REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

THIRD DIVISION

BORDEN CHEMICAL PHILIPPINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 7110

Members:

BAUTISTA, *Chairperson*
PALANCA-ENRIQUEZ, *and*
COTANGCO-MANALASTAS, *JJ.*

Promulgated:
JUN 8 2011
ABFernando 10:30 a.m.

x- x

DECISION

BAUTISTA, *J.*:

This is a Petition for Review filed on December 15, 2004 by Borden Chemical Philippines, Inc. (petitioner), pursuant to Section 7 of Republic Act No. 1125, as amended by Republic Act No. 9282, due to the inaction of respondent Commissioner of Internal Revenue on petitioner's Letter of Protest filed on May 24, 2004, assailing respondent's Formal Letter of Demand and assessments dated April 12, 2004 and April 25, 2004, respectively, for deficiency income tax, withholding tax on compensation, expanded withholding tax (EWT), final withholding tax (FWT), value-added tax (VAT), VAT on royalty, and documentary stamp tax (DST) for taxable year 2001; and for deficiency income tax, expanded withholding tax, documentary stamp tax, and final withholding tax for taxable year 2002, inclusive of interest and penalties in both taxable years.

Petitioner is a domestic corporation duly organized and existing under Philippine laws, with office address at 6th Floor, Padilla Building, Emerald Avenue, Ortigas Center, Pasig City.

On the other hand, respondent Commissioner of Internal Revenue is the public officer authorized under the National Internal Revenue Code (NIRC) of 1997 to assess and collect all national taxes, fees and charges, and to enforce all forfeitures, penalties, and fines connected with such taxes. He may be served with summons and other court processes at the Bureau of Internal Revenue (BIR) National Office Building, Agham Road, Diliman, Quezon City.

On March 26, 2004, petitioner received a Preliminary Assessment Notice dated January 30, 2004 for alleged deficiency income tax, withholding tax on compensation, EWT, FWT, VAT, value-added tax on royalty, DST, interest, and compromise penalties for taxable years 2001 and 2002.[1]

On April 12, 2004, petitioner filed its position papers attaching thereto such documentary evidence necessary to refute the BIR's findings and support its objections to the alleged deficiency taxes.[2]

On April 23, 2004, petitioner received a Formal Letter of Demand dated April 12, 2004 from the BIR "requesting" it to pay the deficiency tax liability

---

[1] Par. 2, Facts, Joint Stipulation of Facts and Issues for Trial (JSFIT), docket, pp. 430-431
[2] Par. 3, Facts, JSFIT, docket, p. 431

within the time shown in the enclosed assessment notice or on May 25, 2004. The amounts of the basic deficiency taxes claimed and the corresponding interest and compromise penalties are summarized as follows:[3]

Tax Type	Assessment Notice No.	Basic Tax	Interest	Compromise Penalties	Total
2001					
Income Tax	INC-01-000101	P 7,070,456.36	P 2,983,151.45	P 25,000.00	P 10,078,607.81
Withholding Tax on Compensation	WC-01-000056	140,454.39	65,417.11	25,000.00	230,871.50
Expanded Withholding Tax	EWT-01-000104	825,330.63	384,400.57	25,000.00	1,234,731.20
Final Withholding Tax	FWT-01-000028	55,252.38	25,733.99	24,000.00	104,986.37
Value-Added Tax	VT-01-000117	2,660,526.21	1,239,149.19	25,000.00	3,924,675.40
Value-Added Tax on Royalty	VT-01-000118	-	29,830.62	20,012.02	49,842.65
Documentary Stamp Tax	DST-01-000096	112,500.00	60,904.11	12,000.00	185,404.11
Taxable Year 2001	***Subtotal***	***P 10,864,519.97***	***P 4,788,587.04***	***P 156,012.02***	***P 15,809,119.04***
2002					
Income Tax	INC-02-000102	P 20,352,840.12	P 4,516,657.67	P 25,000.00	P 24,894,497.80
Expanded Withholding Tax	EWT-02-000105	68,380.94	18,172.47	12,000.00	98,553.41
Documentary Stamp Tax	DST-02-000097	93,712.50	39,847.07	12,000.00	145,559.57
Final Withholding Tax	FWT-02-000029	-		1,000.00	1,000.00
Taxable Year 2002	***Subtotal***	***P 20,514,933.56***	***P 4,574,677.21***	***P 50,000.00***	***P 25,139,610.78***
2001 and 2002	**Total**	**P 31,379,453.53**	**P 9,363,264.25**	**P 206,012.02**	**P 40,948,729.82**

On May 24, 2004, petitioner duly protested the said Formal Letter of Demand and Assessment Notices, attaching such documents, schedules, and returns necessary to support its objections to the assessments made by the BIR.[4]

Due to inaction of respondent on the said protest, petitioner filed the instant Petition for Review with this Court on December 15, 2004.

Respondent filed his Answer[5] on February 17, 2005, interposing the following Special and Affirmative Defenses:

[3] Par. 4, Facts, JSFIT, docket, p. 431
[4] Pars. 6 and 7, Facts, JSFIT, docket, p. 435
[5] Docket, pp. 330-341

"**SPECIAL AND AFFIRMATIVE DEFENSES**

5. The assessments were issued in accordance with law and regulations;

6. The assessment for deficiency income taxes for taxable year 2000 in the amount of P7,070,456.36 arose from the following discrepancies discovered during investigation:

   a. Petitioner's total debit to Accounts Receivable was found to be greater by P608,616.51 (net of value-added tax) when compared to the total sales per financial statements;
   b. The gain on disposal of equipment in the amount of P823,795.00 as stated in the statement of cash flows was not declared as part of revenue in the income tax return.
   c. The miscellaneous income in the amount of P8,598,022.00 declared as part of the other income in Petitioner's Financial Statement was not included in the other income declared in its Income Tax Return.
   d. The accounts subject to withholding tax on compensation per general ledger vis-à-vis the alpha list of employees revealed that there is a discrepancy in the amount of P438,919.97;
   e. Analysis made on the expense accounts subject to expanded withholding tax per general ledger revealed that when compared to the income payments made per alpha list there is a discrepancy in the amount of P10,185,830.45;
   f. The foreign exchange loss in the amount of P2,730,220.00 as presented in the income tax return was not duly substantiated by bank debit memos covering the said transaction.
   g. The other non-operating expenses account in the amount of P3,067,922.00 was found to be not duly supported by evidences of costs;
   h. The Expense Account-Pension Cost in the amount of P726,000.00 was found to be unnecessary since it was already established that all of the Petitioner's employees were already terminated as of May 31, 2001 and no retirement plan duly approved by the BIR was submitted;
   i. Scrutiny made on the import entry declarations submitted by Petitioner showed that the data captured on the Updated SAS and Importer's Detail

Report were higher than those declared per VAT returns, hence, the resulting discrepancy in the amount of P692,732.19, which is deemed to be an undeclared sale;

j. The creditable withholding tax being claimed exceeds the sales declared in the Income Tax Return in the amount of P10,394,260.00;
k. The write-off of inventory was already considered as non-deductible expense per ITR reconciliation. However, the same amount was still claimed as part of Cost of Sales and again as part of the other non-operating expenses - a clear case of double claim of inventory write-off in the amount of P2,233,277.00;
l. The reversal of the Allowance for Inventory Obsolescence in the amount of P1,141,184.00 as part of the non-taxable income was disallowed because said inventory was not supported with a Certificate of Destruction duly approved by the BIR;
m. The Retrenchment/Separation Pay in the amount of P1,496,636.00, which forms part of the Other No-Operating Expenses was disallowed as the cash outlay for said account should come from the retirement fund set aside for this purpose;
n. The allowance for doubtful accounts was over-provisioned in the amount of P7,555,099.00. Hence, the reversal of said allowance for bad debts was deemed taxable instead of non-taxable as presented in the ITR reconciliation;

7. Petitioner's contention that it has enough Net Operating Loss Carry-Over (NOLCO) from prior years to offset the purported taxable income at P150,498,436.00 and P48,191,919.00 for 1999 and 2000, respectively (a new contention to the FAN as it was not cited as a defense either during the informal conference or in the protest to the PAN) is bereft of both factual and legal bases since investigation disclosed that Petitioner neither provided for NOLCO in its Income Tax Return nor in its Financial Statements in violation of Sections 6.4 and 7 of Revenue Regulations No.14-200, which provides as follows:

'NOLCO shall be allowed as deduction in computing the taxpayer's income taxes per quarter and annual final adjustment income tax returns; Provided, however, that if per the taxpayer's final annual adjustment income tax return, the entire operations for the year resulted to a net operating loss, such net operating loss may be claimed as

NOLCO deduction in the immediately succeeding taxable year... In order that compliance with this three-year statutory requisite may be effectively monitored, **the taxpayer shall, at all times show its NOLCO deduction, in its income tax return, as a separate item of deduction**. In no case may NOLCO be claimed, as part of the taxpayer's other itemized deductions like under deduction of 'losses' in general. It was observed in the submitted ITRs of 1999, 2000 and 2001, that the alleged NOLCO was 'never' seen, in direct contrast to the wording of the Regulations 'at all times', as a separate item of deduction. The reference being made by the counsels purport to the net taxable loss under line 20 of the ITR, which is not conclusive as to its source, if coming from the immediately succeeding taxable year or not, in contravention to the aforecited provision.'

'The NOLCO shall be separately shown in the taxpayer's income tax return (also shown in the **Reconciliation Section of the Tax Return**) while the Unused NOLCO shall be presented in the Notes to the Financial Statements showing, **in detail**, the taxable year in which the net operating loss was sustained or incurred, and any amount thereof claimed as NOLCO deduction **within three (3) consecutive years** immediately following the year of such loss. **Failure to comply with this requirement will disqualify the taxpayer from the NOLCO.**'

8. The assessment for deficiency withholding tax on compensation in the amount of P140,454.39 arose from a comparison made on the salaries and wages between the accounts enumerated per alpha list of employees and per general ledger, which revealed a discrepancy in the amount of P438,919.97;

9. The assessment for deficiency Expanded Withholding Tax in the amount of P825,330.63 arose from a comparison of the expenses subject to expanded withholding tax between the accounts enumerated per alpha list of income recipients and per general ledger, which revealed a discrepancy in the amount of P825,330.63. The professional fee account has long been analyzed since the time of the preliminary assessment notice wherein it was already identified that the amount of P6,096,516.54 was just the one declared as exempt (being paid to GPP) per alpha list. Assuming that the alpha list did not cover all the GPPs in the amount of P,027,921.54,

the difference of P1,931,405.00 was not substantiated by an alpha list showing that it is exempt and duly received by the BIR, hence, should be imposed a compromise penalty in the amount of P1,000.00 for non-filing of an information return. The adjustment to effect the additional exempt fees would be transferred from the taxable professional fee to the exempt. Hence, the withholding tax discrepancy between the alpha list and per FS was reduced to P193,140.50;

10. The assessment for deficiency Final Withholding Tax on Royalty in the amount of P55,252.38 arose from the finding during audit that Petitioner did not withhold the proper final withholding taxes on the royalty payments it made to Elmer's Investments, Inc. up to April 2001 under their existing trade license in the amount of P640,480.99;

11. The assessment for deficiency value-added tax in the amount of P2,660,526.21 arose from the following findings during the audit:

    a. The year's total debit to Accounts Receivable was found to be greater by P608,616.51 (net of VAT) when compared to the total sales per Financial Statement;
    b. The adjustment to Retained Earnings in the amount of P48,518.00 was declared as part of the return for income tax purposes, but was not declared as part of the taxable gross receipts in the Income Tax Return;
    c. The miscellaneous income in the amount of P8,598,022.00 was declared as part of the other income in the Financial Statement but was not included in the VAT returns as part of the taxable gross receipts;
    d. The proceeds from sale of equipment in the amount of P903,524.00 were not included as part of the gross receipts subject to VAT;
    e. Scrutiny made on the import entry declarations submitted by Petitioner proved that the data captured on the Updated SAS and Importer's Detail Report were higher by P692,732.19 than those declared per VAT returns;
    f. The creditable withholding tax being claimed by Petitioner exceeded the declared sales in the VAT Return in the amount of P1,970,467.40 which is considered undeclared sales;
    g. The disallowance of non-VAT purchases in the amount of P28,305.45 and Input Tax without supporting

documents in the amount of P1,431,371.85 resulted from the verification with the Integrated Tax System (ITS) of petitioner's summary list of purchases, while the input tax without supporting documents came from the second quarter VAT return having no summary list of purchases submitted;

h. The assessment for deficiency value-added tax on royalty in the amount of P64,048.10 arose from the finding during audit that royalty payments in the amount of P640,480.99 made to the Elmer's Investments Inc., a foreign licensor, should have been paid for with VAT on behalf of the said foreign company, to be used as input tax in the return. However, no withholding tax return has been made, Hence, the corresponding input tax thereof cannot also be claimed.

12. The assessment for deficiency Income Tax for taxable year 2002 in the amount of P20,352,840.12 resulted from the following findings during the audit:

a. The Professional Fee in the amount of P626,164.39 and Rental in the amount of P115,290.00 were not subjected to the proper income tax. Analysis made on the expense accounts subject to expanded withholding tax per general ledger revealed that when compared to the income payments made per alpha list, a discrepancy arose. The alleged payment to the GPP and the rental expense remain to be substantiated;
b. The write-off of fixed assets in the amount of P184,470.00 despite the approval of the Board of Directors is deemed to have been sold in the absence of proof to the contrary;
c. Since all employees were practically terminated as of May 31, 2001, the Pension Trust Contribution account in the amount of P605,000.00 is no longer necessary, thus, disallowed. Petitioner failed to submit the retirement plan duly approved by the BIR;
d. Since all the employees of Petitioner had been terminated, instead of amortizing the Past Service Cost, the excess Retirement Fund in the amount of P68,607,674.00 should be reverted back to the Company since the said Fund was used for petitioner's calendar year 2002 expenses due to the decrease of said account from 2001 to 2002;

13. The assessment for deficiency Expanded Withholding Tax in the amount of P68,380.94 arose from the finding during audit that Professional Fee in the amount of P626,164.39 and Rental Fees in the amount of P115,290.00 were not subjected to the proper withholding taxes;

14. The assessment for deficiency documentary stamp tax arose from the finding during audit that proceeds of inter-company loan on March 3, 2002 in the amount of P62,475,000.00 were availed of for taxable year 2002, hence, subject to documentary stamp tax under Section 173 of the NIRC of 1997;

15. The Compromise penalty in the amount of P1,000.00 was imposed for non-filing of DST Return for taxable year 2002;

16. All presumptions are in favor of the correctness of tax assessments. The good faith of tax assessors and the validity of their actions are presumed. They will be presumed to have taken into consideration all the facts to which their attention was called (*CIR vs. Construction Resources of Asia, Inc. 145 SCRA 671*). It is incumbent upon the taxpayer to prove the *contrary (Mindanao Bus Company vs. CIR, 1 SCRA 538; CIR vs. Tuazon, Inc., 173 SCRA 397)* and failure to do so shall vest legality to respondent's actions and assessments."

On February 2, 2005, petitioner received respondent's Final Decision on Disputed Assessment (FDDA) dated November 12, 2004.[6]

In respondent's FDDA, respondent reiterated his findings in the Formal Letter of Demand dated April 12, 2004 and Assessment Notices dated April 25, 2004, except for the following items: (a) with respect to the 2001 expenses allegedly not subjected to Expanded Withholding Tax, the discrepancy between the alphalist and the Financial Statements was reduced by the amount of P1,931,405.00; (b) corollary to item "a", the 2001 Expanded

[6] Exhibit "JJ", docket, pp. 923-932

Withholding Tax discrepancy between the alphalist and Financial Statements was reduced by P193,140.50; and (c) the assessment for the 2001 Documentary Stamp Tax for the P75,000,000.00 Citibank loan was cancelled.[7]

On March 3, 2005, petitioner filed a Motion for Leave to File and to Admit Supplemental Petition for Review[8], with attached Supplemental Petition for Review[9], which this Court granted during the April 8, 2005 hearing.[10] In the Supplemental Petition, petitioner prays that the Formal Letter of Demand dated April 12, 2004 and the Assessment Notices dated April 25, 2004, as modified by the FDDA dated November 12, 2004; and the FDDA itself be cancelled, reversed and set aside on the same grounds raised in the Petition.[11]

On July 13, 2005, respondent filed an Answer to the Supplemental Petition for Review[12].

On September 15, 2006, upon motion of petitioner pursuant to Rule 13 of the Revised Rules of the Court of Tax Appeals, this Court commissioned Atty. Rosario S. Bernaldo, the Managing Partner of R.S. Bernaldo & Associates, as Independent Certified Public Accountant (CPA).[13]

On April 15, 2008, petitioner filed a Motion for Leave to File and to Admit Attached Second Supplemental Petition for Review[14] with the

---

[7] Par. 9, Facts, JSFIT, docket, pp. 435-436
[8] Docket, pp. 344-345
[9] Docket, pp. 347-349
[10] Minutes of Hearing, docket, p. 420, and Resolution dated June 10, 2005, docket, p. 421
[11] Docket, p. 348; Par. 11, Facts, JSFIT, docket, p. 436
[12] Docket, pp. 423-425
[13] Minutes of Hearing, docket, p. 488
[14] Docket, pp. 665-667

attached Second Supplemental Petition for Review[15] dated April 8, 2008, averring that on January 31, 2008, it availed of the tax amnesty program under Republic Act (R.A.) No. 9480. In the Resolution[16] dated June 4, 2008, this Court granted the above motion and the Second Supplemental Petition for Review was admitted.

In its Second Supplemental Petition for Review, petitioner avers that it filed on January 31, 2008 a Notice of Availment of Tax Amnesty, a Tax Amnesty Return, Statement of Assets, Liabilities and Networth, and paid the amnesty tax of P1,000,000.00. Consequently, petitioner claims that it is "immune from the payment of taxes, as well as additions thereto, and the appurtenant civil, criminal or administrative penalties" under the NIRC of 1997, except withholding taxes, pursuant to Section 6(a) of R.A. No. 9480. It claims that the assessments for income tax, VAT, VAT on Royalty, and DST for the years 2001 and 2002 have already been cancelled by its availment of tax amnesty; while the issue pertaining to the validity of the assessments for deficiency expanded withholding tax, withholding tax on compensation, and final withholding tax in the aggregate amount of P1,637,310.69 for taxable years 2001 and 2002, are retained. In support thereof, petitioner attached documents marked as Annexes "A" to "E"[17], as proof of its tax amnesty availment.

---

[15] Docket, pp. 668-673
[16] Docket, p. 684
[17] Notice of Availment of Tax Amnesty under Republic Act No. 9480 dated January 31, 2008, Tax Amnesty Return (BIR Form No. 2116), Statement of Assets and Liabilities and Networth (SALN) as of December 31, 2005, Tax Amnesty Payment Form/Acceptance of Payment Form (BIR Form No. 0617), DBP BIR Tax Payment Deposit Slip, docket, pp. 676-682

On July 15, 2008, respondent filed a Supplemental Answer[18] raising the following Special and Affirmative Defenses:

"SPECIAL AND AFFIRMATIVE DEFENSES

5. The filing of the petition is invalid due to procedural infirmity. When petitioner filed a protest on the assessment on 24 May 2004, it was given a period of sixty (60) days within which to file all relevant supporting documents in support of its cause under the fourth paragraph of Section 228 of the National Internal Revenue Code of 1997. However, petitioner did not exhaust the 60-day period. Instead, it went ahead and filed its Petition for Review. Therefore, based on the foregoing, the filing of the said petition is premature.

6. The availment of Tax Amnesty *per se* does not extinguish all the liabilities of petitioner arising from the assessment rather, it is the faithful compliance with the requirements thereof. Section 4 of Republic Act No. 9480 (Tax Amnesty Act of 2007) reads as follows:

> 'SEC. 4. *Presumption of Correctness of the SALN.* - The SALN as of December 31, 2005 shall be considered as true and correct except where the amount of declared networth is understated to the extent of thirty percent (30%) or more as may be established in proceedings initiated by, or at the instance of, parties other than the BIR or its agents; *Provided*, **That such proceedings must be initiated within one year following the date of the filing of the tax amnesty return and the SALN. Findings of or admission in congressional hearings, other than administrative agencies of the government, and/or courts shall be admissible to prove a thirty percent (30%) under-declaration**.' (*Emphasis supplied*)

While it is true that amnesty is an act of forgiveness, the proviso under Section 4 of R.A. No. 9480 qualifies this act of forgiveness via an investigation to determine whether or not the taxpayer is a penitent errant worthy of compassion. To ignore this proviso would result in an absurd situation where the State-purveyor of compassion and mercy, would be made a fool, if later on it discovers that the taxpayer has duped its benefactor. Hence, total extinguishment of

---
[18] Docket, pp. 702-707

liabilities should not ensue after the availment of Tax Amnesty *per se*.

7. Furthermore, pursuant to Section 6 of R.A. No. 9480 in relation to Department Order No. 29-07 dated 15 August 2007, it is incumbent upon petitioner to submit the original or certified true copies of the following documents:

    (a) Acceptance of Payment Form which must be signed by the branch manager, in case of payment through an authorized agent bank;
    (b) Notice of Availment;
    (c) Statement of Assets, Liabilities and Net Worth which does not show understatement of net worth as of 31 December 2005 to the extent of 30% or more;
    (d) Tax Amnesty Return; and
    (e) Full payment of the amnesty tax payable.

8. Assuming *por arguendo*, that petitioner indeed availed of the Tax Amnesty and filed a Notice of Availment of Tax Amnesty on 31 January 2008, then it follows that it cannot invoke the jurisdiction of the Honorable Court in the case at bar. It is incumbent upon the taxpayer to wait for the lapse of the one-year period under Section 4 of R.A. No. 9480 before the matter can be considered closed and terminated. The taxpayer must not merely initiate the prescribed administrative relief, but must also pursue it to its appropriate conclusion before seeking judicial intervention in order to give that administrative agency an opportunity to decide the matter by itself correctly and prevent unnecessary and premature resort to the court. Furthermore, the taxpayer cannot ask for the cancellation of the assessment and extinguishment of all liabilities arising from tax because the Court itself is inhibited from entertaining such prayers under the doctrine of exhaustion of administrative remedies."

On July 31, 2008, petitioner filed a Motion for Leave to File and to Admit Attached Third Supplemental Petition for Review[19] with the attached Third Supplemental Petition for Review[20] dated July 30, 2008, averring, among others, that on May 9, 2008, petitioner paid the BIR the total amount of

[19] Docket, pp. 718-720
[20] Docket, pp. 721-727

P1,358,894.27 allegedly representing its total deficiency withholding tax liability for 2001 and 2002, inclusive of interest and penalties. In the Resolution[21] dated October 6, 2008, this Court granted the above motion, and accordingly, the Third Supplemental Petition for Review attached thereto was admitted.

In its Third Supplemental Petition for Review, petitioner reiterated its allegations pertaining to its availment of the tax amnesty granted under R.A. No. 9480. Further, it avers that it paid the BIR on May 9, 2008 the total amount of P1,358,894.27 purportedly representing its total deficiency withholding tax liability for 2001 and 2002, inclusive of interest and penalties. Thus, petitioner asserts that considering its payment of the deficiency withholding taxes, the said withholding tax assessments must be cancelled, reversed and set aside. In support thereof, petitioner attached documents marked as Annexes "A", "B" and "C"[22], as proof of its payment.

On November 3, 2008, respondent filed an Answer (Re: Third Supplemental Petition for Review)[23] raising the following Special and Affirmative Defenses:

"**SPECIAL AND AFFIRMATIVE DEFENSES**

6. Availment of tax amnesty is not extinguishment of deficiency tax liabilities *per se*. Under R.A. No. 9480 or the Tax Amnesty Law, the applicant-taxpayer is required to 'file with Bureau of Internal Revenue (BIR) a notice and Tax Amnesty Return accompanied by a Statement of Assets, Liabilities and Networth (SALN) as of December 31, 2005'. However,

---

[21] Docket, p. 752-753

[22] Copy of Computation Sheet, Copies of Certification issued by the BIR Large Taxpayers Service LT-Document Processing and Quality Assurance Division dated May 15, 2008, docket, pp. 730-732

[23] Docket, pp. 760-766

pursuant to Section 15 of the Tax Amnesty Law, the Secretary of Finance issued Department Order No. 29-07 to implement tax amnesty provisions. Under the said department order, the applicant-taxpayer must submit the original or certified true copies of the following documents:

(a) Acceptance of Payment Form which must be signed by the branch manager, in case of payment through an authorized agent bank;
(b) Notice of Availment;
(c) Statement of Assets, Liabilities and Net Worth which does not show understatement of net worth as of 31 December 2005 to the extent of 30% or more;
(d) Tax Amnesty Return; and
(e) Full payment of the amnesty tax payable.

7. Satisfaction of the documentary requirements gives the applicant-taxpayer an inchoate right to have deficiency tax liabilities covered by the amnesty to be extinguished. It is the faithful compliance with the requirements of R.A. No. 9480 that brings about true absolution. Section 4 of R.A. No. 9480 reads:

> 'SEC. 4. *Presumption of Correctness of the SALN.* - The SALN as of December 31, 2005 shall be considered as true and correct except where the amount of declared networth is understated to the extent of thirty percent (30%) or more as may be established in proceedings initiated by, or at the instance of, parties other than the BIR or its agents; *Provided*, **That such proceedings must be initiated within one year following the date of the filing of the tax amnesty return and the SALN. Findings of or admission in congressional hearings, other than administrative agencies of the government, and/or courts shall be admissible to prove a thirty percent (30%) under-declaration**.' (*Emphasis supplied*)

It is incumbent upon the taxpayer to wait for the lapse of the one-year period under Section 4 of R.A. No. 9480 before the matter can be considered closed and terminated. The taxpayer must not merely initiate the prescribed administrative relief, but must also pursue it to its appropriate conclusion before seeking judicial intervention in order to give that administrative agency an opportunity to decide the matter by itself correctly and prevent unnecessary and premature resort to the court. Furthermore, the taxpayer cannot ask for the cancellation of the assessment and extinguishment of all liabilities arising from tax because the Court itself is inhibited from entertaining such prayers under the doctrine of exhaustion of administrative remedies.

8. As for the withholding liabilities of the petitioner, respondent takes exception as to the Expanded Withholding Tax (EWT) deficiency allegedly satisfied by petitioner. According to Assessment Notice No. EWT-01-000104, petitioner is liable for deficiency EWT in the amount of P1,234,731.20. However, in the instant Third Supplemental Petition for Review, petitioner claims to have fully satisfied the EWT deficiency in the amount of P550,405.16 inclusive of delinquency interest and compromise penalty. If that is so, then petitioner is still liable for the balance of P684,326.04. Petitioner's explanation as to the reduction of the EWT deficiency is insufficient as petitioner merely annexed a computation sheet bereft of details. In the absence of evidence to the contrary, assessments are presumed correct. In the case of *Commissioner of Internal Revenue vs. Bank of the Philippine Islands*, the Supreme Court held:

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

In the case at bar, petitioner not only failed to refute this presumption, but it also paid taxes that were not based on the corresponding assessment notice, i.e. Assessment Notice No. EWT-01-000104."

During trial, petitioner presented three (3) witnesses. Thereafter, petitioner filed its Formal Offer of Evidence [for Petitioner's Manifestation and Motion to Cancel Assessments dated March 25, 2009][24] on April 2, 2009, submitting Exhibits "Y" to "HH", inclusive of sub-markings; which this Court

[24] Docket, pp. 862-869

admitted in the Resolution[25] dated June 3, 2009. On August 25, 2009, petitioner filed a Supplemental Formal Offer of Evidence [for Petitioner's Manifestation and Motion to Cancel Assessments dated March 25, 2009],[26] submitting Exhibits "II," "JJ", and "KK"; which this Court admitted in the Resolution[27] dated October 20, 2009.

On the other hand, respondent presented Mr. Narciso T. Laguerta as his sole witness.[28] Thereafter, on March 3, 2010, respondent filed the Formal Offer of Evidence[29] submitting Exhibits "1" to "6", inclusive of sub-markings; which this Court admitted in the Resolution[30] dated May 24, 2010.

In the Resolution[31] dated March 25, 2010 this Court resolved, among others, that petitioner is deemed to have fully complied with the requirements of R.A. No. 9480 and should thereafter be immune from the payment of taxes, as well as the appurtenant civil, criminal or administrative penalties under the National Internal Revenue Code of 1997, as amended, in so far as petitioner's alleged deficiency income taxes, value-added taxes, and documentary stamp taxes for 2001 and 2002; and that Assessment Notices Nos. INC-01-000101, VT-01-000117, VT-01-000118, DST-01-000096, INC-02-000102, and DST-02-000097 are cancelled and set aside, solely in view of petitioner's availment of tax amnesty under R.A. No. 9480.

---

[25] Docket, pp. 974-975
[26] Docket, pp. 1053-1056
[27] Docket, pp. 1110-1111
[28] Minutes dated February 10, 2010, docket, p. 1126; Exhibit "6" Judicial Affidavit dated December 16, 2009, docket, pp. 1118-1123
[29] Docket, pp. 1133-1137
[30] Docket, pp. 1165-1166
[31] Docket, pp. 1139-1143

On August 12, 2010, this case was submitted for decision, considering petitioner's Memorandum[32] filed on July 5, 2010, and respondent's Memorandum[33] filed on August 9, 2010.[34]

The following are the parties' jointly stipulated issues[35] submitted for this Court's resolution:

> "1. Whether Respondent complied with substantive and procedural due process requirements when it issued a Formal Letter of Demand dated 12 April 2004, the same date Petitioner filed its position paper.
>
> *Deficiency Income Taxes for 2001*
>
> 2. Whether Petitioner's total debit to Accounts Receivable is greater by P608,616.51 (net of VAT) when compared to the total sales per financial statements for 2001; and whether such discrepancy is sales subject to income tax.
> 3. Whether the gain on disposal of equipment in the amount of P823,795.00 as stated in the statement of cash flows was not declared as part of revenue in the Income Tax Return.
> 4. Whether the miscellaneous income in the amount of P8,598,022.00 declared as part of the other income in Petitioner's Financial Statement was not included in the other income declared in its Income Tax Return.
> 5. Whether certain compensation paid to employees in the amount of P438,919.97 is subject to withholding tax, and if yes, whether such compensation was subjected to withholding tax.
> 6. Whether certain expenses in the amount of P8,254,425.45 are subject to expanded withholding tax, and if yes, whether such expenses were subjected to expanded withholding tax.
> 7. Whether foreign exchange losses in the amount of P2,730,220 was not duly substantiated.
> 8. Whether 'a portion of the non-operating expenses' in the amount of P3,067,922 was not duly substantiated.
> 9. Whether Pension Costs in the amount of P726,000 is an allowable deduction from gross income if all of Petitioner's employees were terminated as of 31 May 2001.

---

[32] Docket, pp. 1177-1196
[33] Docket, pp. 2005-2026
[34] Docket, p. 2029
[35] Docket, pp. 440-444

10. Whether the discrepancy between the figures appearing in the Updated SAS and Importer's Detail Report per Bureau of Customs and those appearing in the VAT Returns, in the amount of P692,732.19, constitutes sales subject to income tax.
11. Whether Petitioner failed to declare certain sales transactions amounting to P10,394,260.
12. Whether there was double claim of inventory write-off in the amount of P2,233,277.
13. Whether reversals to the Allowance for Inventory Obsolescence account in the amount of P1,141,184 constitute taxable income.
14. Whether the Retrenchment/Separation Pay in the amount of P1,496,636.00 should form part of the Other Non-Operating Expenses or should be taken from the retirement fund set aside for this purpose.
15. Whether the allowance for doubtful accounts was over-provisioned in the amount of P7,555,099.00; and whether reversals to the Allowance for Bad Debts account in the amount P7,555,099 constitute taxable income.
16. On the assessment for the alleged deficiency withholding tax on compensation for 2001, the issue is whether Petitioner is liable for deficiency withholding tax on compensation in the amount of P230,871.50, inclusive of interest and compromise penalties.

Deficiency Expanded Withholding Taxes for 2001

17. On the assessment for alleged deficiency expanded withholding tax for 2001, the issue is whether Petitioner is liable for deficiency expanded withholding tax in the amount of P951,634.85, inclusive of interest and compromise penalties.

Deficiency Final Withholding Taxes for 2001

18. On the assessment for alleged deficiency final withholding tax for 2001, the issue is whether Petitioner is liable for deficiency final withholding tax in the amount of P104,986.37, inclusive of interest and compromise penalties, on royalty payments.

Deficiency Value-Added Taxes for 2001

19. On the assessment for alleged deficiency VAT for 2001, the issue is whether Petitioner is liable for deficiency VAT in the amount of P3,924,675.40, inclusive of interest and compromise

penalties. In resolving this issue, the following questions need to be addressed:

19.1 Whether there are undeclared sales in the amount of P608,616.51.
19.2 Whether adjustments made to Retained Earnings are subject to VAT.
19.3 Whether Miscellaneous Income in the amount of P8,598,022 is subject to VAT.
19.4 Whether proceeds from sale of equipment in the amount of P903,524.00 are subject to VAT.
19.5 Whether the discrepancy in the amount of P692,732.19 between the figures captured from the Updated SAS and Importer's Details report and those declared in the VAT constitutes sales that are subject to VAT.
19.6 Whether 'undeclared sales arising from tax credits' amounting to P1,970,467.40 are subject to VAT.
19.7 Whether purchases in the amount of P28,305.45 were made from non-VAT taxpayers; and whether claims for input tax in the amount of P1,431,371.85 were duly substantiated.

Deficiency Value-Added Taxes (on Royalty) for 2001

20. Whether royalty payments made to Elmer's Investments, Inc. are subject to VAT; and whether the corresponding input tax thereof can be claimed.

Deficiency Income Taxes for 2002

21. On the assessment for alleged deficiency income tax for 2002, the issue is whether Petitioner is liable for deficiency income tax in the total amount of P24,894,497.80, inclusive of interest and compromise penalties. In resolving this issue, the following questions need to be answered:

21.1 Whether professional fees in the amount of P626,164.39 is subject to expanded withholding tax.
21.2 Whether the rental expenses in the amount of P115,290.00 are an allowable deduction from gross income.
21.3 Whether the write-off of fixed assets amounting to P184,470.00 is an allowable deduction from gross income.

21.4 Whether the contributions made to the pension fund in the amount of P605,000 are an allowable deduction from gross income if all employees were terminated as of 31 May 2001.

21.5 Whether the amount of P68,607,674 is excess retirement fund that was reverted to, and constitute income of Petitioner.

Deficiency Expanded Withholding Taxes for 2002

22. Whether Professional Fees in the amount of P626,164.39 and Rental Fees in the amount of P115,290.00 were subjected to the proper withholding taxes.

Deficiency Documentary Stamp Taxes for 2002

23. Whether the proper documentary stamp taxes were paid on the proceeds of inter-company loan in the amount of P62,475,000.00

Compromise penalty

24. Whether Petitioner is liable for compromise penalty in the amount of P1,000.00 for non-filing of DST Return for taxable year 2002.

Net operating loss carry-over

25. Whether Petitioner's contention that it has enough Net Operating Loss Carry-over ('NOLCO') from prior years to offset the purported taxable income at P150,498,436.00 and P48,191,919.00 for 1999 and 2000, respectively, has factual and legal bases."

In view of petitioner's availment of tax amnesty under R.A. No. 9480, which was earlier resolved in the Resolution dated March 25, 2010, this Court's evaluation will now be limited to the remaining issues pertaining to assessments for deficiency withholding tax on compensation, expanded withholding tax, and final withholding tax for taxable years 2001 and 2002 subject of Assessment Notice Nos. WC-01-000056, EWT-01-000104, FWT-01-000028, EWT-02-000105, and FWT-02-000029.

In its Third Supplemental Petition for Review, petitioner claims that it paid the BIR on May 9, 2008 the total amount of P1,358,894.27 allegedly representing its total deficiency withholding tax liability for 2001 and 2002, inclusive of interest and penalties. Below is the breakdown of the amount of P1,358,894.27:

Taxable Year	Assessment No.	Basic Tax	Delinquency Interest	Compromise	Total
2001	WC-01-000056	P 230,871.50	P 174,891.16	P 16,000.00	P 421,762.66
	EWT-01-000104	304,066.72	230,338.44	16,000.00	550,405.16
	FWT-01-000028	104,986.37	79,529.90	16,000.00	200,516.27
2002	EWT-02-000105	98,553.41	74,656.77	12,000.00	185,210.18
	FWT-02-000029	-	-	1,000.00	1,000.00
	Total	**P 738,478.00**	**P 559,416.27**	**P 61,000.00**	**P 1,358,894.27**

To prove that it fully paid the deficiency withholding taxes subject of Assessment Notice Nos. WC-01-000056, EWT-01-000104, FWT-01-000028, EWT-02-000105 and FWT-02-000029, including the corresponding penalties and interest thereon, petitioner presented BIR Computation Sheet[36] signed by Maridur V. Rosario[37], BIR Tax Payment Deposit Slip[38], BIR Payment Form No. 0605[39], BIR Certifications[40], Judicial Affidavit[41], and Supplemental Judicial Affidavit[42] of Ms. Luz A. Nonan (who identified said affidavits during trial), Formal Letter of Demand together with the Assessment Notices[43], Final

[36] Exhibit "DD", docket, p. 877
[37] Chief, LT-Collection and Enforcement Division, Exhibit "DD-2", docket, p. 877
[38] Exhibits "EE" to "EE-4", docket, pp. 880-884
[39] Exhibits "EE-5" to "EE-9", docket, pp. 885-889
[40] Exhibits "FF" to "FF-1", docket, pp. 890-891
[41] Exhibit "GG", docket, pp. 892-899
[42] Exhibit "HH", docket, pp. 900-902
[43] Exhibit "II", docket, pp. 906-922

Decision on Disputed Assessment[44], and Certificate of No Outstanding Tax Liability[45]. A scrutiny of these documents proves that petitioner fully paid the deficiency withholding tax liabilities under Assessment Notice Nos. WC-01-000056, FWT-01-000028, EWT-02-000105, and FWT-02-000029, except for the deficiency expanded withholding tax for taxable year 2001 covered by Assessment Notice No. EWT-01-000104.

In view of the said payment by petitioner, which this Court finds to be in order, Assessment Notice Nos. WC-01-000056, FWT-01-000028, EWT-02-000105, and FWT-02-000029 are deemed cancelled and set aside; while the issue pertaining to the deficiency EWT assessment for taxable year 2001 under Assessment Notice No. EWT-01-000104 remains to be resolved.

As stated in respondent's Final Decision on Disputed Assessment[46], the deficiency EWT for taxable year 2001 arose from the following findings:

> "C. Expanded Withholding Tax
>
> Expanded Withholding Tax not Remitted – P825,330.63. – A comparison was made on the expenses subject to expanded withholding tax between the accounts enumerated per alpha list of income recipients and per general ledger, which revealed a discrepancy. *Section 57(B), NIRC*. The professional fee account has long been analyzed since the time of the preliminary assessment notice wherein it was already identified that the amount of P6,096,516.54 were just the ones declared as exempt (being paid to GPP) per alpha list. Assuming that the alpha list did not cover all the GPPs as it is being alleged now in the amount of P8,027,921.54, the difference of P1,931,405.00 was not substantiated by an alpha list showing that it is exempt and duly received by the BIR, hence should be imposable by a compromise penalty in the amount of P1,000.00 for non-filing of an information return. The adjustment to effect the additional

[44] Exhibit "JJ", docket, pp. 923-932
[45] Exhibit "KK", docket, p. 991
[46] Par. C, FDDA, Exhibit "JJ", docket, pp. 927-928

exempt fees would be transferred from the taxable professional fee to the exempt, hence the withholding tax discrepancy between the alpha list and per FS will be reduced to P193,140.50 (P1,931,405.00 x 10%)."

Based on the foregoing, petitioner claims that respondent reduced the basic deficiency EWT assessment for taxable year 2001 from P825,330.63 to P193,140.50. As a consequence, petitioner alleges that since it paid the amount of P550,405.16[47], inclusive of interest and penalties, it has fully settled the deficiency EWT assessment for 2001.

Respondent, on the other hand, argues that the basic deficiency EWT of P825,330.63 originally assessed against petitioner per Assessment Notice No. EWT-01-000104, was reduced by respondent in his FDDA to the amount of P632,190.13[48] and not P193,140.50 as alleged by petitioner.

This Court finds for respondent. Had it been the intention of respondent to reduce the basic deficiency EWT for 2001 **to** and not **by** the amount of P193,140.50, the same should have been reflected also in the deficiency income tax being assessed against petitioner for 2001 per FDDA. As can be seen in the FDDA, respondent disallowed the expenses subject of the deficiency EWT assessment from petitioner's claimed income tax deductions for 2001, to wit:

"<u>2001</u>

<u>A. Income Tax</u>

xxx xxx xxx

[47] Exhibits "EE-1" and "EE-6", docket, pp. 881 and 886
[48] P825,330.63 less P193,140.50

> e.) Expenses not subjected to EWT - P10,185,830.45. - An analysis made on the expense accounts subject to expanded withholding tax per general ledger revealed that when compared to the income payments made per alpha list, a discrepancy arose. *Section 34 (K), NIRC*. The professional fee account has long been analyzed since the time of the Preliminary Assessment Notice (PAN) wherein it was already identified that the amount of P6,096,516.54 were just the ones declared as exempt (being paid to General Professional Partnerships or GPP) per alpha list. Assuming that the alpha list did not cover all the GPPs as it is being alleged now in the amount of P8,027,921.54, there will only be a difference of P1,931,405.00. For purposes of equity, the adjustment to effect the additional exempt fees would be transferred from the taxable professional fee to the exempt, hence the discrepancy between the alpha list and per FS **will just be reduced by the amount of P1,931,405.00.**" *(Emphasis supplied)*

Clearly, the afore-mentioned P1,931,405.00 decrease in the disallowed income tax deductions of petitioner pertained to the EWT of P193,140.50 deducted by respondent from the original basic deficiency EWT of P825,330.63. Hence, the basic deficiency EWT assessment for 2001 per FDDA was lowered to the amount of P632,190.13, and not P193,140.50 as alleged by petitioner.

Further, the amount of basic deficiency EWT of P304,066.72 is included in the total amount of P550,405.16 paid by petitioner. Had petitioner believed, as it now insists, that respondent reduced the basic deficiency EWT to P193,140.50, it would have paid the basic deficiency EWT of only P193,140.50.

It bears stressing also that the parties jointly stipulated as follows:

> "In Respondent's Final Decision, Respondent basically reiterated its findings in its Formal Letter of Demand dated April 12, 2004 and Assessment Notices dated April 25, 2004, except for the following items: (i) with respect to the 2001 expenses

> allegedly not subjected to Expanded Withholding Tax ('EWT'), **the discrepancy between the alpha list and the Financial Statements was reduced by the amount of PhP 1,931,405.00**; (ii) corollary to item (i), **the 2001 Expanded Withholding Tax discrepancy between the alpha list and Financial Statements was reduced by PhP 193,140.50**; and (iii) the assessment for the 2001 Documentary Stamp Tax ('DST') for the PhP 75,000,000.00 Citibank loan was cancelled.[49]
>
> xxx xxx xxx
>
> **Respondent assessed deficiency expanded withholding taxes of P825,330.63**, exclusive of interest and penalties on the ground that a comparison was made on the expenses subject to Expanded Withholding Tax ('EWT') showed that there was a discrepancy between the amounts reported in the alpha list and those in Petitioner's general ledger. In arriving at the above assessment, Respondent subjected certain expenses it found to be subject to EWT thereby yielding a EWT due of P1,026,433.94, which it then compared against the EWT remitted to the government in the amount of P201,103.31."[50] (*Emphasis supplied*)

Evidently, petitioner is being assessed of basic deficiency EWT for 2001 per respondent's FDDA in the reduced amount of P632,190.13 and not P193,140.50 as alleged by petitioner, considering that based on the above stipulations, the 2001 Expanded Withholding Tax discrepancy between the alphalist and Financial Statements was reduced **by** P193,140.50.

Petitioner presented in evidence the Certificate of No Outstanding Tax Liability[51] (OCN 3TC0000003406) dated March 16, 2009 to prove that petitioner has no outstanding internal revenue tax liability as of March 16, 2009.[52] Respondent counters that the purported Certificate of No Outstanding Tax Liability was not identified by Revenue Officer Rey Asterio L.

---

[49] Par. 9, Facts, JSFIT, docket, pp. 435-436
[50] Par. 28, Facts, JSFIT, docket, p. 438
[51] Exhibit "KK", docket, p. 991
[52] Memorandum, docket, pp. 1184-1194; and Transcript of Stenographic Notes (TSN) dated August 7, 2009, pp. 26-27

Tambis, who executed the said document; thus, petitioner's supposition that it has no outstanding tax liability is hearsay, arguing that well-settled is the rule that hearsay evidence cannot be given credence for it has no probative value.[53] Further, respondent claims that petitioner was not issued an Authority to Cancel Tax Assessment and assuming that the said Certificate was identified, it is nonetheless unavailing as petitioner's tax liability occurred when it was a large taxpayer.[54]

This Court agrees with respondent. The Court notes that the aforesaid Certificate of No Outstanding Tax Liability presented by petitioner was issued by Revenue District Officer Tambis of BIR Revenue District Office (RDO) No. 043-Pasig City.

First, there is no proof that the contents of the Certificate of No Outstanding Tax Liability is shown to be true and correct, and duly identified and testified on by the person issuing it. The Certificate reads:

> "This is to certify that as of March 16, 2009, the above-named taxpayer has no outstanding internal revenue tax liability with the Bureau of Internal Revenue. This certificate is:
>
> VALID FOR DISSOLUTION OF NON-INDIVIDUAL TAXPAYERS"

Clearly, said contents do not prove payment of deficiency taxes subject of this case, including deficiency EWT for 2001. In fact, the contents thereof did not indicate the type of tax and the taxable years covered by said certification. The best evidence of payment is the official receipt and/or deposit slips showing payment to the account of respondent.

[53] Memorandum, docket, pp. 2019-2020
[54] Memorandum, docket, p. 2020

Second, petitioner failed to prove that the Revenue District Officer of Pasig City has legal authority to certify that petitioner "has no outstanding internal revenue tax liability with the Bureau of Internal Revenue." This Court believes that the tax clearance, assuming it is mandated by law, should have come from the Large Taxpayers Service, the same office that issued the subject assessment notices. Otherwise, it cannot be said that petitioner was cleared of all its tax liabilities for 2001.

Assessments are *prima facie* presumed correct and made in good faith. It is the taxpayer and not the Bureau of Internal Revenue who has the duty of proving otherwise. It is an elementary rule that in the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed. All presumptions are in favor of tax assessments. Verily, failure to present proof of error in the assessment will justify judicial affirmance of said assessment.[55]

WHEREFORE, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, the assessments for deficiency withholding tax on compensation and final withholding tax for taxable year 2001, and for deficiency expanded withholding tax, and final withholding tax for taxable year 2002 covered by Assessment Notice Nos. WC-01-000056, FWT-01-000028, EWT-02-000105, and FWT-02-000029 are hereby **CANCELLED** and **WITHDRAWN**.

---

[55] Commissioner of Internal Revenue vs. Court of Appeals, *et al.*, G.R. No. 104151, March 10, 1995 and Atlas Consolidated Mining and Development Corporation vs. Court of Appeals, *et al.*, G.R No. 105563, March 10, 1995

However, the assessment for deficiency expanded withholding tax issued by respondent against petitioner for taxable year 2001 subject of Assessment Notice No. EWT-01-000104 is hereby **AFFIRMED** with some modifications. Accordingly, petitioner is hereby **ORDERED** to **PAY** respondent the amount of P1,818,324.87, computed as follows:

Tax on expenses not subjected to EWT			P 825,330.63
Less:	EWT assessed on allowed exempt portion		193,140.50
Basic EWT Deficiency			P 632,190.13
Add:	25% Surcharge	P158,047.53	
	20% Deficiency Interest		
	from January 25, 2002 to February 2, 2005 (P632,190.13 x 20% x 1105 days ÷ 365)	382,778.13	
	from February 3, 2005 to May 9, 2008 (P632,190.13 x 20% x 1192 days ÷ 365)	412,915.42	
	20% Delinquency Interest from Feb. 2, 2005 to May 9, 2008		
	on basic def. EWT and surcharge [(P632,190.13 + P158,047.53) x 20% x 1193 days ÷ 365]	516,577.28	
	on deficiency interest due for Jan. 25, 2002 to Feb. 2, 2005 (P382,778.13 x 20% x 1193 days ÷ 365)	250,221.54	1,720,539.90
Total			**P2,352,730.03**
Less:	Voluntary payment for deficiency EWT per Exhibit "EE-6"[56]		
	Basic Tax	P304,066.72	
	Interest	230,338.44	534,405.16
Amount of EWT still due			**P1,818,324.87**

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

(a) deficiency interest at the rate of twenty percent (20%) *per annum* on basic deficiency EWT of P328,123.41[57] computed from May 10, 2008 until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended;

---

[56] Docket. p. 886. Note that the voluntary payment for Assessment Notice No. EWT-01-000104 included compromise penalty in the amount of P16,000.00 which was not considered in the computation of EWT Still Due since there was no compromise agreement between the parties

[57] P632,190.13 less P304,066.72

(b) delinquency interest at the rate of twenty percent (20%) *per annum* on the total amount of P486,170.94, representing the unpaid basic deficiency EWT of P328,123.41 and twenty-five percent (25%) surcharge of P158,047.53,[58] computed from May 10, 2008 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended; and

(c) delinquency interest at the rate 20% *per annum* on the deficiency interest of P152,439.69[59] computed from May 10, 2008 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

OLGA PALANCA-ENRIQUEZ
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

---

[58] Based on basic deficiency EWT of P632,190.13
[59] Deficiency Interest due for January 25, 2002 to February 2, 2005 in the amount of P382,778.13 less payment made on May 9, 2008 in the amount of P230,338.44

ATTESTATION

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

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Justice