REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

MERIDIEN BUSINESS LEADER, INC., *Petitioner,*	**CTA Case No. 9316**
	Members:
-*versus*-	**DEL ROSARIO**, *PJ, Chairperson,* **CASTAÑEDA, JR.**,* *and* **MANAHAN**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: FEB 23 2021 1:51 pm

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AMENDED DECISION

MANAHAN, *J.*:

This resolves respondent's Motion for Reconsideration (Re: Decision dated 11 November 2019) filed through registered mail on September 10, 2020 assailing this Court's Decision[1] in the above captioned case promulgated on July 29, 2020. The dispositive portion of which reads as follows:

> "**WHEREFORE**, the Petition for Review filed by Meridien Business Leader, Inc. on March 18, 2016, through registered mail, is hereby **GRANTED.** Accordingly, the assailed Final Decision, the undated FDDA, including the subject tax assessments issued by respondent Commissioner of Internal Revenue, holding petitioner liable for deficiency taxes and compromise penalties in the aggregate amount of ₱2,361,261,053.16 for taxable year 2010, are **CANCELLED and SET ASIDE.**
>
> **SO ORDERED.**"

Respondent moves for the reconsideration of the assailed Decision on the ground that the "Honorable Court erred in ruling that the assessment notices against petitioner is a nullity for allegedly not indicating a definite due date for the payment of the tax liabilities." Petitioner, on the other hand, reiterates

* Designated as Special Member pursuant to Memorandum dated December 18, 2020
[1] Docket - Vol. VI (unpaged).

that the Court validly cancelled the assessments and prays that respondent's Motion for Reconsideration be denied for lack of merit.

We agree with respondent.

In *Commissioner of Internal Revenue v. Fitness by Design, Inc.*,[2] the assessments were found to lack a definite amount of tax liability and did not contain a specific due date, thereby negating the demand for payment.

In the instant case, the Formal Letter of Demand (FLD) and Final Decision on Disputed Assessment (FDDA) both contained due dates, June 30, 2014 and October 31, 2015, respectively. Thus, there is a definite demand to pay on a specific due date.

With those due dates contained in the FLD, FDDA and assessment notices, together with the computation of tax liability up to the said due dates, then there is a definite amount of tax liability.

The statement contained in the FLD and the FDDA merely means that the interest will be adjusted if the taxpayer fails to pay on the due date specified in the assessment notices. The basic deficiency tax liability remains the same regardless of when the taxpayer chooses to pay the assessment. The interest, and only the interest, may be adjusted if the taxpayer pays before or after the due date. The basic deficiency tax liability remains the same. What is important is that there is a due date contained in the FLD/FDDA/assessment notice.

Thus, the Court will now examine the assessment items.

Based on respondent's FDDA, with attached Details of Discrepancies and Assessment Notices,[3] petitioner was assessed of deficiency internal revenue taxes for TY 2010, in the aggregate amount of ₱2,361,261,053.17, including surcharges, interest and penalties, summarized as follows:

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2 G.R. No. 215957, November 9, 2016.
3 Exhibit "R-14", BIR Records, pp. 879 to 900.

Tax Type	Basic	Surcharge	Interest	Compromise Penalty	Total
Income Tax ("IT")	₱ 642,954,160.26	₱ 321,477,080.13	₱ 584,824,058.10	-	₱ 1,549,255,298.49
Value Added Tax ("VAT")	325,699,810.94	162,849,905.47	310,351,765.06	-	798,901,481.47
Withholding Tax on Compensation ("WC")	4,976,080.53	-	4,684,332.25	₱ 25,000.00	9,685,412.78
Expanded Withholding Tax ("EWT")	938,727.10	-	899,634.91	25,000.00	1,863,362.01
Fringe Benefit Tax ("FBT")	615,464.07	153,866.02	561,168.33	25,000.00	1,355,498.42[4]
Compromise Penalty	-	-	-	200,000.00	200,000.00
Total	**₱975,184,242.90**	**₱484,480,851.62**	**₱901,320,958.65**	**₱275,000.00**	**₱2,361,261,053.17**

I. Deficiency IT - ₱1,549,255,298.49 & II. Deficiency EWT - ₱1,863,362.01

Petitioner was assessed of deficiency income tax for TY 2010 in the amount of ₱1,549,255,298.49, computed as follows:[5]

Taxable income per return		₱ 15,546,167.00
Add: Findings per Investigation:		
IT-1 Undeclared sales per audit (GJ,GL,TAR,TB,FS/ITR)	₱1,844,097,778.86	
IT-2 Additional Taxable Income on Undeclared Purchases	224,050,566.58	
IT-3 Undeclared Other Operating Income	20,841,052.46	
IT-4 Additional Taxable Income (matching of SLP, EWT, & Aitied)	7,762,459.05	
IT-6 Disallowed expenses for non-withholding of tax	46,428,677.25	
Total Adjustments per audit		2,143,180,534.20
Taxable income per audit		₱ 2,158,726,701.20
Multiplied by: Income tax rate		30%
Income tax due per audit		₱ 647,618,010.36
Less: 30% Regular Corporate Income Tax		4,663,850.10
Basic Income Tax Deficiency		**₱ 642,954,160.26**
Add: Increments		
Surcharge	₱ 321,477,080.13	
Interest - 10/31/2015	584,824,058.10	906,301,138.23
Total Amount Due (IT)		**₱1,549,255,298.49**

The assessment items shall be discussed one by one:

IT-1 Undeclared sales per audit (GJ,GL,TAR,TB,FS/ITR)	₱1,844,097,778.86
IT-2 Additional Taxable Income on Undeclared Purchases	224,050,566.58
IT-3 Undeclared Other Operating Income	20,841,052.46
IT-4 Additional Taxable Income (matching of SLP, EWT, & Aitied)	7,762,459.05
IT-6 Disallowed expenses for non-withholding of tax	46,428,677.25

[4] The 0.01 discrepancy from the total amount per FDDA of ₱1,355,498.41 is due to mathematical error.
[5] Exhibit "R-14", BIR Records, p. 900.

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IT-1 Undeclared sales per audit - ₱1,844,097,778.86

Based on respondent's examination, all transactions entered in petitioner's General Journal ("GJ") were compared to the account balances generated in the General Ledger ("GL") and were then traced to the Trial Balance ("TB") to ascertain that all transactions were reflected/forwarded in the Financial Statements ("FS"). Analysis of accounts particularly the sales transactions revealed that 51% of the sales were adjusted/reclassified to the "mother account" (Account Codes 4001000; 4002000, and 4003000) in the GL but were not forwarded/reflected in the TB, which practically understates the sales declaration in the FS. Hence, the discrepancy noted in the GL amounting to ₱1,844,097,778.86, as detailed below, was assessed of the corresponding income tax due pursuant to Section 32 of the National Internal Revenue Code of 1997, as amended (herein referred to as "Tax Code" for brevity):[6]

Acct Code	Account Name	Gen. Journal (GJ)	Gen. Ledger (GL)	FS/TB
4001000	Sale of Goods - Outright	-	₱ 376,114,570.06	-
4001100	Sale of Goods - Outright Vat	₱ 776,509,034.47	376,112,459.46	₱ 376,112,459.46
4001200	Sale of Goods - Outright Vat Exempt	2,110.60	2,110.60	2,110.60
4002000	Sale of Goods - Major Consignor	-	515,306,819.34	-
4002100	Sale of Goods - Major Consignor Vat	1,098,241,260.87	512,978,879.54	512,978,879.54
4002200	Sale of Goods – Major Consignor Vat Exempt	-	2,327,939.80	2,327,939.80
4003000	Sale of Goods - Store Consignor	-	952,676,389.46	-
4003100	Sale of Goods - Store Consignor Vat	1,914,211,792.36	952,673,828.15	952,673,828.15
4003200	Sale of Goods - Store Consignor Vat Exempt	-	2,561.31	2,561.31
4005000	Sale of Goods - Others	2,703,101.16	2,703,101.16	2,703,101.16
	Gross Sales	₱3,791,667,299.46	₱3,690,898,658.88	₱ 1,846,800,880.02
	Less: Discount Fees	(32,964,772.63)	(15,827,864.54)	(15,827,864.54)
	Net Sales per FLD	₱3,758,702,526.83	₱3,675,070,794.34	₱ 1,830,973,015.48
Net Sales, per audit/GL				₱ 3,675,070,794.34
Net Sales, per FS/ITR/TB				1,830,973,015.48
Discrepancy				**₱1,844,097,778.86**

Petitioner contends that the alleged under declaration of sales is merely a result of respondent's erroneous reading and misinterpretation of the entries in its GJ and GL. Allegedly, the

[6] Exhibit "R-14", BIR Records, p. 897.

sales amounts picked up by respondent per GJ is, in actuality, the sums of the Budgeted or Forecasted Sales and its Actual Sales. It further alleges that respondent considered the mother accounts per GL as separate sales entries when it actually represent the sums of the sales of children accounts (total VATable and VAT-Exempt), thus, resulted to a double take-up of the balances.

We find for the petitioner.

A perusal of the GJs submitted by petitioner shows that its sales accounts, particularly, "Sale of Goods-Outright Vat", "Sale of Goods-Major Consignor Vat" and "Sale of Goods-Store Consignor Vat" with the corresponding account codes of 4001100, 4002100 and 4003100, included both the budgeted and actual sales amounts, as shown below:

Account Code	Account Name	Exh. No. (GJ)[7]	Budget Sales	Exh. No. (GJ)[8]	Actual Sales	Total
4001100	Sale of Goods - Outright Vat	"P-7"	₱ 400,396,575.00	"P-13"	₱ 376,112,459.00	₱ 776,509,034.00
4002100	Sale of Goods – Major Consignor Vat	"P-8"	580,986,398.00	"P-14"	512,978,880.00	1,093,965,278.00
4003100	Sale of Goods - Store Consignor Vat	"P-9"	961,533,570.00	"P-15"	952,673,828.00	1,914,207,398.00
	Gross sales		**₱1,942,916,543.00**		**₱1,841,765,167.00**	**₱3,784,681,710.00**

Verily, the above actual sales of ₱376,112,459.00, ₱512,978,880.00 and ₱952,673,828.00 for "Sale of Goods-Outright Vat", "Sale of Goods-Major Consignor Vat" and "Sale of Goods-Store Consignor Vat", respectively, were properly reflected in the GL and forwarded to the FS as gleaned from respondent's computation.

Nonetheless, it is apparent that the ₱1,844,097,778.86 discrepancy noted by respondent pertains to the following alleged sales amounts for "Sale of Goods-Outright", "Sale of Goods-Major Consignor" and "Sale of Goods-Store Consignor" reflected in the GL but not forwarded in the FS:

Account Code	Account Name	Sales Amount
4001000	Sale of Goods - Outright	₱ 376,114,570.06
4002000	Sale of Goods - Major Consignor	515,306,819.34
4003000	Sale of Goods - Store Consignor	952,676,389.46
	Total	**₱1,844,097,778.86**

[7] Docket – Vol. IV, pp. 2358 to 2414.
[8] Docket – Vol. IV, pp. 2771 to 3000 and Docket – Vol. V, pp. 3001 to 3389.

However, based on the GL-Sales Transactions[9] used by respondent in its examination, it can be deduced that these accounts (Outright, Major Consignor and Store Consignor) are actually mother accounts. In fact, the alleged sales amounts corresponding thereto are the exact sums of its respective children accounts (Vat and Vat exempt), as presented hereunder:

Acct Code	Account Name	SM Lipa Sales	SM Rosales Sales	Total Sales
4001000	**Sale of Goods – Outright (mother account)**	**₱233,209,167.86**	**₱142,905,402.20**	**₱376,114,570.06**
	children accounts:			
4001100	Sale of Goods - Outright Vat	₱ 233,209,167.86	₱ 142,903,291.60	₱ 376,112,459.46
4001200	Sale of Goods - Outright Vat Exempt	-	2,110.60	2,110.60
	Total	**₱233,209,167.86**	**₱142,905,402.20**	**₱376,114,570.06**
4002000	**Sale of Goods - Major Consignor (mother account)**	**₱342,019,440.69**	**₱173,287,378.65**	**₱515,306,819.34**
	children accounts:			
4002100	Sale of Goods - Major Consignor Vat	₱ 340,134,767.43	₱ 172,844,112.11	₱ 512,978,879.54
4002200	Sale of Goods - Major Consignor Vat Exempt	1,884,673.26	443,266.54	2,327,939.80
	Total	**₱342,019,440.69**	**₱173,287,378.65**	**₱515,306,819.34**
4003000	**Sale of Goods - Store Consignor (mother account)**	**₱619,372,520.43**	**₱333,303,869.03**	**₱952,676,389.46**
	children accounts:			
4003100	Sale of Goods - Store Consignor VAT	₱ 619,372,520.43	₱ 333,301,307.72	₱ 952,673,828.15
4003200	Sale of Goods - Store Consignor VAT exempt	-	2,561.31	2,561.31
	Total	**₱619,372,520.43**	**₱333,303,869.03**	**₱952,676,389.46**

Even respondent, in its assessment, acknowledged that these accounts with Account codes 4001000, 4002000 and 4003000 are mother accounts. Since the said accounts are mother accounts, which basically represents the total sales of its children accounts, the sales amounts corresponding to the former do not constitute as undeclared sales as the actual sales per children accounts were unquestionably included in the net sales per FS of ₱1,830,973,015.48 and had already been subjected to income tax. Consequently, the deficiency income tax on the alleged undeclared sales of ₱1,844,097,778.86 must be cancelled.

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[9] BIR Records, p. 566.

IT-2 Additional Taxable Income on Undeclared Purchases - ₱224,050,566.58

Respondent's comparison of the purchases recorded per petitioner's Purchase Books as against the purchases reflected per FS revealed a discrepancy in the declaration of purchases for the year. The discrepancy noted was considered as unreflected sources of funds not accounted for in the return, which led to the inference that part of the income has not been reported. Hence, the corresponding income tax due thereon was assessed pursuant to Section 27 and in relation to Section 32 of the Tax Code. The assessed additional taxable income on undeclared purchases amounting to ₱224,050,566.58 was computed by respondent as follows:[10]

Purchases, per Purchase Book:	
Rosales (0230-0457)	₱ 823,345,975.42
Lipa (0230-0270)	1,442,693,971.89
Total	₱2,266,039,947.31
Less: Prior year purchases	201,509,558.54
Net allowable purchases, per Purchase Book	₱2,064,530,388.77
Less: Adjustment:	
Net Discounts and Returns	7,011,928.43
Net allowable purchases after adjustment	₱2,057,518,460.34
Net Purchases, per FS	1,392,479,477.00
Undeclared Purchases	**₱665,038,983.34**
Divided by: COS ratio	74.80%
Grossed-up sales on undeclared purchases	₱ 889,089,549.92
Multiplied by: GP rate	25.20%
Additional taxable income on undeclared purchases	**₱224,050,566.58**

The assessment is unmeritorious.

Respondent's allegation that petitioner had unreported income arising from alleged undeclared purchases is without factual basis. The imputation of the alleged additional income is based on a mere presumption that since there were purchases not accounted for in petitioner's FS, it has likewise undeclared income which corresponds to it.

[10] Exhibit "R-14", BIR Records, p. 896.

As held in the case of *Commissioner of Internal Revenue vs. Agrinurture, Inc.,*[11] a finding of under-declaration of purchases does not by itself result in the imposition of income tax.

The three (3) elements on the imposition of income tax are: (1) there must be gain or profit, (2) that the gain or profit is realized or received, actually or constructively, and (3) it is not exempted by law or treaty from income tax.[12] Income tax is assessed on income received from any property, activity or service. As such, income tax is imposed only when there is an income, and such income was received by the taxpayer and not when there is an under declaration of purchases.

In this case, the said elements are not present. Respondent's assessment was not based on undeclared income actually received by petitioner but on a mere presumption that the alleged undeclared purchases constitute as undeclared income.

While axiomatic is the fact that all presumptions are in favor of the correctness of tax assessments, the assessment itself should not be based on presumptions no matter how logical the presumption might be. In order to stand the test of judicial scrutiny, the assessment must be based on actual facts. The presumption of correctness of assessment being a mere presumption cannot be made to rest on another presumption.[13]

For lack of factual basis, the deficiency income tax assessment corresponding to the alleged additional taxable income on undeclared purchases amounting to ₱224,050,566.58 shall be cancelled.

IT-3 Undeclared Other Operating Income - ₱20,841,052.46

Respondent's comparison of petitioner's other income per GJ as against that declared per FS revealed a discrepancy in the amount of ₱20,841,052.46, as detailed below, hence, assessed pursuant to Sections 27 and 32 of the Tax Code:[14]

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[11] CTA EB Case No. 1054 (CTA Case No. 8345), January 13, 2015.
[12] *Commissioner of Internal Revenue vs. Court of Appeals, et al.*, G.R. No. 108576, January 20, 1999.
[13] *Collector of Internal Revenue vs. Benipayo*, G.R. No. L-13656, January 31, 1962.
[14] Exhibit "R-14", BIR Records, pp. 895 to 896.

Acct Code	Account Name	Per Audit/GJ	Per FS	Discrepancy
4040110	Gain/Loss on Forex	₱ 13,489,598.26	₱ 5,542,757.00	₱ 7,946,841.26
4040012	Rental Income-Mall Selling	7,658,815.99	4,807,822.00	2,850,993.99
4040015	Rental Income-Others	1,358,850.17	634,975.00	723,875.17
4040022	Service Income-Manpower Cost	3,621,215.79	1,205,309.00	2,415,906.79
4040032	Service Income-Others	297,243.41	76,034.00	221,209.41
4040152	Misc Income-Bills Payment	3,565,923.76	1,477,806.00	2,088,117.76
4040155	Misc Income-Showtickets	125,657.98	87,496.00	38,161.98
4040156	Misc Income-Items left by Customer	143,430.66	60,821.00	82,609.66
4040157	Misc Income-Processing Fees	424,905.05	-	424,905.05
4040158	Misc Income-Cash Overages/CBAL	547,762.38	215,445.00	332,317.38
4040159	Misc Income-Scrap Sales	1,413,040.01	838,699.00	574,341.01
4040160	Misc Income-SMAC	3,952,769.61	1,335,878.00	2,616,891.61
4040161	Misc Income-Others	1,697,219.84	1,204,047.00	493,172.84
4040162	Misc Income-Government Services	305,035.36	293,501.00	11,534.36
4040163	Misc Income-Remittances	352,911.19	332,737.00	20,174.19
Total		**₱38,954,379.46**	**₱18,113,327.00**	
Unreported Other Operating Income per audit				**₱20,841,052.46**

Petitioner alleged that the GJ captured all source system including the "Hyperion" module in which budgeted sales are lodged into; that the GJ includes not only the actual income but the budgeted income as well, making the recorded other income higher than the reported amount per FS; that the discrepancy is merely a result of misinterpretation of entries in the GJ since respondent treated the budgeted/forecasted amounts as actual other income, when these are actually mere guides used by petitioner's officers to assess the performance of its business.

Petitioner's arguments are deemed to have merit.

A perusal of the GJ shows that the same contains records/entries of both actual sales and budget sales ("Budget from Hyperion") under the subject accounts names with the corresponding account codes. The details of the budget sales amounts and actual sales amounts are tabulated below:

Acct Code	Account Name	Exh. No. (GJ)[15]	Budget Sales	Exh. No. (GJ)[16]	Actual Sales	Total
4040110	Gain/Loss on Forex	"P-10-1"	₱ 7,946,841.00	"P-11-1"	₱ 5,542,757.00	₱13,489,598.42
4040012	Rental Income-Mall Selling	"P-10-2"	2,850,994.00	"P-11-2"	4,807,822.00	7,658,815.96
4040015	Rental Income-Others	"P-10-3"	723,875.00	"P-11-3"	634,975.00	1,358,850.19

[15] Docket – Vol. IV, pp. 2415 to 2444.
[16] Docket - Vol. IV, pp. 2445 to 2642.

4040022	Service Income-Manpower Cost	"P-10-4"	2,415,906.00	"P-11-4"	1,205,309.00	3,621,215.35
4040032	Service Income-Others	"P-10-5"	221,209.00	"P-11-4"	76,034.00	297,243.22
4040152	Misc Income-Bills Payment	"P-10-6"	2,088,117.00	"P-11-5"	1,477,806.00	3,565,923.44
4040155	Misc Income-Show tickets	"P-10-7"	38,162.00	"P-11-6"	87,496.00	125,658.00
4040156	Misc Income-Items left by Customer	"P-10-8"	82,610.00		60,821.00	143,431.00
4040157	Misc Income-Processing Fees	"P-10-9"	424,905.00	"P-11-7"	-	424,905.05
4040158	Misc Income-Cash Overages/CBAL	"P-10-10"	332,317.78	"P-11-8"	215,444.60	547,762.78
4040159	Misc Income-Scrap Sales	"P-10-11"	574,341.41	"P-11-9"	838,698.60	1,413,040.41
4040160	Misc Income-SMAC	"P-10-12"	2,616,891.62	"P-11-10"	1,335,877.99	3,952,769.62
4040161	Misc Income-Others	"P-10-13"	493,172.37	"P-11-11"	1,204,047.47	1,697,219.37
4040162	Misc Income-Government Services	"P-10-14"	11,533.88	"P-11-12"	293,501.48	305,034.88
4040163	Misc Income-Remittance	"P-10-15"	20,174.27	"P-11-13"	332,736.92	352,911.27
	Total		**₱20,841,050.33**		**₱18,113,327.00**	**₱38,954,378.96**

As gleaned above, the actual sales per GJ under each account names, are equivalent to the sales amounts found by respondent per FS. Further, the budget sales per GJ under each account names, with a total amount of ₱20,841,050.33, are relatively equivalent (with a minimal difference of ₱2.13 due to rounded off amounts) to the discrepancies found by respondent aggregating to ₱20,841,052.46. Hence, respondent's assessment is based on the budget amounts per GJ which it presumed to be actual sales without any other indication on the result of its verification that the same indeed pertain to actual sales transactions where petitioner may have earned an income.

Considering that the actual sales per GJ were reflected in the FS and were already subjected to income tax; and that the findings of respondent that petitioner had undeclared operating income is unfounded, the deficiency income tax on the alleged undeclared other operating income of ₱20,841,052.46 cannot be sustained.

IT-4 Additional Taxable Income (matching of SLP, EWT, & Aitied) - ₱7,762,459.05

After a line-by-line matching of petitioner's Summary List of Purchases ("SLP"), Alphalist of Payees and third-party information ("TPI") from BIR AITIED (Relief Data), respondent noted a discrepancy on the former's purchases which was considered as undeclared revenue pursuant to the doctrine held in the case of *CTA vs Perez and CIR L-10507 dated 30 May 1958,* and assessed petitioner of additional taxable income based on gross profit ratio amounting to ₱7,762,459.05, computed as follows:[17]

TIN	Suppliers Name	Remarks/ Justification	SLP/EWT	Aitied Data	Discrepancy
388771	Jollibee Foods Corp.	no trans in 2010	-	₱ 62,989,514.45	
204276905	Hershey Phils., Inc.		₱ 185,562.65	11,145,240.17	₱ 10,959,677.52
220916861	Mktg. Convergence, Inc.		2,454,235.57	9,023,339.75	6,569,104.18
122558110	Lao, Caroline Sio	Optima Fashion	4,591,970.53	4,591,967.65	
4849649	Chelsons Mfg. Inct. Inc.	no trans in 2010	-	3,866,894.11	
2723605	Alexis Mktg. Inc.		2,632,393.57	4,879,282.27	2,246,888.70
102231380	Tan Kian Go	Dowi Hoseiry Mills	5,760,171.77	1,933,068.06	
112104	Coca-Cola Bottlers Phils. Inc.		340,988.98	2,250,088.32	1,909,099.34
223508439	Tanada, Angielyn H.	JY Mktg.	3,472,523.26	3,333,097.64	
138750939	Zapata, Willy R.	Zapmega Gen Mdse	1,354,398.72	1,354,398.27	
218694749	SM Retail Inc.		51,882,629.46	53,200,951.43	1,318,321.97
103902410	Siytaoco, Michael Tiu	Exxel Inter'l Trdg	1,354,820.08	1,020,830.69	
188793321	Magpayo, Jerry Ko.	Beautylines Trdg Inc	981,536.00	1,019,394.18	37,858.18
			₱75,011,230.59	**₱160,608,066.99**	**₱23,040,949.89**
Undeclared purchases per line-by-line reconciliation					₱ 23,040,949.89
Divided by: COS Ratio					74.80%
Grossed-up sales on undeclared purchases					₱ 30,803,408.95
Multiplied by: GP Rate					25.20%
Additional taxable income					**₱ 7,762,459.05**

Petitioner disagrees with the above assessment.

Petitioner points out that the Computer Assisted Audit Tools (CAATTs) extraction data as provided under Revenue Memorandum Order (RMO) No. 14-2011 are not evidence in themselves to support a tax assessment. The Bureau has to comply with the procedures laid down in RMO No. 46-2004 before such third-party information can enjoy the presumption of correctness, that is, the BIR must secure the Sworn Declaration of the third-party, in this case, the specific suppliers of the Company that such amounts were indeed sales by the Company to them. Otherwise, the BIR's data are mere hearsay evidence that will not stand the scrutiny to the Court.

Thus, the assessments resulting from the comparison of the supposed third-party information (SLS) and the Company's report (SLP and Alphalist of suppliers subjected to EWT) or any other information are mere naked assessments or have no leg to stand on absent the sworn statements/declarations from the said third party sources. Since this item of the assessment is

[17] Exhibit "R-14", BIR Records, p. 895.

simply based on a mere assumption and not on facts, it must be cancelled and set aside.

Also, petitioner posits that the imputation of additional taxable income arising from alleged undeclared purchases/expenses has no legal basis whatsoever either under our tax laws or existing jurisprudence. Thus, the income tax assessment on the additional taxable income arising from the alleged undeclared purchases must be cancelled due to lack of factual and/or legal basis.

We agree with the petitioner.

Records show that the assessed additional taxable income which arose from the amounts per TPI was based merely on figures extracted from respondent's own database (Relief data) not verified with the pertinent externally sourced documents to check its veracity.

In the cross-examination during the hearing held on April 11, 2019, respondent's own witness, RO Riza F. Budaño, admitted that third-party confirmations were not secured by the latter, to wit: [18]

> "ATTY. CONDE:
>
> xxx xxx xxx
>
> Q. With respect to the additional taxable income of *seven seven six two four nine five,* considered as undeclared purchases, Ms. Witness, in answer to Question No. 54, did you secure sworn electric declaration of third parties in relation to these particular findings?
>
> MS. BUDAÑO
>
> A. I failed to secure a third-party confirmation on that."

Notably, under RMO No. 4-2003,[19] even the BIR recognizes the need to verify the amounts reflected in the Quarterly report with other externally sourced data in ascertaining the taxpayer's under-declaration of revenues or overstatement of

[18] TSN, April 11, 2019 hearing, p. 14.
[19] SUBJECT: Guidelines and Procedures on the Processing of Quarterly Summary Lists of Sales and Purchases and of the Imposition of Penalties Therefor as Provided under Revenue Regulations No. 8-2002.

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costs and expenses, if any. The pertinent portions of RMO No. 4-2003 are hereunder quoted:

> "The Bureau of Internal Revenue is reengineering its work processes in order to increase revenue collections and to pursue quality audit by making use of available internal and external information resources. In order to strengthen and enhance its assessment functions, the utilization of information technology has been identified as an effective tool to improve tax administration through the development of the Reconciliation of Listings for Enforcement (RELIEF) System.
>
> The RELIEF System was created to support third-party information program and voluntary assessment program of the Bureau through the cross-referencing of third-party information from the taxpayer's Summary Lists of Sales and Purchases prescribed to be submitted on a quarterly basis pursuant to Revenue Regulations ("RR") Nos. 7-95, as amended by RR 13-97, RR 07-99 and RR 08-2002.
>
> The RELIEF System shall cover all VAT taxpayers above threshold limits set by RR 8-2002 to submit Summary Lists of Sales and Purchases in magnetic form based on a prescribed electronic format. The consolidation and matching of information with other externally sourced data will detect under-declaration of revenues/ over-declaration of cost and expenses, thus, resulting to greater tax potential."

Without the corroborating certifications or confirmations from related third-party sources to support the TPI's credibility and integrity, the finding casts doubts as to the reliability and correctness of the assessment on the alleged additional taxable income.

While it is true that tax assessments have the presumption of correctness and regularity in its favor, it is also equally true that assessments should not be based on mere presumptions no matter how reasonable or logical the presumption might be.[20]

As such, the imposition of income tax on undeclared income on the basis of an unverified third party information is without merit and must be cancelled.

Moreover, as earlier discussed under item ***IT-2***, and we reiterate that, a finding of under-declaration of purchase or

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[20] *Commissioner of Internal Revenue vs. Fax N Parcel, Incorporated*, CTA EB No. 883, February 14, 2013.

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expense does not by itself result in the imposition of income tax. In the imposition of income tax, it must be clear that there was an income, and such income was received by the taxpayer, and not when there is an under-declared purchase or expense.

Here, it is clear that the assessment was not based on undeclared income actually received by petitioner. Respondent's mere reliance on the undeclared purchases, is not enough basis to uphold the subject assessment.

As such, the findings that petitioner had additional taxable income based on the alleged undeclared purchases per line-by-line reconciliation cannot be enforced against petitioner; otherwise, the Court stands to tax petitioner arbitrarily. Accordingly, the deficiency income tax assessment on the amount of ₱7,762,459.05 should be cancelled and withdrawn.

IT-6/WE-1 Disallowed expenses for non-withholding of tax/ Purchases still subject to EWT - ₱46,428,677.25

Respondent's comparison of the income payments subject to withholding tax per TB as against the amounts subjected to withholding tax per Alphalist disclosed that the following expenses, aggregating to ₱46,428,677.25, have not been subjected to withholding tax, hence disallowed pursuant to Section 34(K) of the Tax Code:[21]

Income Payments	EWT Rate	Per Trial Balance	Per Alphalist	Disallowed Expenses
Purchase of Goods	1%	₱ 1,421,777,909.00	₱ 1,421,777,909.00	-
Purchase of Services	2%	217,613,962.83	171,512,653.00	₱ 46,101,309.83
Rental	5%	78,795,647.09	78,474,930.40	320,716.69
Professional Fees	10%	486,357.73	479,707.00	6,650.73
Management Fee	15%	73,063,302.24	102,185,009.26	
Total		**₱1,791,737,178.89**	**₱1,774,430,208.66**	**₱46,428,677.25**

In relation thereto, petitioner was assessed of deficiency EWT in the amount of ₱1,863,362.01, as computed below, pursuant to Sec. 57 of the Tax Code and Sec. 2.57.2 of RR 2-1998, as amended by RR 17-2003 and RR 30-2003:[22]

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[21] Exhibit "R-14", BIR Records, p. 894.
[22] Exhibit "R-14", BIR Records, pp. 899 and 886 to 887.

Purchases still subject to EWT:	Rate	Per TB/Audit	EWT Due
Goods	1%	₱ 1,421,777,909.00	₱14,217,779.09
Services	2%	217,613,962.83	4,352,279.26
Rental	5%	78,795,647.09	3,939,782.35
Professional Fee	10%	486,357.73	48,635.77
Mgmt/Consultancy Fee	15%	102,185,009.26	15,327,751.39
		₱1,820,858,885.91	
EWT Due			₱37,886,227.86
Less: EWT Remitted per Form 1601E			36,947,500.76
EWT Due - Basic			**₱ 938,727.10**
Add: Increments			
Interest - 10/31/2015		₱ 899,634.91	
Compromise		25,000.00	924,634.91
Total Amount Due (WE)			**₱1,863,362.01**

To simplify, the disallowed purchases/income payments totaling ₱46,428,677.25 was assessed of the corresponding basic EWT due of ₱938,727.10, computed as follows:

Disallowed Expenses/Purchases still subject to EWT	Tax Base	Rate	EWT Due
Purchase of Services	₱ 46,101,309.83	2%	₱ 922,026.20
Rental	320,716.69	5%	16,035.83
Professional Fees	6,650.73	10%	665.07
Total	**₱46,428,677.25**		**₱938,727.10**

a. Purchase of Services

The breakdown of the assessed purchase of services in the amount of ₱46,101,309.83 is presented by petitioner as follows:

Prepaid Insurance	₱ 1,109,666.12
Prepaid Others	20,531,533.60
Freight and handing charges	9,239,616.41
Communication	1,214,476.50
Utilities	98,105,296.34
Security services	572,792.10
Janitorial services	3,296,340.45
Manpower costs	22,042,848.69
Service fees	2,067,926.51
IT expenses	5,567,132.80
Advertising and promotions	9,823,187.20
Insurance	1,523,216.76
Transportation and travel	1,995,115.34
Misc Expense - Bank Charges	16,686.46
PPE Acquisition	40,508,127.55
Total expenses that should be subjected to EWT	217,613,962.83

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Less: Income payment per BIR Form 1601E	171,512,653.00
Difference	**₱46,101,309.83**

Petitioner contends that respondent considered the total debits of the "Prepaid Insurance" and "Prepaid Others" accounts as income payments that should have been subjected to 2% EWT without considering the total credits thereon which represent the expense during the year; that it has already subjected to EWT the prepaid accounts upon set up but since respondent already captured all the expenses in the TB as income payment that should be subjected to 2% EWT, total debits of these prepaid accounts should no longer be considered as the same were already closed to expense during the year; that the method of the respondent in getting all the amounts of expense accounts and at the same time considering the total debits of prepaid expenses will definitely result to a discrepancy as there is double take-up of the amount of expense; and that only the ending balance amounting to ₱19,139.78 should have been considered in the assessment since the same was not yet closed to expense account during the year.

We partially agree with the petitioner.

As testified by petitioner's Controller, Ma. Marilyn C. Abalayan, in her Judicial Affidavit,[23] the details of the "Prepaid Insurance" and "Prepaid Others", and the entries for the set-up of its prepayments and recording of actual expenses are as follows:

	Beginning	Total debits	Total credits	Ending
Prepaid Insurance	₱ 25,969.25	₱ 1,109,666.12	₱ 1,116,496.59	₱ 19,138.78
Prepaid Others	0.00	20,531,533.60	20,531,533.60	0.00
Total	**₱25,969.25**	**₱21,641,199.72**	**₱21,648,030.19**	**₱19,138.78**

	Debit	Credit
to set up prepayments:		
Prepaid expenses	xxx	
Input tax	xxx	
EWT payable		xxx
Cash		xxx
to record actual expenses		
Expenses	xxx	
Prepaid expenses		xxx

[23] Exhibit "P-29", Docket – Vol. III, pp. 1852 to 1853, A-51.

Verily, petitioner does not deny that the "Prepaid Insurance" and "Prepaid Others" in the amounts of ₱1,109,666.12 and ₱20,531,533.60 are subject to 2% EWT. In fact, based from its entries, it subjects the prepaid expenses to EWT upon set-up of the said accounts.

Meanwhile, respondent's assessment also included the "Insurance" expense account, which is related to the "Prepaid Insurance" account. Since a credit to the "Prepaid Insurance" corresponds to a debit to the "Insurance" expense account, the credit/expensed amounts corresponding to the ₱1,109,666.12 "Prepaid Insurance" for the year may have formed part of the assessed amount of ₱1,523,216.76 for "Insurance" expense subject to EWT, resulting to double take-up of amounts. Moreover, since petitioner has "Prepaid Insurance" beginning amount of ₱25,969.25, the corresponding credit/expensed amounts thereto, which may also have formed part of the assessed amount of ₱1,523,216.76 for "Insurance" expense subject to EWT, should not be included in the amounts subject to EWT for TY 2010 as the tax due thereon redounds to the prior taxable year.

Now, considering that the portion pertaining to the current year prepaid expenses out of the ₱19,138.78 ending balance cannot be ascertained and the expensed amounts pertaining to the beginning balance of ₱25,969.25 must be excluded in the assessment, petitioner's position taking up only the ending balance of ₱19,138.78 as subject to EWT is not plausible. Rationally, to avoid double take-up of the ₱1,109,666.12 "Prepaid Insurance" for the year as subject to EWT, it is only proper that the corresponding credits/expensed amounts thereto be deducted from the assessed amount for "Insurance" instead.

As to the "Prepaid Others", petitioner did not present the breakdown thereof or any detail as to what type of prepaid expense constitutes the same and to which expense does it relate. As such, it cannot be determined whether the expensed portion of the said prepaid expense was actually included in the expense accounts already considered by respondent as subject to 2% EWT. Hence, the alleged double take-up is unfounded.

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Thus, the consideration of ₱1,109,666.12 "Prepaid Insurance" and ₱20,531,533.60 "Prepaid Others" in computing the assessment is in order. However, the amount in consideration for "Insurance" shall accordingly be reduced to ₱406,720.17 (₱1,523,216.76 less ₱1,116,496.59), taking into account the total credits to "Prepaid Insurance" amounting to ₱1,116,496.59, which include the expensed amounts for the ₱25,969.25 beginning balance that should not be subject to EWT for TY 2010 and ₱1,109,666.12 current year's purchase that was already subject to EWT under "Prepaid Insurance".

All the other expense accounts, being undisputed, shall not be disturbed.

Considering the foregoing, the purchase of service still subject to 2% EWT amounted to ₱44,984,813.24, as computed below:

Prepaid Insurance	₱ 1,109,666.12
Prepaid Others	20,531,533.60
Freight and handing charges	9,239,616.41
Communication	1,214,476.50
Utilities	98,105,296.34
Security services	572,792.10
Janitorial services	3,296,340.45
Manpower costs	22,042,848.69
Service fees	2,067,926.51
IT expenses	5,567,132.80
Advertising and promotions	9,823,187.20
Insurance	406,720.17
Transportation and travel	1,995,115.34
Misc Expense - Bank Charges	16,686.46
PPE Acquisition	40,508,127.55
Total expenses that should be subjected to EWT	216,497,466.24
Less: Income payment per BIR Form 1601E	171,512,653.00
Purchase of service still subject to 2% EWT	**₱44,984,813.24**

b. Rental

Based on respondent's verification, the assessed Rental amounting to ₱320,716.69 was computed as follows:[24]

Prepaid Rent (debits)	₱ 395,292.23
Rent Expense (total ending bal. of Rent Expense accounts)	78,400,354.86
Total Rentals that should be subjected to EWT	78,795,647.09

[24] BIR Records, pp. 508 and 510.

Tax base of EWT remitted per Form 1601E	78,474,930.40
Difference	**₱ 320,716.69**

Petitioner maintains that it has subjected to EWT the prepaid account upon set-up but since respondent already captured the total rent expense account in the TB as income payment that should be subjected to 5% EWT, total debits of the prepaid rent should no longer be considered as the same were already closed to rent expense during the year; that the method of the respondent in getting the total rent expense and at the same time considering also the total debits of prepaid rent will, to reiterate, definitely result to a discrepancy as there is double take-up of the amount of rent expense; and that only the ending balance amounting to ₱40,884.11 should have been considered in the assessment since the same was not yet closed to expense account during the year.

We rule against the assessment.

Respondent's assessment included both the "Prepaid Rent" and "Rent Expense", which are related accounts. When a portion of the Prepaid Rent is expensed or incurred, the amount is credited to the "Prepaid Rent" with a corresponding debit of the same amount to the "Rent Expense". As such, considering the "Rent Expense", which includes the credit/expensed amounts in "Prepaid Rent", as subject to 5% EWT, when the said credit/expensed amounts were already subject to 5% EWT upon set-up of the "Prepaid Rent", results to double take-up of amounts.

While petitioner posits that only the ending balance of ₱40,884.11[25] under "Prepaid Rent" should be considered as part of the assessment since the credits thereto/expensed amounts therefrom were already assessed under "Rent Expense", we find it more logical to consider the "Prepaid Rent" amount of ₱395,292.23, as subject to 5% EWT since the same is already subject to EWT upon set-up thereof, and deduct the corresponding credits/expensed amounts from the assessed amount of "Rent Expense" to avoid double take-up of amounts.

[25] Computation of Ending balance of "Prepaid Rent" per TB/BIR audit (based on BIR Records, p. 510)

Debits	₱395,292.23
Credits	354,408.12
Ending balance	**₱ 40,884.11**

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Consequently, petitioner have no Rentals still subject to 5% EWT, as shown below:

Prepaid Rent (debits)		₱ 395,292.23
Rent Expense (total ending bal. of Rent Expense accounts)	₱78,400,354.86	
Less: Credits to/expensed amounts from Prepaid Rent	354,408.12	78,045,946.74
Total Rentals subject to EWT		₱78,441,238.97
Tax base of EWT remitted per Form 1601E		78,474,930.40
Difference		**(₱ 33,691.43)**

c. *Professional Fees*

Petitioner did not anymore refute the assessed "Professional Fees" in the amount of ₱6,650.73, hence, the same shall be enforced.

In sum, the deficiency income tax on the disallowed expenses totaling ₱44,991,463.97 and the corresponding deficiency EWT due thereon in the amount of ₱900,361.34 shall be upheld. The computation of the said disallowed expenses and deficiency EWT is shown below:

Purchases/Expenses still subject to EWT	Disallowed Expenses	Rate	Deficiency EWT Due
Purchase of Services	₱ 44,984,813.24	2%	₱ 899,696.26
Professional Fees	6,650.73	10%	665.07
Total	**₱44,991,463.97**		**₱900,361.34**

Income Tax Credits

Based on the computation of the deficiency income tax assessment, respondent did not consider the income tax payments and creditable taxes withheld for TY 2010 reflected in petitioner's Annual Income Tax Return ("ITR") as tax credits to be offset against the income tax due of the latter.

In effect, respondent disallowed the creditable withholding taxes ("CWTs") and income tax payments of petitioner, which respectively amount to ₱2,128,722.00,[26] and ₱7,575,895.00,[27]

[26] CWTs per Annual ITR/BIR Form 1702 (Exhibit "P-21", Docket – Vol. V, p. 3606):

Creditable Tax Withheld for the First Three Quarters *(Line 30C)*	₱1,380,494.00
Creditable Tax Withheld Per BIR Form No.2307 for the Fourth Quarter *(Line 30D)*	748,228.00
Total CWTs for TY 2010	**₱2,128,722.00**

[27] Tax payments per Annual ITR/BIR Form 1702 (Exhibit "P-21", Docket – Vol. V, p. 3606):

Tax Payments for the First Three Quarters *(Line 30B)*	₱5,174,175.00
Tax Payment per Annual ITR *(Line 33)*	2,401,720.00

without stating the basis therefor. For failure of respondent to inform petitioner of the law and facts on which the said disallowances were based, the same is considered void, pursuant to Section 228[28] of the Tax Code.

Accordingly, the said CWTs and income tax payments shall be considered in computing the total income tax deficiency of petitioner.

Based on the foregoing, petitioner is liable to pay **basic deficiency EWT for TY 2010 in the amount of ₱900,361.34** as computed earlier and **income tax for TY 2010 in the amount of ₱8,456,672.29**, computed as follows:

Taxable Income per return		₱15,546,167.00
Add: Adjustments		
IT-6 Disallowed expenses for non-withholding of tax		44,991,463.97
Adjusted Taxable Income		₱ 60,537,630.97
Multiplied by: Income Tax rate		30%
Income Tax due		₱18,161,289.29
Less: Income Tax Credits		
Creditable Withholding Taxes	₱2,128,722.00	
Income Tax Payments	7,575,895.00	9,704,617.00
Basic Deficiency Income Tax		**₱8,456,672.29**

III. Deficiency VAT - ₱798,901,481.47

Petitioner was assessed of deficiency VAT for TY 2010 in the amount of ₱798,901,481.47, computed as follows:[29]

Vatable Sales		₱1,851,011,948.22
Add: Findings per Investigation:		
VT-1 Undeclared sales per audit (GJ,GL,TAR,TB,FS/ITR)	₱1,844,097,778.86	
VT-2 Additional Taxable Income on Undeclared Purchases	224,050,566.58	
VT-3 Undeclared Operating Income	20,841,052.46	
VT-4 Additional Taxable Income (matching of SLP, EWT, & Aitied)	7,762,459.05	
VT-6 Unrecorded sale of Prepaid Cards	60,352,008.03	

Total tax payments for TY 2010	₱7,575,895.00

[28] "Sec. 228. *Protesting of Assessment.* - When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *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."

[29] Exhibit "R-14", BIR Records, p. 899 to 900.

VT-7 Collections of Reimbursable Charges not subjected to VAT	58,180,362.00	
VT-8 Discrepancy on income subjected to VAT per ITR vs Vat Return	1,382,286.78	
VT-10 Sales not qualified for zero-rating	2,327,940.00	
Total Adjustments per audit		2,218,994,453.76
Vatable sales per audit		₱4,070,006,401.98
Multiplied by: Vat rate		12%
Output tax due per audit		₱ 488,400,768.24
Less: Net Allowable Input Tax:		
Input tax from current purchases		₱ 214,125,163.37
Add: Beginning carry-over input	₱ 7,735,440.55	
Beginning deferred input (CG)	6,970,608.37	14,706,048.92
Available Input Tax		₱ 228,831,212.29
Less: Ending carry-over input	₱ 1,839,981.88	
Ending deferred input (CG)	4,869,796.61	6,709,778.49
Utilized input tax for the year		₱ 222,121,433.80
Less: Audit Findings:		
VT-9 Violations on invoicing requirements incl. unsupported	₱ 59,420,476.50	59,420,476.50
Net allowable input tax per audit		₱ 162,700,957.30
Net VAT due per audit		₱ 325,699,810.94
Less: VAT Credits/Payments		-
Basic Value Added Tax Deficiency		**₱325,699,810.94**
Add: Increments		
Surcharges - 50%	₱ 162,849,905.47	
Interest - 10/31/2015	310,351,765.06	473,201,670.53
Total Amount Due (VT)		**₱798,901,481.47**

The deficiency VAT assessment arose from the following items:

VT-1 Undeclared sales per audit (GJ,GL,TAR,TB,FS/ITR)	₱1,844,097,778.86
VT-2 Additional Taxable Income on Undeclared Purchases	224,050,566.58
VT-3 Undeclared Other Operating Income	20,841,052.46
VT-4 Additional Taxable Income (matching of SLP, EWT, & Aitied)	7,762,459.05
VT-6 Unrecorded sale of Prepaid Cards	60,352,008.03
VT-7 Collections of Reimbursable Charges not subjected to VAT	58,180,362.00
VT-8 Discrepancy on income subjected to VAT per ITR vs Vat Return	1,382,286.78
VT-9 Violations on invoicing requirements including unsupported	59,420,476.50
VT-10 Sales not qualified for zero-rating	2,327,940.00

VT-1 Undeclared sales per audit - ₱1,844,097,778.86;
VT-2 Additional Taxable Income on Undeclared Purchases - ₱224,050,566.58;

VT-3 Undeclared Other Operating Income - ₱20,841,052.46; and
VT-4 Additional Taxable Income (matching of SLP, EWT, & Aitied) - ₱7,762,459.05

Based on the same findings under the deficiency income tax assessment (items ***IT-1, IT-2, IT-3 and IT-4***), that petitioner had undeclared sales and other operating income, and additional taxable income on undeclared purchases, respondent imposed 12% VAT thereon in accordance with Section 106, 107 and 108 of the Tax Code.

In line with the findings discussed earlier, petitioner has no undeclared sales and additional taxable income, thus, the imposition of VAT thereon is incorrect. Likewise, no deficiency VAT assessment should arise from an undeclared purchase. As discussed, respondent is incorrect to presume that the undeclared purchases automatically resulted in undeclared income, therefore the imposition of VAT thereon is also incorrect. It must be pointed out that under Section 106(A) of the Tax Code, VAT is assessed on the *"gross selling price or gross value in money of the goods or properties sold, bartered or exchanged, such tax to be paid by the seller or transferor"*.

Also, under Section 108 of the NIRC of 1997, as amended, VAT is assessed on the *"gross receipts derived from the sale or exchange of services"*. Significantly, the law defines "gross selling price" and "gross receipts" as follows:

> ". . . **'gross selling price'** means the total amount of money or its equivalent which the purchaser pays or is obligated to pay the seller in consideration of the sale, barter or exchange of the goods or properties, excluding the value-added tax."
>
> ". . . **'gross receipts'** means the total amount of money or its equivalent representing the contract price, compensation, service fee, rental or royalty, including the amount charged for materials supplied with the services and deposits and advanced payments actually or constructively received during the taxable quarter for the services performed or to be performed for another person, excluding value-added tax."

Clearly, the VAT can be imposed only when it is shown that the taxpayer received an amount of money or its equivalent from its sale, barter or exchange of goods or properties, or from sale or exchange of services, and not when there are undeclared purchases or unaccounted expenses. In other words, the VAT is imposed when one sells, not when one purchases.

At this juncture, it must be pointed out that in order to stand the test of judicial scrutiny, the assessment must be based on actual facts. The presumption of correctness of assessment being a mere presumption cannot be made to rest on another presumption. Hence, assessment should not be based on mere presumptions no matter how reasonable or logical said presumptions may be.[30]

Consequently, the presumption of correctness of the assessment does not apply in the present case considering that respondent's conclusion that the additional income on undeclared purchases are translated and would automatically result in undeclared income which would in turn increase petitioner's VAT liabilities, is not based on actual facts and thus, is a mere presumption.

Thus, considering that petitioner had no undeclared sales and other operating income, and additional taxable income on undeclared purchases, the assessed deficiency VAT thereon shall also be cancelled.

VT-6 Unrecorded sale of Prepaid Cards – ₱60,352,008.03

Respondent's verification disclosed that sales of prepaid cards in the amount of ₱60,352,008.03 has not been subjected to VAT, as per analysis on the entries made in the books of account, which is in violation of Sections 106, 107 and 108 of the Tax Code, hence, assessed, with details as follows:[31]

Acct Code	Account Name	ISA	GJ/GL/TB	Higher Amount
2002201	AP Prepaid Cards-PLDT	₱ 691,600.00	₱ 1,041,575.00	₱ 1,041,575.00
2002202	AP Prepaid Cards-SMART	22,221,651.00	33,537,351.11	33,537,351.11

[30] *Collector of Internal Revenue vs. Alberta D. Benipayo*, G.R. No. L-13656, January 31, 1962, 4 SCRA 182; *Commissioner of Internal Revenue vs. Island Garment Manufacturing Corporation and the Court of Tax Appeals*, G.R. No. L-46644, September 11, 1987, 153 SCRA 665.

[31] Exhibit "R-14", BIR Records, p. 892.

2002204	AP Prepaid Cards-GLOBE	22,973,170.98	24,624,205.59	24,624,205.59
2002209	AP Prepaid Cards-PHILWEB	-	1,445.00	1,445.00
2002222	AP Prepaid Cards-DIGITEL	-	2,311,720.94	2,311,720.94
2002223	AP Prepaid Cards-PILTEL	-	21,980.90	21,980.90
2002234	AP Prepaid Cards-DIGITEL MOBILINE	3,410,246.00	3,547,289.90	3,547,289.90
2002236	AP Prepaid Cards-INNOVE COMM	-	53,184.20	53,184.20
2002238	AP Prepaid Cards-CONNECTIVITY UNL	5,618.00	5,618.00	5,618.00
2002239	AP Prepaid Cards-PHIL WIRELESS INC	216,840.00	451,498.22	451,498.22
2002241	AP Prepaid Cards-HELIUS CORP.	38,145.00	38,145.00	38,145.00
2002243	AP Prepaid Cards-CHIRISTIAN LIFE CO	22,650.00	31,650.00	31,650.00
2002244	AP Prepaid Cards-MICROGAMING TEC	712,170.00	737,159.29	737,159.29
2002246	AP Prepaid Cards-LUCKY CIRCLE COR	22,620.00	22,620.00	22,620.00
2002247	AP Prepaid Cards-ABS CBN Interacti	65,317.00	106,634.60	106,634.60
2002299	AP Prepaid Cards-Others	474,700.00	5,966,298.92	5,966,298.92
	Total	**₱50,854,727.98**	**₱72,498,376.67**	**₱72,498,376.67**
AP Prepaid Cards				₱ 72,498,376.67
Less: Adjustments/Accruals/Correction of entries				19,863,169.32
Net Credit to AP Prepaid Cards				₱ 52,635,207.35
Misc Income-Prepaid Cards				14,959,041.64
Vatable sale of Prepaid cards, inclusive of VAT				₱ 67,594,248.99
Divided by:				112%
Vatable sale of Prepaid cards, exclusive of VAT				**₱60,352,008.03**

Petitioner avers that the above schedule represents prepaid cards transactions which were posted in the Special Purpose Machines ("SPM") but the receipt of cash arising therefrom does not constitute income on the part of the petitioner; that although it passes through the point-of-sale ("POS") system, the money received from the said transaction is not compensation for services rendered by petitioner but a liability for the cash held in trust for the telecommunications companies, which is being remitted to the latter; that as a non-sale transaction, it only issues Non-VAT acknowledgement receipt upon receipt of cash from customers; that it only acts as intermediary in the prepaid card transactions and for which it receives commission income for the services rendered to the telecommunications companies; and that the said commission income was reflected in its FS and ITR as part of other income, which was then subjected to the 30% income tax and 12% VAT.

Petitioner's averments cannot be given credit as the latter did not present any supporting documents to establish or justify the same. In its protest[32] to the Formal Letter of Demand ("FLD")/ Formal Assessment Notice ("FAN"), petitioner admitted that *"the total credits of AP prepaid cards include not only the actual sale of prepaid cards but also the accrual, some*

[32] Exhibit "P-3", Docket – Vol. IV, p. 2126, second paragraph.

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adjustments and correction of entries during the year. Xxx The correct amount of prepaid card sales is ₱52,635,207.35." However, it failed to prove that the proceeds therefrom are only held in trust for and are eventually remitted to the telecommunications companies and that the alleged commission income it earned from the said transactions, if true, was indeed reflected in its VAT returns and subsequently subjected to 12% VAT.

Hence, petitioner's statements remain as mere allegations, absent any evidentiary documents to support the same. Basic is the rule that he who alleges a fact has the burden of proving it and a mere allegation is not evidence.[33]

Since petitioner failed to refute the respondent's findings on the Unrecorded Sale of Prepaid Cards in the amount of ₱60,352,008.03, the assessed deficiency VAT thereon shall be sustained.

VT-7 Collections of Reimbursable Charges not subjected to VAT – ₱58,180,362.00

Respondent's investigation disclosed that reimbursable charges are the Common Usage Area Charges ("CUSA") regularly billed by petitioner to suppliers for their share on the utilities expense, which is generally based on the sales performance of the product and other parameters but not on actual consumption. By so doing, petitioner allegedly generates income and therefore should be subject to the 12% VAT. More so, petitioner utilizes the total input tax on communication, light & water without deducting or taking into consideration the reimbursable charges. It would be detrimental for the government if such action be allowed – presenting CUSA collections as reimbursable costs and subsequently claim all the inputs on these accounts. As such, reimbursable charges were considered as other income subject to VAT, hence, assessed pursuant to Section 108 of the Tax Code. The details of the assessment is presented below:[34]

Acct Code	Account Name	Per Audit/GJ	Adjustments	Ending Bal. per TB
4040081	Reimbursable-Electricity	₱ 1,068,462.11	(₱ 471,641.11)	₱ 596,821.00

[33] *Luxuria Homes, Inc. vs. Court of Appeals*, G.R. No. 1259866, January 28, 1999.
[34] Exhibit "R-14", BIR Records, p. 891.

4040082	Reimbursable-Water	97,800.84	(13,176.84)	84,624.00
4040083	Reimbursable-Common Area	243,380,438.84	(189,876,221.84)	53,504,217.00
4040085	Reimbursable-Others	7,868,994.03	(3,874,294.03)	3,994,700.00
	Total	**₱252,415,695.82**		**₱58,180,362.00**

Petitioner argues that that the ending balance of "Reimbursable Charges" does not constitute income on the part of the petitioner; that the money received from said reimbursable charges is not a compensation for services rendered by petitioner but a reimbursement at cost on the utility expenses which were initially shouldered and paid by the latter on behalf of those concerned suppliers; that respondent's witness confirmed during cross examination that there is no actual sale subject to VAT arising from the reimbursable charges; and that accordingly, the said reimbursement at cost is not subject to 12% VAT.

Meanwhile, respondent's verification also disclosed that petitioner utilizes the total input tax on communication, light & water without deducting the input tax related to the reimbursed charges. If so, petitioner overclaims the input tax related to the reimbursed charges, which the reimbursing payors should rightfully claim, and consequently, petitioner incurs a tax benefit therefrom as the said input tax overclaim reduces the output tax that is due from the petitioner.

We sustain the assessment.

Petitioner's stance that "Reimbursable Charges" are mere reimbursement at cost which it initially shouldered and paid on behalf of those concerned suppliers holds no water since petitioner did not provide any documentary evidence that would show that the expenses/costs charged to its suppliers are indeed without any mark-up or profit element.

Moreover, petitioner neither controverted nor presented any evidence to disprove the findings of respondent with regard to its utilization of the input tax on the "Reimbursable Charges", as such the input tax overclaim implies unjust enrichment on the part of the petitioner. Consequently, We are compelled to retain the assessment. Accordingly, the deficiency VAT on the "Reimbursable Charges" in the amount of ₱58,180,362.00 shall be sustained.

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VT-8 Discrepancy on income subjected to VAT per ITR vs Vat Return – ₱1,382,286.78

Respondent's comparison of sales and other income per FS/ITR as against the sales per VAT return revealed a discrepancy in the amount of ₱1,382,286.78, as detailed below, which was considered as income not subjected to VAT, in violation of the provisions of Sections 106, 107 and 108 of the Tax Code:[35]

Net Sales per ITR		₱1,830,973,016.00
Other Income per FS/ITR:		
Commission and services	₱5,635,831.00	
Foreign currency gain-net	5,542,757.00	
Rental	5,442,797.00	
Various Services	4,098,028.00	
Miscellaneous	3,029,746.00	23,749,159.00
Total Gross Sales/Income per FS/ITR		1,854,722,175.00
Less: Zero-rated sales		2,327,940.00
Sales/Income subject to VAT		1,852,394,235.00
Less: Sales subjected to VAT per return		1,851,011,948.22
Income not subjected to VAT		**₱ 1,382,286.78**

Petitioner alleges that the total income per FS/ITR includes not only income from sale of goods but also those from sale of service. As value-added tax is imposed on gross receipts and income tax is imposed on gross sales and revenue, a timing difference may occur on the reporting of income for income tax purposes and for VAT purposes.

However, petitioner's allegation is not justified as it failed to present evidence to show that, indeed, the difference merely arose from the timing difference in its recognition of income as declared in its VAT Returns vis-à-vis the income reported in its Annual ITR. Neither did petitioner prove that the subject discrepancy was reported as income and accordingly subjected to VAT in any other taxable year.

Failure on the part of petitioner to present proof as to the allegations made is self-serving and does not prove anything. It is basic in the rule of evidence that bare allegations,

[35] Exhibit "R-14", BIR Records, pp. 890 to 891.

unsubstantiated by evidence, are not equivalent to proof. In short, mere allegations are not evidence.[36]

Thus, this particular item of assessment shall be sustained.

VT-9 Violations on invoicing requirements including unsupported – ₱59,420,476.50

For an input tax to be creditable, it should be evidenced by a valid VAT invoice or official receipt ("OR") in accordance with Sections 110(A)(1), 113 and 237 of the Tax Code. However, respondent's scrutiny of petitioner's source documents disclosed that there were purchase invoices/receipts which failed to comply with the invoicing requirements and that some of its purchases from related companies were unsupported. Hence, the related input taxes were disallowed. The disallowance of ₱59,420,476.50 was computed by respondent as follows:[37]

a) Disallowed due to violation on invoicing requirements		Input Tax	
Purchases without MBL's TIN		₱61,956,624.34	
Less: With Sample Invoices		(4,910,193.06)	
OR & Invoices do not show segregation of input tax		1,162,908.94	
Purchases with TIN 006-305-533 instead of 006-324-896		1,211,136.30	₱ 59,420,476.50
c) No supporting documents (related party transactions)			
	SLP	Input Tax	
Premier Southern Corp.	₱103,045,798.43	₱12,365,495.81	
SM Retail, Inc.	51,882,629.46	6,225,915.54	
Hardware Workshop Inc.	35,725,297.43	4,287,035.69	₱ 22,878,447.04
Disallowed input tax from vouching of source documents			**₱59,420,476.50**

At the outset, it is apparent from respondent's computation that the assessed disallowance of ₱59,420,476.50 pertains only to the input tax disallowed due to violation on invoicing requirements. Hence, the input tax with no supporting documents in the amount of ₱22,878,447.04, as shown above, shall be disregarded.

We partially uphold the disallowance.

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[36] *Real vs. Belo*, G.R. No. 146224, January 26, 2007.
[37] Exhibit "R-14", BIR Records, p. 890.

Sections 110(A) and 113(A) and (B) of the NIRC of 1997, as amended, and as implemented by Sections 4.110-1, 4.110-8 and 4.113-1(A) and (B) of RR No. 16-2005, explicitly state that any input tax may be creditable against the output tax provided that the same is supported by VAT invoice [for purchase of goods or properties] or VAT official receipt (OR) [for purchase of services] containing the required information, to wit:

<u>Secs. 110(A) and 113(A) and (B) of the Tax Code:</u>

"SEC. 110. *Tax Credits.-*

(A) *Creditable Input Tax.-*

(1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax: xxx"

(a) Purchase or importation of goods:

(i) For sale; or

(ii) For conversion into or intended to form part of a finished product for sale including packaging materials; or

(iii) For use as supplies in the course of business; or

(iv) For use as materials supplied in the sale of service; or

(v) For use in trade or business for which deduction for depreciation or amortization is allowed under this Code.

(b) Purchase of services on which a value-added tax has actually been paid."

"Sec. 113. *Invoicing and Accounting Requirements for VAT-Registered Persons.-*

(A) *Invoicing Requirements.* – A VAT-registered person shall issue:

(1) A VAT invoice for every sale, barter or exchange of goods or properties; and

(2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.

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(B) *Information Contained in the VAT Invoice or VAT Official Receipt.* – The following information shall be indicated in the VAT invoice or VAT official receipt:

(1) A statement that the seller is a VAT-registered person, followed by his Taxpayer's Identification Number (TIN);

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax: *Provided,* That:

(a) The amount of the tax shall be shown as a separate item in the invoice or receipt;

xxx xxx xxx

(3) The date of transaction, quantity, unit cost and description of the goods or properties or nature of the service; and

(4) In the case of sales in the amount of One thousand pesos (₱1,000) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and Taxpayer identification Number (TIN) of the purchaser, customer or client."

<u>Secs. 4.110-1, 4.110-8 and 4.113-1(A) and (B) of RR No. 16-2005:</u>

"SEC. 4.110-1. *Credits for Input Tax.* — xxx.

xxx xxx xxx

Any input tax on the following transactions evidenced by a VAT invoice or official receipt issued by a VAT-registered person in accordance with Secs. 113 and 237 of the Tax Code shall be creditable against the output tax:

(a) Purchase or importation of goods

(1) For sale; or

(2) For conversion into or intended to form part of a finished product for sale, including packaging materials; or

(3) For use as supplies in the course of business; or

(4) For use as raw materials supplied in the sale of services; or

(5) For use in trade or business for which deduction for depreciation or amortization is allowed under the Tax Code,

xxx xxx xxx

(c) Purchase of services in which a VAT has actually been paid;"

"SEC. 4.110-8. *Substantiation of Input Tax Credits.* —

(a) Input taxes for the importation of goods or the domestic purchase of goods, properties or services is made in the course of trade or business, whether such input taxes shall be credited against zero-rated sale, non-zero-rated sales, or subjected to the 5% Final Withholding VAT, must be substantiated and supported by the following documents, and must be reported in the information returns required to be submitted to the Bureau:

xxx xxx xxx

(2) For the domestic purchase of goods and properties — invoice showing the information required under Secs. 113 and 237 of the Tax Code.

xxx xxx xxx

(4) For the purchase of services — official receipt showing the information required under Secs. 113 and 237 of the Tax Code.

A cash register machine tape issued to a registered buyer shall constitute valid proof of substantiation of tax credit only if it shows the information required under Secs. 113 and 237 of the Tax Code."

"SEC. 4.113-1. *Invoicing Requirements.* —

(A) *A VAT-registered person shall issue:* —

(1) A VAT invoice for every sale, barter or exchange of goods or properties; and

(2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.

Only VAT-registered persons are required to print their TIN followed by the word 'VAT' in their invoice or official receipts. Said documents shall be considered as a 'VAT Invoice' or 'VAT official receipt'. All purchases covered by invoices/receipts other than VAT Invoice/VAT Official Receipt shall not give rise to any input tax.

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VAT invoice/official receipt shall be prepared at least in duplicate, the original to be given to the buyer and the duplicate to be retained by the seller as part of his accounting records.

(B) *Information contained in VAT invoice or VAT official receipt.* — The following information shall be indicated in VAT invoice or VAT official receipt:

(1) A statement that the seller is a VAT-registered person, followed by his TIN;

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the VAT; *Provided*, That:

(a) The amount of tax shall be shown as a separate item in the invoice or receipt;

xxx xxx xxx

(3) In the case of sales in the amount of one thousand pesos (₱1,000.00) or more where, the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and TIN of the purchaser, customer or client, shall be indicated in addition to the information required in (1) and (2) of this Section."

In addition, the invoices and ORs must be duly registered with the BIR pursuant to Section 237, in relation to Section 238, both of the Tax Code, which respectively provide:

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

xxx xxx xxx

SEC. 238. *Printing of Receipts or Sales or Commercial Invoices.* — All persons who are engaged in business shall secure from the Bureau of Internal Revenue an authority to print receipts or sales or commercial invoices before a printer can print the same

No authority to print receipts or sales or commercial invoices shall be granted unless the receipts or invoices to be printed are serially numbered and shall show, among other

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things, the name, business style, Taxpayer Identification Number (TIN) and business address of the person or entity to use the same, and such other information that may be required by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner."

Thus, in order to prove entitlement to credits for input taxes due and paid, petitioner must not only present the supporting documents prescribed under Section 4.110-8 of RR No. 16-2005, but more importantly, these documents must comply with the invoicing requirements of Sections 113(A) and (B), 237 and 238 of the Tax Code, as implemented by Section 4.113-1(A) and (B) of RR No. 16-2005.

In support of the disallowed input taxes, petitioner submitted various sales invoices, ORs and other related documents,[38] which were examined by the Court-commissioned Independent Certified Public Accountant ("ICPA"), Ma. Criselda S. Oplas of Alas, Oplas & Co., CPAs. The results of the ICPA's examination are summarized hereunder:[39]

Input VAT Allowed by ICPA Input VAT properly supported and compliant with invoicing and substantiation requirements	₱ 40,460,240.08
Input VAT disallowed by ICPA	
Input VAT without available documents at the time of examination	₱ 17,039,580.28
Input VAT supported by documents that are out-of-period	1,502,080.84
Input VAT supported by documents with no VAT breakdown	220,005.33
Input VAT supported by documents with wrong VAT breakdown	176,360.99
Input VAT supported by documents with no or wrong TIN	20,496.84
Input VAT supported by documents without petitioner's name indicated therein	1,795.72
Total	₱ 18,960,320.00[40]
Total Input VAT accounted by ICPA	**₱59,420,560.08**

A comparison between the assessed disallowance of ₱59,420,476.50 and the input VAT accounted by ICPA in the amount of ₱59,420,560.08 revealed a difference of ₱83.58, which pertains to the amount included in the input tax accounted by ICPA for Shoetech General Merchandise Inc. but was already excluded from the assessed disallowed input tax for the said supplier per the Summary of Disallowed Input Tax[41]. Considering that the said difference was not anymore part of the assessed disallowance, and it cannot be ascertained as to which among the ICPA's classifications it belongs, the same shall be considered as part of the input VAT allowed by the

[38] Exhibits "P-31-3-1" to "P-31-159-269".
[39] Exhibit "P-30-3" (ICPA Report), Docket - Vol. III, p. 2042, par. 3; Exhibit"P-31-2-2" (Table 2), ICPA Report Folder.
[40] The 0.01 difference from the ₱18,960,320.01 stated in ICPA Report may be due to rounding off.
[41] Exhibit "P-31-2-1" (Table 1), ICPA Report Folder.

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ICPA. Consequently, the input VAT allowed by ICPA shall be adjusted to ₱40,460,156.50 (₱40,460,240.08 less ₱83.58).

The Court agrees with the above findings of the ICPA, save for the input VAT exception in the amount of ₱58,710.12 (from "Input VAT supported by documents with wrong VAT breakdown") wherein the input VAT were found to be either correctly indicated in exact amount on the face of the supporting invoice/OR, or forming part of the input VAT amount indicated in the supporting invoice/OR, or reflected on the face of the supporting invoice/OR which is actually lower than the amount disallowed, to wit:

Exhibit No.	Supplier's Name	Invoice/ OR No.	Input VAT Amount
Input VAT due are actually properly reflected in the supporting VAT invoices			
P-31-5-434	Alexis Marketing, Inc.	57534	₱ 515.57
P-31-6-42	Allegro Pacific (Phils.), Inc.	14613	835.71
P-31-6-65	Allegro Pacific (Phils.), Inc.	15253	742.50
P-31-6-67	Allegro Pacific (Phils.), Inc.	15275	495.00
P-31-6-70	Allegro Pacific (Phils.), Inc.	15432	402.86
P-31-6-74	Allegro Pacific (Phils.), Inc.	15131	2,208.21
P-31-6-81	Allegro Pacific (Phils.), Inc.	15181	1,080.00
P-31-6-87	Allegro Pacific (Phils.), Inc.	15592	768.21
P-31-10-65	Bachelor Galore Mfg.	56117	672.86
P-31-17-68	Branded Lifestyle Inc	12230	320.63
P-31-17-69	Branded Lifestyle Inc	12231	319.82
P-31-17-70	Branded Lifestyle Inc	12232	842.14
P-31-17-71	Branded Lifestyle Inc	12233	320.63
P-31-18-44	BSG Marketing & Gen. Merchandise	39520	96.43
P-31-18-45	BSG Marketing & Gen. Merchandise	39524	96.43
P-31-18-55	BSG Marketing & Gen. Merchandise	39713	160.71
P-31-37-69	Dreamworks Fashion Trading Inc	10690	1,234.29
P-31-48-136	Funtastic International Inc	106376	192.86
P-31-53-93	GM Stemiko Corp	40274	462.86
P-31-58-284	Gruppo Sachin & Sachin Co.	31141	2,120.87
P-31-93-107	Merle Garments	11590	2,160.00
P-31-125-6	So-en Garments Corp	389080	10,320.17
P-31-141-32	Topline Attire and Garments Corp	4722	642.86
Input VAT due actually formed part of the input VAT amount reflected in the supporting VAT invoices			
P-31-5-162	Alexis Marketing, Inc.	54965	379.29
P-31-5-206	Alexis Marketing, Inc.	44403	47.57
P-31-5-284	Alexis Marketing, Inc.	53369	21.21
P-31-6-10	Allegro Pacific (Phils.), Inc.	13794	308.79
P-31-6-15	Allegro Pacific (Phils.), Inc.	13973	176.79
P-31-6-31	Allegro Pacific (Phils.), Inc.	14282	145.71
P-31-6-37	Allegro Pacific (Phils.), Inc.	14568	488.57
P-31-6-41	Allegro Pacific (Phils.), Inc.	14500	325.71

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P-31-6-66	Allegro Pacific (Phils.), Inc.	15274	192.86
P-31-6-69	Allegro Pacific (Phils.), Inc.	15405	1,388.57
P-31-6-72	Allegro Pacific (Phils.), Inc.	15468	514.29
P-31-6-73	Allegro Pacific (Phils.), Inc.	15480	192.86
P-31-6-85	Allegro Pacific (Phils.), Inc.	15552	289.29
P-31-6-93	Allegro Pacific (Phils.), Inc.	15690	868.37
P-31-7-7	Anyo Apparel Inc.	2033	1,388.57
P-31-18-63	BSG Marketing & Gen. Merchandise	39922	132.86
P-31-18-64	BSG Marketing & Gen. Merchandise	39925	115.71
P-31-18-270	BSG Marketing & Gen. Merchandise	32520	47.14
P-31-18-272	BSG Marketing & Gen. Merchandise	32627	281.79
P-31-18-275	BSG Marketing & Gen. Merchandise	32793	998.04
P-31-18-281	BSG Marketing & Gen. Merchandise	32924	388.93
P-31-18-285	BSG Marketing & Gen. Merchandise	33000	507.86
P-31-18-286	BSG Marketing & Gen. Merchandise	33864	144.64
P-31-18-295	BSG Marketing & Gen. Merchandise	33136	77.14
P-31-18-301	BSG Marketing & Gen. Merchandise	33256	142.93
P-31-18-305	BSG Marketing & Gen. Merchandise	33392	135.00
P-31-18-332	BSG Marketing & Gen. Merchandise	34198	612.86
P-31-18-345	BSG Marketing & Gen. Merchandise	34429	565.71
P-31-18-352	BSG Marketing & Gen. Merchandise	34619	205.71
P-31-18-355	BSG Marketing & Gen. Merchandise	34456	257.14
P-31-18-373	BSG Marketing & Gen. Merchandise	34920	263.57
P-31-18-390	BSG Marketing & Gen. Merchandise	35333	1,819.29
P-31-23-20	CD & D Trading	10058	925.71
P-31-23-29	CD & D Trading	10325	617.14
P-31-23-31	CD & D Trading	10343	617.14
P-31-23-55	CD & D Trading	11133	867.86
P-31-34-23	Dakki Classics Concepts, Inc.	32750	370.93
P-31-37-8	Dreamworks Fashion Trading Inc	8499	501.43
P-31-38-45	Easytone Marketing	14683	38.57
P-31-58-305	Gruppo Sachin & Sachin Co.	36137	312.82
P-31-63-2	Henson Clothing Company Inc	37502	173.79
P-31-63-3	Henson Clothing Company Inc	37503	215.14
P-31-95-143	Microer Bag	33181	275.36
P-31-95-144	Microer Bag	33220	114.00
P-31-95-146	Microer Bag	33310	675.00
P-31-106-593	Planet Classic Corporation	83939	3,702.86
Input VAT due are reflected in the supporting VAT invoices which are actually at a lower amount than the amount of the disallowed input VAT			
P-31-5-205	Alexis Marketing, Inc. (out of disallowed claim of ₱186.43)	44241	171.15
P-31-23-53	CD & D Trading (out of disallowed claim of ₱1,238.14)	11108	1,201.00
P-31-23-60	CD & D Trading (out of disallowed claim of ₱2,871.43)	11363	2,785.29
P-31-81-24	Kidstyle Fashion, Inc (out of disallowed claim of ₱1,570.20)	4345	1,396.20
P-31-95-74	Microer Bag (out of disallowed claim of ₱609.11)	30634	609.10
P-31-103-83	Pasha Marketing (out of disallowed claim of ₱1,991.79)	15520	1,991.76
P-31-116-18	R-Man Footwear (out of disallowed claim of ₱748.93)	1975	711.48
Total			**₱ 58,710.12**

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Hence, in addition to the ₱40,460,156.50 input VAT allowed by the ICPA, the input VAT in the amount of ₱58,710.12 was, likewise, duly substantiated. On the other hand, the ICPA's input VAT exceptions in the amount of ₱18,901,609.88 (₱18,960,320.00 less ₱58,710.12) are proper disallowances as it failed to meet the invoicing and substantiation requirements prescribed under Sections 110(A) and 113(A) and (B) of the Tax Code, in relation to Sections 4.110-1, 4.110-8 and 4.113-1 of RR No. 16-2005.

Thus, out of the assessed input VAT disallowance of ₱59,420,476.50, only the amount of ₱18,901,609.88, as computed below, shall be sustained:

Disallowance per FDDA	₱ 59,420,476.50
Less: Input VAT allowed by ICPA	40,460,156.50
Additional allowed input VAT per Court's further verification	58,710.12
Total Disallowed Input Tax	**₱18,901,609.88**

VT-10 Sales not qualified for zero-rating – ₱2,327,940.00

Per the FLD/FAN,[42] respondent disallowed the input tax allocated to exempt sales in the amount of ₱266,755.25 pursuant to Sec. 4.110-4 of RR 16-2005 which states that "*...the input tax attributable to VAT-exempt sales shall not be allowed as credit against the output tax but should be treated as part of cost or expense...*". However, considering petitioner's claim in its protest to the FLD/FAN [43] that it has no exempt sales transaction and that the amount of ₱2,327,940.00 pertaining to sales to PEZA-registered company and diplomats of foreign countries, which were subjected to zero-rate VAT, was mistakenly reflected as exempt sales, respondent withdrew the assessment on the disallowed input allocated to exempt sales. Nonetheless, respondent assessed the said zero-rate sales to 12% VAT for being not properly supported with valid documents such as PEZA registration and IDs of the diplomat buyers. The computation of the assessment per FDDA is shown below:[44]

Input tax from current purchases (Goods & Services)		₱212,371,516.43
Ratio of Exempt Sales to Total Sales:		
Exempt Sale, per VAT	₱ 2,327,940.00	

[42] Exhibit "P-2", Docket – Vol. IV, p. 2090, item VT-10.
[43] Exhibit "P-3", Docket – Vol. IV, p. 2130, Schedule 18.
[44] Exhibit "R-14", BIR Records, pp. 889 to 890.

Total Sales	1,853,339,888.22	0.13%
Disallowed input tax per FLD		266,755.25
Adjustments:		
No Allocation of input tax for zero rated sales		266,755.25
Disallowed input		**0.00**
Sales not qualified for zero-rating for being unsupported		**₱2,327,940.00**

Petitioner now asserts that the assessed sales not qualified for zero-rating actually pertain to the sales of books, magazines and bulletins, which are VAT exempt pursuant to Section 109(1)(R) of the Tax Code, as implemented by Section 4.109-1(B)(1)(r) of RR 16-2005, which provide that the "sale, importation, printing, or publication of books and any newspaper, magazine, review or bulletin, which appears at regular intervals with fixed prices for subscription and sale, and which is not devoted principally to the publication of paid advertisements".

We uphold the assessment.

Petitioner's contradicting stance is doubtful.

Initially, petitioner claims that the amount of ₱2,327,940.00 pertain to zero-rated sales to PEZA-registered entities and diplomats, which were subject to zero-rated VAT, then later on, when the same was denied zero-rating absent the documents which will accord it to zero-rating, it submits that the same pertain to sales of books, magazines and bulletins, which are exempt from VAT.

Nonetheless, petitioner did not present the supporting ORs/invoices to prove the nature of the subject transactions or any other pieces of evidence to substantiate its claim. Hence, there is no showing that the sales of ₱2,327,940.00, indeed, pertain to the alleged VAT exempt sales of books, magazines and bulletins or qualify as zero-rated sales. As such, the deficiency VAT on the alleged sales not qualified for zero-rating amounting to ₱2,327,940.00 stands.

In sum, petitioner is liable to pay basic deficiency VAT for TY 2010 in the amount of ₱33,570,721.48, computed as follows:

Vatable Sales		₱1,851,011,948.22
Add: Adjustments		
VT-6 Unrecorded sale of Prepaid Cards	₱60,352,008.03	
VT-7 Collections of Reimbursable Charges not subjected to VAT	58,180,362.00	
VT-8 Discrepancy on income subjected to VAT per ITR vs Vat Return	1,382,286.78	
VT-10 Sales not qualified for zero-rating	2,327,940.00	
Total Adjustments		122,242,596.81
Adjusted Vatable Sales		₱1,973,254,545.03
Multiplied by: VAT rate		12%
Output tax due		**₱ 236,790,545.40**
Less: Net Allowable Input Tax:		
Input tax from current purchases		₱ 214,125,163.37
Add: Beginning carry-over input	₱ 7,735,440.55	
Beginning deferred input (CG)	6,970,608.37	14,706,048.92
Available Input Tax		₱ 228,831,212.29
Less: Ending carry-over input	1,839,981.88	
Ending deferred input (CG)	4,869,796.61	6,709,778.49
Utilized input tax for the year		₱ 222,121,433.80
Less: Audit Findings:		
VT-9 Violations on invoicing requirements incl. unsupported		18,901,609.88
Net allowable input tax		₱ 203,219,823.92
Basic Deficiency VAT		**₱ 33,570,721.48**

IV. Deficiency WC - ₱9,685,412.78

Petitioner was assessed of deficiency WC for TY 2010 in the amount of ₱9,685,412.78, computed as follows:[45]

Additional taxable salaries not subjected to withholding		₱ 4,976,080.53
Add: Increments		
Interest - 10/31/2015	₱4,684,332.25	
Compromise	25,000.00	4,709,332.25
Total Amount Due (WC)		**₱9,685,412.78**

Respondent's audit of the amounts reflected as salaries and wages in the Alphalist and FS and the entries recorded in the books of accounts revealed a discrepancy on the amounts reported as salaries and wages, which likewise revealed additional compensation subject to withholding tax, hence, assessed of deficiency WC pursuant to Section 80(A) of the Tax Code. The assessed additional taxable salaries not subjected to

[45] Exhibit "R-14", BIR Records, p. 899.

withholding in the amount of ₱4,976,080.53 was computed by respondent as follows:[46]

Acct Code	Account Name	Per Audit/GJ	Non-Taxable	Taxable
6001011	Salaries and Wages-Basic Rank and File	₱164,833,762.59		
6001012	Salaries and Wages-Basic Confi	15,835,750.25		
6001013	Salaries and Wages-Basic Exec	11,009,437.81		
6001021	Salaries and Wages-Overtime-Regular	258,553.54		
6001031	Salaries and Wages-COLA/ERA	2,333,032.37		
6001051	Salaries and Wages-ND Reg Shift	26,567.02		
6001052	Salaries and Wages-ND Confi	15,644.27		
6001071	Salaries and Wages-Overtime Rest	14,142.75		
6001081	Salaries and Wages-Overtime Special	1,379,831.56		
6001101	Salaries and Wages-Overtime Legal	3,706,332.42		
	Total Salaries & Wages	199,413,054.58		₱ 199,413,054.58
6002010	SSS Contribution	13,701,584.03		
6002020	PhilHealth Contribution	2,295,935.69		
6002030	HDMF Contribution	2,954,802.43		
6002040	Employee Compensation	250,529.79		
	Total Mandatory Contributions	₱ 19,202,851.94	₱19,202,851.94	
6002050	OEB-13th Month	15,530,988.62		
6002060	OEB-Bonus	4,892,349.73		
6002070	OEB-Leave Conversion	2,859,258.47		
6002120	OEB-Funeral Aid	70,000.00		
6002130	OEB-Meals	228,058.74		
6002140	OEB-Cashier's Refund	980,409.40		
6002150	OEB-HMO Premium	1,486,620.58		
6002160	OEB-Uniform	1,155,329.96		
6002171	OEB-Internal Training Charges	255,117.15		
6002182	OEB Emp Events-Year End Party	649,251.27		
6002183	OEB Emp Events-Branch Anniversary	329,680.14		
6002184	OEB Emp Events-Sports Fest	16,892.50		
6002190	OEB-Employee Recreation	1,175.00		
6002200	OEB-Medical Subsidy	66,076.16		
6002220	OEB-Corporate	102,280.00		
6002230	OEB-Awards/Incentive	519,068.68		
6002240	OEB-Hospitalization	46,160.70		
6002250	OEB-Cashiers and Checkers Allowance	565,874.00		
6002260	OEB-Others	4,762,247.63		
6002270	OEB-Clothing Corporate	82,774.65		
6002280	OEB-HMO Access Fee	279,764.54		
6002290	OEB-HMO Hospitalization	1,971,065.30		
6002300	OEB-STARS	7,399,684.00		
	Total Other Employee Benefits	₱ 44,250,127.22	44,250,127.22	
	Total Salaries & Wages, per audit	₱262,866,033.74	₱63,452,979.16	₱ 199,413,054.58
Less: Salaries & Wages, per Alphalist/FS:				

[46] *Id.*, p. 887 to 888.

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	Schedule 7.1	₱12,015,171.19	₱ 1,771,379.30	₱ 10,243,791.89
	Schedule 7.3	58,113,369.57	6,864,676.38	51,248,693.19
	Schedule 7.4	1,551,994.99	151,103.88	1,400,891.11
	Schedule 7.5	21,101,536.94	4,487,413.49	16,614,123.45
	Total	₱ 92,782,072.69		
	Add: Other Benefits per FS, not reflected in	34,519,485.31	34,519,485.31	
	Total Salaries & Wages, per FS	₱127,301,558.00	₱47,794,058.36	₱ 79,507,499.64
	Discrepancy per FLD	₱135,564,475.74	₱15,658,920.80	₱ 119,905,554.94
Taxable salaries not subjected to withholding				**₱119,905,554.94**
Multiplied by: Average withholding tax rate				4.15%
Basic WC on salaries & wages not subjected to withholding				**₱ 4,976,080.53**

Petitioner contends that the alleged discrepancy arose from respondent's comparison of the salaries and wages reflected in petitioner's GJ and the amount reported in the alphalist of compensation. Petitioner further reiterates the misappreciation by respondent of the entries in the GJ; that the "Salaries and Wages" per GJ also captured the budgeted/forecasted salaries and wages, which were lodged under "Hyperion" module; and that respondent included the budgeted/forecasted salaries and wages as actual payments to employees without considering the entries reversing such budgeted/forecasted figures.

Petitioner further posits that, using the actual and correct amount of salaries and wages amounting to ₱92,753,655.00 and other employees' benefits of ₱9,822,262.14 per GL and TB that should have been subjected to WC, in comparison with the gross compensation reported in the annual Alphalist of employees, will show a reduced discrepancy of ₱2,567,775.77, computed as follows:

Salaries and wages per GL/TB:	₱ 92,753,655.00
Other employees benefits:	
600205-OEB -13th month pay	₱ 7,574,919.27
6002060-OEB -Bonus	2,247,342.87
Sub-Total	₱ 9,822,262.14
Total salaries and OEB per TB	₱102,680,297.14
Less: Gross Compensation per alphalist	100,112,521.37
Difference	**₱ 2,567,775.77**

Further, petitioner presented the following summary of the salaries and wages recorded in its GJ, which shows the actual and alleged budgeted amounts:

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Acct Code	Account Name	Budget	Actual	Total
6001011	Salaries and wages-Basic rank and file	₱87,405,443.29	₱77,428,319.30	₱164,833,762.59
6001012	Salaries and wages-Basic Confidential	9,063,174.46	6,772,575.79	15,835,750.25
6001013	Salaries and wages-Basic Executive	6,406,450.07	4,602,987.74	11,009,437.81
6001021	Salaries and wages-Overtime Regular and File	38,800.55	217,050.14	258,553.54
6001022	Salaries and wages-Overtime-Regular	-	2,702.85	2,702.85
6001031	Salaries and wages-Cola/ERA Rank and File	1,237,997.91	1,095,035.46	2,333,033.37
6001051	Salaries and wages-ND Reg. Shift Rank and File	-	26,567.02	26,567.02
6001052	Salaries and wages-ND Confidential	-	15,644.27	15,644.27
6001071	Salaries and wages-Overtime Rest Day	-	14,142.75	14,142.75
6001081	Salaries and wages-Overtime Special Holiday	585,301.42	636,739.11	1,222,040.53
6001082	Salaries and wages-Overtime Special Holiday	115,277.60	42,513.43	157,791.03
6001101	Salaries and wages-Overtime Legal Holiday	1,590,446.87	1,812,871.32	3,403,318.19
6001102	Salaries and wages-Overtime Legal	216,507.41	84,595.01	301,102.42
6001111	Salaries and wages-Overtime Legal	-	1,911.81	1,911.81
	Total	**₱106,659,399.58**	**₱92,753,655.00**	**₱199,413,054.58**

Petitioner's allegations lack merit.

To support the said budgeted amounts, petitioner offered as evidence "Exhibit P-6-1 and series", which pertain to the GJs of Budget Accounts for Salaries and Wages. However, the same was denied admission by this Court for petitioner's failure to identify the same.[47] Other than that, no documents were further submitted by petitioner to support the alleged budgeted amounts. Moreover, as to the alleged reduced amount of discrepancy, petitioner did not provide the basis for including only the two accounts under "Other employee benefits" (600205-OEB -13th month pay and 6002060-OEB –Bonus), while excluding all others, as subject to WC in computing the said discrepancy. Since petitioner fell short in disproving that the total salaries & wages per audit in the amount of ₱199,413,054.58 as found by respondent are subject to WC, the same shall not be disturbed. Accordingly, the basic deficiency withholding tax on compensation in the amount of ₱4,976,080.53 shall be sustained.

V. Deficiency FBT - ₱1,355,498.42

Petitioner was assessed of deficiency FBT for TY 2010 in the amount of ₱1,355,498.42, computed as follows:[48]

[47] Resolution dated March 5, 2018, Docket – Vol. VI, pp. 4081 to 4082; Resolution dated December 18, 2018, Docket – Vol. VI, pp. 4177 to 4181; Order dated April 11, 2019, Docket – Vol. VI, pp. 4192 to 4193.
[48] Exhibit "R-14", BIR Records, p. 898.

Travel expenses, subject to FBT		₱ 1,307,861.14
Divided by:		68%
Grossed-up monetary value		₱ 1,923,325.21
Multiplied by: FBT rate		32%
Fringe Benefit Tax – basic		₱ 615,464.07
Add: Increments		
Surcharge	₱153,866.02	
Interest-10/31/2015	561,168.33	
Compromise	25,000.00	740,034.35
Total Amount Due (FBT)		**₱1,355,498.42**

The said amount of ₱1,355,498.42 arose from the amount of ₱1,307,861.14 under "TandT Local-Hotel Accommodation", which was assessed by respondent of FBT pursuant to Section 33 of the Tax Code.[49]

Petitioner avers that the above expenses are not benefits given to employees but are expenses of employees during their business travels and are incurred in the pursuit of petitioner's business, thus, not subject to FBT.

However, petitioner's statement is a mere unsubstantiated allegation. No documentary evidence was adduced by petitioner to prove that the subject expenses were incurred by its employees during their business travels and were indeed made in the pursuit of petitioner's business. Since petitioner failed to overcome the presumption of correctness of the deficiency fringe benefit tax assessment, the Court sustains the said assessment.

Thus, petitioner is liable to pay basic deficiency FBT for TY 2010 in the amount of ₱615,464.07.

VI. Compromise Penalty - ₱275,000.00

Respondent's imposition of compromise penalties aggregating ₱275,000.00, broken down below, including those imposed on petitioner's deficiency taxes, must be removed since there is no showing that petitioner consented to the same:[50]

[49] Exhibit "R-14", BIR Records, p. 886.
[50] Exhibit "R-14", BIR Records, p. 898 to 899.

Non-submission of Summary List of Sales (Relief Data)	₱ 50,000.00	
Non-submission of E-Sales	50,000.00	
2 POS machines which had resettable accumulating grand total	50,000.00	
Non-compliance on the required format of books of accounts	50,000.00	₱ 200,000.00
Compromise penalty imposed on:		
Deficiency WTC	₱ 25,000.00	
Deficiency EWT	25,000.00	
Deficiency FBT	25,000.00	75,000.00
Total Compromise Penalty		**₱ 275,000.00**

It must be stressed that a compromise penalty is imposed to avoid prosecution for violation of the provisions of the Tax Code.[51] Pursuant to RMO No. 01-90, as amended by RMO No. 19-2007, compromise penalties are only suggested in settlement of criminal liability, and may not be imposed or exacted on a taxpayer in the event that a taxpayer refuses to pay the same. It is well-settled that the Court has no jurisdiction to compel a taxpayer to pay the compromise penalty because by its very nature, it implies a mutual agreement between the parties in respect to the thing or subject matter that is so compromised, and the choice of paying or not paying it distinctly belongs to the taxpayer.[52] Absent a showing that petitioner consented to the compromise penalty, its imposition should be deleted. The imposition of the same without the conformity of the taxpayer is illegal and unauthorized.[53]

VII. 50% Surcharge

Respondent imposed fifty percent (50%) surcharge on petitioner's deficiency income tax and VAT pursuant to Section 248(B) of the Tax Code, as implemented by Section(4)(4.2)(4.2.1) of RR 12-1999, which states in part that ".....in case a false or fraudulent return is willfully made, the penalty to be imposed shall be fifty percent (50%) of the deficiency tax. Provided, That a substantial underdeclaration of taxable sales, receipts or income, or a substantial overstatement of deductions, as determined by the Commissioner or his duly authorized representative, shall constitute prima facie evidence of a false or fraudulent return."[54]

[51] *The Philippines International Fair, Inc. vs. The Collector of Internal Revenue, et. al.*, G.R. Nos. L-12928 and L-12932, March 31, 1962.
[52] *Phil. International Fair, Inc. vs. The Collector of Internal Revenue*, G.R. Nos. L-12928 and L-12932, March 31, 1962, 4 SCRA 781.
[53] *Commissioner of Internal Revenue vs. Liangga Bay Logging Co., Inc.*, G.R. No. 35266, January 21, 1999, 193 SCRA 92-93.
[54] Exhibit "R-14, BIR Records, p. 885.

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The assessed 50% surcharge on deficiency income tax and VAT must be dropped.

Section 248(B) of the Tax Code states what constitutes as *prima facie* evidence of false or fraudulent return:

> "(B) In case of willful neglect to file the return within the period prescribed by this Code or by rules and regulations, or in case a false or fraudulent return is willfully made, the penalty to be imposed shall be fifty percent (50%) of the tax or of the deficiency tax, in case any payment has been made on the basis of such return before the discovery of the falsity or fraud: *Provided,* That **a substantial underdeclaration of taxable sales, receipts or income, or a substantial overstatement of deductions, as determined by the Commissioner pursuant to the rules and regulations to be promulgated by the Secretary of Finance, shall constitute *prima facie* evidence of a false or fraudulent return: *Provided, further,* That <u>failure to report sales, receipts or income in an amount exceeding thirty percent (30%) of that declared per return, and a claim of deductions in an amount exceeding thirty percent (30%) of actual deductions, shall render the taxpayer liable for substantial underdeclaration of sales, receipts or income or for overstatement of deductions, as mentioned herein.</u>**" *(Emphasis and underscoring supplied)*

Based on the foregoing provision, a *prima facie* evidence of a false or fraudulent return is either a substantial **under-declaration** of sales, receipts or income, or a substantial **overstatement** of deductions. In turn, there is a substantial under-declaration of sales, receipts or income, when there is failure to report sales, receipts or income exceeding 30% of that declared per return; and, there is a substantial overstatement of deductions when a claim of deductions exceeds 30% of the actual deductions.

In the case at bar, contrary to respondent's premise, there is no *prima facie* evidence of a false or fraudulent return in the instant case, since there is neither substantial under-declaration of sales, receipts or income, nor a substantial overstatement of deductions, as shown below:

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On Income

Income tax assessment upheld by this Court: Disallowed expenses for non-withholding of tax	₱ 44,991,463.97
Divided by: Reported Deductions per Annual ITR[55]	₱ 469,684,683.00
Ratio of overclaimed deduction over actual deductions	**9.58%**

On VAT

VAT assessments upheld by this Court:		
Unrecorded sale of Prepaid Cards	₱ 60,352,008.03	
Collections of Reimbursable Charges not subjected to VAT	58,180,362.00	
Discrepancy on income subjected to VAT per ITR vs Vat Return	1,382,286.78	
Sales not qualified for zero-rating	2,327,940.00	₱ 122,242,596.81
Divided by: Reported Total Sales/Receipts per VAT Returns[56]		
1st Quarterly VAT Return	₱ 373,203,908.38	
2nd Quarterly VAT Return	508,132,093.46	
3rd Quarterly VAT Return	369,323,660.13	
4th Quarterly VAT Return	600,352,286.25	₱1,851,011,948.22
Ratio of undeclared sales over declared sales		**6.60%**

Therefore, the imposition of 50% surcharge under Section 248(B) of the Tax Code is unwarranted.

WHEREFORE, in view of the foregoing, the Motion for Partial Reconsideration filed by respondent is **PARTIALLY GRANTED**.

Accordingly, the Court's Decision dated July 29, 2020, is hereby amended to read as follows:

> "**WHEREFORE**, premises considered the instant Petition for Review is **PARTIALLY GRANTED**. The assessments issued by respondent against petitioner for deficiency income tax, EWT, VAT, WC and FBT for TY 2010 are **AFFIRMED WITH MODIFICATIONS.** Accordingly, petitioner is **ORDERED TO PAY** respondent the aggregate amount of **ONE HUNDRED SEVENTY-THREE MILLION EIGHT HUNDRED EIGHTY-EIGHT THOUSAND SEVEN HUNDRED FORTY-SIX PESOS AND THIRTY CENTAVOS (₱173,888,746.30),** inclusive of the 25% surcharge imposed under Section 248(A)(3) of the Tax Code, and 20% deficiency and delinquency interests imposed under Section 249(B) and (C) of the same Code, respectively, computed until December 31, 2017, as follows:

[55] Exhibit "P-21" (Line 22C), Docket – Vol. V, p. 3605.
[56] Exhibit "P-26" (Line 19A), Docket – Vol. V, pp. 3886, 3859, 3866 and 3874.

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	Income Tax	EWT	VAT	WTC	FBT	Total
Basic Tax	₱ 8,456,672.29	₱ 900,361.34	₱ 33,570,721.48	₱ 4,976,080.53	₱ 615,464.07	₱ 48,519,299.71
Add:25% Surcharge	2,114,168.07	225,090.33	8,392,680.37	1,244,020.13	153,866.02	12,129,824.92
20% Deficiency Interest up to Oct. 31, 2015						
IT: From Apr. 16, 2011 to Oct. 31, 2015 *[₱8,456,672.29 X 20% X 1660/365 days]*	7,692,096.44					7,692,096.44
[57]**EWT**: From Jan. 14, 2011 to Oct. 31, 2015 *[₱900,361.34 x 20% x 1752/365 days]*		864,346.89				864,346.89
VAT: From Jan. 26, 2011 to Oct. 31, 2015 *[₱33,570,721.48 x 20% x 1740/365 days]*			32,007,153.63			32,007,153.63
[58]**WTC**: From Jan. 14, 2011 to Oct. 31, 2015 *[₱4,976,080.53 x 20% x 1752/365 days]*				4,777,037.31		4,777,037.31
[59]**FBT**: From Jan. 16, 2011 to Oct. 31, 2015 *[₱615,464.07 x 20% x 1750/365 days]*					590,171.03	590,171.03
Total Amount Due, Oct. 31, 2015	**₱18,262,936.80**	**₱1,989,798.56**	**₱ 73,970,555.48**	**₱10,997,137.97**	**₱1,359,501.12**	**₱106,579,929.93**
Add: 20% Deficiency Interest from Nov. 1, 2015 to Dec. 31, 2017						
IT: *[₱8,456,672.29 x 20% x 792/365 days]*	3,669,964.08					3,669,964.08
EWT: *[₱900,361.34 x 20% x 792/365 days]*		390,732.15				390,732.15
VAT: *[₱33,570,721.48 x 20% x 792/365 days]*			14,568,773.38			14,568,773.38
WC: *[₱4,976,080.53 x 20% x 792/365 days]*				2,159,482.62		2,159,482.62
FBT: *[₱615,464.07 x 20% x 792/365 days]*					267,094.54	267,094.54
20% Delinquency Interest from Nov. 1, 2015 to Dec. 31, 2017						
IT: *[₱18,262,936.80 x 20% x 792/365 days]*	7,925,614.22					7,925,614.22
EWT: *[₱1,989,798.56 x 20% x 792/365 days]*		863,518.06				863,518.06
VAT: *[₱73,970,555.48 x 20% x 792/365 days]*			32,101,194.49			32,101,194.49
WC: *[₱10,997,137.97 x 20% x 792/365 days]*				4,772,456.59		4,772,456.59
FBT: *[₱1,359,501.10 x 20% x 792/365 days]*					589,986.24	589,986.24
Total Amount Still Due as of Dec. 31, 2017	**₱29,858,515.10**	**₱3,244,048.77**	**₱120,640,523.35**	**₱17,929,077.18**	**₱2,216,581.90**	**₱173,888,746.30**

In addition, petitioner should be **ORDERED TO PAY** respondent delinquency interest at the rate of twelve percent (12%) computed from January 1, 2018

[57] Pursuant to RR No. 26-02, taxpayers classified under group C, such as herein petitioner, are required to file the Monthly Withholding Tax Returns within eleven (13) days following the end of the month. Hence, the deadline for filing thereof for the last month of TY 2010 is on January 13, 2011.

[58] *Supra.*

[59] Pursuant to Section 5 of RR No. 4-2002, the deadline for e-filing of the Quarterly Remittance Return of Final Income Taxes Withheld on Fringe Benefits Paid to Employees Other than Rank and File (BIR Form No. 1603) is on January 15, 2011, assuming that the subject fringe benefit was granted within the last month of the TY 2010.

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	Income Tax	EWT	VAT	WTC	FBT	Total
Basic Tax	₱ 8,456,672.29	₱ 900,361.34	₱ 33,570,721.48	₱ 4,976,080.53	₱ 615,464.07	₱ 48,519,299.71
Add:25% Surcharge	2,114,168.07	225,090.33	8,392,680.37	1,244,020.13	153,866.02	12,129,824.92
20% Deficiency Interest up to Oct. 31, 2015						
IT: From Apr. 16, 2011 to Oct. 31, 2015 [*₱8,456,672.29 X 20% X 1660/365 days*]	7,692,096.44					7,692,096.44
[57] **EWT**: From Jan. 14, 2011 to Oct. 31, 2015 [*₱900,361.34 x 20% x 1752/365 days*]		864,346.89				864,346.89
VAT: From Jan. 26, 2011 to Oct. 31, 2015 [*₱33,570,721.48 x 20% x 1740/365 days*]			32,007,153.63			32,007,153.63
[58] **WTC**: From Jan. 14, 2011 to Oct. 31, 2015 [*₱4,976,080.53 x 20% x 1752/365 days*]				4,777,037.31		4,777,037.31
[59] **FBT**: From Jan. 16, 2011 to Oct. 31, 2015 [*₱615,464.07 x 20% x 1750/365 days*]					590,171.03	590,171.03
Total Amount Due, Oct. 31, 2015	**₱18,262,936.80**	**₱1,989,798.56**	**₱ 73,970,555.48**	**₱10,997,137.97**	**₱1,359,501.12**	**₱106,579,929.93**
Add: 20% Deficiency Interest from Nov. 1, 2015 to Dec. 31, 2017						
IT: [*₱8,456,672.29 x 20% x 792/365 days*]	3,669,964.08					3,669,964.08
EWT: [*₱900,361.34 x 20% x 792/365 days*]		390,732.15				390,732.15
VAT: [*₱33,570,721.48 x 20% x 792/365 days*]			14,568,773.38			14,568,773.38
WC: [*₱4,976,080.53 x 20% x 792/365 days*]				2,159,482.62		2,159,482.62
FBT: [*₱615,464.07 x 20% x 792/365 days*]					267,094.54	267,094.54
20% Delinquency Interest from Nov. 1, 2015 to Dec. 31, 2017						
IT: [*₱18,262,936.80 x 20% x 792/365 days*]	7,925,614.22					7,925,614.22
EWT: [*₱1,989,798.56 x 20% x 792/365 days*]		863,518.06				863,518.06
VAT: [*₱73,970,555.48 x 20% x 792/365 days*]			32,101,194.49			32,101,194.49
WC: [*₱10,997,137.97 x 20% x 792/365 days*]				4,772,456.59		4,772,456.59
FBT: [*₱1,359,501.10 x 20% x 792/365 days*]					589,986.24	589,986.24
Total Amount Still Due as of Dec. 31, 2017	**₱29,858,515.10**	**₱3,244,048.77**	**₱120,640,523.35**	**₱17,929,077.18**	**₱2,216,581.90**	**₱173,888,746.30**

In addition, petitioner should be **ORDERED TO PAY** respondent delinquency interest at the rate of twelve percent (12%) computed from January 1, 2018

[57] Pursuant to RR No. 26-02, taxpayers classified under group C, such as herein petitioner, are required to file the Monthly Withholding Tax Returns within eleven (13) days following the end of the month. Hence, the deadline for filing thereof for the last month of TY 2010 is on January 13, 2011.

[58] *Supra.*

[59] Pursuant to Section 5 of RR No. 4-2002, the deadline for e-filing of the Quarterly Remittance Return of Final Income Taxes Withheld on Fringe Benefits Paid to Employees Other than Rank and File (BIR Form No. 1603) is on January 15, 2011, assuming that the subject fringe benefit was granted within the last month of the TY 2010.

until full payment thereof pursuant to Section 249(C) of the Tax Code, as amended by Republic Act (RA) No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN), as implemented by RR No. 21-2018, based on the following amounts:

Income tax	₱18,262,936.80
Expanded Withholding Tax	1,989,798.56
Value Added Tax	73,970,555.48
Withholding Tax on Compensation	10,997,137.97
Fringe Benefit Tax	1,359,501.12

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

(With Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FIRST DIVISION

MERIDIEN BUSINESS LEADER, INC.
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9316

Members:

DEL ROSARIO, *P.J., Chairperson, and*
MANAHAN, *JJ.*

Promulgated:
FEB 23 2021 1:51pm

x- x

DISSENTING OPINION

DEL ROSARIO, P.J.:

After much introspection and consideration, I am constrained to maintain the position I have taken in the assailed Decision.

It is indeed disconcerting to apply an existing jurisprudence when an interpretation of the pertinent law that contradicts such jurisprudence, as espoused by my distinctive colleague - is itself supported by equal sense and logic.

My personal sentiment aside, I simply have to remind myself of the basic principle on *"hierarchy of courts"*; and that, as I belong to the third level court, my judicial discretion does not stretch to the point where I can brush aside a Supreme Court pronouncement by refusing to apply its teachings when glaring similarity to the present case exists.

With due respect, I submit that this Court cannot ignore the application of a doctrine so clearly and plainly elucidated in *Commissioner of Internal Revenue vs. Fitness by Design Inc.*[1]

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[1] G.R. No. 215957, November 9, 2016.

To be sure, *Fitness by Design* was parenthetic in saying that a demand by government for the taxpayer to pay deficiency tax liabilities must specify the **definite amount sought to be collected**, failing which, the demand would be violative of the taxpayer's right to due process of law. Thus, in declaring as fatally infirm a demand letter **similarly worded** as that involved in the present case, the Supreme Court, speaking through *Honorable Associate Justice Marvic M. V. F. Leonen* opined:

> "The disputed Final Assessment Notice is not a valid assessment.
>
> First, it lacks the definite amount of tax liability for which respondent is accountable. It does not purport to be a demand for payment of tax due, which a final assessment notice should supposedly be. An assessment, in the context of the National Internal Revenue Code, is a 'written notice and demand made by the [Bureau of Internal Revenue] on the taxpayer for the settlement of a **due tax liability that is there definitely set and fixed.' Although the disputed notice provides for the computations of respondent's tax liability, the amount remains indefinite. It only provides that the tax due is still subject to modification, depending on the date of payment.** Thus:
>
>> The complete details covering the aforementioned discrepancies established during the investigation of this case are shown in the accompanying Annex 1 of this Notice. The 50% surcharge and 20% interest have been imposed pursuant to Sections 248 and 249 (B) of the [National Internal Revenue Code], as amended. **Please note, *however, that the interest and the total amount due will have to be adjusted if prior or beyond April 15, 2004.*** (Emphasis Supplied)
>
> xxx
>
> The Court of Tax Appeals **did not err in cancelling the Final Assessment Notice** as well as the Audit Result/Assessment Notice issued by petitioner to respondent for the year 1995 covering the 'alleged deficiency income tax, value-added tax and documentary stamp tax amounting to P10,647,529.69, inclusive of surcharges and interest' **for lack of due process**. Thus, the Warrant of Distraint and/or Levy is void since an invalid assessment bears no valid effect." *(Boldfacing supplied)*

Juxtaposed in parallel, the Formal Letter of Demand dated May 19, 2014[2] in the case at bar likewise reads:

[2] Exhibits "P-2" and "R-11".

> **"Please take note that the interest and total amount due will have to be adjusted if paid beyond June 30, 2014."** *(Boldfacing supplied)*

There must be some wisdom behind the legal precept in *Fitness by Design*, more so as it was a unanimous decision promulgated by the Second Division of the Supreme Court.

Thus, after assessing the rationale behind the doctrine in *Fitness by Design*, I noted that indeed -- the amount indicated in the aforequoted Formal Letter of Demand is definite only if payment is made on the EXACT due date stated therein. While payment can be made BEFORE or AFTER the date indicated, the exact MANNER of COMPUTING the "adjustment" to come up with a final and definite amount in case payment is made before or after the due date was undisclosed.

Any ambiguity in the amount demanded from a taxpayer is fatal as it precludes him from knowing the exact amount to pay whenever an adjustment is made.

Of course, there would have been a semblance of CERTAINTY if the Formal Letter of Demand dated May 19, 2014 at the very least indicated how adjustment of the demanded amount would be made – particularly with respect to the purported <u>interest</u> that should have to be adjusted vis-à-vis the resulting total amount.

The manner by which interest was computed in *Fitness By Design* and in the present case is very similar; <u>BOTH do not indicate the date when interest commences to run</u>, *viz.*:

FINAL ASSESSMENT NOTICE ***FITNESS BY DESIGN***		**FORMAL LETTER OF DEMAND DATED MAY 19, 2014 PRESENT CASE**	
Income Tax		**Income Tax**	
Taxable Income per audit	xxx	Basic Income Tax Deficiency	xxx
Tax Due (35%)		Add: Increments	
Add: Surcharge (50%)	xxx	Surcharge 50%	xxx
Interest (20% per annum) until 4-15-04	xxx	**Interest – 6-30-2014**	xxx
		Compromise	xxx
Deficiency Income Tax	xxx	Total Amount Due (IT)	xxx
Value Added Tax		**Value Added Tax**	
Unreported Sales	xxx	Basic Value Added Tax Deficiency	xxx
Output Tax (10%)	xxx	Add: Increments	
Add: Surcharge (50%)	xxx	Surcharge 50%	xxx
Interest (20% per annum) until 4-15-04	xxx	**Interest – 6-30-2014**	xxx
		Compromise	xxx
Deficiency VAT	xxx	Total Amount Due (VT)	xxx

GM

	Withholding Tax Compensation xxx Additional taxable salaries xxx Add: Increments Surcharge **Interest – 6-30-2014** Compromise Total Amount Due (WC)	 xxx xxx xxx xxx xxx
	Expanded Withholding Tax xxx Basic EWT Deficiency Add: Increments Surcharge **Interest – 6-30-2014** Compromise Total Amount Due (WE)	 xxx xxx xxx xxx xxx
	Fringe Benefit Tax xxx Fringe Benefit Tax Basic Add: Increments Surcharge 25% **Interest – 6-30-2014** Compromise Total Amount Due (FBT)	 xxx xxx xxx xxx xxx

At once glaring is the fact that in the present case, while the Formal Letter of Demand dated May 19, 2014 states that the interest was computed up to June 30, 2014, **it does not categorically provide for the specific reckoning point or date when interest commences to run** for each type of tax assessment, namely, income tax, value-added tax, withholding tax on compensation, expanded withholding tax and fringe benefit tax.

Even the **rate of interest** that was applied in computing the amount of interest was not indicated, which makes the Formal Letter of Demand dated May 19, 2014 even worse than that in *Fitness By Design* which the Supreme Court nullified.

Considering the different deadlines prescribed by the National Internal Revenue Code (NIRC) of 1997, as amended, in the filing of returns and payment of aforesaid tax types, the dates for the reckoning of interest vary for each specific type of tax. Thus, it was fatal for respondent not to apprise petitioner in the Formal Letter of Demand anent the specific date within which interest shall begin to run for each tax type as well as the rate thereof.

Since adjustment of the amount due becomes indispensable if payment is made by petitioner beyond or after June 30, 2014, the date as to when interest begins to run and the rate thereof are crucial and of much significance to petitioner's right to know the exact amount he is liable to pay.

Financial matters, moreso - computation of interest, involve technical and skill-based concepts that require proper guidance in their application in pragmatic terms. **Thus, it was faulty and flawed for respondent to presume that petitioner would know the exact amount of what is sought to be collected after "adjustment" if no clear and specific formula is communicated to it.**

In the words of *Fitness by Design*: "An assessment does not only include a computation of tax liabilities; ... Its main purpose is to determine the amount that a taxpayer is liable to pay."

Verily, the Formal Letter of Demand dated May 19, 2014 sent to petitioner can hardly be considered as one with indication of DEFINITE amount of liability. *Fitness by Design* is unambiguous and precise. **Revisit by this Court of the doctrine laid down by the Highest Court of the land is unwarranted; rather - and more appropriate, is for respondent himself to revisit, review and modify the details of demand letters he sends out to taxpayers, consistent with the Supreme Court's pronouncement on the matter. This should not be too burdensome for respondent to do.**

As earlier stated, I can only apply *Fitness by Design* to this case. Unless and until modified by the Supreme Court *En Banc*, the doctrine laid down in aforestated case cannot be ignored irrespective of any contrary opinion on the matter. In the language of Honorable (now) Chief Justice Diosdado M. Peralta in *Carmelo F. Lazatin, et al. vs. Hon. Aniano A. Desierto as Ombudsman, et al.*[3]:

> "Petitioners now assert that the Court's ruling on the constitutionality of the provisions of R.A. No. 6770 should be revisited and the principle of *stare decisis* set aside. Again, this contention deserves scant consideration.
>
> The doctrine of *stare decisis et non quieta movere* (to adhere to precedents and not to unsettle things which are established) is embodied in Article 8 of the Civil Code of the Philippines which provides, thus:
>
>> 'ART. 8. Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines.'

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[3] G.R. No. 147097, June 5, 2009.

It was further explained in *Fermin v. People* as follows:

> 'The doctrine of *stare decisis* enjoins adherence to judicial precedents. **It requires courts in a country to follow the rule established in a decision of the Supreme Court thereof.** That decision becomes a judicial precedent to be followed in subsequent cases by all courts in the land. The doctrine of *stare decisis* is based on the principle that once a question of law has been examined and decided, it should be deemed settled and closed to further argument.'

In *Chinese Young Men's Christian Association of the Philippine Islands v. Remington Steel Corporation*, the Court expounded on the importance of the foregoing doctrine, stating that:

> 'The doctrine of *stare decisis* is one of policy grounded on the necessity for securing certainty and stability of judicial decisions, thus:
>
>> Time and again, the court has held that **it is a very desirable and necessary judicial practice** that when a court has laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle and apply it to all future cases in which the facts are substantially the same. *Stare decisis et non quieta movere.* Stand by the decisions and disturb not what is settled. *Stare decisis* simply means that **for the sake of certainty, a conclusion reached in one case should be applied to those that follow if the facts are substantially the same**, even though the parties may be different. Xxx'"

To stress, it is the better practice that when a court has laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle and apply it to all future cases where the facts are substantially the same.[4]

By tradition and in our system of judicial administration, the Supreme Court has the last word on what the law is. Any pronouncements made by the Supreme Court in its judicial decisions become part of the law of the land. Adherence to the principle of *stare decisis et non quieta movere* is mandated for all lower courts which necessarily includes this Court.

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[4] *Sherwin T. Gatchalian vs. Office of the Ombudsman, et al.*, G.R. No. 229288, August 1, 2018.

There is only one Supreme Court from whose decisions all other courts - including this court - should take its bearings.

In the absence of any strong, compelling reason that the doctrine of *stare decisis* should not be applied to the present case, I am of the view that by virtue of the doctrine laid in Fitness By Design, the Court did not err in holding that the Formal Letter of Demand dated May 19, 2014 (with attached Assessment Notices) was void for failure to contain a definite and fixed amount of tax liability.

All told, I DISSENT on the *proposition* that the Formal Letter of Demand dated May 19, 2014 (with attached Assessment Notices) is valid and VOTE to deny respondent's Motion for Reconsideration filed on September 10, 2020.

ROMAN G. DEL ROSARIO
Presiding Justice