionals:			
(e) Survey fee	₱ 24,407.99		
(f) Broker's fee	899,763.58		
(g) Director's fee	639,348.70		
(h) Commission	3,230,051.73		
Total	4,793,572.00	₱1,073,805.69	₱ 3,719,766.31
Payment to contractors/ subcontractors:			
(f) Service contractors	2,656,491.01		
(b) Insurance	48,221.59		
Total	2,704,712.60	2,608,265.71	96,446.89
Income payments not subjected to withholding tax			**₱3,816,213.20**

Petitioner asserts that it properly withheld taxes on its income payments for taxable year 2006 when required by law under the proper circumstances.

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[51] BIR Records, p. 159, Exhibit "R-10".

[52] SEC. 34. *Deductions from Gross Income.* – 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 Section, 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 in accordance with this Sections 58 and 81 of this Code.

Likewise, the following expenses were disallowed by respondent on the ground that they were not properly supported by documentary evidence pursuant to Section 34(A)(1)(b)[53] of the NIRC of 1997, as amended:

Professional fee	₱ 647,348.70
Commission	251,503.41
Brokerage fee	65,033.95
Disallowed expenses	**₱963,886.06**

Petitioner avers that the disallowance has no factual basis as the expenses are duly supported by vouchers[54] issued by petitioner to its consultants (for professional fees), agents (for commissions), and brokers (for brokerage fees).

a. Survey fee (₱24,407.99) and insurance (₱48,221.59)

It is a well-settled rule that all presumptions are in favor of the correctness of the assessment. It is incumbent upon the taxpayer to prove the contrary. Hence, as there was no proof that the survey fee of ₱24,407.99 and insurance of ₱48,221.59 were subjected to withholding tax, the assessment shall be sustained.

b. Broker's Fee

Respondent disallowed Broker's Fee on the following grounds:

1. The amount of ₱899,763.58 was disallowed due to non-withholding of tax; and
2. The amount of ₱65,033.95 was disallowed for not being properly supported by documentary evidence.

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[53] 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)(1), there shall be allowed the following deductions from gross income:
(A) *Expenses.* –
(1) *Ordinary and Necessary Trade, Business or Professional Expenses.* –
xxxxxxxxx
(b) *Substantiation Requirements.* – No deduction from gross income shall be allowed under Subsection (A) hereof unless the taxpayer shall substantiate with sufficient evidence, such as official receipts or other adequate records: (i) the amount of the expense being deducted, and (ii) the direct connection or relation of the expense being deducted to the development, management, operation and/or conduct of the trade, business or profession of the taxpayer.

[54] Exhibits "S-2", "S-3", "S-6", "S-8", "S-9", "S-11", "S-13", "S-15", "S-17", "S-19", "S-20", "S-22", "S-24", "S-26", "S-27", "S-29", "S-31" to "S-33", "S-37", "S-38", "S-40", "S-42", and "S-44" to "S-153", Docket, pp. 501 to 633.

An examination of the Monthly Remittance Returns of Creditable Income Taxes Withheld (Expanded) (BIR Form No. 1601-E)[55] reveals that petitioner subjected the broker's fee of ₱176,878.00 to withholding tax of ₱17,687.80, as detailed below:

Month	Broker's Fee (WI/WC 140)	
	Income Payments	Taxes Withheld
January	₱ 6,854.30	₱ 685.43
February	13,687.10	1,368.71
March	7,568.60	756.86
April	16,317.50	1,631.75
May	12,636.60	1,263.66
June	27,783.10	2,778.31
July	7,681.50	768.15
August	7,681.50	768.15
September	7,325.40	732.54
October	20,335.60	2,033.56
November	27,537.60	2,753.76
December	21,469.20	2,146.92
Total	**₱176,878.00**	**₱17,687.80**

Thus, only the amount of ₱722,885.58, or the difference between ₱899,763.58 and ₱176,878.00, was not subjected to withholding tax and consequently, should be disallowed as deduction from petitioner's gross income.

As to the amount of ₱65,033.95 alleged by respondent as lacking supporting documents, the same cannot be determined whether it formed part of the amount of ₱722,885.58 already disallowed for petitioner's failure to withhold taxes. As such, it cannot be ascertained by this Court whether there was double disallowance as to brokerage fees. Hence, without petitioner sufficiently refuting such finding by respondent, the same shall be upheld.

c. Director's fee/Professional Fee

Respondent disallowed the Director's fee/Professional Fee account on the following grounds:

1. The amount of ₱639,348.70 was disallowed due to non-withholding of tax; and
2. The amount of ₱647,348.70 was disallowed for not being properly supported by documentary evidence.

[55] BIR Records, pp. 40 to 63, Exhibit "R-10".

Contrary to the findings of respondent, petitioner properly subjected the director's fee of ₱639,348.70 to withholding tax and remitted the corresponding withholding tax in the amount of ₱63,934.86 to the BIR, as evidenced by the Alphalist of Payees Subject to Expanded Withholding Tax ("alphalist") (as of December 31, 2006)[56] filed on February 28, 2007, and by BIR Form No. 1601-E, to wit:

Payee	ATC	Amount of Income Payment	Rate	Amount of Tax Withheld
Carlos, Jose Ignacio Abaya	WI080	₱ 120,000.00	10%	₱ 12,000.00
Cervantes, Solomon	WI080	207,997.77	10%	20,799.77
Lintag, Deana	WI080	155,513.60	10%	15,551.36
Marcelo, Feliciano	WI080	155,837.33	10%	15,583.73
Total		**₱639,348.70**		**₱63,934.86**

However, notwithstanding the findings of the remittance of the corresponding withholding taxes to the BIR, the assessment of the same account, but in the higher amount of ₱647,348.70, shall be sustained due to petitioner's failure to support the same with proper documentary evidence. The vouchers submitted by petitioner in support of its claim are considered as self-serving in the absence of any other corroborating evidence.

d. Commission

Respondent disallowed the Commission account on the following grounds:

1. The amount of ₱3,230,051.73 was disallowed due to non-withholding of tax; and
2. The amount of ₱251,503.41 was disallowed for not being properly supported by documentary evidence.

A perusal of petitioner's BIR Form No. 1601-E reveals that petitioner subjected the commissions of ₱257,694.19 to withholding tax of ₱25,769.42, as shown below:

Month (2006)	Commissions (WI080)	
	Income Payments	Withholding Tax
January	₱ -	₱ -
February	21,195.00	2,119.50

[56] Exhibit "J", Docket, pp. 477 to 478.

March	24,130.60	2,413.06
April	-	-
May	-	-
June	43,798.80	4,379.88
July	57,781.90	5,778.19
August	57,781.90	5,778.19
September	-	-
October	27,764.99	2,776.50
November	25,241.00	2,524.10
December	-	
Total	**₱257,694.19**	**₱25,769.42**

Thus, only the remaining commission amounting to ₱2,972,357.54, or the difference between ₱3,230,051.73 and ₱257,694.19, was not subjected to EWT.

However, petitioner contends that the same was subjected to proper withholding. In support thereto, petitioner submitted the BIR Form No. 1601-E and the corresponding bank payment slip.[57] An examination of the same discloses that the taxable period for which the return was filed pertains to taxable period September 2007. Said Form only confirms petitioner's remittance of withholding tax on commissions pertaining to the taxable period 2007, but not to the period which is the subject of the assessment, 2006. As a result, respondent's assessment on the commission amounting to ₱2,972,357.54 shall be upheld.

Likewise, the assessment on the amount of ₱251,503.41 shall be sustained for petitioner's failure to substantiate the same with proper supporting documents.

In sum, the commission of ₱3,223,860.95 (₱2,972,357.54 + ₱251,503.41) shall be disallowed as deduction from petitioner's gross income.

e. Payment to service contractors (₱2,656,491.01).

Petitioner avers that respondent's disallowance of deductions arising from service contractors amounting to ₱2,656,491.01 is erroneous since it did not claim the same as expense or deduction in its ITR for taxable year 2006; rather, it pertains to advance payment made by petitioner in behalf of another company.

[57] Exhibit "M", Docket, pp. 480 to 481.

A perusal of petitioner's Annual ITR for taxable year 2006 shows that petitioner claimed as "Deduction" from its gross income the amount of ₱4,276,623.55, which consists of the following:

Professional Fees	₱ 639,348.70
Commissions	3,230,051.73
Office Supplies	50,776.74
Insurance	13,615.80
Transportation and Travel	135,000.00
Communication, Light and Water	190,842.28
Miscellaneous	16,988.30
Total	**₱4,276,623.55**

Clearly, contrary to respondent's findings, the alleged payments to service contractors in the amount of ₱2,656,491.01 was not reflected therein, denoting that the same was not claimed as expense or deduction from petitioner's gross income. Further, an examination of the Recon of Income Payments/Expenses Subject to EWT[58], which served as respondent's basis for the assessment, shows that the said amount pertains to AR-Others (Service Contractor) of petitioner. The AR-Others account is not an expense account, hence, respondent is incorrect in disallowing deductions from amounts not claimed as deductions in the first place.

In any case, petitioner submits that respondent's disallowance of the foregoing expenses should be cancelled in view of petitioner's payment of the deficiency EWT in total amount of ₱872,895.35 – that is, basic tax due of ₱373,905.57 plus interest of ₱498,989.78, on September 30, 2013.[59]

The Court disagrees with petitioner.

Section 2.58.5 of RR No. 2-98, as amended by RR No. 14-2002, reads:

> "Sec. 2.58.5. *Requirements for Deductibility.* – Any income payment which is otherwise deductible under the Code shall be allowed as a deduction from the payor's gross income only if it is shown that the income tax required to be withheld has been paid to the Bureau in accordance with Secs. 57 and 58 of the Code.
>
> A deduction will also be allowed in the following

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[58] Exhibit "3-d", BIR Records, p. 171.

[59] Annex A, Petitioner's Memorandum, Docket, pp. 567 to 570.

cases where no withholding of tax was made:

xxx xxx xxx

> **(B)** The withholding agent erroneously underwithheld the tax but pays the difference between the correct amount and the amount of tax withheld, including the interest, incident to such error, and surcharges, if applicable, **at the time of the audit/investigation <u>or</u> reinvestigation/reconsideration**." *(Emphasis supplied)*

It should be noted that the payment was made long after the issuance of the Final Decision – that is, beyond "the time of the audit/investigation or reinvestigation/reconsideration". Thus, the related expenses shall still be disallowed for income tax purposes.

In view of the foregoing, petitioner shall be held liable for basic deficiency income tax of ₱2,562,365.92, as computed below:

Taxable income per ITR			₱ 1,204,846.68
Add: Adjustments per investigation			
Undeclared sales per audit		₱2,589,285.72	
Income payments not subjected to withholding tax:			
Survey fee	₱ 24,407.99		
Broker's fee	722,885.58		
Commission	2,972,357.54		
Insurance	48,221.59	3,767,872.70	
Disallowed expenses:			
Professional fee	647,348.70		
Commission	251,503.41		
Brokerage fee	65,033.95	963,886.06	7,321,044.48
Taxable income per investigation			₱ 8,525,891.16
Income tax due thereon			₱ 2,984,061.91
Less: Allowable tax credits			
Creditable tax withheld		355,202.23	
Payments		66,493.76	421,695.99
Deficiency income tax			**₱2,562,365.92**

<u>Deficiency Value-added Tax</u>

Respondent assessed petitioner for deficiency VAT for taxable year 2006 based on the following grounds:

a. VAT due on the undeclared sales of ₱2,589,285.72; and
b. Disallowed input tax from disallowed expenses - ₱115,666.33.

As already resolved, respondent's right to assess petitioner for deficiency VAT covering the first to third quarters had already prescribed. However, it cannot be ascertained whether the above items of assessment pertain to the prescribed period; thus, the same shall be considered as referring to the unprescribed fourth quarter of taxable year 2006.

Earlier, the Court sustained the assessment of undeclared sales of ₱2,589,285.72 traceable from the reconciliation of its Accounts Receivable vis-à-vis sales per VAT Returns/FS. Accordingly, the deficiency VAT assessed on the alleged undeclared sales shall likewise be sustained.

Also, petitioner's certain expenses – professional fee, commission and brokerage fee, were disallowed for its failure to substantiate the same with proper supporting documents. Pursuant to Sections 110(A) and 113(A)(1) and (2) of the NIRC of 1997, as amended, in order to be creditable against output tax, the input tax must be supported by VAT invoice in case of purchase of goods and VAT official receipt in case of purchase of services. Hence, for petitioner's failure to substantiate by VAT invoices or official receipts the input taxes corresponding to the disallowed expenses, the same shall also be disallowed.

In sum, petitioner is liable for basic deficiency VAT in the amount of ₱426,380.62, as computed below:

Taxable sales for the 4th quarter per VAT returns		₱ 9,977,975.00
Add: Adjustment per investigation		
Undeclared sales per audit		2,589,285.72
Gross sales per investigation		₱12,567,260.72
Output tax due thereon		₱ 1,508,071.29
Less: Allowable tax credits / payments		
Current input tax	₱ 981,788.16	
Payments	215,568.84	
Total	1,197,357.00	
Less: Disallowed input from disallowed expenses	115,666.33	1,081,690.67
Basic Deficiency Value-Added Tax Due		**₱ 426,380.62**

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WHEREFORE, premises considered, the Petition for Review is **PARTIALLY GRANTED**. Accordingly, petitioner is **ORDERED TO PAY** respondent the amount of **₱3,735,933.18**, representing deficiency income tax and VAT for taxable year 2006, inclusive of twenty-five percent (25%) surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, computed as follows:

Tax Type	Basic Tax	Surcharge	Total
Income Tax	₱ 2,562,365.92	₱ 640,591.48	**₱3,202,957.40**
VAT	426,380.62	106,595.16	**532,975.78**
Total	**₱2,988,746.54**	**₱747,186.64**	**₱3,735,933.18**

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

(a) Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency income tax of ₱2,562,365.92, computed from the April 15, 2007, and VAT of P426,380.62, computed from January 25, 2007, until full payment thereof, pursuant to Section 249(B) of the NIRC of 1997;

(b) Delinquency interest at the rate of 20% per annum on the total amount of ₱3,735,933.18 and on the 20% deficiency interest which have accrued as afore-stated in (a), computed from September 30, 2011, until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.

In view of petitioner's partial payment of its deficiency income tax and VAT in the respective amounts of ₱1,031,714.04 and ₱170,552.24 to the BIR on September 30, 2013[60], the same shall be considered in the computation of petitioner's deficiency taxes still due and payable.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

(On Leave)
ROMAN G. DEL ROSARIO
Presiding Justice

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

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[60] Joint Manifestation/Motion, Docket, pp. 402 to 412.

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.

ERLINDA P. UY
Acting Chairperson

CERTIFICATION

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

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice