Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

GREENHILLS PROPERTIES, INC., Petitioner,	**CTA Case No. 8295**
	Members:
-versus-	CASTAÑEDA, JR., *Chairperson* CASANOVA, *and* COTANGCO-MANALSTAS, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** MAY 15 2015 4:25 p.m.

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DECISION

CASANOVA, *J.:*

This Petition for Review, filed by petitioner Greenhills Properties, Inc. against respondent Commissioner of Internal Revenue prays for the cancellation and setting aside of the Assessment Notices No. 043A-B017-07 for deficiency income tax in the amount of Four Million Five Hundred Sixty Three Thousand Seven Hundred Twelve and 38/100 (₱4,563,712.38), for deficiency value-added tax (VAT) in the amount of Two Million Nine Hundred Eighty Four Thousand Six Hundred One and 31/100 (₱2,984,601.31), for deficiency expanded withholding tax (EWT) in the amount of Five Hundred Forty One Thousand One Hundred Twenty Two Pesos and 70/100 (₱541,122.70), for deficiency final withholding tax (FWT) in the amount of Fifty One Million Six Hundred Eight Thousand Seven Hundred Eighty Eight Pesos and 09/100 (₱51,608,788.09), for improperly accumulated earnings tax (IAET) in the amount of Seventy Six Million Eighty Nine Thousand One Hundred Twenty One Pesos and 56/100 (₱76,089,121.56), and for compromise penalty in the amount of Fifty Thousand Pesos (₱50,000), all for taxable year 2007.

Petitioner Greenhills Properties, Inc. is a corporation duly organized and existing under and by virtue of Philippine laws[1] with principal office and business address at 2003-B Philippine Stock Exchange Center, Exchange Road, Ortigas Center, Pasig City.[2] It is engaged in the general business of real estate, to buy, own, invest, deal in, lease, or otherwise acquire, maintain, administer, develop, improve, construct, or otherwise hold, sell, rent out, trade in, exchange or otherwise dispose of, real estate or real property of any character and kind, including but not limited to land, building, condominium, and townhouses, as well as rights and participations of every character and kind in such property.[3] It is registered with the Bureau of Internal Revenue (BIR) on January 1, 1997 under BIR Certificate of Registration bearing RDO Control No. OCN 3RC0000151129 with the Tax Identification Number (TIN) 000-461-018-000.[4]

Respondent is the duly appointed Commissioner of Internal Revenue, vested by law in general to implement and enforce the provisions of the National Internal Revenue Code (NIRC) and other tax laws, and in particular, decide claims for refund of internal revenue taxes.[5]

On November 20, 2007, petitioner and Palafox & Associates entered into a Service Agreement[6].

On February 28, 2008, petitioner filed its Annual Information Return of Creditable Income Taxes Withheld (Expanded)/Income Payments Exempt from Withholding Tax (BIR Form No. 1604-E)[7] together with Alphalist of Payees Subject to Expanded Withholding Tax as of December 31, 2007[8].

On April 11, 2008, petitioner, likewise, filed with the BIR RDO No. 43, its Annual Income Tax Return for the calendar year ending December 31, 2007.[9] Also, petitioner submitted its Monthly Remittance Return of Income Taxes Withheld on Compensation (BIR Form No. 1601-C) from January to December 2007 and Quarterly

[1] Exhibit "A".
[2] Par. A(1) of the Joint Stipulation of Facts and Issues (JSFI), Docket (Vol. I), p. 419.
[3] Par. A(3) of JSFI, Docket (Vol. I), p. 420; Exhibit "A".
[4] Par. A(4) of JSFI, Docket (Vol. I), p. 420; Exhibit "B".
[5] Par. A(2) of JSFI, Docket (Vol. I), p. 420.
[6] Exhibit "Y".
[7] Exhibits "N" and "N-1".
[8] Exhibits "N-2" and "N-3".
[9] Par. A(5) of JSFI, Docket (Vol. I), p. 421; Exhibits "C" and "C-1".

Value-Added Tax Return (BIR Form No. 2550-Q) for the 1st, 2nd, 3rd and 4th quarters of calendar year ending December 31, 2007 through the Electronic Filing and Payment System (EFPS) of the BIR.[10]

Respondent, through BIR RDO No. 43, issued the Letter of Authority No. LOA 2007 00027338 dated June 30, 2008[11] for the examination of petitioner's books of accounts and other accounting records for all internal revenue taxes for the period from January 1, 2007 to December 31, 2007.[12] Subsequently, respondent issued the Notice for Informal Conference[13] on October 15, 2009.

On June 4, 2010, respondent issued the Preliminary Assessment Notice with Details of Discrepancies[14] which was received by petitioner on June 15, 2010,[15] assessing the latter as follows:

I. DEFICIENCY INCOME TAX			
Taxable income per ITR			₱ 28,087,266.00
Add: Adjustments per investigation:			
Undeclared income		₱ 3,280,906.00	
Unaccounted commission expense		474,175.86	
Income payments not subjected to withholding tax		3,299,062.13	
Salaries and wages not subjected to withholding		1,461,408.00	8,515,551.99
Taxable income per investigation			₱ 36,602,817.99
Income tax due thereon			₱ 12,810,986.30
Less: Disallowed Tax Credit/payments			
Unexpired Excess of Prior Year's MCIT		₱ 1,652,087.00	
Prior Year's excess tax credit		5,767,609.00	
Creditable tax withholding claimed		2,557,156.00	
Total		₱ 9,976,852.00	
Less: Excess tax credit to be carried over to the next period	₱ 146,308.00		
Disallowed creditable tax withheld	142,458.00	288,766.00	9,688,086.00
Deficiency income tax			₱ 3,122,900.30
Add: 20% Interest p.a. (04.16.08 to 06.07.10)			1,338,141.39
TOTAL AMOUNT DUE			₱ 4,461,041.68
II. DEFICIENCY VALUE ADDED TAX			
Sales/Receipts per VAT return			₱ 56,439,503.37
Add: Adjustments per investigation:			
Unaccounted commission expense			474,175.86
Taxable Sales per investigation			₱ 56,913,679.23
Output tax due thereon			₱ 6,829,641.51
Less: Allowable credits/payments:			
Input tax carried over from previous quarter		₱ 14,294,381.00	

[10] Par. A(34), JSFI, Docket (Vol. I), p. 428.
[11] Exhibit "D"; Exhibit "R-2", BIR records, p. 320.
[12] Pars. A (19) and (33), JSFI, Docket (Vol. I), pp. 425 and 427, respectively.
[13] Exhibit "R-14", BIR records, p. 366,
[14] Exhibits "E" and "E-1"; Exhibits "R-15", BIR records, pp. 480 to 482.
[15] Par. A(32), JSFI, Docket (Vol. I), p. 427.

Input tax claimed			1,104,410.00	
Total			₱ 15,398,791.00	
Less: Excess input to be carried over to the next period	₱ 8,626,051.00			
Disallowed input tax carried over from previous quarter	1,806,048.00			
Disallowed input	119,182.00		10,551,281.00	4,847,510.00
Deficiency Value Added Tax				₱ 1,982,131.51
Add: 20% Interest (01.26.08 to 06.07.10)				937,303.83
TOTAL AMOUNT DUE				₱ 2,919,435.34

III. DEFICIENCY EXPANDED WITHHOLDING TAX

	Amount	*Rate*	*Tax Due*
Professional Fee	₱ 2,293,175.84	15%	₱ 343,976.38
Income payments by top 20,000 supplier of services	403,181.29	2%	8,063.63
Income payments by top 20,000 supplier of goods	602,705.00	1%	6,027.05
Deficiency Expanded Withholding Tax			₱ 358,067.05
Add: 20% Interest p.a. from 01.16.05 to 12.28.07			171,283.58
TOTAL AMOUNT DUE			₱ 529,350.63

IV. DEFICIENCY FINAL WITHHOLDING TAX ON INTEREST EXPENSE

	Amount	*Rate*	*Tax Due*
Cash dividends declared in 2006 paid 2007	₱ 243,026,486.00	10%	₱ 24,302,648.60
Cash dividends declared in 2007	50,000,000.00	10%	5,000,000.00
Deficiency Final Withholding Tax			₱ 29,302,648.60
Add: 25% Surcharge		₱ 7,325,662.15	
20% Interest (01.16.08 to 06.07.10)		14,017,102.59	
Compromise Penalty		25,000.00	21,367,764.74
TOTAL AMOUNT DUE			₱ 50,670,413.34

V. DEFICIENCY IMPROPERLY ACCUMULATED EARNINGS TAX

Improperly Accumulated Earnings		₱ 487,536,722.00
Multiply by tax rate		10%
Deficiency Improperly Accumulated Earnings Tax		48,753,672.20
Add: 25% surcharge	₱ 12,188,418.05	
20% interest (1.16.09 to 06.07.10)	13,544,170.85	
Compromise penalty	25,000.00	25,757,588.90
TOTAL AMOUNT DUE		₱ 74,511,261.10

On June 29, 2010, petitioner filed its Reply[16] to the Preliminary Assessment Notice dated June 25, 2010 with BIR Revenue Region No. 7.[17]

On July 7, 2010, respondent issued the Formal Letter of Demand with Details of Discrepancies[18] and Assessment Notices No. 043A-B017-07[19] for deficiency income tax, deficiency VAT, deficiency EWT, deficiency FWT, deficiency IAET, and for compromise penalty,[20]

[16] Exhibits "F" and "F-1".
[17] Par. A(6) of JSFI, Docket (Vol. I), p. 421.
[18] Par. A(7) of JSFI, Docket (Vol. I), p. 422; Exhibits "H", "H-1", "H-2", "H-3" and "H-4"; Exhibit "R-16-A", BIR records, pp. 483 to 486.
[19] Exhibits "G", "G-1", "G-2", "G-3", "G-4" and "G-5"; Exhibits "R-16", BIR records, pp.488 to 493.
[20] Par. A(6)(a), (b), (c), (d), (e) and (f) of JSFI, Docket (Vol. I), pp. 421 to 422.

for taxable year ended December 31, 2007, which petitioner received on August 18, 2010.[21] Petitioner was assessed as follows:

I. DEFICIENCY INCOME TAX

Taxable income per ITR			₱ 28,087,266.00
Add: Adjustments per investigation:			
Undeclared income		₱ 3,280,906.00	
Unaccounted commission expense		474,175.86	
Income payments not subjected to withholding tax		3,299,062.13	
Salaries and wages not subjected to withholding		1,461,408.00	8,515,551.99
Taxable income per investigation			₱ 36,602,817.99
Income tax due thereon			₱ 12,810,986.30
Less: Disallowed Tax Credit/payments			
Unexpired Excess of Prior Year's MCIT		₱ 1,652,087.00	
Prior Year's excess tax credit		5,767,609.00	
Creditable tax withholding claimed		2,557,156.00	
Total		₱ 9,976,852.00	
Less: Excess tax credit to be carried over to the next period	₱ 146,308.00		
Disallowed creditable tax withheld	142,458.00	288,766.00	9,688,086.00
Deficiency income tax			₱ 3,122,900.30
Add: 20% Interest p.a. (04.16.08 to 08.06.10)			1,440,812.08
TOTAL AMOUNT DUE			₱ 4,563,712.38

II. DEFICIENCY VALUE ADDED TAX

Sales/Receipts per VAT return			₱ 56,439,503.37
Add: Adjustments per investigation:			
Unaccounted commission expense			474,175.86
Taxable Sales per investigation			₱ 56,913,679.23
Output tax due thereon			₱ 6,829,641.51
Less: Allowable credits/payments:			
Input tax carried over from previous quarter		₱ 14,294,381.00	
Input tax claimed		1,104,410.00	
Total		₱ 15,398,791.00	
Less: Excess input to be carried over to the next period	₱ 8,626,051.00		
Disallowed input tax carried over from Previous quarter	1,806,048.00		
Disallowed input	119,182.00	10,551,281.00	4,847,510.00
Deficiency Value Added Tax			₱ 1,982,131.51
Add: 20% Interest (01.26.08 to 08.06.10)			1,002,469.80
TOTAL AMOUNT DUE			₱ 2,984,601.31

III. DEFICIENCY EXPANDED WITHHOLDING TAX

	Amount	*Rate*	*Tax Due*
Professional Fee	₱ 2,293,175.84	15%	₱ 343,976.38
Income payments by top 20,000 supplier of services	403,181.29	2%	8,063.63
Income payments by top 20,000 supplier of goods	602,705.00	1%	6,027.05
Deficiency Expanded Withholding Tax			₱ 358,067.05
Add: 20% Interest p.a. from 01.16.05 to 8.6.10			183,055.65
TOTAL AMOUNT DUE			₱ 541,122.70

IV. DEFICIENCY FINAL WITHHOLDING TAX

	Amount	*Rate*	*Tax Due*
Cash dividends declared in 2006 paid 2007	₱ 243,026,486.00	10%	₱ 24,302,648.60

[21] Par. A(7) of JSFI, Docket (Vol. I), p. 422.

Cash dividends declared in 2007	50,000,000.00	10%	5,000,000.00
Deficiency Final Withholding Tax			₱ 29,302,648.60
Add: 25% Surcharge		₱ 7,325,662.15	
20% Interest (01.16.08 to 08.06.10)		14,980,477.34	22,306,139.49
TOTAL AMOUNT DUE			₱ 51,608,788.09

V. DEFICIENCY IMPROPERLY ACCUMULATED EARNINGS TAX

Improperly Accumulated Earnings		₱ 487,536,722.00
Multiply by tax rate		10%
Deficiency Improperly Accumulated Earnings Tax		48,753,672.20
Add: 25% surcharge	₱ 12,188,418.05	
20% interest (1.16.09 to 08.06.10)	15,147,031.31	27,335,449.36
TOTAL AMOUNT DUE		₱ 76,089,121.56

On September 16, 2010, petitioner filed its Letter-Protest[22] to the Final Assessment Notices (FAN) with the Office of Commissioner Kim Jacinto-Henares.[23] On November 12, 2010, petitioner also submitted supporting documents for its protest.[24] It further submitted supplemental relevant documents through a Letter dated November 15, 2010.[25]

Respondent granted petitioner's request for reinvestigation and the records were remanded to the concerned Revenue District Office for evaluation.[26] However, respondent failed to act on the aforesaid protest within the 180-day period from the submission of the supporting documents, which ended on May 11, 2011.[27]

Thus, on June 9, 2011, petitioner elevated to this Court the disputed internal revenue tax assessments for taxable year ending December 31, 2007.[28]

Respondent filed her Answer on August 10, 2011 interposing the following special and affirmative defenses, viz:

> "4. The assessment for calendar year 2007 in the total amount of P135,837,346.04 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

[22] Exhibit "I".
[23] Par. A(8) of JSFI, Docket (Vol. I), p. 422.
[24] Par. A(9) of JSFI, Docket (Vol. I), p. 422; Exhibits "K" and "K-1", box of exhibits.
[25] Exhibits "L" and "L-1".
[26] Exhibit "J".
[27] Par. A (10) and (11), JSFI, Docket (Vol. I), p. 423.
[28] Par. A(12), JSFI, Docket (Vol. I), p. 423, Petition for Review, Docket (Vol. I), pp. 10 to 47.

Demand with Details of Discrepancies and was served within the three-year prescriptive period provided in Sec. 203 of the Tax Code, as amended.

5. Verification disclosed that a discrepancy in sales amounting to P3,280,906.00 per VAT returns compared to Sales declared in the Financial Statements of petitioner, which is taxable pursuant to Sec. 31 of the 1997 Tax Code, as amended.

6. Verification disclosed that an unaccounted commission expense of P474,175.86 was not reported in the financial statement, thus, considered as unaccounted source of cash, which is taxable pursuant to Sec. 31 of the Tax Code, as amended, and further subject to VAT pursuant to Sec. 106 and 108 of the 1997 Tax Code, as amended.

7. Verification also disclosed that petitioner failed to subject the income payments of P3,299,062.13 to withholding tax as required under RR No. 2-98 as amended, thus, disallowed as deductions from gross income pursuant to Sec. 34(K) of the 1997 Tax Code, as amended.

8. Verification disclosed that salaries and wages in the amount of P1,461,408.00 was not subjected to withholding tax as required under RR No. 2-98, thus, disallowed, as deductions from gross income pursuant to Sec. 34(K) of the 1997 Tax Code, as amended.

9. Verification further disclosed that petitioner failed to submit appropriate documents to validate claimed withholding tax of P142,458.00, hence disallowed pursuant to Sec. 110, 113 and 237 of the 1997 Tax Code, as amended.

10. Verification disclosed that the input tax of P1,806,048.00 carried over from previous quarter was overstated per BIR-ITS records, hence, disallowed pursuant to Sec. 110 of the 1997 Tax Code, as amended.

11. Verification further disclosed that there is disallowed input tax of P119,182.00 as tax credits against output tax pursuant to Sec. 110 in relation to Sec. 113 and 237 of the 1997 Tax Code, as amended.

12. Verification disclosed that dividend payments amounting P293,026,486.00 was not subjected to final withholding tax, hence, assessed pursuant to Sec. 2.57-1(A)(E) of RR No. 2-98, as amended.

13. Verification further disclosed that petitioner in its financial statement reflected a Retained Earnings more than the paid-up Capital Stock at the end of TY 2007, the difference therefore is considered an improperly accumulated earnings subject to a 10% improperly accumulated earnings tax pursuant to Sec. 29 of the 1997 Tax Code, as amended, and RR No. 2-2001.

14. 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."

On September 12, 2011, petitioner's Pre-Trial Brief[29] and respondent's Pre-Trial Brief[30] were filed.

The parties submitted their Joint Stipulation of Facts and Issues[31] on October 17, 2011, which the Court approved in a Resolution promulgated on October 19, 2011.[32] On the same date, the Pre-Trial was terminated.

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[29] Docket (Vol. I), pp. 366 to 397.
[30] Docket (Vol. I), pp. 398 to 404.
[31] Docket (Vol. I), p. 419.
[32] Resolution, Docket (Vol. I), p. 441.

Upon motion of petitioner, Mr. Michael L. Aguirre was commissioned as the Independent Certified Public Accountant (ICPA) on November 14, 2011.

During trial, petitioner presented its witnesses, namely: Michael L. Aguirre, Gloria Unson, Nestor Pugna and Ramon CF. Cuervo III.

On the other hand, respondent presented her sole witness Rodorico D. Peralta.

After considering respondent's Memorandum[33] filed on April 4, 2014 and petitioner's Memorandum[34] submitted through registered mail on May 5, 2014, the instant case was submitted[35] for decision on May 15, 2014.

The parties set forth the following issues[36] to be resolved by the Court:

> I. Whether or not the Large Taxpayers Service and not Revenue Region No. 7 has jurisdiction over the petitioner for assessment of alleged deficiency taxes;
>
> II. Whether or not petitioner is liable for deficiency income tax assessment in the aggregate amount of ₱4,563,712.38 under Assessment Notice No. 043A-B017-07 consisting of the following:
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> > a. Undeclared income in the amount of ₱3,280,906.00;
> > b. Unaccounted commission expense in the amount of ₱474,175.86;
> > c. Income payments not subjected to withholding tax in the amount of ₱3,299,062.13;

[33] Docket (Vol. IV), pp. 2499 to 2510.
[34] Docket (Vol. IV), pp. 2524 to 2601.
[35] Resolution, Docket (Vol. IV), p. 2603.
[36] Par. B of JSFI, Docket (Vol. I), pp. 428 to 430.

d. Salaries and wages not subjected to withholding tax in the amount of ₱1,461,408.00; and
e. Disallowed creditable withholding tax credits in the amount of ₱142,458.00

III. Whether or not petitioner is liable for deficiency value added tax in the amount of ₱1,982,131.51 under Assessment Notice No. 043A-B017-07;

IV. Whether or not petitioner is liable for deficiency expanded withholding tax in the amount of ₱541,122.70 under Assessment Notice No. 043A-B017-07;

V. Whether or not petitioner is liable for deficiency final withholding tax in the amount of ₱51,608,788.09 under Assessment Notice No. 043A-B017-07;

A. Whether or not the final withholding tax assessment covering the period 2006 is valid considering the letter of authority that only covers the period January 1, 2007 to December 31, 2007;

VI. Whether or not petitioner correctly remitted the correct taxes on the dividend declaration for taxable year 2007;

VII. Whether or not petitioner is liable for deficiency improperly accumulated earnings tax in the amount of ₱76,089,121.56 under Assessment Notice No. 043A-B017-07;

VIII. Whether or not petitioner is liable for compromise penalty in the amount of ₱50,000.00 under Assessment Notice No. 043A-B017-07.

The Court will first determine if it has jurisdiction over the instant Petition.

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

> "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."

Records show that respondent issued the Formal Letter of Demand with Details of Discrepancies and Assessment Notices No. 043A-B017-07, which petitioner received on August 18, 2010. Petitioner filed its Letter-protest to the FAN on September 16, 2010, and subsequently submitted its supporting documents on November 12, 2010.

Respondent had one hundred eighty (180) days from November 12, 2010 or until May 11, 2011, within which to act on petitioner's protest.

Notwithstanding, respondent failed to act on the aforesaid protest. As such, petitioner had thirty (30) days from the lapse of the one hundred eighty (180)-day period or until June 10, 2011, within which to appeal respondent's inaction.

On June 9, 2011, petitioner filed this Petition for Review.

Thus, the instant case was timely filed.

The Court shall now proceed to resolve the main issues.

Respondent contends that since petitioner is registered with the BIR, Revenue Region No. 7, RDO 43, (Pasig City), Revenue Region No. 7, Quezon City has jurisdiction over petitioner for the assessment of deficiency taxes for taxable year 2007. Accordingly, there was no record of transfer of registration from RDO 43 to the Large Taxpayer Service and, the latter filed its Annual Income Tax Return for taxable year 2007 at RDO 43, Pasig.

As provided under Par. II (A) 1 and 2 of Revenue Memorandum Order No. 5-2009, the general rule is that it is the **investigating office where the taxpayer is registered or which has specific jurisdiction over a taxpayer that shall exercise primary jurisdiction over the conduct of an audit/investigation into the tax liabilities of the taxpayer for a given taxable period.** As such, the Revenue District Office shall exercise primary jurisdiction in the conduct of audits/investigations over taxpayer registered in its Revenue District.[37] (*Emphasis supplied.*)

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[37] Par. II (A) (1) of Revenue Memorandum Order No. 5-2009.

The exceptions to the above-mentioned general rule on primary jurisdiction are (1) cases where there is prima facie evidence of tax fraud; or (2) cases falling under the Run After Tax Evaders (RATE) Program.[38] In either instance, the jurisdiction to conduct audit/investigation rests upon the National Investigation Division (NID) or the Regional Special Investigation Divisions (SIDs).[39]

A perusal of the records shows that petitioner is a registered taxpayer at RDO No. 43A, Revenue Region No. 7, Quezon City.[40]

Applying the aforementioned RMO to the present case, Revenue Region No. 7, Quezon City has the primary jurisdiction to conduct audit/investigation for assessment of deficiency taxes of petitioner.

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

Petitioner Greenhills Properties, Inc. (GPI) seeks the cancellation and setting aside of the Assessment Notices No. 043A-B017-07 covering deficiency income tax, value-added tax, expanded withholding tax, final withholding tax, improperly accumulated earnings tax and compromise penalty for taxable year 2007 in the aggregate amount of ₱135,837,346.04, broken down as follows:

Deficiency Tax	**Amount**
Income Tax	₱ 4,563,712.38
Value-Added Tax	2,984,601.31
Expanded Withholding Tax	541,122.70
Final Withholding Tax	51,608,788.09
Improperly Accumulated Earnings Tax	76,089,121.56
Compromise Penalty	50,000.00
Total	**₱135,837,346.04**

I. Deficiency Expanded Withholding Tax (EWT)

The Court deems it proper to determine first this particular assessment prior to moving on with the resolution on the other

[38] Par. II (B) (1) *Ibid.*
[39] Par. II (B) (2), *Id.*
[40] Exhibit "B".

assessments since the findings in this Section would affect the computation of the deficiency income tax (to be discussed under Section II hereof).

Respondent assessed petitioner for deficiency expanded withholding tax in the amount of ₱541,122.70, computed as follows[41]:

	Amount	Rate	Tax Due
Professional Fee	₱2,293,175.84	15%	₱343,976.38
Income payments by top 20,000 supplier of services	403,181.29	2%	8,063.63
Income payments by top 20,000 supplier of goods	602,705.00	1%	6,027.05
Deficiency Expanded Withholding Tax			**₱358,067.05**
Add: 20% Interest (1.16.08 to 08.06.10)			183,055.65
TOTAL AMOUNT DUE			**₱541,122.70**

The assessment resulted from respondent's finding that there were income payments made by petitioner in the year 2007, comprising of the latter's (a) professional fees in the amount of ₱2,293,175.84, (b) payments to regular suppliers of services in the amount of ₱403,181.29 and (c) payments to regular suppliers of goods in the amount of ₱602,705.00 totaling ₱3,299,062.13 that were not subjected to EWT as required under Revenue Regulations (RR) No. 02-98, as amended, detailed as follows[42]:

	Per FS	Per Alphalist	Difference
Professional Fees	**₱3,196,741.00**	**₱903,565.16**	**₱2,293,175.84**
Income payments by top 20,000 supplier of services			
Cost of Sales			
Repairs and Maintenance	1,813,274.00		
Security and Services	610,260.00		
Light and water	395,669.00		
Janitorial Services	137,086.00		
Operating Expenses			
Insurance	1,195,412.00		
Transportation and travel	529,818.00		
Membership and association dues	478,115.00		
Representation and entertainment	297,108.00		
Postage, telephone and telegraph	81,315.00		
Advertising	37,000.00		
Income payments by top 20,000 supplier of goods	**5,575,057.00**	**5,171,875.71**	**403,181.29**
Operating Expenses			
Miscellaneous	425,406.00		
Stationeries and office supplies	177,299.00		

[41]Exhibit "H-2".
[42]Exhibit "H-3".

	602,705.00		**602,705.00**
Income payments not subjected to withholding tax			**₱3,299,062.13**

The Court shall discuss each of the aforesaid categories of income payments hereafter.

A. Professional Fees

According to petitioner's witness, Ms. Gloria Unson, in her Judicial Affidavit[43], the professional fees per AFS amounting to ₱3,196,741[44] included the following payments to General Professional Partnerships (GPPs)[45]:

CL Manabat	₱ 513,200.00
Pastelero Law Office	621,877.67
Santiago and Santiago Law Office	36,000.00
EM Zalamea Actuarial	5,000.00
	₱ 1,176,077.67

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

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

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

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[43] Exhibit "M[4]", Q&A, Nos. 37 and 38, Docket, (Vol. II), p. 616.
[44] Exhibit"P", petitioner's Notes to Financial Statements as of and for the years ended December 31, 2007 and 2006, Note 22; Exhibit "LL".
[45] Exhibit "V".

xxx xxx xxx

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

(4) General professional partnerships."

To prove that the appertaining income payees are indeed GPPs exempted from withholding, petitioner presented their respective Articles of Partnership as follows:

	Exhibit No.	**Purpose**
CL Manabat	**"VV"**	Practice of public accounting
Pastelero Law Office	**"WW"**	Practice of law
Santiago and Santiago Law Office	**"TT"**	Practice of law
EM Zalamea Actuarial	*None*	

Further, the Court-commissioned ICPA verified that the above payments to GPPs were duly supported by check disbursement vouchers and official receipts,[46] and, were summarized in Annex D.1 of his report[47].

However, re-examination of the aforesaid pieces of evidence reveals that an amount of ₱200,000.00 as payment to CL Manabat, which the ICPA mentioned to be supported with Exhibit "I.87-ICPA", has actually no supporting document attached in the records for the scrutiny of this Court. Hence, it cannot verify if such amount was actually paid to CL Manabat.

As for the income payments made to EM Zalamea, Ms. Unson testified that the entity was not actually a GPP, thus, should have been subjected to a 10% withholding tax. Out of the total income payments made to EM Zalamea which amounted to ₱43,660.00[48], only an amount of ₱38,660.00 was subjected to withholding tax per Alphalist of Payees[49] attached to BIR Form 1604-E[50]. As such, the

[46]Exhibits "I.1-ICPA" to "I.99.A-ICPA".
[47]Exhibit "W^5".
[48]Exhibit "W^5", Annex D.1.
[49]Exhibits "N-2" and "N-3"
[50]Exhibits "N" and "N-1".

difference of ₱5,000.00, as indicated in the above tabular summary of professional fees to GPPs, must be subject to deficiency EWT.

In sum, of the total alleged payments to GPP, only the amount of ₱971,077.67 was satisfactorily proven by petitioner to be exempt from the imposition of EWT, thus, the same must be deducted from the assessed amount.

The Court proceeds to the remaining professional fees amounting to ₱2,020,663.33 (₱3,196,741.00 – 1,176,077.67).

Based on the summary[51] prepared by the ICPA, the total amount of professional fees with supporting documents was ₱3,484,239.70. From this amount, there was a corresponding deduction amounting to ₱287,499.00, which was labelled to be "Paid by El Pueblo Tenants (Reimburseables)", as shown below:

	Amount	Withholding Tax	Ref
Professional Fee subject to EWT:			
Analiza Chamorro	₱ 17,250.00	₱ 1,725.00	Annex D.1-ICPA
Delma Garbo	17,250.00	1,725.00	Annex D.1-ICPA
E.M. Zalamea Actuarial	38,660.00	3,866.00	Annex D.1-ICPA
Anette G. Aquado	314,722.23	31,472.22	Annex D.1-ICPA
Ernesto Calderon	297,305.65	29,730.55	Annex D.1-ICPA
Cuervo Appraiser	13,392.86	1,339.28	Annex D.1-ICPA
Palafox Associates	621,830.36	63,495.54	Annex D.1-ICPA
Management Fee			
PHRC Property Managers	987,550.93	98,755.14	Annex D.1-ICPA
Less: Paid by El Pueblo Tenants (Reimburseables)	(287,499.00)		
Total	₱ 2,020,463.03		
Professional Fee not subject to EWT:			
C.L. Manabat	₱ 513,200.00	Exempt - GPP	Annex D.1-ICPA
Pastelero Law Office	621,877.67	Exempt - GPP	Annex D.1-ICPA
Santiago & Santiago Law Office	36,000.00	Exempt - GPP	Annex D.1-ICPA
Total	₱ 1,171,077.67		
Professional Fee without withholding:			
E.M. Zalamea Actuarial	5,000.00	-	Annex D.1-ICPA
Nestor Pugna	200.00	-	Annex D.1-ICPA
Total	5,200.00		
Total Professional Fee as Per AFS	**₱ 3,196,740.70**	**₱ 232,108.73**	

[51] Exhibit "W^5", Annex D.1.

Factoring the actual amount of ₱3,484,239.70 professional fees paid, the total difference which must be accounted for by petitioner to have been subjected to EWT is ₱2,308,162.03 (₱3,484,239.70 – 1,176,077.67).

In relation thereto, the ICPA verified that of this remaining amount, the total EWT remitted by petitioner was ₱232,108.74, as can be traced from the supporting documents[52] (also summarized in Annex D.1 of the ICPA Report) to the Alphalist of Payees attached to BIR Form 1604-E[53].

	Amount	**EWT Withheld**
Professional Fee subject to EWT:		
Analiza Chamorro	₱ 17,250.00	₱ 1,725.00
Delma Garbo	17,250.00	1,725.00
E.M. Zalamea Actuarial	38,660.00	3,866.00
Anette G. Aquado	314,722.23	31,472.23
Ernesto Calderon	297,305.65	29,730.55
Cuervo Appraiser	13,392.86	1,339.28
Palafox Associates	621,830.36	63,495.54
Management Fee:		
PHRC Property Managers	987,550.93	98,755.14
Professional Fee without withholding:		
Nestor Pugna	200.00	-
	₱2,308,162.03	**₱ 232,108.74**

It was observed that respondent applied the rate of 15% in computing the deficiency EWT on professional fees. Nevertheless, Section 2.57.2 (A) of RR No. 2-98, as amended, provides that professional fees, talent fees, etc. for services rendered by professionals are subject to EWT either at ten percent (10%), if the gross income of the professional does not exceed ₱720,000.00 in a year, or fifteen percent (15%), if the professional's gross income exceeds ₱720,000 in a year, to wit:

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

xxx xxx xxx

[52] Exhibits "I.1-ICPA" to "I.99.A-ICPA" as summarized in Exhibit "W[5]", Annex D.1.
[53] Exhibit "N" to "N-3".

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

After this Court's verification and upon re-computation of the assessment on professional fees, the amount of deficiency EWT must have been ₱69,897.50:

	Amount	**EWT Due**	**EWT Paid**	**Deficiency EWT**
Professional Fees subject to EWT:				
Analiza Chamorro	17,250.00	1,725.00	1,725.00	-
Delma Garbo	17,250.00	1,725.00	1,725.00	-
E.M. Zalamea Actuarial	38,660.00	3,866.00	3,866.00	-
Anette G. Aquado	314,722.23	31,472.22	31,472.22	-
Ernesto Calderon	297,305.65	29,730.55	29,730.55	-
Cuervo Appraiser	13,392.86	1,339.28	1,339.28	-
Palafox Associates	621,830.36	63,495.54	63,495.54	-
Management Fee				-
PHRC Property Managers	987,550.93	148,132.64	98,755.14	49,377.50
Professional Fees not subject to EWT:				
C.L. Manabat	313,200.00	Exempt-GPP		
Pastelero Law Office	621,877.67	Exempt-GPP		
Santiago & Santiago Law Office	36,000.00	Exempt-GPP		
Subtotal	971,077.67			
C.L. Manabat	200,000.00	20,000.00	-	20,000.00
Professional Fee without withholding:				
E.M. Zalamea Actuarial	5,000.00	500.00	-	500.00
Nestor Pugna	200.00	20.00		20.00
Subtotal	5,200.00			
Total Professional Fees Paid	3,484,239.70	**302,006.23**	**232,108.73**	**69,897.50**
	(287,499.00)			
Total Professional Fees per AFS	**3,196,740.70**			

a

B. Income Payments by Top 20,000 Supplier of Goods and Services

Petitioner contends that respondent failed to present proof to establish that the former belongs to the Top 20,000 private corporations for it to be required to withhold 1% and 2% on its income payments to local suppliers of goods and services, respectively.[54]

The pertinent provision governing this matter is Section 2.57.2(M) of RR No. 02-98, as amended by RR No. 17-03, to wit:

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

[54] Memorandum, Docket (Vol. IV), pp. 2538 – 2539.

Revenue (BIR) as having satisfied any of the following criteria:

xxx xxx xxx

A corporation shall not be considered a withholding agent for purposes of this Section, unless such corporation has been <u>determined and duly notified, in writing</u>, by the Commissioner that it has been selected as one of the top ten thousand (10,000) private corporations. (*Emphasis and underscoring supplied.*)

xxx xxx xxx"

Based on the afore-quoted provision, it is indispensable that due notice must be given to the corporate taxpayer as satisfactory proof that it belongs to the Top 10,000 private corporations to warrant its requirement of withholding from its income payments.

In its reply letter[55] to the Preliminary Assessment Notice (PAN), protest letter[56] to the Final Assessment Notice (FAN), supplemental letter[57] (re: supplemental submission of relevant documents), and Petition for Review[58] filed before this Court, petitioner consistently stated that it has been classified as a large taxpayer per letter of the BIR dated June 11, 2004. Petitioner even attached to its reply letter to the PAN, supplemental letter (re: supplemental submission of relevant documents) and Petition for Review, a copy of the said notification letter from the BIR.

As a duly notified large taxpayer, petitioner is required to withhold 1% and 2% EWT on its local purchases of goods and services, respectively, pursuant to Section 2.57.2(M) of RR No. 02-98, as amended by RR No. 17-03, quoted earlier.

Based on ICPA's examination, out of the income payments made by petitioner to its regular suppliers of services and goods in the total amount of ₱6,177,762.00, subject of the deficiency EWT assessment, only the following income payments totalling ₱2,747,011.90 were verified to have been subjected to EWT per

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[55] Exhibit "F", p. 2; BIR records, p. 462.
[56] Exhibit "I", pp. 13-14, BIR records, p. 561-575.
[57] Exhibit "L", p. 3.
[58] Docket, (Vol. I), p. 17.

petitioner's BIR Form No. 1604E and alphalist. Thus, on the remaining income payments of ₱3,430,750.10, which were not subjected to EWT, petitioner shall be liable for the corresponding deficiency EWT in the total amount of ₱64,813.92, computed as follows:

	Per AFS	Per return (1604E & Alphalist) [59]	Not subjected to EWT	EWT Rate	Deficiency EWT
Supplier of Services					
Repairs and maintenance	₱1,813,274.00	₱1,777,069.30	₱ 36,204.70	2%	₱ 724.09
Security Services	610,260.00	610,260.00	-	2%	-
Light and Water	395,669.00	-	395,669.00	2%	7,913.38
Janitorial Services	137,086.00	137,086.00	-	2%	-
Insurance	1,195,412.00	-	1,195,412.00	2%	23,908.24
Transportation and Travel	529,818.00	-	529,818.00	2%	10,596.36
Membership and association dues	478,115.00	-	478,115.00	2%	9,562.30
Representation and entertainment	297,108.00	-	297,108.00	2%	5,942.16
Postage, telephone and telegraph	81,315.00	-	81,315.00	2%	1,626.30
Advertising	37,000.00	-	37,000.00	2%	740.00
Subtotal	**₱5,575,057.00**	**₱2,524,415.30**	**₱3,050,641.70**		**₱61,012.83**
Supplier of Goods					
Miscellaneous	₱ 425,406.00	₱ 159,367.10	₱ 266,038.90	1%	₱ 2,660.39
Stationeries and office supplies	177,299.00	63,229.50	114,069.50	1%	1,140.70
Subtotal	**₱ 602,705.00**	**222,596.60**	**380,108.40**		**₱ 3,801.08**
Total	**₱6,177,762.00**	**₱2,747,011.90**	**₱3,430,750.10**		**₱64,813.92**

In sum, petitioner is liable to pay deficiency EWT for taxable year 2007 in the total amount of ₱134,711.42, broken down as follows:

	Income Payment	Deficiency EWT
Professional Fees		
PHRC Property Managers	₱ 329,183.33	₱ 49,377.50
E.M. Zalamea Actuarial	5,000.00	500.00
Nestor Pugna	200.00	20.00
C.L. Manabat	200,000.00	20,000.00
Subtotal	**₱ 534,383.33**	**₱ 69,897.50**
Income Payments to Suppliers of Services	₱ 3,050,641.70	₱ 61,012.83
Income Payments to Suppliers of Goods	380,108.40	3,801.08
Subtotal	**₱ 3,430,750.10**	**₱ 64,813.92**

[59] Exhibit "W^5-4".

Total	**₱ 3,965,133.43**	**₱ 134,711.42**

II. Deficiency Income Tax

The Formal Letter of Demand[60] shows that respondent computed the assessment for deficiency income tax as follows:

Taxable income per ITR			₱ 28,087,266.00
Add: Adjustments per investigation			
Undeclared income		₱3,280,906.00	
Unaccounted commission expense		474,175.86	
Income payments not subjected to withholding tax		3,299,062.13	
Salaries and wages not subjected to withholding		1,461,408.00	8,515,551.99
Taxable income per investigation			**₱36,602,817.99**
Income tax due thereon			₱ 12,810,986.30
Less: Disallowed Tax Credit/payments			
Unexpired Excess of Prior Year's MCIT		₱1,652,087.00	
Prior Year's excess tax credit		5,767,609.00	
Creditable tax withholding claimed		2,557,156.00	
Total		₱9,976,852.00	
Less: Excess tax credit to be carried over to the next period	₱146,308.00		
Disallowed creditable tax withheld	142,458.00	288,766.00	9,688,086.00
Deficiency Income Tax			₱3,122,900.30
Add: 20% Interest p.a. (04.16.08 to 06.07.10)			1,440,812.08
TOTAL AMOUNT DUE			**₱4,563,712.38**

The Court shall now scrutinize the validity of the above assessment by delving into the propriety of the income imputed as well as the expense deductions and tax credits disallowed by respondent namely:

A. Undeclared income	₱3,280,906.00
B. Unaccounted commission expense	474,175.86
C. Income payments not subjected to withholding tax	3,299,062.13
D. Salaries and wages not subjected to withholding	1,461,408.00
E. Excess tax credits to be carried forward	146,308.00
F. Disallowed creditable tax withheld	142,458.00

[60] Exhibit "H-1".

A. Undeclared Income

Invoking Section 31 of the National Internal Revenue Code (NIRC) of 1997, as amended, respondent assessed petitioner for deficiency income tax on alleged undeclared income of ₱3,280,906.00, representing the discrepancy[61] between petitioner's receipts as per audit by respondent and as reflected in its audited financial statement[62] (AFS) and income tax return[63] (ITR), computed as follows:

Gross receipts per VAT return	₱	56,439,503.00
Add: A/R, end (net)		3,116,286.00
Total	**₱**	**59,555,789.00**
Less: A/R, beg (net)		6,548,245.00
Income for the year per audit	**₱**	**53,007,544.00**
Less: Income per return		49,726,638.00
Difference	**₱**	**3,280,906.00**

Petitioner accounted for the discrepancy as follows[64]:

Gross receipts per VAT return		₱ 56,439,503.00
AR Ending		
Less: Monthly dues payments of El Pueblo Tenants (Net of VAT)		4,458,755.40
		₱ 51,980,747.60
Add: Accounts Receivable End (net of VAT)	₱ 3,116,286.00	
Less: Monthly dues payments of El Pueblo Tenants (Net of VAT)	624,929.83	2,491,358.17
		₱ 54,472,103.77
Less: Accounts Receivable Beginning (net of VAT)	₱ 6,548,245.00	
Less: Monthly dues payments of El Pueblo Tenants (Net of VAT)	595,383.00	5,952,862.00
		48,519,241.77
Add: December 31, 2007 adjustment, net of VAT		
Received from American Auction on Beijing Rental in El Pueblo	894,819.22	
Rack's, Inc. Rental payments	312,500.00	1,207,319.22
Income for the year		49,726,560.99
Income per return		49,726,638.00
Difference		**₱ (77.01)**

[61] Details of Discrepancies, Exhibit "H-3".
[62] Exhibit "P".
[63] Exhibit "C".
[64] Par. 28, Petition for Review, Docket, (Vol. I), p. 20.

Petitioner alleged that the discrepancy pertained to the association dues by its tenants in the Ortigas Center Association, Inc., which were used to maintain and upkeep its various El Pueblo properties, as provided in the Contracts of Lease[65], covering periods including the year 2007. Also, petitioner made advances for the payment of the expenses for the El Pueblo property, such as electricity, water, security services, janitorial and insurance expenses. Accordingly, these are "common area expenses" which were expressly stipulated in the Contracts of Lease as to be reimbursable by the lessees to petitioner. These contracts uniformly provide the following stipulation, to wit:

> "MEMBERSHIP IN THE ORTIGAS CENTER ASSOCIATION, INC. - Upon effectivity of their respective contracts, all tenants of the LESSOR, such as the LESSEE, shall automatically become members in the Ortigas Center Association, Inc. and therefore LESSEE binds itself/himself/herself to faithfully perform and comply with all the duties and obligations of a member, including but not limited to the following:
>
> > a. Within the stipulated periods, the LESSEE agrees to pay all dues, assessments, interests, penalties, and other amounts that may be levied or imposed by the Association on its members; and
>
> xxx xxx xxx"
>
> "PAYMENT OF COMMON AREA EXPENSES. - In addition to the preceding paragraph, the LESSEE shall reimburse the LESSOR for all actual expenses incurred in connection with the repairs and maintenance of the common areas, including but not limited to, security services, janitorial and garbage, water, light, and power, advertising and promotions and other related expenses. x x x"

Thus, the alleged payments amounting to ₱3,280,906.00 were not claimed as petitioner's expenses. Since the discrepancy is considered as reimbursed expenses and merely a return of capital, a

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[65] Exhibits "MMM", "NNN", "OOO", "PPP", "QQQ", "RRR", "SSS", "TTT", "UUU", "UUU-1", and "VVV".

the same is not subject to income tax. Hence, it is allegedly erroneous for respondent to include these association dues and reimbursable expenses as part of the taxable income.

However, respondent counter-argues that petitioner failed to reflect the said reimbursable expenses in the AFS and there should have been proper allocation of such expenses. Also, respondent has pointed out that the ICPA had reported that an amount of ₱3,109,047.43 was not subjected to withholding tax, thus, disallowed pursuant to the rule of deductibility under Section 34(K) of the NIRC of 1997, as amended.

The Court finds for the petitioner.

The BIR in its various rulings[66], held that association/condominium dues, membership fees and other assessment/charges collected from the members, which are **merely held in trust** and which are to be used solely for administrative expenses in implementing their purpose(s), viz., to protect and safeguard the welfare of the owners, lessees and occupants; provide utilities and amenities for their members, and from which the **corporation could not realize any gain or profit as a result of their receipt thereof, must not be included in said corporation's gross income**. This means that the same are not subject to income tax and to withholding tax.[67]

The report of the Court-commissioned ICPA shows that these common area expenses, although reported for VAT purposes by petitioner as these are VATable transactions, did not form part of petitioner's income and were not reported as such for the taxable year 2007.[68]

In this regard, petitioner presented the official receipts (ORs) issued to the tenants for the reimbursement of expenses, cash receipts book[69] showing that the reimbursements were recorded as

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[66] BIR Ruling [DA-(C-239) 612-09] dated October 19, 2009; BIR Ruling No. [DA-(C-182) 468-09] dated August 18, 2009; BIR Ruling [DA-(C-162) 427-09] dated July 31, 2009; BIR Ruling No. [DA-(C-032) 137-09] dated March 5, 2009; BIR Ruling No. [DA-(C-016) 079-08] dated July 28, 2008; BIR Ruling No. 018-05 dated September 16, 2005; BIR Ruling [DA-304-04] dated June 2, 2004.

[67] *Officemetro Philippines, Inc. (formerly Regus Centres, Inc.) vs. CIR*, CTA Case No. 8382, June 3, 2014.

[68] Exhibit "XXXXX".

[69] Exhibits "Y.1.1-ICPA" to "Y.21.1-ICPA".

reduction to expenses upon collection, and check vouchers[70] (CVs) prepared for the payment of expenses (including reimbursables) and the corresponding official receipts[71] issued by the service providers.

Annex A of the ICPA report[72] summarizes that only a total of ₱4,777,512.51 pertains to the portion of the common area expenses reimbursed by its tenants. The amount was obtained by subtracting the amount of expense presented per AFS, or ₱7,348,441.72, from the total amount paid per check vouchers, or ₱12,125,954.23. Hence, the expenses claimed by petitioner in its 2007 AFS and AITR were net of recoveries from El Pueblo tenants. As correctly pointed out by the ICPA, had petitioner recorded the reimbursements as income instead of deducting it against the related expense, it should have recorded the total amount paid to third party suppliers in full as expense. In this instance, there will be no resulting taxable income because the amount collected will not exceed the amount paid.

Petitioner's declared gross receipts per its 2007 Quarterly VAT Returns in the total amount of ₱56,439,503.00 included petitioner's collections from El Pueblo tenants for the reimbursable expenses in the amount of ₱4,458,755.40[73], which respondent failed to take into account in her computation of the alleged undeclared income of ₱3,280,906.00. Obviously, the amount of ₱4,458,755.40, being a lot higher, will easily offset the alleged undeclared income of ₱3,280,906.00.

It is clear from the foregoing that the subject assessment, being a mere result of erroneous computation, must be cancelled.

B. Unaccounted Commission Expense

Based on the comparison of petitioner's commission expense per financial statements (FS) and per return, respondent's examiner has found that petitioner failed to report in its FS the commission expense in the amount of ₱474,175.86 and considered the same as unaccounted source of cash/undeclared income computed as follows[74]:

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[70] Exhibits "L.1-ICPA" to "L.36-ICPA", "K.1-ICPA" to "K.31-ICPA", "M.1-ICPA" to "M.24-ICPA", "N.1-ICPA" to "N.17-ICPA".
[71] Exhibits "X.1-ICPA" to "X.107-ICPA".
[72] Exhibit "WWWWW-2".
[73] BIR records, pp. 656-658.
[74] Exhibit "H-3".

	Per FS	Per Return	Difference
Commission Expense	₱ 513,375.00	₱ 987,550.86	₱ 474,175.86
Unaccounted Commission Expense			**₱ 474,175.86**

Petitioner, on the other hand, argues that the alleged unaccounted commission expense in the amount of ₱474,175.86 was not reflected in its Annual Income Tax Return for taxable year 2007. Due process requires that taxpayer must be informed in writing of the factual and legal basis upon which the tax assessment is based. As such, it is incumbent upon the BIR to show how the alleged amount was arrived at. The BIR allegedly failed to explain this finding to petitioner even after the latter filed its Reply to the Preliminary Assessment Notice on June 29, 2010[75].

The Court finds for petitioner.

Section 228 of NIRC of 1997, as amended, provides that the taxpayer must be informed in writing of the law and the facts upon which a tax assessment is based; otherwise, the assessment is void. This is in consonance with the due process requirement of the 1997 Philippine Constitution which provides that "No person shall be deprived of his property without due process of law." The taxpayer needs to know the nature of the examiner's findings in order to be able to properly contest the same and submit supporting documents.

In *Commissioner of Internal Revenue vs. Enron Subic Power Corporation*[76], the Supreme Court ruled:

> "The CIR insists that an examination of the facts shows that Enron was properly apprised of its tax deficiency. During the pre-assessment stage, the CIR advised Enron's representative of the tax deficiency, informed it of the proposed tax deficiency assessment through a preliminary five-day letter and furnished Enron a copy of the audit working paper allegedly showing in detail the legal and factual bases of the assessment. The CIR argues that these steps sufficed to inform Enron of the laws and facts on which the deficiency tax assessment was based.

[75] Exhibit "I", p. 5.
[76] GR. No. 166387, Resolution dated January 19, 2009.

We disagree. The advice of tax deficiency, given by the CIR to an employee of Enron, as well as the preliminary five-day letter, were not valid substitutes for the mandatory notice in writing of the legal and factual bases of the assessment. These steps were mere perfunctory discharges of the CIR's duties in correctly assessing a taxpayer. The requirement for issuing a preliminary or final notice, as the case may be, informing a taxpayer of the existence of a deficiency tax assessment is markedly different from the requirement of what such notice must contain. Just because the CIR issued an advice, a preliminary letter during the pre-assessment stage and a final notice, in the order required by law, does not necessarily mean that Enron was informed of the law and facts on which the deficiency tax assessment was made.

The law requires that the legal and factual bases of the assessment be stated in the formal letter of demand and assessment notice. Thus, such cannot be presumed. Otherwise, the express provisions of Article 228 of the NIRC and RR No. 12-99 would be rendered nugatory. The alleged 'factual bases' in the advice, preliminary letter and 'audit working papers' did not suffice. There was no going around the mandate of the law that the legal and factual bases of the assessment be stated in writing in the formal letter of demand accompanying the assessment notice.

We note that the old law merely required that the taxpayer be notified of the assessment made by the CIR. This was changed in 1998 and the taxpayer must now be informed not only of the law but also of the facts on which the assessment is made. Such amendment is in keeping with the constitutional principle that no person shall be deprived of property without due process. In view of the absence of a fair opportunity for Enron to be informed of the legal and factual bases of the assessment against it, the assessment in question was void." *(Emphasis supplied.)*

It is to be noted that the alleged unaccounted commission expense in the amount of ₱474,175.86 originated from the commission expense of ₱987,550.86 described by respondent in her computation as "Per Return". Petitioner was unable to comprehend how respondent arrived at the amount of ₱987,550.86 as this figure is different from the amount of ₱513,375.00[77] that was reflected in petitioner's 2007 Annual Income Tax Return as commission expense.

Respondent, through the Judicial Affidavit[78] of her witness, Mr. Rodorico D. Peralta, clarified that the amount of ₱987,550.86 commission expense "Per Return" as indicated in the Details of Discrepancy was obtained from the Alphalisting of Payees[79]. However, such information should have been indicated in the PAN, FLD and FAN issued by respondent to petitioner as required under Section 228 of the NIRC of 1997, as amended. Petitioner cannot be expected to be able to determine and thereafter refute the examiner's findings without the disclosure of the details of the basis of the assessment. Accordingly, due to respondent's failure to adequately provide the factual basis of the deficiency income tax assessment on the alleged unaccounted commission expense of ₱474,175.86, the same shall be considered void.

C. Income Payments Not Subjected to Withholding Tax

As earlier stated, under the deficiency EWT assessment (see discussion under item I), petitioner failed to prove that it withheld and remitted the EWT due on the following income payments:

	Income Payment	Deficiency EWT
Professional Fees		
PHRC Property Managers	₱ 329,183.33	₱ 49,377.50
E.M. Zalamea Actuarial	5,000.00	500.00
Nestor Pugna	200.00	20.00
C.L. Manabat	200,000.00	20,000.00
Subtotal	**₱ 534,383.33**	**₱ 69,897.50**
Income Payments to Suppliers of Services	₱ 3,050,641.70	₱ 61,012.83
Income Payments to Suppliers of Goods	380,108.40	3,801.08
Subtotal	**₱ 3,430,750.10**	**₱ 64,813.92**
Total	**₱ 3,965,133.43**	**₱ 134,711.42**

[77] Note 20 of petitioner's AFS, BIR records, p. 282; Line 53, Schedule 3 of petitioner's 2007 ITR, BIR records, p. 318.
[78] Exhibit "R-17".
[79] Exhibit "R-4-a".

However, the professional fees of ₱329,183.33 with the corresponding deficiency EWT of ₱49,377.50 shall be reduced by the amount of ₱95,832.91[80] pertaining to professional fees reimbursed by El Pueblo tenants with the related EWT of ₱14,374.94. Thus, only the professional fees of ₱233,350.42 claimed by petitioner as deductible expense shall be disallowed pursuant to Section 34(K) of the NIRC of 1997, as amended, which states that:

> "(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 xxx."

Likewise, petitioner's income payments to its suppliers of services and goods in the total amount of ₱3,430,750.10 shall be disallowed from its claimed deductions against its taxable gross income for the year 2007 on the ground that the same were not subjected to EWT, thus, considered as unallowable deduction.

D. Salaries and Wages Not Subject to Withholding Tax

Finding that the salaries and wages in the amount of ₱1,461,408.00 was not subjected to withholding tax, respondent disallowed the same as deduction from petitioner's gross income pursuant to Section 34(K) of the NIRC of 1997, as amended, broken down as follows[81]:

	Per FS	**Per Alphalist**	**Not Subjected**
Remuneration of Key Management Personnel			
Salaries and wages	₱ 720,000.00		
Post employment benefits	247,655.00		
Other short term employee benefits	39,643.00		
Operating Expense			
Salaries and wages	1,343,600.00		
Post employment benefits	395,010.00		
	₱ 2,745,908.00	**₱ 1,284,500.00**	**₱ 1,461,408.00**
Salaries and wages not subjected to withholding			**₱ 1,461,408.00**

[80] 29.1123213% (₱287,499 ÷ ₱987,550.93); Exhibit "W^5-5".
[81] Exhibit "H-4".

Petitioner maintains that respondent's findings on salaries, wages and benefits were erroneous, and should be cancelled on the ground that the same were accounted twice by respondent. It claims that the salaries, wages and benefits under Note 22 of its AFS already included the salaries, wages and benefits under Note 16.

First, the Court shall resolve if there was a double assessment made by respondent as being alleged by petitioner.

Examination of the AFS shows that the salaries, wages and benefits in the amount of ₱1,343,600.00 under Note 22 – Operating Expenses were cross-referred to Note 16 – Related Parties. A portion of Note 16 discloses the breakdown of Remuneration of Key Management Personnel as follows:

	Note	**2007**	2006
Salaries and wages	21	₱ 720,000.00	₱ 2,160,000.00
Post employment benefits	21	247,655.00	299,091.00
Other short-term employee benefits	21	39,643.00	172,678.00
		₱ 1,007,298.00	**₱ 2,631,769.00**

Based on the tabular AFS disclosure above, the cross-referencing of the amounts to Note 21 pertains to the breakdown of Other Operating Income. This is a mere typographical error on the part of the petitioner since the breakdown of Note 21 does not disclose any cross-referencing to Note 16. Instead, it appears that the proper Note disclosure to which petitioner intended to cross-refer the above amounts was Note 22 – Operating Expense, where the line item for Salaries, wages and benefits was cross-referred back to Note 16. Although the total amount of the Remuneration of Key Management Personnel under Note 16 does not exactly tie up with the total amount of Salaries, wages and benefits under Note 22, this only shows that the amounts disclosed in Note 16 were part of the amounts presented in Note 22.

Accordingly, the disclosure of Remuneration of Key Management Personnel under Note 16 of the petitioner's 2007 AFS was in compliance with the presentation disclosure specified in

Philippine Accounting Standards (PAS) 24[82]: *Related Party Disclosures*, paragraph 16, to wit:

> 16 An entity shall disclose key management personnel compensation in total for each of the following categories:
>
> (a) Short-term employee benefits
> (b) Post-employment benefits
> (c) Other long term benefits
> (d) Termination benefits; and
> (e) Share-based payments.[83]

Furthermore, in paragraph 9 thereof, compensation is defined to include "all employee benefits" which pertain to "all forms of consideration given by an entity in exchange for service rendered by employees" as defined under PAS 19.[84]. Within such definition, it includes short-term employee benefits, such as wages, salaries, and post-employment benefits, among others.

The disclosure merely <u>purports to clarify</u> the users of the financial statements on the "possibility that its financial position and profit or loss may have been affected by the existence of related parties and by transactions and outstanding balances with such parties"[85]. Accordingly, "a member of the key management personnel of the entity or its parent" is within the scope of a related party[86]. *(Underscoring supplied.)*

Accordingly, a separate disclosure on the details of the remuneration of key management personnel in the AFS is not tantamount to a separate transaction of compensation.

[82] Philippine Financial Reporting Standards (PERS), Philippine Institute of Certified Public Accountants (PICPA), Part II of II, pp. 761-770

[83] Philippine Financial Reporting Standards (PFRS), Philippine Institute of Certified Public Accountants (PICPA), Part II of II, p. 768.

[84] Par. 7, Definitions, PAS 19: *Employee Benefits*, Philippine Financial Reporting Standards (PFRS), Financial Reporting Standards Council (FRSC) and Philippine Institute of Certified Public Accountants (PICPA), Part I of II, p. 665.

[85] Objective, PAS 24: *Related Party Disclosures*, Philippine Financial Reporting Standards (PFRS), Financial Reporting Standards Council (FRSC) and Philippine Institute of Certified Public Accountants (PICPA), Part II of II, p. 765.

[86] Par. 9d, Related Party (d), PAS 24: *Related Party Discloures*, Philippine Financial Reporting Standards (PFRS), Financial Reporting Standards Council (FRSC) and Philippine Institute of Certified Public Accountants (PICPA), Part II of II, p. 766.

In fine, petitioner's claim is meritorious in invoking that it was assessed twice by the respondent when the amount of remuneration of key management personnel was included in the computation of the difference.

That being settled, what is left to be resolved by the Court is whether or not petitioner withheld the required withholding tax on the following amounts:

Salaries and wages	₱ 1,343,600.00
Post-employment benefits	395,010.00
	₱ 1,738,610.00

Ms. Gloria Unson, witness for petitioner, stated in her Judicial Affidavit[87] that the post-employment benefits amounting to ₱395,010.00 must not be subject to withholding tax as these were not yet paid out.

The Court agrees with petitioner. It bears stressing that the withholding tax on compensation applies to compensation actually or constructively paid[88]. In this case, the post-employment benefits in the amount of ₱395,010.00 cannot be said to be actually or constructively received by the employees since it is a mere provision, comprising of current service and interest cost, as set out in the latest independent actuarial valuation of the petitioner's unfunded, non-contributory defined benefit retirement plan covering substantially all of petitioner's employees. Further, the movements in the present value of defined benefit obligation shows no deduction for any employee separation paid out of the plan.[89] More importantly, the post-employment benefits of ₱395,010.00 was not claimed as deductible expense by petitioner for taxable year 2007 as can be seen in its Reconciliation[90] of Net Income per Books against Taxable Income.

Considering the foregoing, the amount of ₱395,010.00 must be stricken down in the computation of the assessment.

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[87] Exhibit "MMMM".
[88] Section 2.83.6, RR No. 2-98.
[89] Note 17, Audited Financial Statements, Exhibit "P".
[90] Section E, line 115, petitioner's 2007 AITR, BIR records, p. 317.

With regard to the salaries and wages amounting to ₱1,343,600.00, petitioner presented a schedule[91] reconciling the same with the ₱1,284,500.00 gross compensation reflected in the alphalist[92], as shown below:

Per Alphabetical List						
		Compensation		Non-Taxable 13th Month		Total
Lanuza, Gerardo, Jr. O.	₱	480,000.00	₱	30,000.00	₱	510,000.00
Olbes, Antonio O.		240,000.00		20,000.00		260,000.00
Pugna, Nestor A.		226,200.00		16,750.00		242,950.00
Unson, Gloria P.		252,600.00		18,950.00		271,550.00
					₱	1,284,500.00
Employer Contribution						
HDMF			₱	15,140.00		
SSS Premium				48,090.00		
			₱	63,230.00		63,230.00
Total					₱	1,347,730.00
Per Audited Financial Statement						1,343,600.00
Difference					₱	4,130.00

As indicated in the above summary and testified to by Ms. Gloria Unson in her Judicial Affidavit[93], the discrepancy between the claimed salaries and wages per AFS of ₱1,343,600.00 and per alphalist of ₱1,284,500.00 in the amount of ₱59,100.00 represents the difference between the employer's contribution for Home Development Mutual Fund (HDMF) and Social Security System (SSS) premium in the amount of ₱63,230.00 and overstatement of the gross compensation per alphalist in the amount of ₱4,130.00 (₱63,230.00 less ₱4,130.00).

While employer's contributions remitted to SSS and HDMF are excluded from the computation of taxable income, thus, not subject to withholding tax under Section 32(B)(7)(f) of the NIRC of 1997, as amended, petitioner, nonetheless, failed to present any supporting source document that will prove actual remittance of the ₱63,230.00.

Consequently, the unsupported discrepancy between the claimed Salaries and wages per AFS and per alphalist in the amount of ₱59,100.00 shall be disallowed from petitioner's claimed

[91] Exhibit "O".
[92] Exhibit "C.4-ICPA".
[93] Exhibit "M[4]", Docket, (Vol. II), p. 618.

deductions pursuant to Section 34(K) of the NIRC of 1997, as amended.

E. Excess Tax Credits Carried Forward

Respondent disallowed the carry-over of excess tax credits amounting to ₱146,308.00, which was obtained from Line 31 of the AITR. However, respondent did not indicate the basis for the disallowance in the Details of Discrepancy.

Respondent's failure to provide the factual and legal basis for the assessment denied petitioner of due process for not having the opportunity to be clarified with the issues which, in its discretion, needs to be refuted. Thus, pursuant to Section 228 of the NIRC of 1997, as amended, this item of assessment shall be considered void.

Further, it was improper for respondent to disallow the said excess tax credits because any tax benefit derived by petitioner from the carry-over of the said amount redounds to the succeeding year 2008. Since the tax benefit will be in the succeeding year, at most, petitioner may only be assessed in the said succeeding year.

F. Disallowed Creditable Tax Withheld

Pursuant to Sections 110, 113 and 237 of the NIRC of 1997, as amended, respondent disallowed petitioner's creditable withholding tax credits in the amount of ₱142,458.00 for failure of the latter to submit appropriate documents[94].

Petitioner disagrees with respondent, stating that the latter failed to provide the former with the computation or schedules for the alleged unsupported creditable withholding tax claimed. Neither does the 2007 FAN itself provide any explanation how the aforesaid amount was arrived at. Petitioner argues that contrary to respondent's allegations, the claim was fully supported with documents.

To support its averments, petitioner presented the Certificates of Creditable Taxes Withheld (BIR Form 2307)[95] from January to

[94] Exhibit "H-4".
[95] Exhibits "W.1-ICPA" to "W.125-ICPA".

December 2007. The ICPA verified said certificates and summarized his findings in Annex T of his report[96].

The total amount of the CWT Certificates vouched by the ICPA amounted to ₱2,554,921.31[97]. However, the amount of CWTs for the year 2007, as declared by petitioner in its AITR, amounted to ₱2,557,156.00[98]. The difference of ₱2,234.69 shall be disallowed from petitioner's total claimed creditable tax credits for the year 2007.

In sum, petitioner is liable for basic deficiency income tax for taxable year 2007 in the amount of ₱1,233,331.72, computed as follows:

Taxable Income per ITR (Amended)		**₱28,299,511.00**
Add: Adjustments per investigation		
Income payments not subjected to withholding tax		
Professional Fees	₱ 233,350.42	
Income Payments to Suppliers of Goods and Services	3,430,750.10	
Salaries and wages not subjected to withholding tax	59,100.00	3,723,200.52
Taxable income per investigation		**₱32,022,711.52**
Income tax due thereon		**₱11,207,949.03**
Less: Disallowed Tax Credit/Payments		
Unexpired Excess of Prior Year's MCIT	₱ 1,652,087.00	
Prior Year's Excess Tax Credit	5,767,609.00	
Creditable Taxes Withheld	2,557,156.00	
Total	**₱ 9,976,852.00**	
Less: Disallowed creditable tax withheld	2,234.69	9,974,617.31
Basic deficiency income tax		**₱ 1,233,331.72**

III. Deficiency Value-Added Tax (VAT)

Respondent computed the deficiency VAT assessment in the amount of ₱2,984,601.31 by adding adjustments to petitioner's taxable receipts per VAT returns for the year 2007 the unaccounted commission expense amounting to ₱474,175.86, and disallowing (a) input tax carried over from previous quarter in the amount of

[96] Exhibit "W[5]", Docket,(Vol. II), pp. 1224-1228.
[97] Exhibit "W[5]", Docket, (Vol. II), p. 1228.
[98] The sum of ₱2,028,192.00 and ₱528,964.00, lines 28C abd 28D of petitioner's 2007 AITR, BIR records, p. 319.

₱1,806,048.00, and (b) input tax amounting to ₱119,182.00, broken down as follows[99]:

Sales/Receipts per VAT return			₱56,439,503.37
Add: Adjustments per investigation:			
Unaccounted commission expense			474,175.86
Taxable Sales per investigation			**56,913,679.23**
Output tax due thereon			**₱6,829,641.51**
Less: Allowable credits/payments:			
Input tax carried over from previous quarter		₱14,294,381.00	
Input tax claimed		1,104,410.00	
Total		**₱15,398,791.00**	
Less: Excess input to be carried over to the next period	₱8,626,051.00		
Disallowed input tax carried over from previous quarter	1,806,048.00		
Disallowed input	119,182.00	10,551,281.00	4,847,510.00
Deficiency Value Added Tax			**₱1,982,131.51**
Add: 20% Interest (01.26.08 to 06.07.10)			1,002,469.80
TOTAL AMOUNT DUE			**₱2,984,601.31**

The Court shall verify the propriety of each of the said adjustment and disallowances.

A. Unaccounted Commission Expense

This assessment is based on the same finding under the deficiency income tax assessment that petitioner had an undeclared income from unaccounted commission expense in the amount of ₱474,175.86 (see discussion under item II.B).

As discussed earlier, the assessment is void as respondent failed to comply with the due process requirement under Section 228 of the NIRC of 1997, as amended. Thus, the deficiency VAT assessment on this item shall be cancelled.

B. Disallowed Input Tax Carried Over from Previous Quarter

Pursuant to Section 110 of the NIRC of 1997, as amended, respondent disallowed petitioner's claimed input tax carried over from

[99]Exhibit "H-1".

previous quarter amounting to ₱1,806,048.00, because it was overstated per BIR-ITS records.

Petitioner pointed out that respondent failed to state specifically what previous quarter she was referring to. Petitioner explained that from 2006 to 2009, it incurred input VAT; and if the previous quarter referred to is taxable year 2006, petitioner was already assessed deficiency VAT in 2006, which it had paid.

Petitioner further insists that since there was no factual and legal basis for the disallowance of the same, the assessment should be set aside.

The Court finds the disallowance proper.

Petitioner admitted that there was indeed an over-claimed input VAT arising from 2006, which was eventually carried-over in 2007 and in subsequent years.[100] In fact, it amended its VAT returns for the 4th quarter of 2008 to deduct the over-claimed input VAT. The same was made in the amendments of VAT returns in 2009.

The erroneous claim of a tax benefit must not entitle the taxpayer to the said benefit from the time it was erroneously declared, and not only in the year when it was determined or assessed to be erroneous. As such, since the input VAT was admitted to be over-claimed in 2006, we find it proper that petitioner was disallowed to benefit from the same for the subject taxable year 2007.

Despite this disallowance, petitioner asserts that its total valid excess input VAT at the end of 2007 would still be sufficient to cover its output tax, hence, it cannot be liable for any deficiency VAT.

An analysis of the Quarterly VAT Returns[101] of the petitioner from VATable year 2007 to the 1st quarter of 2009 shows the following:

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[100] Memorandum, Docket (Vol. IV), pp. 2561 to 2564.
[101] Exhibits "D.1-ICPA" to "D.35-ICPA".

	Excess input tax carried over from previous period	**Excess input VAT for the period**
2007		
1st Quarter	₱ 14,294,380.97	₱ 12,939,351.59
2nd Quarter	12,939,351.59	11,307,698.39
3rd Quarter	11,307,698.39	9,775,171.07
4th Quarter	9,775,171.07	8,626,051.10
2008		
1st Quarter	8,626,051.10	7,173,737.22
2nd Quarter	7,173,737.22	5,600,962.36
3rd Quarter	5,600,962.36	**8,210,759.20**
4th Quarter (Amended)	**6,491,806.01**	5,085,200.94
2009		
1st Quarter (Amended)	5,085,200.94	3,789,269.01

Note that the excess input VAT from the third quarter of 2008 was not fully carried over in the following quarter. Petitioner directly deducted the amount of ₱1,718,953.19 as compared to the amount being disallowed by respondent of ₱1,806,048.00, or a difference of ₱87,094.81. But since petitioner did not specifically refute the noted difference, the Court shall let the original disallowed amount be sustained.

C. Disallowed Input Tax

Respondent disallowed petitioner's input tax in the amount of ₱119,182.00 based on Section 110 in relation to Sections 113 and 237 of the NIRC of 1997, as amended[102]. However, respondent did not present any computation on how she arrived at the figures.

Petitioner objected to the aforesaid disallowance on the ground that respondent failed to specify the expenses/transaction resulting to the disallowed input VAT and the reason for the same during the tax audit investigation and in the FAN. It further insists that respondent's VAT Analysis[103] is merely a summary schedule of the 2007 VAT returns of petitioner.

The Court agrees with petitioner.

[102]Exhibit "H-4".
[103]Exhibit "R-11".

Respondent's failure to provide the composition of the supposed disallowed input tax of ₱119,182.00 and the basis for the disallowance thereof is in violation of the due process requirement under Section 228 of the NIRC of 1997, as amended. Thus, the deficiency VAT assessment in the amount of ₱119,182.00 shall be cancelled.

D. Disallowed Excess Input Tax to be Carried Over to the Next Period

The Court has noticed from respondent's computation of deficiency VAT that it disallowed the amount of ₱8,626,051.00, representing the total net excess input VAT for the year 2007 which shall be carried over to the subsequent periods[104]. However, no legal and factual bases was provided in the Details of Discrepancy[105] to justify the disallowance of such amount.

Despite petitioner's failure to refute the same, the Court finds it improper to uphold an assessment which is already void on its face.

Further, it was improper for respondent to disallow the said excess input tax because any tax benefit derived by petitioner from the carry-over of the said amount redounds to the succeeding year 2008. Since the tax benefit will be in the succeeding year, at most, petitioner may only be assessed in the said succeeding year.

Thus, the Court shall remove the said amount from the computation of deficiency VAT.

Considering the foregoing, the Court finds that petitioner still had excess input VAT which can be carried over to the next periods amounting to ₱6,820,002.60. Hence, petitioner is not liable for any deficiency VAT, as shown below:

Sales/Receipts per VAT return			₱ 56,439,503.37
Output tax due thereon			₱ 6,772,740.40
Less: Allowable credits/payments			
Input tax carried over from previous quarter		₱ 14,294,381.00	

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[104]Line 29, BIR Form 2550-Q, Exhibit "D.14-ICPA".
[105]Exhibit "H-4".

Input tax claimed		1,104,410.00	
Total		₱ 15,398,791.00	
Less: Disallowed input tax carried over from previous quarter		1,806,048.00	13,592,743.00
Excess Input Value Added Tax			**₱ (6,820,002.60)**

IV. Deficiency Final Withholding Tax (FWT) on Dividends

Respondent found that petitioner failed to subject to FWT the latter's dividend payments/payable amounting to ₱293,026,486.00. Thus, pursuant to Section 2.57-1(A)(E) of RR No. 02-98, as amended, respondent assessed petitioner of deficiency FWT in the amount of ₱51,608,788.09, computed as follows:

	Amount	Rate	Tax Due
Cash dividends declared in 2006 paid 2007	₱243,026,486.00	10%	₱24,302,648.60
Cash dividends declared in 2007	50,000,000.00	10%	5,000,000.00
Deficiency Final Withholding Tax			**₱29,302,648.60**
Add: 25% Surcharge		₱7,325,662.15	
20% Interest (01.16.08 to 08.06.10)		14,980,477.34	22,306,139.49
TOTAL AMOUNT DUE			**₱51,608,788.09**

A. Cash dividends declared in 2006 and paid in 2007 - ₱243,026,486.00

Petitioner argued that the assessment on the ₱243,026,486.00 cash dividends declared in 2006 is without legal and factual bases on the following grounds: a) the dividends declared in 2006, which were paid in 2007, formed part of its retained earnings as of December 31, 1997, thus, are not subject to 10% final tax pursuant to Section 24(B)(2) of the NIRC of 1997, as amended; b) the Letter of Authority covers only taxable year 2007 while the amount of ₱243,026,486.00 dividends pertains to the 2006 transactions; c) the dividends were declared on June 10, 2006 (₱145,000,000.00) and on October 19, 2006 (₱98,026,486.00) and the corresponding withholding tax returns (BIR Form No. 1601-F) were filed on or before July 10, 2006 and November 10, 2006, respectively, thus respondent's right to assess and collect deficiency taxes thereon have already prescribed; and d) part of the ₱243,026,486.00 dividends was paid to domestic corporations which are exempt from withholding taxes.

The Court finds the assessment erroneous.

Note 26 of petitioner's 2007 AFS[106] specifically states that:

"**26. CASH DIVIDENDS**

On June 10, 2006, the Board of Directors approved the declaration of cash dividends **from the accumulated retained earnings as of December 31, 1997** to stockholders of record as of May 30, 2006 amounting to ₱145,000,000 and was paid on June 14, 2006.

On October 19, 2006, the Board of Directors approved the declaration of cash dividends **from the accumulated retained earnings as of December 31, 1997** to stockholders of record as of September 30, 2006 amounting to ₱98,026,486.00, of which ₱55 million was paid on October 22, 2006 while the remaining ₱43,026,486.00 was paid in 2007.

On June 30, 2007, the Board of Directors approved the declaration of cash dividends to stockholders of record as of July 31, 2007 amounting to ₱50,000,000 and was paid on August 23, 2007.

Based on the foregoing disclosure made by petitioner in its 2007 AFS, which is the very same disclosure relied upon by respondent in the assessment, the amount of ₱243,026,486.00 refers to dividends forming part of petitioner's retained earnings as of December 31, 1997. Under Section 24(B)(2) of the NIRC of 1997, as amended, income forming part of retained earnings as of December 31, 1997 shall not be subject to the 10% final tax, even if declared or distributed on or after January 1, 1998, to wit:

"(2) *Cash and/or Property Dividends.* — A final tax at the following rates shall be imposed upon the cash and/or property dividends actually or constructively received by an individual from a domestic corporation or from a joint stock company, insurance or mutual fund

[106] Exhibit "P", p. 27.

companies and regional operating headquarters of multinational companies, or on the share of an individual in the distributable net income after tax of a partnership (except a general professional partnership) of which he is a partner, or on the share of an individual in the net income after tax of an association, a joint account, or a joint venture or consortium taxable as a corporation of which he is a member or co-venturer:

Six percent (6%) beginning January 1, 1998;
Eight percent (8%) beginning January 1, 1999;
Ten percent (10%) beginning January 1, 2000."

Provided, however, **That the tax on dividends shall apply only on income earned on or after January 1, 1998. Income forming part of retained earnings as of December 31, 1997 shall not, even if declared or distributed on or after January 1, 1998, be subject to this tax."** (*Emphasis supplied.*)

Clearly, the amount of ₱243,026,486.00 dividends declared by petitioner in 2006 but forming part of its retained earnings as of December 31, 1997, is not subject to the 10% final tax imposed under Section 24(B)(2) of the NIRC of 1997, as amended. Therefore, the deficiency FWT assessment on the ₱243,026,486.00 cash dividends declared in 2006 shall be cancelled.

B. Cash dividends declared and paid in 2007 - ₱50,000,000.00

According to petitioner, out of the ₱50,000,000.00 cash or dividends declared in 2007, the amount of ₱24,466,155.00 pertaining to dividends declared to domestic corporations, specifically, Peridot Asset Holding and Francisco Ortigas Sr., Inc., is exempt from FWT pursuant to Section 27(D)(4) of the NIRC of 1997, as amended. As regards the remaining amount of ₱25,355,845.00, petitioner alleged that the same was paid to individual stockholders, upon which petitioner withheld and remitted the 10% FWT pursuant to Section 2.57.1(A)(5) of RR 2-98, as amended.

The Court-commissioned ICPA presented in his report the following breakdown of the dividends declared[107]:

[107] Annex R – ICPA, Exhibits "YY" and "WWWWW".

Name of Recepient	Amount of Dividend Payment	Final Tax Rate	Amount of tax Withheld
Lanuza, Corazon Versosa	₱ 163,781.30	10%	₱ 16,378.13
Lanuza, Gerardo Ortigas	31.25	10%	3.13
Lanuza, Juan Antonio Ortigas	31.25	10%	3.13
Olbes, Amalia Ortigas	8,276,500.00	10%	827,650.00
Olbes, Antonio Ortigas	1,348,687.50	10%	134,868.75
Olbes, Eduardo Ortigas	1,648,687.50	10%	164,868.75
Olbes, Jose Maria	33,812.50	10%	3,381.25
Campos Lanuza and Co., Inc.	13,884,312.40	10%	1,388,431.24
Peridot Asset Holdings, Inc.	14,083,562.50	Exempt	-
Francisco Ortigas Sr., Inc.	10,560,593.80	Exempt	-
TOTAL	**₱ 50,000,000.00**		**₱ 2,535,584.38**

Based on the verification of records, petitioner, Peridot Asset Holdings, Inc. and Francisco Ortigas Sr., Inc. are domestic corporations as indicated in their respective Articles of Incorporation (AOI)[108], hence, dividends declared by petitioner to the two domestic corporation stockholders must be exempt from tax. But these AOIs only prove that such corporations are domestically organized and created. On the other hand, the question of whether these corporations are indeed stockholders of petitioner and that they actually received the dividend, still remains.

Petitioner only presented a Schedule of Dividends for 2006 and 2007[109] to prove the breakdown of the distribution of the dividends declared during those years. But these schedules are mere self-serving, which cannot be regarded with great weight. Petitioner even failed to submit the BOD resolution for the declaration of the questioned dividends. Hence, it cannot be verified if the two corporations are actually stockholders of petitioner and the dividends owing to them were actually paid to them for the Court to determine that these dividends were intercorporate in nature to warrant exemption from final tax pursuant to Section 27(D)(4) of the NIRC of 1997, as amended.

As for the dividends declared to individual stockholders amounting to ₱25,355,845.00, the corresponding final withholding tax was remitted to the BIR as can be traced from BIR Form 1604-E[110] filed by petitioner on February 28, 2008.

[108]Exhibits "A", "SS", and "QQ", respectively.
[109]Exhibit "JJ".
[110]Exhibits "N" to "N-3".

Respondent averred that the corresponding final withholding tax was not accordingly filed by the petitioner as it used the wrong form, which is the BIR Form 1604-E for expanded withholding taxes. The correct form should have been BIR Form 1601-F since the tax on dividends is a final tax as provided in Section 2.57.1 (A)(5) of RR 2-98.

Notwithstanding, the Court believes that despite the use of the wrong form, petitioner still sufficiently proved that it had, in fact, withheld and remitted the corresponding tax on the dividends declared to individuals. Thus, petitioner's argument must be given merit by the Court. To affirm an assessment by mere use of wrong form in filing a return, thereby ordering a taxpayer to pay the same tax again, despite the taxpayer being able to sufficiently prove that the corresponding tax was already remitted, would result to a double burden on the part of the taxpayer and an unjust enrichment by the government due to benefiting from a double collection of tax.

Based on the foregoing, petitioner has satisfactorily proved that such item of assessment is erroneous only to the extent of the dividends paid to individuals. However, the assessment on the ₱24,466,155.00[111] dividends must be sustained for petitioner's failure to present clear and convincing evidence that such dividends are exempt from tax. Consequently, petitioner is liable to pay the corresponding deficiency FWT in the amount of ₱2,446,615.50, computed as follows:

Cash dividends declared in 2007	₱ 24,644,156.30
FWT rate	10%
Deficiency FWT on Dividends	**₱ 2,464,415.63**

V. Improperly Accumulated Earnings Tax (IAET)

Upon investigation, respondent found that petitioner's AFS[112] reflected a Retained Earnings more than the Paid-up Capital Stock at the end of the taxable year 2007. Hence, respondent considered the difference as petitioner's improperly accumulated Retained Earnings in the amount of ₱487,536,722.00, computed as follows[113]:

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[111] Should be P24,644,156.30
[112] Exhibit "P".
[113] Exhibit "H-4".

Retained Earnings		₱1,780,563,208.00
Less: Cash dividend declared		
June 14, 2006	₱145,000,000.00	
October 22, 2006	55,000,000.00	
2007	43,026,486.00	
August 23, 2007	50,000,000.00	293,026,486.00
Unappropriated Retained Earnings		₱1,487,536,722.00
Less: Capital Stock		1,000,000,000.00
Improperly Accumulated Retained Earnings		**₱487,536,722.00**

Thus, pursuant to Section 29 of the NIRC of 1997, as amended and RR 02-01, respondent assessed petitioner of deficiency IAET in the amount of ₱76,089,121.56, inclusive of surcharge and interest, computed as follows[114]:

Improperly Accumulated Earnings		₱ 487,536,722.00
Multiply by tax rate		10%
Deficiency Improperly Accumulated Earnings Tax		₱ 48,753,672.20
Add: 25% Surcharge	₱ 12,188,418.05	
20% interest (1.16.09 to 08.06.10)	15,147,031.31	27,335,449.36
TOTAL AMOUNT DUE		**₱ 76,089,121.56**

Petitioner, on the other hand, disagreed with the aforementioned assessment for lack of factual and legal bases. The dividends declared by petitioner in its AFS, such as (i)₱145,000,000.00 paid on June 14, 2006, (ii)₱55,000,000.00 paid on October 22, 2006, and (iii)₱43,026,486.00 paid in 2007 should be excluded in computing deficiency tax liabilities as they pertained to transactions before taxable year 2007.

The Court agrees with petitioner. The assessment must only involve those transactions covered by the period indicated in the LOA, which is the taxable year 2007. Hence, those dividend transactions made before or subsequent to 2007 must be excluded.

In the first place, these dividends declared in 2006, regardless of when paid, is no longer included as part of Retained Earnings as of December 31, 2007, as presented in the AFS. As a basic accounting precept, the amount of dividends is already deducted from unrestricted retained earnings upon declaration. Thus, it is erroneous to deduct the same again from retained earnings as of the end of 2007 for purposes of computing the deficiency IAET.

[114] Exhibit "H-2".

Further, petitioner avers that the computation of the improperly accumulated earnings under Section 29 of the Tax Code, as amended, excludes the earnings and profits of a corporation set aside for the reasonable needs of the business, pursuant to Section 3 of RR No. 2-2001.

To prove such claim, petitioner presented a copy of its Minutes of Special Meeting of the Board of Directors (BOD) held on April 19, 2006[115] which contains a proposal by the GPI's President that there is a need "to redevelop the El Pueblo Project, Pasig City, Metro Manila to improve and maximize return on investment. The existing improvements are not attractive to prospective business establishments such that some of the buildings for quite sometime have been vacant and are not producing rental income." Acknowledging this need, the BOD approved the earmarking of ₱1,000,000,000.00 from the accumulated unrestricted earnings of GPI as of December 31, 2006, which amounted to ₱1,782,509,264.00.

In fine, petitioner's reason in setting aside portion of its accumulated retained earnings is within the reasonable needs of the business as contemplated in Section 29 of the Tax Code, implemented by Section 3 of RR 2-2001, to wit:

> "**SEC. 29.** Imposition of Improperly Accumulated Earnings Tax. -
>
> xxx xxx xxx
>
> (B) *Tax on Corporations Subject to Improperly Accumulated Earnings Tax.* –
>
> (1) *In General.* - The improperly accumulated earnings tax imposed in the preceding Section shall apply to every corporation formed or availed for the purpose of avoiding the income tax with respect to its shareholders or the shareholders of any other corporation, by permitting earnings and profits to accumulate instead of being divided or distributed.

[115]Exhibit "X".

xxx xxx xxx

(C) *Evidence of Purpose to Avoid Income Tax.* –

xxx xxx xxx

(2) *Evidence Determinative of Purpose.* - The fact that the earnings or profits of a corporation are permitted to accumulate beyond the reasonable needs of the business shall be determinative of the purpose to avoid the tax upon its shareholders or members unless the corporation, by the clear preponderance of evidence, shall prove to the contrary.

xxx xxx xxx

(E) *Reasonable Needs of the Business.* - For purposes of this Section, the term 'reasonable needs of the business' includes the reasonably anticipated needs of the business."

"REVENUE REGULATIONS NO. 02-01

SUBJECT: Implementing the Provision on Improperly Accumulated Earnings Tax Under Section 29 of the Tax Code of 1997

xxx xxx xxx

SECTION 3. *Determination of Reasonable Needs of the Business.* — An accumulation of earnings or profits (including undistributed earnings or profits of prior years) is unreasonable if it is not necessary for the purpose of the business, considering all the circumstances of the case. To determine the "reasonable needs" of the business in order to justify an accumulation of earnings, these Regulations hereby adhere to the so-called "Immediacy Test" under American jurisprudence as adopted in this jurisdiction. **Accordingly, the term "reasonable needs of the business" are hereby construed to mean the immediate needs of the**

business, including reasonably anticipated needs. In either case, the corporation should be able to prove an immediate need for the accumulation of the earnings and profits, or the direct correlation of anticipated needs to such accumulation of profits. Otherwise, such accumulation would be deemed to be not for the reasonable needs of the business, and the penalty tax would apply.

For purposes of these Regulations, the following constitute accumulation of earnings for the reasonable needs of the business:

a) Allowance for the increase in the accumulation of earnings up to 100% of the paid-up capital of the corporation as of Balance Sheet date, inclusive of accumulations taken from other years;

b) **Earnings reserved for definite corporate expansion projects or programs requiring considerable capital expenditure as approved by the Board of Directors or equivalent body**;

c) Earnings reserved for building, plants or equipment acquisition as approved by the Board of Directors or equivalent body;

d) Earnings reserved for compliance with any loan covenant or pre-existing obligation established under a legitimate business agreement;

e) Earnings required by law or applicable regulations to be retained by the corporation or in respect of which there is legal prohibition against its distribution;

f) In the case of subsidiaries of foreign corporations in the Philippines, all undistributed earnings intended or reserved for investments within the Philippines as can be proven by corporate records and/or relevant documentary evidence."[116]

[116]Emphasis supplied.

Based on the foregoing, petitioner's alleged reasonable needs of the business fall under Section 3(b) of RR No. 2-2001.

To further strengthen its claim, petitioner presented the proposal from Palafox Associates[117] dated November 20, 2007, the contracted architectural firm, which was agreed upon and signed by Mr. Gerardo Lanuza, Jr., President of GPI, to prove that the development of the El Pueblo Project is an immediate need and is in fact already in progress.

It may infer from the foregoing pieces of evidence that petitioner's business has reasonable needs of accumulating its earnings, profits, thus, the imposition of the IAET is improper.

However, upon careful examination of the BOD Resolution, the Court finds that it is incredulous that as early as April 19, 2006, the President of GPI, and also as resolved by the BODs, had already known that the amount of accumulated retained earnings as of December 31, 2006 will be ₱1,782,509,264.00 to base the amount which will be appropriated. And, more incredulously, such amount was exactly achieved by the end of 2006 as it was presented in the AFS[118] under the year 2006 column of the Balance Sheet.

Further, significant transactions such as appropriations of retained earnings are required to be presented in the financial statements as a disclosure to the Notes to the Financial Statements as per Philippine Accounting Standards (PAS) 1: *Presentation of Financial Statements*, paragraph 103, stating that the notes shall:

"(a) present information about the basis of preparation of the financial statements and the specific accounting policies used in accordance with paragraphs 108-115;

(b) disclose any information required by IFRSs that is not presented on the face of the balance sheet, income statement, statement of changes in equity, or cash flow statement; and

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[117]Exhibit "Y".
[118]Exhibit "P".

> **(c) provide additional information that is not presented on the face of the balance sheet, income statement, statement of changes in equity, or cash flow statement that is <u>deemed relevant to an understanding of any of them</u>.**"[119] *(Emphasis supplied.)*

Petitioner failed to comply with such disclosure requirement. A significant transaction such as an appropriation for future business expansion is one of the information needed to be disclosed in the financial statements to apprise (1) the stockholders, on the reduction of the retained earnings available for distribution to them; and (2), more importantly, the government and public, as to the entity's accountability as a taxpayer and a service provider.

Finding such irregularity in the BOD Resolution issued for the appropriation without corroborating the information that had been disclosed regarding such expansion in the AFS, leads the Court to doubt on the veracity of the appropriation.

Also, without clear and convincing evidence showing that BOD approved the appropriation of the retained earnings for a definite expansion project, the said retention of profits for such purpose cannot be considered as reasonable need under Section 3(b) of RR No. 2-2001.

In fine, petitioner failed to persuade this Court that there was an actual appropriation for the reasonable needs of the business, thus, petitioner shall be liable for deficiency improperly accumulated earnings tax for the year 2007 amounting to ₱73,056,320.80, computed as follows:

Retained Earnings, 2007	₱ 1,780,563,208.00
Less: Cash dividend declared in 2007	50,000,000.00
Unappropriated Retained Earnings	**₱ 1,730,563,208.00**
Less: Capital Stock	1,000,000,000.00
Improperly Accumulated Retained Earnings	**₱ 730,563,208.00**
IAET Rate	10%
Basic deficiency IAET	**₱ 73,056,320.80**

[119] Philippine Financial Reporting Standards (PFRS), Financial Reporting Standards Council (FRSC) and Philippine Institute of Certified Public Accountants (PICPA), Part I of II, pp. 405 to 406.

Nevertheless, since the above amount of ₱73,056,320.80 is higher than the assessment made by respondent in the amount of ₱48,753,672.20, the Court is constrained to uphold the lower amount of ₱48,753,672.20.

VI. Compromise Penalties

Respondent assessed petitioner for the following compromise penalties based on Section/s 250/255/236(B) of the NIRC of 1997, as amended, with reference to Revenue Memorandum Order (RMO) No. 1-90[120]:

Non/late-filing/payment of final withholding tax	₱ 25,000.00
Non/late-filing/payment of improperly accumulated earnings tax	25,000.00
TOTAL	**₱ 50,000.00**

Such imposition cannot be sustained. Under Revenue Memorandum Order No. 01-90, compromise penalties are only amounts suggested in settlement of criminal liability, and may not be imposed or exacted on the taxpayer in the event that a taxpayer refuses to pay the same. Thus, compromise penalties imply mutual agreement between the taxpayer, on one hand, and the Commissioner of Internal Revenue, on the other. Absent any showing that petitioner consented to the compromise penalties, the same should not be imposed.

WHEREFORE, premises considered, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, the assessments issued by respondent against petitioner for taxable year 2007 covering deficiency value-added tax in the amount of ₱2,984,601.31 and compromise penalties in the amount of ₱50,000.00 are hereby **CANCELLED**. However, the assessments issued by respondent against petitioner for taxable year 2007 covering deficiency expanded withholding tax, income tax, final withholding tax and improperly accumulated earnings tax are hereby AFFIRMED but with modifications. Accordingly, petitioner is hereby ORDERED TO PAY respondent the amount of **SIXTY FIVE MILLION SEVEN HUNDRED THIRTY TWO THOUSAND SIX HUNDRED SIXTY THREE PESOS AND SEVENTY ONE CENTAVOS (₱65,732,663.71)** representing basic deficiency expanded

[120] Exhibit "H".

withholding tax, income tax, final withholidng tax and improperly accumulated earnings tax and the 25% surcharge imposed under Section 248(3) of the 1997 NIRC, as amended, computed as follows:

Deficiency Tax	Basic	Surcharge	Total
Expanded Withholding Tax	₱ 134,711.42	₱ 33,677.85	₱ 168,389.27
Income Tax	1,233,331.72	308,332.93	1,541,664.65
Final Withholding Tax	2,464,415.63	616,103.91	3,080,519.54
Improperly Accumulated Earnings Tax	48,753,672.20	12,188,418.05	60,942,090.25
Total	**₱52,586,130.97**	**₱13,146,532.74**	**₱65,732,663.71**

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

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

Deficiency Tax	**Basic Tax**	**20% deficiency interest computed from**
Expanded Withholding Tax	₱ 134,711.42	January 13, 2008
Income Tax	1,233,331.72	April 15, 2008
Final Withholding Tax	2,464,415.63	January 13, 2008
Improperly Accumulated Earnings Tax	48,753,672.20	April 15, 2008

b) Delinquency interest at the rate of 20% per annum on the total amount of ₱65,732,663.71 and on the 20% deficiency interest which have accrued as aforestated in (a), computed from August 6, 2010 until full payment thereof pursuant to Section 249(C) of the 1997 NIRC, as amended.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

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

(On Official Business)

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

ATTESTATION

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

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice